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# SUBCHAPTER A—CHILD NUTRITION PROGRAMS

## PART 210—NATIONAL SCHOOL LUNCH PROGRAM

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SOURCE: 53 FR 29147, Aug. 2, 1988, unless otherwise noted.

## Subpart A—General

### § 210.1 General purpose and scope.

(a) *Purpose of the program.* Section 2 of the National School Lunch Act (42 U.S.C. 1751), states: ''It is declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of food and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs.'' Pursuant to this act, the Department provides States with general and special cash assistance and donations of foods acquired by the Department to be used to assist schools in serving nutritious lunches to children each school day. In furtherance of Program objectives, participating schools shall serve lunches that are nutritionally adequate, as set forth in these regulations, and shall to the extent practicable, ensure that participating children gain a full understanding of the relationship between proper eating and good health.

(b) *Scope of the regulations.* This part sets forth the requirements for participation in the National School Lunch and Commodity School Programs. It specifies Program responsibilities of State and local officials in the areas of program administration, preparation and service of nutritious lunches, payment of funds, use of program funds,

program monitoring, and reporting and recordkeeping requirements.

**§ 210.2 Definitions.**

For the purpose of this part:

*Act* means the National School Lunch Act, as amended.

*Afterschool care program* means a program providing organized child care services to enrolled school-age children afterschool hours for the purpose of care and supervision of children. Those programs shall be distinct from any extracurricular programs organized primarily for scholastic, cultural or athletic purposes.

*Attendance factor* means a percentage developed no less than once each school year which accounts for the difference between enrollment and attendance. The attendance factor may be developed by the school food authority, subject to State agency approval, or may be developed by the State agency. In the absence of a local or State attendance factor, the school food authority shall use an attendance factor developed by FCS. When taking the attendance factor into consideration, school food authorities shall assume that all children eligible for free and reduced price lunches attend school at the same rate as the general school population.

*Average Daily Participation* means the average number of children, by eligibility category, participating in the Program each operating day. These numbers are obtained by dividing (a) the total number of free lunches claimed during a reporting period by the number of operating days in the same period; (b) the total number of reduced price lunches claimed during a reporting period by the number of operating days in the same period; and (c) the total number of paid lunches claimed during a reporting period by the number of operating days in the same period.

*Child* means—(a) a student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (a) and (b) of the definition of ''School,'' including students who are mentally or physically handicapped as defined by the State and who are participating in a school program established for the mentally or physically handicapped; or (b) a person under 21 chronological years of age who is enrolled in an institution or center as described in paragraphs (c) and (d) of the definition of ''School;'' or (c) For purposes of reimbursement for meal supplements served in afterschool care programs, an individual enrolled in an afterschool care program operated by an eligible school who is 12 years of age or under, or in the case of children of migrant workers and children with handicaps, not more than 15 years of age.

*CND* means the Child Nutrition Division of the Food and Consumer Service of the Department.

*Commodity School Program* means the Program under which participating schools operate a nonprofit lunch program in accordance with this part and receive donated food assistance in lieu of general cash assistance. Schools participating in the Commodity School Program shall also receive special cash and donated food assistance in accordance with § 210.4(c).

*Days* means calendar days unless otherwise specified.

*Department* means the United States Department of Agriculture.

*Distributing agency* means a State agency which enters into an agreement with the Department for the distribution to schools of donated foods pursuant to part 250 of this chapter.

*Donated foods* means food commodities donated by the Department for use in nonprofit lunch programs.

*FCS* means the Food and Consumer Service, United States Department of Agriculture.

*FCSRO* means the appropriate Regional Office of the Food and Consumer Service of the Department.

*Fiscal year* means a period of 12 calendar months beginning October 1 of any year and ending with September 30 of the following year.

*Food component* means one of the four food groups which compose the reimbursable school lunch, i.e., meat or meat alternate, milk, grains/breads and vegetables/fruits for the purposes of § 210.10(k) or one of the four food groups which compose the reimbursable school lunch, i.e., meat or meat alternate,

milk, bread or bread alternate, and vegetable/fruit under § 210.10a.

*Food item* means one of the five required foods that compose the reimbursable school lunch, i.e., meat or meat alternate, milk, grains/breads, and two (2) servings of vegetables, fruits, or a combination of both for the purposes of § 210.10(k) or one of the five required foods that compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and two (2) servings of vegetables, fruits, or a combination of both for the purposes of § 210.10a.

*Food service management company* means a commercial enterprise or a nonprofit organization which is or may be contracted with by the school food authority to manage any aspect of the school food service.

*Free lunch* means a lunch served under the Program to a child from a household eligible for such benefits under 7 CFR part 245 and for which neither the child nor any member of the household pays or is required to work.

*Handicapped student* means any child who has a physical or mental impairment as defined in § 15b.3 of the Department's nondiscrimination regulations (7 CFR part 15b).

*Lunch* means a meal which meets the nutrition standards and the appropriate nutrient and calorie levels designated in § 210.10. In addition, if applicable, a lunch shall meet the requirements by age/grade groupings in § 210.10(k)(2) or the school lunch pattern for specified age/grade groups of children as designated in § 210.10a.

*Menu item* means, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, any single food or combination of foods. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards provided in § 210.10, except for those foods that are considered as foods of minimal nutritional value as provided for in § 210.11(a)(2) which are not offered as part of a menu item in a reimbursable meal. For the purposes of a reimbursable lunch, a minimum of three menu items must be offered, one of which must be an entree (a combination of foods or a single food item that is offered as the main course) and one of which must be fluid milk. Under offer versus serve, a student shall select, at a minimum, an entree and one other menu item. If more than three menu items are offered, the student may decline up to two menu items; however, the entree cannot be declined.

*National School Lunch Program* means the Program under which participating schools operate a nonprofit lunch program in accordance with this part. General and special cash assistance and donated food assistance are made available to schools in accordance with this part.

*Net cash resources* means all monies, as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a school food authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

*Nonprofit*, when applied to schools or institutions eligible for the Program, means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; or, in the Commonwealth of Puerto Rico, certified as nonprofit by the Governor.

*Nonprofit school food service* means all food service operations conducted by the school food authority principally for the benefit of schoolchildren, all of the revenue from which is used solely for the operation or improvement of such food services.

*Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning* mean ways to develop menus based on the analysis for nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met. Such analysis is based on averages weighted in accordance with the criteria in § 210.10(i)(5). Such analysis is normally done by a school or a school food authority. However, for the purposes of Assisted Nutrient Standard Menu Planning, menu planning and analysis are completed by other entities and shall incorporate the production quantities needed to accommodate

the specific service requirements of a particular school or school food authority.

*OIG* means the Office of the Inspector General of the Department.

*Point of Service* means that point in the food service operation where a determination can accurately be made that a reimbursable free, reduced price or paid lunch has been served to an eligible child.

*Program* means the National School Lunch Program and the Commodity School Program.

*Reduced price lunch* means a lunch served under the Program: (a) to a child from a household eligible for such benefits under 7 CFR part 245; (b) for which the price is less than the school food authority designated full price of the lunch and which does not exceed the maximum allowable reduced price specified under 7 CFR part 245; and (c) for which neither the child nor any member of the household is required to work.

*Reimbursement* means Federal cash assistance including advances paid or payable to participating schools for lunches meeting the requirements of § 210.10 and served to eligible children.

*Revenue*, when applied to nonprofit school food service, means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

*School* means: (a) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (b) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; (c) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term ''residential child care institutions'' includes, but is not limited to: homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more; or (d) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

*School food authority* means the governing body which is responsible for the administration of one or more schools; and has the legal authority to operate the Program therein *or* be otherwise approved by FCS to operate the Program.

*School week* means the period of time used to determine compliance with the nutrition standards and the appropriate calorie and nutrient levels in § 210.10. Further, if applicable, school week is the basis for conducting Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning for lunches as provided in § 210.10(i) and § 210.10(j). The period shall be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, the period shall be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school lunches are offered less than three times shall be combined with either the previous or the coming week.

*School year* means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

*Secretary* means the Secretary of Agriculture.

*7 CFR part 3015*, means the Uniform Federal Assistance Regulations published by the Department to implement Office of Management and Budget Circulars A–21, A–87, A–102, A–110, A–122, A–124, and A–128; the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.); and Executive Order 12372.

NOTE: OMB Circulars, referred to in this definition, are available from the EOP Publications, New Executive Office Building, 726 Jackson Place NW, Room 2200, Washington, DC 20503.

*State* means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, or the Federated States of Micronesia, the Republic of the Marshalls, and the Republic of Palau.

*State agency* means (a) the State educational agency; (b) any other agency of the State which has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools, as specified in §210.3(b); or (c) the FCSRO, where the FCSRO administers the Program as specified in §210.3(c).

*State educational agency* means, as the State legislature may determine, (a) the chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (b) a board of education controlling the State department of education.

*State food distribution advisory council* means a group which meets to advise the State educational agency and the State distributing agency with respect to the needs of schools participating in the Program concerning the manner of selection and distribution of commodities.

*Subsidized lunch* (paid lunch) means a lunch served to children who are either not eligible for or elect not to receive the free or reduced price benefits offered under 7 CFR part 245. The Department subsidizes each paid lunch with both general cash assistance and donated foods. Although a paid lunch student pays for a large portion of his or her lunch, the Department's subsidy accounts for a significant portion of the cost of that lunch.

*Yogurt* means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Definition and Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, 21 CFR 131.200, 21 CFR 131.203, and 21 CFR 131.206, respectively.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12580, Mar. 28, 1989; 56 FR 32939, July 17, 1991; 58 FR 42487, Aug. 10, 1993; 60 FR 31207, June 13, 1995; 62 FR 10189, Mar. 6, 1997]

### §210.3 Administration.

(a) *FCS*. FCS will act on behalf of the Department in the administration of the Program. Within FCS, the CND will be responsible for Program administration.

(b) *States*. Within the States, the responsibility for the administration of the Program in schools, as defined in §210.2, shall be in the State educational agency. If the State educational agency is unable to administer the Program in public or private nonprofit residential child care institutions or nonprofit private schools, then Program administration for such schools may be assumed by FCSRO as provided in paragraph (c) of this section, or such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer such schools. Each State agency desiring to administer the Program shall enter into a written agreement with the Department for the administration of the Program in accordance with the applicable requirements of this part; part 235; part 245; parts 15, 15a, 15b, and 3015 of Departmental regulations; and FCS instructions.

(c) *FCSRO*. The FCSRO will administer the Program in nonprofit private schools or public or nonprofit private residential child care institutions if the State agency is prohibited by law from disbursing Federal funds paid to such schools. In addition, the FCSRO

will continue to administer the Program in those States in which nonprofit private schools or public or nonprofit private residential child care institutions have been under continuous FCS administration since October 1, 1980, unless the administration of the Program in such schools is assumed by the State. The FCSRO will, in each State in which it administers the Program, assume all responsibilities of a State agency as set forth in this part and part 245 of this chapter as appropriate. References in this part to ''State agency'' include FCSRO, as applicable, when it is the agency administering the Program.

(d) *School food authorities.* The school food authority shall be responsible for the administration of the Program in schools. State agencies shall ensure that school food authorities administer the Program in accordance with the applicable requirements of this part; part 245; parts 15, 15a, 15b, and 3015 of Departmental regulations; and FCS instructions.

## Subpart B—Reimbursement Process for States and School Food Authorities

### § 210.4 Cash and donated food assistance to States.

(a) *General.* To the extent funds are available, FCS will make cash assistance available in accordance with the provisions of this section to each State agency for lunches and meal supplements served to children under the National School Lunch and Commodity School Programs. To the extent donated foods are available, FCS will provide donated food assistance to distributing agencies for each lunch served in accordance with the provisions of this part and part 250 of this chapter.

(b) *Assistance for the National School Lunch Program.* The Secretary will make cash and/or donated food assistance available to each State agency and distributing agency, as appropriate, administering the National School Lunch Program, as follows:

(1) *Cash assistance for lunches:* Cash assistance payments are composed of a *general* cash assistance payment, authorized under section 4 of the Act, and a *special* cash assistance payment, authorized under section 11 of the Act. General cash assistance is provided to each State agency for *all* lunches served to children in accordance with the provisions of the National School Lunch Program. Special cash assistance is provided to each State agency for lunches served under the National School Lunch Program to children determined eligible for free or reduced price lunches in accordance with part 245 of this chapter. The total general cash assistance paid to each State for any fiscal year shall not exceed the lesser of amounts reported to FCS as reimbursed to school food authorities in accordance with § 210.5(d)(3) or the total calculated by multiplying the number of lunches reported in accordance with § 210.5(d)(1) for each month of service during the fiscal year, by the applicable national average payment rate prescribed by FCS. The total special assistance paid to each State for any fiscal year shall not exceed the lesser of amounts reported to FCS as reimbursed to school food authorities in accordance with § 210.5(d)(3) or the total calculated by multiplying the number of free and reduced price lunches reported in accordance with § 210.5(d)(1) for each month of service during the fiscal year by the applicable national average payment rate prescribed by FCS. In accordance with section 11 of the Act, FCS will prescribe annual adjustments to the per meal national average payment rate (general cash assistance) and the special assistance national average payment rates (special cash assistance) which are effective on July 1 of each year. These adjustments, which reflect changes in the food away from home series of the Consumer Price Index for all Urban Consumers, are annually announced by Notice in July of each year in the FEDERAL REGISTER. FCS will also establish maximum per meal rates of reimbursement within which a State may vary reimbursement rates to school food authorities. These maximum rates of reimbursement are established at the same time and announced in the same Notice as the national average payment rates.

(2) *Donated food assistance.* For each school year, FCS will provide distributing agencies with donated foods for

lunches served under the National School Lunch Program as provided under part 250 of this chapter. The per lunch value of donated food assistance is adjusted by the Secretary annually to reflect changes as required under section 6 of the Act. These adjustments, which reflect changes in the Price Index for Foods Used in Schools and Institutions, are effective on July 1 of each year and are announced by Notice in the FEDERAL REGISTER in July of each year.

(3) *Cash assistance for meal supplements.* For those eligible schools (as defined in §210.10(n)(1) or §210.10a(j)(1), whichever is applicable) operating afterschool care programs and electing to serve meal supplements to enrolled children, funds shall be made available to each State agency, each school year in an amount no less than the sum of the products obtained by multiplying:

(i) The number of meal supplements served in the afterschool care program within the State to children from families that do not satisfy the income standards for free and reduced price school meals by 2.75 cents;

(ii) The number of meal supplements served in the afterschool care program within the State to children from families that satisfy the income standard for free school meals by 30 cents;

(iii) The number of meal supplements served in the afterschool care program within the State to children from families that satisfy the income standard for reduced price school meals by 15 cents.

(4) The rates in paragraph (b)(3) are the base rates established in August 1981 for the CACFP. FCS shall prescribe annual adjustments to these rates in the same Notice as the National Average Payment Rates for lunches. These adjustments shall ensure that the reimbursement rates for meal supplements served under this part are the same as those implemented for meal supplements in the CACFP.

(c) *Assistance for the Commodity School Program.* FCS will make special cash assistance available to each State agency for lunches served in commodity schools in the same manner as special cash assistance is provided in the National School Lunch Program. Payment of such amounts to State agencies is subject to the reporting requirements contained in §210.5(d). FCS will provide donated food assistance in accordance with part 250 of this chapter. Of the total value of donated food assistance to which it is entitled, the school food authority may elect to receive cash payments of up to 5 cents per lunch served in its commodity school(s) for donated foods processing and handling expenses. Such expenses include any expenses incurred by or on behalf of a commodity school for processing or other aspects of the preparation, delivery, and storage of donated foods. The school food authority may have all or part of these cash payments retained by the State agency for use on its behalf for processing and handling expenses by the State agency or it may authorize the State agency to transfer to the distributing agency all or any part of these payments for use on its behalf for these expenses. Payment of such amounts to State agencies is subject to the reporting requirements contained in §210.5(d). The total value of donated food assistance is calculated on a school year basis by adding:

(1) The applicable national average payment rate (general cash assistance) prescribed by the Secretary for the period of July 1 through June 30 multiplied by the total number of lunches served during the school year under the Commodity School Program; and

(2) The national per lunch average value of donated foods prescribed by the Secretary for the period of July 1 through June 30 multiplied by the total number of lunches served during the school year under the Commodity School Program.

[53 FR 29147, Aug. 2, 1988, as amended at 58 FR 42487, Aug. 10, 1993; 60 FR 31207, June 13, 1995]

### §210.5 Payment process to States.

(a) *Grant award.* FCS will specify the terms and conditions of the State agency's grant in a grant award document and will generally make payments available by means of a Letter of Credit issued in favor of the State agency. The State agency shall obtain funds for reimbursement to participating school food authorities through procedures established by FCS in accordance with 7

CFR part 3015. State agencies shall limit requests for funds to such times and amounts as will permit prompt payment of claims or authorized advances. The State agency shall disburse funds received from such requests without delay for the purpose for which drawn. FCS may, at its option, reimburse a State agency by Treasury Check. FCS will pay by Treasury Check with funds available in settlement of a valid claim if payment for that claim cannot be made within the grant closeout period specified in paragraph (d) of this section.

(b) *Cash-in-lieu of donated foods.* All Federal funds to be paid to any State in place of donated foods will be made available as provided in part 240 of this chapter.

(c) *Recovery of funds.* FCS will recover any Federal funds made available to the State agency under this part which are in excess of obligations reported at the end of each fiscal year in accordance with the reconciliation procedures specified in paragraph (d) of this section. Such recoveries shall be reflected by a related adjustment in the State agency's Letter of Credit.

(d) *Substantiation and reconciliation process.* Each State agency shall maintain Program records as necessary to support the reimbursement payments made to school food authorities under § 210.7 and § 210.8 and the reports submitted to FCS under this paragraph. The State agency shall ensure such records are retained for a period of 3 years or as otherwise specified in § 210.23(c).

(1) *Monthly report.* Each State agency shall submit a final Report of School Program Operations (FCS–10) to FCS for each month. The final reports shall be limited to claims submitted in accordance with § 210.8 of this part. For the month of October, the final report shall include the total number of children approved for free lunches, the total number of children approved for reduced price lunches, and the total number of children enrolled in participating public schools, private schools, and residential child care institutions, respectively, as of the last day of operation in October. The final reports shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FCS grants an exception. Upward adjustments to a State's report shall not be made after 90 days from the month covered by the report unless authorized by FCS. Downward adjustments to a State's report shall always be made regardless of when it is determined that such adjustments are necessary. FCS authorization is not required for downward adjustments. Any adjustments to a State's report shall be reported to FCS in accordance with procedures established by FCS.

(2) *Quarterly report.* Each State agency shall also submit to FCS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter.

(3) *End of year report.* Each State agency shall submit a final Financial Status Report (SF–269) for each fiscal year. This final fiscal year grant closeout report shall be postmarked and/or submitted to FCS within 120 days after the end of each fiscal year or part thereof that the State agency administered the Program. Obligations shall be reported only for the fiscal year in which they occur. FCS will not be responsible for reimbursing Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred. Grant closeout procedures are to be carried out in accordance with 7 CFR part 3015.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12580, Mar. 28, 1989; 56 FR 32939, July 17, 1991]

### § 210.6 Use of Federal funds.

*General.* State agencies shall use Federal funds made available under the Program to reimburse or make advance payments to school food authorities in connection with lunches and meal supplements served in accordance with the provisions of this part; *except that,* with the approval of FCS, any State agency may reserve an amount up to one percent of the funds earned in any fiscal year under this part for use in carrying

out special developmental projects. Advance payments to school food authorities may be made at such times and in such amounts as are necessary to meet the current fiscal obligations. All Federal funds paid to any State in place of donated foods shall be used as provided in part 240 of this chapter.

[53 FR 29147, Aug. 2, 1988, as amended at 58 FR 42487, Aug. 10, 1993]

### §210.7 Reimbursement for school food authorities.

(a) *General.* Reimbursement payments to finance nonprofit school food service operations shall be made only to school food authorities operating under a written agreement with the State agency. Subject to the provisions of §210.8(c), such payments may be made for lunches and meal supplements served in accordance with provisions of this part and part 245 in the calendar month preceding the calendar month in which the agreement is executed. These reimbursement payments include general cash assistance for all lunches served to children under the National School Lunch Program and special cash assistance payments for free or reduced price lunches served to children determined eligible for such benefits under the National School Lunch and Commodity School Programs. Reimbursement payments shall also be made for meal supplements served to eligible children in after-school care programs in accordance with the rates established in §210.4(b)(3). Approval shall be in accordance with part 245 of this chapter.

(b) *Assignment of rates.* At the beginning of each school year, State agencies shall establish the per meal rates of reimbursement for school food authorities participating in the Program. These rates of reimbursement may be assigned at levels based on financial need; *except that,* the rates are not to exceed the maximum rates of reimbursement established by the Secretary under §210.4(b) and are to permit reimbursement for the total number of lunches in the State from funds available under §210.4. Within each school food authority, the State agency shall assign the same rate of reimbursement from general cash assistance funds for all lunches served to children under the Program. Assigned rates of reimbursement may be changed at any time by the State agency, *provided that* notice of any change is given to the school food authority. The total general and special cash assistance reimbursement paid to any school food authority for lunches served to children during the school year are not to exceed the sum of the products obtained by multiplying the total reported number of lunches, by type, served to eligible children during the school year by the applicable maximum per lunch reimbursements prescribed for the school year for each type of lunch.

(c) *Reimbursement limitations.* To be entitled to reimbursement under this part, each school food authority shall ensure that Claims for Reimbursement are limited to the number of free, reduced price and paid lunches and meal supplements that are served to children eligible for free, reduced price and paid lunches and meal supplements, respectively, for each day of operation.

(1) *Lunch count system.* To ensure that the Claim for Reimbursement accurately reflects the number of lunches and meal supplements served to eligible children, the school food authority shall, at a minimum:

(i) Correctly approve each child's eligibility for free and reduced price lunches and meal supplements based on the requirements prescribed under 7 CFR part 245;

(ii) Maintain a system to issue benefits and to update the eligibility of children approved for free or reduced price lunches and meal supplements. The system shall:

(A) Accurately reflect eligibility status as well as changes in eligibility made after the initial approval process due to verification findings, transfers, reported changes in income or household size, etc.; and

(B) Make the appropriate changes in eligibility after the initial approval process on a timely basis so that the mechanism the school food authority uses to identify currently eligible children provides a current and accurate representation of eligible children. Changes in eligibility which result in increased benefit levels shall be made as soon as possible but no later than 3 operating days of the date the school

food authority makes the final decision on a child's eligibility status. Changes in eligibility which result in decreased benefit levels shall be made as soon as possible but no later than 10 operating days of the date the school food authority makes the final decision on the child's eligibility status.

(iii) Base Claims for Reimbursement on lunch counts, taken daily at the point of service, which correctly identify the number of free, reduced price and paid lunches served to eligible children;

(iv) Correctly record, consolidate and report those lunch and supplement counts on the Claim for Reimbursement; and

(v) Ensure that Claims for Reimbursement do not request payment for any excess lunches produced, as prohibited in §210.10(a)(2) or §210.10a(b), whichever is applicable, or non-Program lunches (i.e., a la carte or adult lunches) or for more than one meal supplement per child per day.

(2) *Point of service alternatives.*

(i) State agencies may authorize alternatives to the point of service lunch counts provided that such alternatives result in accurate, reliable counts of the number of free, reduced price and paid lunches served, respectively, for each serving day. State agencies are encouraged to issue guidance which clearly identifies acceptable point of service alternatives and instructions for proper implementation. School food authorities may select one of the State agency approved alternatives without prior approval.

(ii) In addition, on a case-by-case basis, State agencies may authorize school food authorities to use other alternatives to the point of service lunch count; provided that such alternatives result in an accurate and reliable lunch count system. Any request to use an alternative lunch counting method which has not been previously authorized under paragraph (2)(i) is to be submitted in writing to the State agency for approval. Such request shall provide detail sufficient for the State agency to assess whether the proposed alternative would provide an accurate and reliable count of the number of lunches, by type, served each day to eligible children. The details of each approved alternative shall be maintained on file at the State agency for review by FCS.

(d) The State agency shall reimburse the school food authority for meal supplements served in eligible schools (as defined in §210.10(n)(1) or §210.10a(j)(1), whichever is applicable) operating afterschool care programs under the NSLP in accordance with the rates established in §210.4(b).

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12581, Mar. 28, 1989; 56 FR 32939, July 17, 1991; 58 FR 42487, Aug. 10, 1993; 60 FR 31207, June 13, 1995]

### § 210.8 Claims for reimbursement.

(a) *Internal controls.* The school food authority shall establish internal controls which ensure the accuracy of lunch counts prior to the submission of the monthly Claim for Reimbursement. At a minimum, these internal controls shall include: an on-site review of the lunch counting and claiming system employed by each school within the jurisdiction of the school food authority; comparisons of daily free, reduced price and paid lunch counts against data which will assist in the identification of lunch counts in excess of the number of free, reduced price and paid lunches served each day to children eligible for such lunches; and a system for following up on those lunch counts which suggest the likelihood of lunch counting problems.

(1) *On-site reviews.* Every school year, each school food authority with more than one school shall perform no less than one on-site review of the lunch counting and claiming system employed by each school under its jurisdiction. The on-site review shall take place prior to February 1 of each school year. Further, if the review discloses problems with a school's meal counting or claiming procedures, the school food authority shall: ensure that the school implements corrective action; and, within 45 days of the review, conducts a follow-up on-site review to determine that the corrective action resolved the problems. Each on-site review shall ensure that the school's claim is based on the counting system authorized by the State agency under §210.7(c) of this part and that the counting system, as implemented, yields the actual number

of reimbursable free, reduced price and paid lunches, respectively, served for each day of operation.

(2) *School food authority claims review process.* Prior to the submission of a monthly Claim for Reimbursement, each school food authority shall review the lunch count data for each school under its jurisdiction to ensure the accuracy of the monthly Claim for Reimbursement. The objective of this review is to ensure that monthly claims include only the number of free, reduced price and paid lunches served on any day of operation to children currently eligible for such lunches.

(i) Any school food authority that was found by its most recent administrative review conducted in accordance with § 210.18, to have no meal counting and claiming violations may:

(A) Develop internal control procedures that ensure accurate meal counts. The school food authority shall submit any internal controls developed in accordance with this paragraph to the State agency for approval and, in the absence of specific disapproval from the State agency, shall implement such internal controls. The State agency shall establish procedures to promptly notify school food authorities of any modifications needed to their proposed internal controls or of denial of unacceptable submissions. If the State agency disapproves the proposed internal controls of any school food authority, it reserves the right to require the school food authority to comply with the provisions of paragraph (a)(3) of this section; or

(B) Comply with the requirements of paragraph (a)(3) of this section.

(ii) Any school food authority that was identified in the most recent administrative review conducted in accordance with § 210.18, or in any other oversight activity, as having meal counting and claiming violations shall comply with the requirements in paragraph (a)(3) of this section.

(3) *Edit checks.* (i) The following procedure shall be followed for school food authorities identified in paragraph (a)(2)(ii) of this section, by other school food authorities at State agency option, or, at their own option, by school food authorities identified in paragraph (a)(2)(i) of this section: the school food authority shall compare each school's daily counts of free, reduced price and paid lunches against the product of the number of children in that school currently eligible for free, reduced price and paid lunches, respectively, times an attendance factor.

(ii) School food authorities that are identified in subsequent administrative reviews conducted in accordance with § 210.18 as not having meal counting and claiming violations and that are correctly complying with the procedures in paragraph (a)(3)(i) of this section have the option of developing internal controls in accordance with paragraph (a)(2)(i) of this section.

(4) *Follow-up activity.* The school food authority shall promptly follow-up through phone contact, on-site visits or other means when the internal controls used by schools in accordance with paragraph (a)(2)(i) of this section or the claims review process used by schools in accordance with paragraphs (a)(2)(ii) and (a)(3) of this section suggest the likelihood of lunch count problems. When problems or errors are identified, the lunch counts shall be corrected prior to submission of the monthly Claim for Reimbursement. Improvements to the lunch count system shall also be made to ensure that the lunch counting system consistently results in lunch counts of the actual number of reimbursable free, reduced price and paid lunches served for each day of operation.

(5) *Recordkeeping.* School food authorities shall maintain on file, each month's Claim for Reimbursement and all data used in the claims review process, by school. Records shall be retained as specified in § 210.23(c) of this part. School food authorities shall make this information available to the Department and the State agency upon request.

(b) *Monthly claims.* To be entitled to reimbursement under this part, each school food authority shall submit to the State agency, a monthly Claim for Reimbursement, as described in paragraph (c) of this section.

(1) *Submission timeframes.* A final Claim for Reimbursement shall be postmarked or submitted to the State agency not later than 60 days following the last day of the full month covered

by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless otherwise authorized by FCS.

(2) *State agency claims review process.* The State agency shall review each school food authority's Claim for Reimbursement, on a monthly basis, in an effort to ensure that monthly claims are limited to the number of free and reduced price lunches served, by type, to eligible children.

(i) The State agency shall, at a minimum, compare the number of free and reduced price lunches claimed to the number of children approved for free and reduced price lunches enrolled in the school food authority for the month of October times the days of operation times the attendance factor employed by the school food authority in accordance with paragraph (a)(3) of this section or the internal controls used by schools in accordance with paragraph (a)(2)(i) of this section. At its discretion, the State agency may conduct this comparison against data which reflects the number of children approved for free and reduced price lunches for a more current month(s) as collected pursuant to paragraph (c)(2) of this section.

(ii) In lieu of conducting the claims review specified in paragraph (b)(2)(i) of this section, the State agency may conduct alternative analyses for those Claims for Reimbursement submitted by residential child care institutions. Such alternatives analyses shall meet the objective of ensuring that the monthly Claims for Reimbursement are limited to the numbers of free and reduced price lunches served, by type, to eligible children.

(3) *Follow-up activity.* The State agency shall promptly follow-up through phone contact, on-site visits, or other means when the claims review process suggests the likelihood of lunch count problems.

(4) *Corrective action.* The State agency shall promptly take corrective action with respect to any Claim for Reimbursement which includes more than the number of lunches served, by type, to eligible children. In taking corrective action, State agencies may make adjustments on claims filed within the 60-day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of School Program Operations (FCS–10) for the claim month required under § 210.5(d) of this part. Upward adjustments in Program funds claimed which are not reflected in the final FCS–10 for the claim month shall not be made unless authorized by FCS. Except that, upward adjustments for the current and prior fiscal years resulting from any review or audit may be made, at the discretion of the State agency. Downward adjustments in amounts claimed shall always be made, without FCS authorization, regardless of when it is determined that such adjustments are necessary.

(c) *Content of claim.* The Claim for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Report of School Program Operations required under § 210.5(d) of this part. Such data shall include, at a minimum, the number of free, reduced price and paid lunches and meal supplements served to eligible children. The claim shall be signed by a school food authority official.

(1) *Consolidated claim.* The State agency may authorize a school food authority to submit a consolidated Claim for Reimbursement for all schools under its jurisdiction, *provided that,* the data on each school's operations required in this section are maintained on file at the local office of the school food authority and the claim separates consolidated data for commodity schools from data for other schools. Unless otherwise approved by FCS, the Claim for Reimbursement for any month shall include only lunches and meal supplements served in that month except if the first or last month of Program operations for any school year contains 10 operating days or less, such month may be combined with the Claim for Reimbursement for the appropriate adjacent month. However, Claims for Reimbursement may not combine operations occurring in two fiscal years.

(2) *October data.* For the month of October, the State agency shall also obtain, either through the Claim for Reimbursement or other means, the total number of children approved for free lunches and meal supplements, the total number of children approved for reduced price lunches and meal supplements, and the total number of children enrolled in the school food authority as of the last day of operation in October. The school food authority shall submit this data to the State agency no later than December 31 of each year. State agencies may establish shorter deadlines at their discretion. In addition, the State agency may require school food authorities to provide this data for a more current month if for use in the State agency claims review process under paragraph (c)(2) of this section.

(d) *Advance funds.* The State agency may advance funds available for the Program to a school food authority in an amount equal to the amount of reimbursement estimated to be needed for one month's operation. Following the receipt of claims, the State agency shall make adjustments, as necessary, to ensure that the total amount of payments received by the school food authority for the fiscal year does not exceed an amount equal to the number of lunches and meal supplements by reimbursement type served to children times the respective payment rates assigned by the State in accordance with §210.7(b). The State agency shall recover advances of funds to any school food authority failing to comply with the 60-day claim submission requirements in paragraph (b) of this section.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12581, Mar. 28, 1989; 56 FR 32940, July 17, 1991; 58 FR 42487, Aug. 10, 1993; 60 FR 31207, June 13, 1995]

## Subpart C—Requirements for School Food Authority Participation

### §210.9 Agreement with State agency.

(a) *Application.* An official of a school food authority shall make written application to the State agency for any school in which it desires to operate the Program. Applications shall provide the State agency with sufficient information to determine eligibility. The school food authority shall also submit for approval a Free and Reduced Price Policy Statement in accordance with part 245 of this chapter.

(b) *Annual agreement.* The school food authority shall annually enter into a written agreement with the State agency. The State agency may allow school food authorities to extend by amendment a previous year's agreement in lieu of taking a new agreement annually *provided* that each year a current written agreement is on file at the State agency. The agreement shall contain a statement to the effect that the "School Food Authority and participating schools under its jurisdiction, shall comply with all provisions of 7 CFR parts 210 and 245." This agreement shall provide that each school food authority shall, with respect to participating schools under its jurisdiction:

(1) Maintain a nonprofit school food service and observe the limitations on the use of nonprofit school food service revenues set forth in §210.14(a) and the limitations on any competitive school food service as set forth in §210.11(b);

(2) Limit its net cash resources to an amount that does not exceed 3 months average expenditures for its nonprofit school food service or such other amount as may be approved in accordance with §210.19(a);

(3) Maintain a financial management system as prescribed under §210.14(c);

(4) Comply with the requirements of the Department's regulations regarding financial management (7 CFR part 3015);

(5) Serve lunches, during the lunch period, which meet the minimum requirements prescribed in §210.10 or 210.10a, whichever is applicable;

(6) Price the lunch as a unit;

(7) Serve lunches free or at a reduced price to all children who are determined by the school food authority to be eligible for such meals under 7 CFR part 245;

(8) Claim reimbursement at the assigned rates only for reimbursable free, reduced price and paid lunches served to eligible children in accordance with 7 CFR part 210. Agree that the school food authority official signing the claim shall be responsible for reviewing and analyzing meal counts to ensure

accuracy as specified in § 210.8 governing claims for reimbursement. Acknowledge that failure to submit accurate claims will result in the recovery of an overclaim and may result in the withholding of payments, suspension or termination of the program as specified in § 210.25. Acknowledge that if failure to submit accurate claims reflects embezzlement, willful misapplication of funds, theft, or fraudulent activity, the penalties specified in § 210.26 shall apply;

(9) Count the number of free, reduced price and paid reimbursable meals served to eligible children at the point of service, or through another counting system if approved by the State agency;

(10) Submit Claims for Reimbursement in accordance with § 210.8;

(11) Comply with the requirements of the Department's regulations regarding nondiscrimination (7 CFR parts 15, 15a, 15b);

(12) Make no discrimination against any child because of his or her eligibility for free or reduced price meals in accordance with the approved Free and Reduced Price Policy Statement;

(13) Enter into an agreement to receive donated foods as required by 7 CFR part 250;

(14) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(15) Accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department;

(16) Maintain necessary facilities for storing, preparing and serving food;

(17) Upon request, make all accounts and records pertaining to its school food service available to the State agency and to FCS, for audit or review, at a reasonable time and place. Such records shall be retained for a period of 3 years after the date of the final Claim for Reimbursement for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the 3 year period as long as required for resolution of the issues raised by the audit;

(18) Maintain files of currently approved and denied free and reduced price applications, respectively, and the names of children approved for free lunches based on documentation certifying that the child is included in a household approved to receive benefits under the Food Stamp or the Aid to Families with Dependent Children Programs. If the applications and/or documentation are maintained at the school food authority level, they shall be readily retrievable by school;

(19) Retain the individual applications for free and reduced price lunches and meal supplements submitted by families for a period of 3 years after the end of the fiscal year to which they pertain or as otherwise specified under paragraph (b)(17) of this section.

(20) No later than March 1, 1997, and no later than December 31 of each year thereafter, provide the State agency with a list of all elementary schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the preceding October.

(c) *Afterschool care requirements.* Those school food authorities with eligible schools (as defined in § 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable) that elect to serve meal supplements during afterschool care programs, shall agree to:

(1) Serve meal supplements which meet the minimum requirements prescribed in § 210.10 or § 210.10a, whichever is applicable;

(2) Price the meal supplement as a unit;

(3) Serve meal supplements free or at a reduced price to all children who are determined by the school food authority to be eligible for free or reduced price school meals under 7 CFR part 245;

(4) If charging for meals, the charge for a reduced price meal supplement shall not exceed 15 cents;

(5) Claim reimbursement at the assigned rates only for meal supplements served in accordance with the agreement;

(6) Claim reimbursement for no more than one meal supplement per child per day;

(7) Review each afterschool care program two times a year; the first review shall be made during the first four weeks that the school is in operation each school year, except that an afterschool care program operating year round shall be reviewed during the first four weeks of its initial year of operation, once more during its first year of operation, and twice each school year thereafter; and

(8) Comply with all requirements of this part, except that, claims for reimbursement need not be based on ''point of service'' meal supplement counts (as required by §210.9(b)(9)).

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12581, Mar. 28, 1989; 56 FR 32941, July 17, 1991; 58 FR 42488, Aug. 10, 1993; 60 FR 31208, June 13, 1995; 62 FR 901, Jan. 7, 1997]

### §210.10 Nutrition standards for lunches and menu planning methods.

(a) *General requirements for school lunches.* (1) In order to qualify for reimbursement, all lunches served to children age 2 and older, as offered by participating schools, shall, at a minimum, meet the nutrition standards provided in paragraph (b) of this section and the appropriate level of calories and nutrients provided for in either paragraph (c) or paragraph (i)(1) of this section for nutrient standard menu planning and assisted nutrient standard menu planning or in paragraph (d) of this section for food-based menu planning, whichever is applicable. Compliance with the nutrition standards and the nutrient and calorie levels shall be determined by averaging lunches offered over a school week. Except as otherwise provided herein, school food authorities shall ensure that sufficient quantities of foods are planned and produced to meet, at a minimum, the nutrition standards in paragraph (b) of this section, the appropriate nutrient and calorie levels in paragraphs (c), (d), or (i)(1) of this section, whichever is applicable, and to either contain all the required food items in at least the amounts indicated in paragraph (k) of this section or to supply sufficient quantities of menu items and foods as provided in paragraphs (i) or (j) of this section.

(2) School food authorities shall ensure that each lunch is priced as a unit and that lunches are planned and produced on the basis of participation trends, with the objective of providing one reimbursable lunch per child per day. Any excess lunches that are produced may be offered, but shall not be claimed for general or special cash assistance provided under §210.4. The component requirements for meal supplements served under the Child and Adult Care Food Program authorized under part 225 of this chapter shall also apply to meal supplements served by eligible school food authorities in afterschool care programs under the NSLP.

(3) Production and menu records shall be maintained to demonstrate that the required number of food components and food items or menu items are offered on a given day. Production records shall include sufficient information to evaluate the menu's contribution to the requirements on nutrition standards in paragraph (b) of this section and the appropriate levels of nutrients and calories in paragraphs (c), (d) or (i)(1) of this section, whichever is applicable. If applicable, schools or school food authorities shall maintain nutritional analysis records to demonstrate that lunches meet, when averaged over each school week, the nutrition standards provided in paragraph (b) of this section and the nutrient and calorie levels for the appropriate age or grade group as provided for in paragraphs (c) or (i)(1) of this section, whichever is applicable.

(b) *Nutrition standards for reimbursable lunches.* School food authorities shall ensure that participating schools provide nutritious and well-balanced meals to children. In addition, for children ages 2 and above meals shall be provided based on the nutrition standards provided in this section.

(1) Provision of one-third of the Recommended Dietary Allowances (RDA) of protein, calcium, iron, vitamin A and vitamin C to the applicable age or grade groups in accordance with the appropriate levels provided in paragraph (c), (d) or (i)(1) of this section, whichever is applicable;

(2) Provision of the lunchtime energy allowances for children based on the

appropriate age or grade groups in accordance with the levels provided in paragraphs (c), (d) or (i)(1) of this section, whichever is applicable;

(3) The applicable recommendations of the *1990 Dietary Guidelines for Americans* which are:

(i) Eat a variety of foods;

(ii) Limit total fat to 30 percent of calories;

(iii) Limit saturated fat to less than 10 percent of calories;

(iv) Choose a diet low in cholesterol;

(v) Choose a diet with plenty of vegetables, fruits, and grain products; and

(vi) Use salt and sodium in moderation.

(4) The following measures of compliance with the applicable recommendations of the *1990 Dietary Guidelines for Americans:*

(i) A limit on the percent of calories from total fat to 30 percent based on the actual number of calories offered;

(ii) A limit on the percent of calories from saturated fat to less than 10 percent based on the actual number of calories offered;

(iii) A reduction of the levels of sodium and cholesterol; and

(iv) An increase in the level of dietary fiber.

(5) School food authorities have three alternatives for menu planning in order to meet the requirements of this paragraph and the appropriate nutrient and calorie levels in paragraphs (c), (d) or (i)(1) of this section, whichever is applicable: nutrient standard menu planning as provided for in paragraph (i) of this section, assisted nutrient standard menu planning as provided for in paragraph (j) of this section, or food-based menu planning as provided for in paragraph (k) of this section. The actual minimum calorie levels vary depending upon the alternative followed due to differences in age/grade groupings of each alternative.

(c) *Nutrient levels for school lunches/nutrient analysis.* (1) For the purposes of nutrient standard and assisted nutrient standard menu planning, as provided for in paragraphs (i) and (j), respectively, of this section, schools shall, at a minimum, provide calorie and nutrient levels for school lunches (offered over a school week) for the required grade groups specified in the chart following:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES/NUTRIENT ANALYSIS (SCHOOL WEEK AVERAGES)

| Nutrients and energy allowances | Minimum requirements | | | Optional |
|---|---|---|---|---|
| | Preschool | Grades K–6 | Grades 7–12 | Grades K–3 |
| Energy allowance/calories | 517 | 664 | 825 | 633 |
| Total fat (as a percent of actual total food energy) | (1) | (1) | (1) | (1) |
| Saturated fat (as a percent of actual total food energy) | (2) | (2) | (2) | (2) |
| RDA for protein (g) | 7 | 10 | 16 | 9 |
| RDA for calcium (mg) | 267 | 286 | 400 | 267 |
| RDA for iron (mg) | 3.3 | 3.5 | 4.5 | 3.3 |
| RDA for vitamin A (RE) | 150 | 224 | 300 | 200 |
| RDA for vitamin C (mg) | 14 | 15 | 18 | 15 |

[1] Not to exceed 30 percent over a school week.
[2] Less than 10 percent over a school week.

(2) At their option, schools may provide for the calorie and nutrient levels for school lunches (offered over a school week) for the age groups specified in the following chart or may develop their own age groups and their corresponding levels in accordance with paragraph (i)(1) of this section.

OPTIONAL MINIMUM NUTRIENT LEVELS FOR SCHOOL LUNCHES/NUTRIENT ANALYSIS (SCHOOL WEEK AVERAGES)

| Nutrients and energy allowances | Ages 3–6 | Ages 7–10 | Ages 11–13 | Ages 14 and above |
|---|---|---|---|---|
| Energy allowance/calories | 558 | 667 | 783 | 846 |
| Total fat (as a percent of actual total food energy) | (1) | (1) | (1) | (1) |
| Saturated fat (as a percent of actual total food energy) | (2) | (2) | (2) | (2) |

OPTIONAL MINIMUM NUTRIENT LEVELS FOR SCHOOL LUNCHES/NUTRIENT ANALYSIS (SCHOOL WEEK AVERAGES)—Continued

| Nutrients and energy allowances | Ages 3–6 | Ages 7–10 | Ages 11–13 | Ages 14 and above |
|---|---|---|---|---|
| RDA for protein (g) | 7.3 | 9.3 | 15.0 | 16.7 |
| RDA for calcium (mg) | 267 | 267 | 400 | 400 |
| RDA for iron (mg) | 3.3 | 3.3 | 4.5 | 4.5 |
| RDA for vitamin A (RE) | 158 | 233 | 300 | 300 |
| RDA for vitamin C (mg) | 14.6 | 15.0 | 16.7 | 19.2 |

[1] Not to exceed 30 percent over a school week.
[2] Less than 10 percent over a school week.

(d) *Minimum nutrient levels for school lunches/food-based menu planning.* For the purposes of food-based menu planning, as provided for in paragraph (k) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school lunches offered over a school week:

MINIMUM NUTRIENT LEVELS FOR SCHOOL LUNCHES/FOOD-BASED MENU PLANNING (SCHOOL WEEK AVERAGES)

| | Preschool | Grades K–6 | Grades 7–12 | Grades K–3 option |
|---|---|---|---|---|
| Energy allowances (Calories) | 517 | 664 | 825 | 633 |
| Total fat (as a percentage of actual total food energy) | (1) | (1) | (1) | (1) |
| Total saturated fat (as a percentage of actual total food energy) | (2) | (2) | (2) | (2) |
| Protein (g) | 7 | 10 | 16 | 9 |
| Calcium (mg) | 267 | 286 | 400 | 267 |
| Iron (mg) | 3.3 | 3.5 | 4.5 | 3.3 |
| Vitamin A (RE) | 150 | 224 | 300 | 200 |
| Vitamin C (mg) | 14 | 15 | 18 | 15 |

[1] Not to exceed 30 percent over a school week.
[2] Less than 10 percent over a school week.

(e) *Choice.* To provide variety and to encourage consumption and participation, schools should, whenever possible, offer a selection of menu items and foods from which children may make choices. When a school offers a selection of more than one type of lunch or when it offers a variety of menu items, foods or milk for choice within a reimbursable lunch, the school shall offer all children the same selection regardless of whether the children are eligible for free or reduced price lunches or pay the school food authority's designated full price. The school may establish different unit prices for each type of lunch offered provided that the benefits made available to children eligible for free or reduced price lunches are not affected.

(f) *Lunch period.* At or about mid-day schools shall offer lunches which meet the requirements of this section during a period designated as the lunch period by the school food authority. Such lunch periods shall occur between 10:00 a.m. and 2:00 p.m., unless otherwise exempted by FCS. With State agency approval, schools that serve children 1–5 years old are encouraged to divide the service of the meal into two distinct service periods. Such schools may divide the quantities, and/or menu items, foods or food items offered between these service periods in any combination that they choose. Schools are also encouraged to provide an adequate number of lunch periods of sufficient length to ensure that all students have an opportunity to be served and have ample time to consume their meals.

(g) *Exceptions.* Lunches claimed for reimbursement shall meet the nutrition requirements for reimbursable meals specified in this section. However, lunches served which accommodate the exceptions and variations authorized under this paragraph are also reimbursable. Exceptions and variations are restricted to the following:

(1) *Medical or dietary needs.* Schools shall make substitutions in foods listed

in this section for students who are considered to have a disability under 7 CFR part 15b and whose disability restricts their diet. Schools may also make substitutions for students who do not have a disability but who are unable to consume the regular lunch because of medical or other special dietary needs. Substitutions shall be made on a case by case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FCS. Such statement shall, in the case of a student with a disability, be signed by a physician or, in the case of a student who is not disabled, by a recognized medical authority.

(2) *Ethnic, religious or economic variations.* FCS encourages school food authorities to consider ethnic and religious preferences when planning and preparing meals. For the purposes of the food-based menu planning alternative as provided for in paragraph (k) of this section, FCS may approve variations in the food components of the lunch on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, or economic needs.

(3) *Natural disaster.* In the event of a natural disaster or other catastrophe, FCS may temporarily allow schools to serve lunches for reimbursement that do not meet the requirements of this section.

(h) *Nutrition disclosure.* School food authorities are encouraged to make information available indicating efforts to meet the nutrition standards in paragraph (b) of this section.

(i) *Nutrient standard menu planning.* (1) *Adjusted nutrient levels.* (i) At a minimum, schools with children age 2 that choose the nutrient standard menu planning alternative shall ensure that the nutrition standards in paragraph (b) and the required preschool level in paragraph (c)(1) of this section are met over a school week except that, such schools have the option of either using the nutrient and calorie levels for preschool children in paragraph (c)(2) of this section or developing separate nutrient and calorie levels for this age group. The methodology for determining such levels will be available in menu planning guidance material provided by FCS.

(ii) At a minimum, schools shall offer meals to children based on the required grade groups in the table, *Minimum Nutrient Levels for School Lunches/Nutrient Analysis,* in paragraph (c)(1) of this section. However, schools may, at their option, offer meals to children using the age groups and their corresponding calorie and nutrient levels in paragraph (c)(2) of this section or, following guidance provided by FCS, develop their own age or grade groups and their corresponding nutrient and calorie levels. However, if only one age or grade is outside the established levels, schools may use the levels for the majority of children regardless of the option selected.

(2) *Contents of reimbursable meal and offer versus serve.* (i) *Minimum requirements.* For the purposes of this menu planning alternative, a reimbursable lunch shall include a minimum of three menu items as defined in §210.2; one menu item shall be an entree and one shall be fluid milk as a beverage. An entree may be a combination of foods or a single food item that is offered as the main course. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards in paragraph (b) of this section and the appropriate nutrient and calorie levels in paragraph (c) or (i)(1) of this section, whichever is applicable, except for those foods that are considered foods of minimal nutritional value as provided for in §210.11(a)(2) which are not offered as part of a menu item in a reimbursable meal. Such reimbursable lunches, as offered, shall meet the established nutrition standards in paragraph (b) and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable, when averaged over a school week.

(ii) *Offer versus serve.* Each participating school shall offer its students at least three menu items as required by paragraph (i)(2)(i) of this section. Under offer versus serve, senior high students must select at least two menu items and may decline a maximum of

two menu items; one menu item selected must be an entree. At the discretion of the school food authority, students below the senior high level may also participate in offer versus serve. The price of a reimbursable lunch shall not be affected if a student declines a menu item or requests smaller portions. State educational agencies shall define ''senior high.''

(3) *Nutrient analysis under Nutrient Standard Menu Planning.* School food authorities choosing the nutrient analysis alternative shall conduct nutrient analysis on all menu items or foods offered as part of the reimbursable meal. However, those foods that are considered as foods of minimal nutritional value as provided for in § 210.11(a)(2) which are not offered as part of a menu item in a reimbursable meal shall not be included. Such analysis shall be over the course of each school week.

(4) *The National Nutrient Database and software specifications.* (i) Nutrient analysis shall be based on information provided in the National Nutrient Database for Child Nutrition Programs. This database shall be incorporated into software used to conduct nutrient analysis. Upon request, FCS will provide information about the database to software companies and others that wish to develop school food service software systems.

(ii) Any software used to conduct nutrient analysis shall be evaluated by FCS or by an FCS designee beforehand and, as submitted, has been determined to meet the minimum requirements established by FCS. However, such review does not constitute endorsement by FCS or USDA. Such software shall provide the capability to perform all functions required after the basic data has been entered including calculation of weighted averages and the optional combining of analysis of the lunch and breakfast programs as provided in paragraph (i)(5) of this section.

(5) *Determination of weighted averages.* (i) Menu items and foods offered as part of a reimbursable meal shall be analyzed based on portion sizes and projected serving amounts and shall be weighted based on their proportionate contribution to the meals. Therefore, in determining whether meals satisfy nutritional requirements, menu items or foods more frequently offered will be weighted more heavily than menu items or foods which are less frequently offered. Such weighting shall be done in accordance with guidance issued by FCS as well as that provided by the software used.

(ii) An analysis of all menu items and foods offered in the menu over each school week shall be computed for calories and for each of the following nutrients: protein; vitamin A; vitamin C; iron; calcium; total fat; saturated fat; and sodium. The analysis shall also include the dietary components of cholesterol and dietary fiber.

(iii) At its option, a school food authority may combine analysis of the National School Lunch and School Breakfast Programs. Such analysis shall be proportionate to the levels of participation in the two programs in accordance with guidance issued by FCS.

(6) *Comparing average nutrient levels.* Once the appropriate procedures of paragraph (i)(5) of this section have been completed, the results shall be compared to the appropriate nutrient and calorie levels, by age/grade groups, in paragraph (c)(1) or (c)(2) of this section or to the levels developed in accordance with paragraph (i)(1) of this section, whichever is applicable, to determine the school week's average. In addition, comparisons shall be made to the nutrition standards provided in paragraph (b) of this section in order to determine the degree of conformity over the school week.

(7) *Adjustments based on students' selections.* The results obtained under paragraph (i)(5) and (i)(6) of this section shall be used to adjust future menu cycles to accurately reflect production and the frequency with which menu items and foods are offered. Menus may require further analysis and comparison, depending on the results obtained in paragraph (i)(6) of this section, when production and selection patterns of students change. The school food authority may need to consider modifications to the menu items and foods offered based on student selections as well as modifications to recipes and other specifications to ensure that the nutrition standards

provided in paragraph (b) of this section and paragraphs (c) or (i)(1) of this section, whichever is applicable, are met.

(8) *Standardized recipes.* Under Nutrient Standard Menu Planning, standardized recipes shall be developed and followed. A standardized recipe is one that was tested to provide an established yield and quantity through the use of ingredients that remain constant in both measurement and preparation methods. USDA/FCS standardized recipes are included in the National Nutrient Database for the Child Nutrition Programs. In addition, local standardized recipes used by school food authorities shall be analyzed for their calories, nutrients and dietary components, as provided in paragraph (i)(5)(ii) of this section, and added to the local databases by school food authorities in accordance with guidance provided by FCS.

(9) *Processed foods.* Unless already included in the National Nutrient Database, the calorie amounts, nutrients and dietary components, as provided in paragraph (i)(5)(ii) of this section, of purchased processed foods and menu items used by the school food authority shall be obtained by the school food authority or State agency and incorporated into the database at the local level in accordance with FCS guidance.

(10) *Menu substitutions.* If the need for serving a substitute food(s) or menu item(s) occurs at least two weeks prior to serving the planned menu, the revised menu shall be reanalyzed based on the changes. If the need for serving a substitute food(s) or menu item(s) occurs two weeks or less prior to serving the planned menu, no reanalysis is required. However, to the extent possible, substitutions should be made using similar foods.

(11) *Compliance with the nutrition standards.* If the analysis conducted in accordance with paragraphs (i)(1) through (i)(10) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (b) of this section and the appropriate levels of nutrients and calories in paragraph (c)(1) or (c)(2) of this section or the levels developed in accordance with paragraph (i)(1) of this section, whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the lunches offered to children comply with the nutrition standards established by paragraph (b) and the appropriate levels of nutrients and calories in paragraphs (c) or (i)(1) of this section, whichever is applicable.

(12) *Other programs.* Any school food authority that operates the Summer Food Service Program authorized under part 225 of this chapter and/or the Child and Adult Care Food Program under part 226 of this chapter may, at its option and with State agency approval, prepare meals provided for those programs using the nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed. Meal supplements shall continue to be provided based on the appropriate program's meal pattern.

(j) *Assisted Nutrient Standard Menu Planning.* (1) School food authorities without the capability to conduct Nutrient Standard Menu Planning, as provided in paragraph (i) of this section, may choose an alternative which uses menu cycles developed by other sources. Such sources may include, but are not limited to the State agency, other school food authorities, consultants, or food service management companies. This alternative is Assisted Nutrient Standard Menu Planning.

(2) Assisted Nutrient Standard Menu Planning shall establish menu cycles that have been developed in accordance with paragraphs (i)(1) through (i)(10) of this section as well as local food preferences and local food service operations. These menu cycles shall incorporate the nutrition standards in paragraph (b) of this section and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable. In addition to the menu cycle, recipes, food product specifications and preparation techniques shall also be developed and provided by the entity furnishing Assisted Nutrient Standard Menu Planning to ensure that the menu items and foods

offered conform to the nutrient analysis determinations of the menu cycle.

(3) At the inception of any use of Assisted Nutrient Standard Menu Planning, the State agency shall approve the initial menu cycle, recipes, and other specifications to determine that all required elements for correct nutrient analysis are incorporated. The State agency shall also, upon request by the school food authority, provide assistance with implementation of the chosen system.

(4) After initial service of the menu cycle under the Assisted Nutrient Standard Menu Planning, the nutrient analysis shall be reassessed and appropriate adjustments made in accordance with paragraph (i)(7) of this section.

(5) Under Assisted Nutrient Standard Menu Planning, the school food authority retains final responsibility for ensuring that all nutrition standards established in paragraph (b) and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever are applicable, are met.

(6) If the analysis conducted in accordance with paragraphs (i)(1) through (i)(10) and paragraph (j)(4) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (b) of this section and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the lunches offered to children comply with the nutrition standards established by paragraph (b) and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable.

(7) Any school food authority that operates the Summer Food Service Program authorized under part 225 of this chapter and/or the Child and Adult Care Food Program under part 226 of this chapter may, at its option and with State agency approval, prepare meals provided for those programs using the assisted nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed. Meal supplements shall continue to be provided based on the appropriate program's meal pattern.

(k) *Food-based menu planning.* (1) *Menu planning alternative.* School food authorities may choose to plan menus using the food-based menu planning alternative. Under the food-based menu planning alternative, specific food components in minimum quantities must be served as provided in paragraphs (k)(2) through (k)(5) of this section.

(2) *Minimum quantities.* At a minimum, school food authorities choosing to plan menus using the food-based menu planning alternative shall offer all five required food items in the quantities provided in the following chart:

| Meal component | Minimum quantities required for | | | | Option for |
|---|---|---|---|---|---|
| | Ages 1–2 | Preschool | Grades K–6 | Grades 7–12 | K-Grade 3 |
| Milk (as a beverage) | 6 Ounces | 6 Ounces | 8 Ounces | 8 Ounces | 8 Ounces. |
| Meat or Meat Alternate (quantity of the edible portion as served). | | | | | |
| Lean meat, poultry or fish | 1 Oz | 1½ Oz | 2 Oz | 2 Oz | 1½ Oz. |
| Cheese | 1 Oz | 1½ Oz | 2 Oz | 2 Oz | 1½ Oz. |
| Large egg | ½ | ¾ | 1 | 1 | ¾. |
| Cooked dry beans or peas | ¼ Cup | ⅜ Cup | ½ Cup | ½ Cup | ⅜ Cup. |
| Peanut butter or other nut or seed butters | 2 Tbsp | 3 Tbsp | 4 Tbsp | 4 Tbsp | 3 Tbsp. |
| Yogurt, plain or flavored, unsweetened or sweetened. | 4 oz. or ½ cup. | 6 oz. or ¾ cup. | 8 oz. or 1 cup | 8 oz. or 1 cup | 6 oz. or ¾ cup. |
| The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above: Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds=1 ounce of cooked lean meat, poultry or fish.). | ½ oz.=50% | ¾ Oz.=50% | 1 Oz.=50% | 1 Oz.=50% | ¾ Oz.=50%. |

| Meal component | Minimum quantities required for | | | | Option for |
|---|---|---|---|---|---|
| | Ages 1–2 | Preschool | Grades K–6 | Grades 7–12 | K-Grade 3 |
| Vegetables/Fruits (2 or more servings of vegetables or fruits or both). | ½ Cup ..... | ½ Cup ..... | ¾ Cup plus extra ½ Cup over a week [1]. | 1 Cup ..... | ¾ Cup. |
| Grains/Breads Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains. | 5 servings per week—minimum of ½ per day [1]. | 8 servings per week—minimum of 1 per day [1]. | 12 servings per week—minimum of 1 per day [1 2]. | 15 servings per week—minimum of 1 per day [1 2]. | 10 servings per week—minimum of 1 per day. [1 2] |

[1] For the purposes of this chart, a week equals five days.
[2] Up to one grains/breads serving per day may be a dessert.

(3) *Meat or meat alternate component.* The quantity of meat or meat alternate shall be the quantity of the edible portion as served. When the school determines that the portion size of a meat alternate is excessive, it shall reduce the portion size of that particular meat alternate and supplement it with another meat/meat alternate to meet the full requirement. To be counted as meeting the requirement, the meat or meat alternate shall be served in a main dish or in a main dish and only one other of the items offered. The Department recommends that if schools do not offer children choices of meat or meat alternates each day, they serve no one meat alternate or form of meat (e.g., ground, diced, pieces) more than three times in a single week.

(i) Vegetable protein products and enriched macaroni with fortified protein defined in appendix A of this part may be used to meet part of the meat or meat alternate requirement when used as specified in appendix A of this part. An enriched macaroni product with fortified protein as defined in appendix A of this part may be used as part of a meat alternate or as a grain/bread item, but not as both food components in the same meal.

(ii) Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall not be used as meat alternates due to their low protein and iron content. Nut and seed meals or flours shall not be used as a meat alternate except as defined in this part under appendix A: Alternate Foods for Meals. Nuts or seeds may be used to meet no more than one-half of the meat/meat alternate requirement. Therefore, nuts and seeds must be used in the meal with another meat/meat alternate to fulfill the requirement.

(iii) Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt served may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products shall not be credited. Four ounces (weight) or ½ cup (volume) of yogurt fulfills the equivalent of one ounce of the meat/meat alternate requirement in the meal pattern.

(4) *Vegetables and fruits.* Full strength vegetable or fruit juice may be counted to meet not more than one-half of the vegetable/fruit requirement. Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but not as both food components in the same meal. For children in kindergarten through grade six, the requirement for this component is based on minimum daily servings plus an additional ½ cup in any combination over a five day period.

(5) *Grains/breads.* (i) All grains/breads such as bread, biscuits, muffins or rice, macaroni, noodles, other pastas or cereal grains such as bulgur or corn grits, shall be enriched or whole grain or made with enriched or whole grain meal or flour.

(ii) Unlike the other component requirements, the grains/breads requirement is based on minimum daily servings and total servings per week. The requirement for this component is

based on minimum daily servings plus total servings over a five day period. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in the Food Buying Guide for Child Nutrition Programs (PA 1331), an FCS publication.

(6) *Offer versus serve.* Each school shall offer its students all five required food items as set forth in the table presented under paragraph (k)(2) of this section. Senior high students shall be permitted to decline up to two of the five required food items. At the discretion of the school food authority, students below the senior high level may be permitted to decline one or two of the required five food items. The price of a reimbursable lunch shall not be affected if a student declines food items or accepts smaller portions. State educational agencies shall define ''senior high.''

(7) *Outlying areas.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the grain/bread requirement. For the Commonwealth of the Northern Mariana Islands, FCS has established a menu consistent with the food-based menu alternative and with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provides optimum nutrition consistent with sound dietary habits for participating children. The State agency shall attach to and make a part of the written agreement required under § 210.9 the requirements of that menu option.

(l) *Milk.* (1) *Varieties.* Regardless of the menu planning alternative chosen, schools shall offer students fluid milk. The selection of the types of milk offered shall be consistent with the types of milk consumed in the prior year. This requirement does not preclude schools from offering additional kinds of milk. However, in the event that a particular type of milk represents less than one (1) percent of the total amount of milk consumed in the previous year, a school may elect not to make this type of milk available. All milk served shall be pasteurized fluid types of milk which meet State and local standards for such milk; except that, in the meal pattern for infants under 1 year of age, the milk shall be unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meets such standards. All milk shall contain vitamins A and D at levels specified by the Food and Drug Administration and be consistent with State and local standards for such milk.

(2) *Insufficient milk supply.* The inability of a school to obtain a supply of milk shall not bar it from participation in the Program and is to be resolved as follows:

(i) If emergency conditions temporarily prevent a school that normally has a supply of fluid milk from obtaining delivery of such milk, the State agency may approve the service of lunches during the emergency period with an available alternate form of milk or without milk.

(ii) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of lunches without milk if the school uses an equivalent amount of canned or dry milk in the preparation of the lunch. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, ''milk'' shall include reconstituted or recombined milk, or as otherwise provided under written exception by FCS.

(m) *Infant lunch pattern.* (1) *Definitions for infant meals.* For the purpose of this section:

(i) Infant cereal means any iron-fortified dry cereal especially formulated and generally recognized as cereal for infants and that is routinely mixed with formula or milk prior to consumption.

(ii) Infant formula means any iron-fortified formula intended for dietary use solely as a food for normal, healthy infants; excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

(2) *Infants under the age of one.* Infants under 1 year of age shall be served an infant lunch as specified in

this paragraph when they participate in the Program. Foods within the infant lunch pattern shall be of texture and consistency appropriate for the particular age group being served, and shall be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible the school should consult with the infant's parent in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food authorized in the meal patterns set forth below must be provided in order to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months of age or older may be claimed for reimbursement when the other meal component or components are supplied by the school. Although it is recommended that either breast milk or iron-fortified infant formula be served for the entire first year, whole milk may be served beginning at 8 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to ensure adequate sources of iron and vitamin C. The infant lunch pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(i) Birth through 3 months—4 to 6 fluid ounces of iron-fortified infant formula.

(ii) 4 through 7 months:

(A) 4 to 8 fluid ounces of iron-fortified infant formula;

(B) 0 to 3 tablespoons of iron-fortified dry infant cereal (optional); and

(C) 0 to 3 tablespoons of fruit or vegetable of appropriate consistency or a combination of both (optional).

(iii) 8 through 11 months:

(A) 6 to 8 fluid ounces of iron-fortified infant formula or 6 to 8 fluid ounces of whole milk;

(B) 2 to 4 tablespoons of iron-fortified dry infant cereal and/or 1 to 4 tablespoons meat, fish, poultry, egg yolk, or cooked dry beans or peas, or ½ to 2 ounces (weight) of cheese or 1 to 4 ounces (weight or volume) of cottage cheese, cheese food or cheese spread of appropriate consistency; and

(C) 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(n) *Supplemental food.* Eligible schools operating afterschool care programs may be reimbursed for one meal supplement served to an eligible child (as defined in § 210.2) per day.

(1) Eligible schools mean schools that:

(i) Operate school lunch programs under the National School Lunch Act;

(ii) Sponsor afterschool care programs as defined in § 210.2; and

(iii) Were participating in the Child and Adult Care Food Program as of May 15, 1989.

(2) Meal supplements shall contain two different components from the following four:

(i) A serving of fluid milk as a beverage, or on cereal, or used in part for each purpose;

(ii) A serving of meat or meat alternate. Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts are excluded and shall not be used as meat alternates due to their low protein content. Nut or seed meals or flours shall not be used as a meat alternate except as defined under appendix A: Alternate Foods for Meals of this part;

(iii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice may not be served when milk is served as the only other component;

(iv) A serving of whole-grain or enriched bread; or an equivalent serving

of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.

(3) Infant supplements shall contain the following:

(i) Birth through 3 months: 4–6 fluid ounces of infant formula.

(ii) 4 through 7 months: 4–6 fluid ounces of infant formula.

(iii) 8 through 11 months: 2–4 fluid ounces of infant formula or whole fluid milk or full strength fruit juice; 0–½ slice of crusty bread or 0–2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate. To improve the nutrition of participating children over one year of age, additional foods may be served with the meal supplements as desired.

(iv) The minimum amounts of food components to be served as meal supplements as set forth in paragraph (n)(3) of this section are as follows. Select two different components from the four listed. (Juice may not be served when milk is served as the only other component.)

MEAL SUPPLEMENT CHART FOR CHILDREN

| Snack (supplement) for children | Children 1 and 2 | Children 3 through 5 | Children 6 through 12 |
|---|---|---|---|
| (Select two different components from the four listed) | | | |
| Milk, fluid | ½ cup | ½ cup | 1 cup. |
| Meat or meat alternate [4] | ½ ounce | ½ ounce | 1 ounce. |
| Juice or fruit or vegetable | ½ cup | ½ cup | ¾ cup. |
| Bread and/or cereal: Enriched or whole grain bread or | ½ slice | ½ slice | 1 slice. |
| Cereal: Cold dry or | ¼ cup [1] | ⅓ cup [2] | ¾ cup [3]. |
| Hot cooked | ¼ cup | ¼ cup | ½ cup. |

[1] ¼ cup (volume) or ⅓ ounce (weight), whichever is less.
[2] ⅓ cup (volume) or ½ ounce (weight), whichever is less.
[3] ¾ cup (volume) or 1 ounce (weight), whichever is less.
[4] Yogurt may be used as meat/meat alternate. You may serve 4 ounces (weight) or ½ cup (volume) of plain, or sweetened and flavored yogurt to fulfill the equivalent of 1 ounce of the meat/meat alternate component. For younger children, 2 ounces (weight) or ¼ cup (volume) may fulfill the equivalent of ½ ounce of the meat/meat alternate requirement.

Caution: Children under five years of age are at the highest risk of choking. USDA recommends that nuts and/or seeds be served to them ground or finely chopped in a prepared food.

SUPPLEMENTS FOR INFANTS

| Birth through three months | Four months through seven months | Eight months through eleven months |
|---|---|---|
| 4–6 fluid ounces formula [1] | 4–6 fluid ounces formula [1] | 2–4 fluid ounces formula,[1] breast milk,[4] whole milk or fruit juice.[2] 0–½ slice bread or 0–2 crackers (optional).[3] |

[1] Shall be iron-fortified infant formula.
[2] Shall be full-strength fruit juice.
[3] Shall be from whole-grain or enriched meal or flour.
[4] Breast milk provided by the infant's mother may be served in place of formula from birth through 11 months. Meals containing only breast milk are not reimbursable. Meals containing breast milk served to infants 4 months or older may be claimed when the other meal component(s) is supplied by the school.

(o) *Implementation of the nutrition standards.* School food authorities shall comply with the *1990 Dietary Guidelines for Americans* as provided in paragraph (b) of this section no later than School Year 1996–97 except that State agencies may grant waivers to postpone implementation until no later than School Year 1998–99. Such waivers shall be granted by the State agency using guidance provided by the Secretary.

[60 FR 31208, June 13, 1995, 60 FR 57146, Nov. 14, 1995, as amended at 61 FR 37671, July 19, 1996; 62 FR 10189, Mar. 6, 1997]

### § 210.10a Lunch components and quantities for the meal pattern.

(a) *Meal pattern definitions.* For the purpose of this section:

(1) *Infant cereal* means any iron-fortified dry cereal especially formulated

and generally recognized as cereal for infants and that is routinely mixed with formula or milk prior to consumption.

(2) *Infant formula* means any iron-fortified formula intended for dietary use solely as a food for normal, healthy infants; excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

(b) *General.* School food authorities shall ensure that participating schools provide nutritious and well-balanced lunches to children in accordance with the provisions of this section. The requirements and recommendations of this section are designed so that the nutrients of the lunch, averaged over a period of time, *approximate* one-third of the Recommended Dietary Allowances for children of each age/grade group as specified in paragraph (c) of this section. School food authorities shall ensure that each lunch is priced as a unit. Except as otherwise provided herein, school food authorities shall ensure that sufficient quantities of food are planned and produced so that lunches provided contain all the required food items in at least the amounts indicated in the table presented under paragraph (c) of this section. School food authorities shall ensure that lunches are planned and produced on the basis of participation trends, with the objective of providing one reimbursable lunch per child per day. Production and menu records shall be maintained to demonstrate that the required number of food components and food items are offered on any given day. Production records shall include sufficient information to evaluate the menu's contribution to the lunch pattern specified in paragraph (c) of this section. Any excess lunches that are produced may be served, but shall *not* be claimed for general or special cash assistance provided under § 210.4. The component requirements for meal supplements served under the CACFP shall also apply to meal supplements served by eligible school food authorities in afterschool care programs under the NSLP.

(c) *Minimum required lunch quantities.* Schools that are able to provide quantities of food to children solely on the basis of their ages or grade level should do so. Schools that cannot serve children on the basis of age or grade level shall provide all school age children Group IV portions as specified in the table presented in this paragraph. Schools serving children on the basis of age or grade level shall plan and produce sufficient quantities of food to provide Groups I–IV no less than the amounts specified for those children in the table presented in this paragraph, and sufficient quantities of food to provide Group V no less than the specified amounts for Group IV. It is recommended that such schools plan and produce sufficient quantities of food to provide Group V children the larger amounts specified in the table. Schools that provide increased portion sizes for Group V may comply with children's requests for smaller portion sizes of the food items; however, schools shall plan and produce sufficient quantities of food to at least provide the serving sizes required for Group IV. Schools shall ensure that lunches are served with the objective of providing the per lunch minimums for each age and grade level as specified in the following table:

SCHOOL LUNCH PATTERN—PER LUNCH MINIMUMS

| Food Components and Food Items | Minimum Quantities | | | | Recommended quantities: Group V, 12 years and older (7–12) |
|---|---|---|---|---|---|
| | Group I, age 1–2 (Preschool) | Group II, age 3–4 (Preschool) | Group III, age 5–8 (K–3) | Group IV, age 9 and older (4–12) | |
| Milk (as a beverage): Fluid whole milk and fluid unflavored lowfat milk must be offered; (Flavored fluid milk, skim milk or buttermilk optional). | ¾ cup (6 fl. oz.). | ¾ cup (6 fl. oz.). | ½ pint (8 fl. oz.). | ½ pint (8 fl. oz.). | ½ pint (8 fl. oz.) |

SCHOOL LUNCH PATTERN—PER LUNCH MINIMUMS—Continued

| Food Components and Food Items | Minimum Quantities | | | | Recommended quantities: Group V, 12 years and older (7–12) |
|---|---|---|---|---|---|
| | Group I, age 1–2 (Preschool) | Group II, age 3–4 (Preschool) | Group III, age 5–8 (K–3) | Group IV, age 9 and older (4–12) | |
| Meat or Meat Alternate (quantity of the edible portion as served): | | | | | |
| Lean meat, poultry, or fish | 1 oz | 1½ oz | 1½ oz | 2 oz | 3 oz. |
| Cheese | 1 oz | 1½ oz | 1½ oz | 2 oz | 3 oz. |
| Large egg | ½ | ¾ | ¾ | 1 | 1½. |
| Cooked dry beans or peas | ¼ cup | ⅜ cup | ⅜ cup | ½ cup | ¾ cup. |
| Peanut butter or other nut or seed butters. | 2 Tbsp | 3 Tbsp | 3 Tbsp | 4 Tbsp | 6 Tbsp. |
| Yogurt, plain or flavored, unsweetened or sweetened. | 4 oz. or ½ cup. | 6 oz. or ¾ cup. | 6 oz. or ¾ cup. | 8 oz. or 1 cup | 12 oz. or 1½ cup. |
| The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above: | | | | | |
| Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1oz. of nuts/seeds = 1oz. of cooked lean meat, poultry, or fish. | ½ oz.=50% | ¾ oz.=50% | ¾ oz.=50% | 1 oz.=50% | 1½ oz.=50%. |
| Vegetable or Fruit: 2 or more servings of vegetables or fruits or both. | ½ cup | ½ cup | ½ cup | ¾ cup | ¾ cup. |
| Bread or Bread Alternate (Servings per week): Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains. | 5 per week—minimum of ½ day. | 8 per week—minimum of 1 per day. | 8 per week—minimum of 1 per day. | 8 per week—minimum of 1 per day. | 10 per week—minimum of 1 per day. |

(d) *Lunch components.* This section specifies the basic food components of the school lunch pattern which shall be served as food items in quantities specified in paragraph (c) of this section.

(1) *Milk.* Schools shall offer students fluid whole milk and fluid unflavored lowfat milk. This requirement does not preclude schools from offering additional kinds of milk. All milk served shall be pasteurized fluid types of milk which meet State and local standards for such milk; *except that,* in the meal pattern for infants under 1 year of age, the milk shall be unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meets such standards. All milk shall contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk. School food authorities that served ¾ cup (6 fluid ounces) of milk to Group III children prior to May 1, 1980, may continue to do so. Such school food authorities shall retain documentation of the date on which they began such service and the reasons for adopting this portion size.

(2) *Meat or meat alternate.* The quantity of meat or meat alternate shall be the quantity of the edible portion *as served.* When the school determines that the portion size of a meat alternate is excessive, it shall reduce the portion size of that particular meat alternate and supplement it with another meat/meat alternate to meet the full requirement. To be counted as meeting the requirement, the meat or meat alternate shall be served in a main dish or in a main dish and only one other menu item. The Department recommends that if schools do not offer children choices of meat or meat alternates each day, they serve no one meat alternate or form of meat (e.g., ground, diced, pieces) more than three times in a single week.

(i) Vegetable protein products and enriched macaroni with fortified protein defined in appendix A may be used to meet part of the meat or meat alternate requirement when used as specified in appendix A. An enriched macaroni product with fortified protein as defined in appendix A may be used as part of a meat alternate or as a bread alternate, but not as both food components in the same meal.

(ii) Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall not be used as meat alternates due to their low protein and iron content. Nut and seed meals or flours shall not be used as a meat alternate except as defined in this part under Appendix A: Alternate Foods for Meals. As noted in the School Lunch Pattern table of this section, nuts or seeds may be used to meet no more than one-half of the meat/meat alternate requirement. Therefore, nuts and seeds must be used in the meal with another meat/meat alternate to fulfill the requirement.

(iii) Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt served may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products shall not be credited. Four ounces (weight) or ½ cup (volume) of yogurt fulfills the equivalent of one ounce of the meat/meat alternate requirement in the meal pattern.

(3) *Vegetable or fruit.* Full strength vegetable or fruit juice may be counted to meet not more than one-half of the vegetable/fruit requirement. Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but not as both food components in the same meal.

(4) *Bread or bread alternate.* (i) All breads or bread alternates such as bread, biscuits, muffins or rice, macaroni, noodles, other pastas or cereal grains such as bulgur or corn grits, shall be enriched or whole grain or made with enriched or whole grain meal or flour.

(ii) Unlike the other component requirements, the bread requirement is based on minimum daily servings *and* total servings per week. Schools shall serve daily at least one-half serving of bread or bread alternate to children in Group I *and* at least one serving to children in Groups II–V. Schools which serve lunch at least 5 days a week shall serve a total of at least five servings of bread or bread alternate to children in Group I and eight servings per week to children in Groups II–V. Schools serving lunch 6 or 7 days per week should increase the weekly quantity by approximately 20 percent (⅕) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (⅕) for each day less than five. The servings for biscuits, rolls, muffins, and other bread alternates are specified in the *Food Buying Guide for Child Nutrition Programs (PA 1331),* an FCS publication.

(e) *Offer versus serve.* Each school shall *offer* its students all five required food items as set forth in the table presented under paragraph (c). Senior high students shall be permitted to decline up to two of the five required food items. At the discretion of the school food authority, students below the senior high level *may* be permitted to decline one or two of the required five food items. The price of a reimbursable lunch shall not be affected if a student declines food items or accepts smaller portions. State educational agencies shall define ''senior high.''

(f) *Choice.* To provide variety and to encourage consumption and participation, schools should, whenever possible, provide a selection of foods and types of milk from which children may make choices. When a school offers a selection of more than one type of lunch or when it offers a variety of foods and milk for choice within the required lunch pattern, the school shall offer all children the same selection regardless of whether the children are eligible for free or reduced price lunches or pay the school food authority designated full price. The school may establish different unit prices for each type of lunch served provided that the benefits

made available to children eligible for free or reduced price lunches are not affected.

(g) *Lunch period.* At or about mid-day schools shall serve lunches which meet the requirements of this part during a period designated as the lunch period by the school food authority. Such lunch periods shall occur between 10:00 a.m. and 2:00 p.m., unless otherwise exempted by FCS. With State approval, schools that serve children 1–5 years old are encouraged to divide the service of the specified quantities and food items into two distinct service periods. Such schools may divide the quantities and/or food items between these service periods in any combination that they choose.

(h) *Infant lunch pattern.* Infants under 1 year of age shall be served an infant lunch as specified in this paragraph when they participate in the Program. Foods within the infant lunch pattern shall be of texture and consistency appropriate for the particular age group being served, and shall be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible the school should consult with the infant's parent in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food authorized in the meal patterns set forth below must be provided in order to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother may be served in place of infant formula from birth through 11 months of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months of age or older may be claimed for reimbursement when the other meal component or components are supplied by the school. Although it is recommended that either breast milk or iron-fortified infant formula be served for the entire first year, whole milk may be served beginning at 8 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to ensure adequate sources of iron and vitamin C. The infant lunch pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(1) Birth through 3 months—4 to 6 fluid ounces of iron-fortified infant formula.

(2) 4 through 7 months—(i) 4 to 8 fluid ounces of iron-fortified infant formula; (ii) 0 to 3 tablespoons of iron-fortified dry infant cereal (optional); and (iii) 0 to 3 tablespoons of fruit or vegetable of appropriate consistency or a combination of both (optional).

(3) 8 through 11 months—(i) 6 to 8 fluid ounces of iron-fortified infant formula or 6 to 8 fluid ounces of whole milk; (ii) 2 to 4 tablespoons of iron-fortified dry infant cereal and/or 1 to 4 tablespoons meat, fish, poultry, egg yolk, or cooked dry beans or peas, or ½ to 2 ounces (weight) of cheese or 1 to 4 ounces (weight or volume) of cottage cheese, cheese food or cheese spread of appropriate consistency; and (iii) 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(i) *Exceptions.* Lunches claimed for reimbursement shall meet the school lunch pattern requirements specified in paragraphs (c) and (d) of this section. However, lunches served which accommodate the exceptions and variations authorized under this paragraph are also reimbursable. Exceptions and variations are restricted to the following:

(1) *Medical or dietary needs.* Schools shall make substitutions in foods listed in this section for students who are considered handicapped under 7 CFR part 15b and whose handicap restricts their diet. Schools may also make substitutions for nonhandicapped students who are unable to consume the regular lunch because of medical or other special dietary needs. Substitutions shall be made on a case by case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FCS. Such

statement shall, in the case of a handicapped student, be signed by a physician or, in the case of a nonhandicapped student, by a recognized medical authority.

(2) *Ethnic, religious or economic variations.* FCS may approve variations in the food components of the lunch on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, or economic needs.

(3) *Foreign meal patterns.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the bread or bread alternate requirement. For the Commonwealth of the Northern Mariana Islands, FCS has established a meal pattern which is consistent with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provides optimum nutrition consistent with sound dietary habits for participating children. The State agency shall attach to and make a part of the written agreement required under § 210.9, the requirements of that pattern.

(4) *Natural disaster.* In the event of a natural disaster or other catastrophe, FCS may temporarily allow schools to serve lunches for reimbursement that do not meet requirements of this section.

(5) *Insufficient milk supply.* The inability of a school to obtain a supply of milk shall not bar it from participation in the Program and is to be resolved as follows:

(i) If emergency conditions temporarily prevent a school that normally has a supply of fluid milk from obtaining delivery of such milk, the State agency may approve the service of lunches during the emergency period with an available alternate form of milk or without milk.

(ii) If a school is unable to obtain a supply of fluid whole milk and fluid unflavored milk containing two percent or less milk fats on a continuing basis, the State agency may approve the service of either fluid whole milk or fluid unflavored milk containing two percent or less milk fats. The Department recommends that the State agency approve for service the available fluid milk with the lowest fat and sugar content. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Marianas, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, ''milk'' shall include reconstituted or recombined milk, or as otherwise provided under written exception by FCS.

(iii) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of lunches without milk if the school uses an equivalent amount of canned, whole or nonfat dry milk in the preparation of the lunch.

(j) *Supplemental food.* Eligible schools operating afterschool care programs may be reimbursed for one meal supplement served to an eligible child (as defined in § 210.2) per day.

(1) Eligible schools mean schools that:

(i) Operate school lunch programs under the National School Lunch Act;

(ii) Sponsor afterschool care programs as defined in § 210.2; and

(iii) Were participating in the CACFP as of May 15, 1989.

(2) Meal supplements shall contain two different components from the following four:

(i) A serving of fluid milk as a beverage, or on cereal, or used in part for each purpose;

(ii) A serving of meat or meat alternate. Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts are excluded and shall not be used as meat alternates due to their low protein content. Nut or seed meals or flours shall not be used as a meat alternate except as defined in this part under Appendix A: Alternate Foods for Meals;

(iii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice may not be served when milk is served as the only other component;

(iv) A serving of whole-grain or enriched bread; or an equivalent serving

of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.

(3) Infant supplements shall contain the following:

(i) Birth through 3 months: 4–6 fluid ounces of infant formula.

(ii) 4 through 7 months: 4–6 fluid ounces of infant formula.

(iii) 8 through 11 months: 2–4 fluid ounces of infant formula or whole fluid milk or full strength fruit juice; 0–½ slice of crusty bread or 0–2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate. To improve the nutrition of participating children over one year of age, additional foods may be served with the meal supplements as desired.

The minimum amounts of food components to be served as meal supplements as set forth in paragraph (j)(3) of this section are as follows. Select two different components from the four listed. (Juice may not be served when milk is served as the only other component.)

MEAL SUPPLEMENT CHART FOR CHILDREN

| Snack (supplement) for children | Children 1 and 2 | Children 3 through 5 | Children 6 through 12 |
|---|---|---|---|
| (Select 2 different components from the 4 listed): | | | |
| Milk, fluid | ½ cup | ½ cup | 1 cup. |
| Meat or meat alternate [4] | ½ ounce | ½ ounce | 1 ounce. |
| Juice or fruit or vegetable | ½ cup | ½ cup | ¾ cup. |
| Bread and/or cereal: | | | |
| Enriched or whole grain bread or | ½ slice | ½ slice | 1 slice. |
| Cereal: | | | |
| Cold dry or | ¼ cup [1] | ⅓ cup [2] | ¾ cup.[3] |
| Hot cooked | ¼ cup | ¼ cup | ½ cup. |

[1] ¼ cup (volume) or ⅓ ounce (weight), whichever is less
[2] ⅓ cup (volume) or ½ ounce (weight), whichever is less.
[3] ¾ cup (volume) or 1 ounce (weight), whichever is less.
[4] Yogurt may be used as meat/meat alternate. You may serve 4 ounces (weight) or ½ cup (volume) of plain, or sweetened and flavored yogurt to fulfill the equivalent of 1 ounce of the meat/meat alternate component. For younger children, 2 ounces (weight) or ¼ cup (volume) may fulfill the equivalent of ½ ounce of the meat/meat alternate requirement.

Caution: Children under five years of age are at the highest risk of choking. USDA recommends that nuts and/or seeds be served to them ground or finely chopped in a prepared food.

SUPPLEMENTS FOR INFANTS

| Birth through 3 months | 4 months through 7 months | 8 months through 11 months |
|---|---|---|
| 4–6 fluid ounces formula.[1] | 4–6 fluid ounces formula.[1] | 2–4 fluid ounces formula,[1] breast milk,[4] whole milk or fruit juice.[2] 0–½ slice bread or 0–2 crackers (optional).[3] |

[1] Shall be iron-fortified infant formula.
[2] Shall be full-strength fruit juice.
[3] Shall be from whole-grain or enriched meal or flour.
[4] Breast milk provided by the infant's mother may be served in place of formula from birth through 11 months. Meals containing only breast milk are not reimbursable. Meals containing breast milk served to infants 4 months or older may be claimed when the other meal component(s) is supplied by the child care facility.

[53 FR 25308, July 6, 1988; 53 FR 48632, Dec. 2, 1988, as amended at 55 FR 18858, May 7, 1990; 56 FR 32941, July 17, 1991; 58 FR 42488, Aug. 10, 1993. Redesignated at 60 FR 31208, June 13, 1995, as amended at 60 FR 31214, June 13, 1995; 61 FR 37671, July 19, 1996; 62 FR 10190, Mar. 6, 1997]

### § 210.11 Competitive food services.

(a) *Definitions.* For the purpose of this section:

(1) *Competitive foods* means any foods sold in competition with the Program to children in food service areas during the lunch periods.

(2) *Food of minimal nutritional value* means: (i) In the case of artificially sweetened foods, a food which provides less than five percent of the Reference Daily Intakes (RDI) for each of eight specified nutrients per serving; and (ii) in the case of all other foods, a food which provides less than five percent of the RDI for each of eight specified nutrients per 100 calories and less than

five percent of the RDI for each of eight specified nutrients per serving. The eight nutrients to be assessed for this purpose are—protein, vitamin A, vitamin C, niacin, riboflavin, thiamine, calcium, and iron. All categories of food of minimal nutritional value and petitioning requirements for changing the categories are listed in appendix B of this part.

(b) *General.* State agencies and school food authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with lunches served under the Program. Such rules or regulations shall prohibit the sale of foods of minimal nutritional value, as listed in appendix B of this part, in the food service areas during the lunch periods. The sale of other competitive foods may, at the discretion of the State agency and school food authority, be allowed in the food service area during the lunch period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service or the school or student organizations approved by the school. State agencies and school food authorities may impose additional restrictions on the sale of and income from all foods sold at any time throughout schools participating in the Program.

[53 FR 29147, Aug. 2, 1988, as amended at 59 FR 23614, May 6, 1994]

### § 210.12 Student, parent and community involvement.

(a) *General.* School food authorities shall promote activities to involve students and parents in the Program. Such activities may include menu planning, enhancement of the eating environment, Program promotion, and related student-community support activities. School food authorities are encouraged to use the school food service program to teach students about good nutrition practices and to involve the school faculty and the general community in activities to enhance the Program.

(b) *Food service management companies.* School food authorities contracting with a food service management company shall comply with the provisions of § 210.16(a) regarding the establishment of an advisory board of parents, teachers and students.

(c) *Residential child care institutions.* Residential child care institutions shall comply with the provisions of this section, to the extent possible.

### § 210.13 Facilities management.

(a) *Health standards.* The school food authority shall ensure that food storage, preparation and service is in accordance with the sanitation and health standards established under State and local law and regulations.

(b) *Storage.* The school food authority shall ensure that the necessary facilities for storage, preparation and service of food are maintained. Facilities for the handling, storage, and distribution of purchased and donated foods shall be such as to properly safeguard against theft, spoilage and other loss.

### § 210.14 Resource management.

(a) *Nonprofit school food service.* School food authorities shall maintain a nonprofit school food service. Revenues received by the nonprofit school food service are to be used only for the operation or improvement of such food service, *except that,* such revenues shall not be used to purchase land or buildings, unless otherwise approved by FCS, or to construct buildings. Expenditures of nonprofit school food service revenues shall be in accordance with the financial management system established by the State agency under § 210.19(a) of this part. School food authorities may use facilities, equipment, and personnel supported with nonprofit school food revenues to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

(b) *Net cash resources.* The school food authority shall limit its net cash resources to an amount that does not exceed 3 months average expenditures for its nonprofit school food service or such other amount as may be approved by the State agency in accordance with § 210.19(a).

(c) *Financial assurances.* The school food authority shall meet the requirements of the State agency for compliance with § 210.19(a) including any separation of records of nonprofit school

food service from records of any other food service which may be operated by the school food authority as provided in paragraph (a) of this section.

(d) *Use of donated foods.* The school food authority shall enter into an agreement with the distributing agency to receive donated foods as required by part 250 of this chapter. In addition, the school food authority shall accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department.

[53 FR 29147, Aug. 2, 1988, as amended at 60 FR 31215, June 13, 1995]

### §210.15 Reporting and recordkeeping.

(a) *Reporting summary.* Participating school food authorities are required to submit forms and reports to the State agency or the distributing agency, as appropriate, to demonstrate compliance with Program requirements. These reports include, but are not limited to:

(1) A Claim for Reimbursement and, for the month of October and as otherwise specified by the State agency, supporting data as specified in accordance with §210.8 of this part;

(2) An application and agreement for Program operations between the school food authority and the State agency, and a Free and Reduced Price Policy Statement as required under §210.9;

(3) A written response to reviews pertaining to corrective action taken for Program deficiencies;

(4) A commodity school's preference whether to receive part of its donated food allocation in cash for processing and handling of donated foods as required under §210.19(b);

(5) A written response to audit findings pertaining to the school food authority's operation as required under §210.22; and

(6) Information on civil rights complaints, if any, and their resolution as required under §210.23.

(b) *Recordkeeping summary.* In order to participate in the Program, a school food authority shall maintain records to demonstrate compliance with Program requirements. These records include but are not limited to:

(1) Documentation of participation data by school in support of the Claim for Reimbursement and data used in the claims review process, as required under §210.8(a), (b), and (c) of this part;

(2) Production and menu records as required under §210.10a and production and menu records and, if appropriate, nutrition analysis records as required under §210.10, whichever is applicable.

(3) Participation records to demonstrate positive action toward providing one lunch per child per day as required under §210.10(a)(2) or §210.10a(b), whichever is applicable;

(4) Currently approved and denied applications for free and reduced price lunches and a description of the verification activities, including verified applications, and any accompanying source documentation in accordance with 7 CFR 245.6a of this Title.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12582, Mar. 28, 1989; 56 FR 32941, July 17, 1991; 60 FR 31215, June 13, 1995]

### §210.16 Food service management companies.

(a) *General.* Any school food authority (including a State agency acting in the capacity of a school food authority) may contract with a food service management company to manage its food service operation in one or more of its schools. However, no school or school food authority may contract with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and paid reimbursable lunches to all eligible children. Any school food authority that employs a food service management company in the operation of its nonprofit school food service shall:

(1) Adhere to the procurement standards specified in §210.21 when contracting with the food service management company;

(2) Ensure that the food service operation is in conformance with the school food authority's agreement under the Program;

(3) Monitor the food service operation through periodic on-site visits;

(4) Retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals;

(5) Retain signature authority on the State agency-school food authority agreement, free and reduced price policy statement and claims;

(6) Ensure that all federally donated foods received by the school food authority and made available to the food service management company accrue only to the benefit of the school food authority's nonprofit school food service and are fully utilized therein;

(7) Maintain applicable health certification and assure that all State and local regulations are being met by a food service management company preparing or serving meals at a school food authority facility; and

(8) Establish an advisory board composed of parents, teachers, and students to assist in menu planning.

(b) *Invitation to bid.* In addition to adhering to the procurement standards under § 210.21, school food authorities contracting with food service management companies shall ensure that:

(1) The invitation to bid or request for proposal contains a 21-day cycle menu developed in accordance with the provisions of § 210.10 or § 210.10a, whichever is applicable, to be used as a standard for the purpose of basing bids or estimating average cost per meal. If a school food authority has no capability to prepare a cycle menu, it may, with State agency approval, request that a 21-day cycle menu developed in accordance with the provisions of § 210.10 or § 210.10a, whichever is applicable, be developed and submitted by each food service management company which intends to submit a bid or proposal to the school food authority. The food service management company must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the school food authority.

(2) Any invitation to bid or request for proposal indicate that nonperformance subjects the food service management company to specified sanctions in instances where the food service management company violates or breaches contract terms. The school food authority shall indicate these sanctions in accordance with the procurement provisions stated in § 210.21.

(c) *Contracts.* Contracts that permit all income and expenses to accrue to the food service management company and ''cost-plus-a-percentage-of-cost'' and ''cost-plus-a-percentage-of-income'' contracts are prohibited. Contracts that provide for fixed fees such as those that provide for management fees established on a per meal basis are allowed. Contractual agreements with food service management companies shall include provisions which ensure that the requirements of this section are met. Such agreements shall also include the following:

(1) The food service management company shall maintain such records as the school food authority will need to support its Claim for Reimbursement under this part, and shall, at a minimum, report claim information to the school food authority promptly at the end of each month. Such records shall be made available to the school food authority, upon request, and shall be retained in accordance with § 210.23(c).

(2) The food service management company shall have State or local health certification for any facility outside the school in which it proposes to prepare meals and the food service management company shall maintain this health certification for the duration of the contract.

(3) No payment is to be made for meals that are spoiled or unwholesome at time of delivery, do not meet detailed specifications as developed by the school food authority for each food component specified in § 210.10, or do not otherwise meet the requirements of the contract. Specifications shall cover items such a grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.

(d) *Duration of contract.* The contract between a school food authority and food service management company shall be a of a duration of no longer than 1 year; and options for the yearly renewal of a contract signed after February 16, 1988, may not exceed 4 additional years. All contracts shall include a termination clause whereby either party may cancel for cause with 60-day notification.

[53 FR 29147, Aug. 2, 1988, as amended at 60 FR 31215, June 13, 1995]

## Subpart D—Requirements for State Agency Participation

### § 210.17 Matching Federal funds.

(a) *State revenue matching.* For each school year, the amount of State revenues appropriated or used specifically by the State for program purposes shall not be less than 30 percent of the funds received by such State under section 4 of the National School Lunch Act during the school year beginning July 1, 1980; *provided that,* the State revenues derived from the operation of such programs and State revenues expended for salaries and administrative expenses of such programs at the State level are not considered in this computation. However, if the per capita income of any State is less than the per capita income of the United States, the matching requirements so computed shall be decreased by the percentage by which the State per capita income is below the per capita income of the United States.

(b) *Private school exemption.* No State in which the State agency is prohibited by law from disbursing State appropriated funds to nonpublic schools shall be required to match general cash assistance funds expended for meals served in such schools, or to disburse to such schools any of the State revenues required to meet the requirements of paragraph (a) of this section. Furthermore, the requirements of this section do not apply to schools in which the Program is administered by a FCSRO.

(c) *Territorial waiver.* American Samoa and the Commonwealth of the Northern Mariana Islands shall be exempted from the matching requirements of paragraph (a) of this section if their respective matching requirements are under $100,000.

(d) *Applicable revenues.* The following State revenues, appropriated or used specifically for program purposes which are expended for any school year shall be eligible for meeting the applicable percentage of the matching requirements prescribed in paragraph (a) of this section for that school year:

(1) State revenues disbursed by the State agency to school food authorities for program purposes, including revenue disbursed to nonprofit private schools where the State administers the program in such schools;

(2) State revenues made available to school food authorities and transferred by the school food authorities to the nonprofit school food service accounts or otherwise expended by the school food authorities in connection with the nonprofit school food service program; and

(3) State revenues used to finance the costs (other than State salaries or other State level administrative costs) of the nonprofit school food service program, i.e.:

(i) Local program supervision;

(ii) Operating the program in participating schools; and

(iii) The intrastate distribution of foods donated under part 250 of this chapter to schools participating in the program.

(e) *Distribution of matching revenues.* All State revenues made available under paragraph (a) of this section are to be disbursed to school food authorities participating in the Program, *except as* provided for under paragraph (b) of this section. Distribution of matching revenues may be made with respect to a class of school food authorities as well as with respect to individual school food authorities.

(f) *Failure to match.* If, in any school year, a State fails to meet the State revenue matching requirement, as prescribed in paragraph (a) of this section, the general cash assistance funds utilized by the State during that school year shall be subject to recall by and repayment to FCS.

(g) *Reports.* Within 120 days after the end of each school year, each State agency shall submit an Annual Report of Revenues (FCS–13) to FCS. This report identifies the State revenues to be counted toward the State revenue matching requirements specified in paragraph (a) of this section.

(h) *Accounting system.* The State agency shall establish or cause to be established a system whereby all expended State revenues counted in meeting the matching requirements prescribed in paragraph (a) of this section are properly documented and accounted for.

**§ 210.18 Administrative reviews.**

(a) *Implementation dates.* For the school year beginning July 1, 1992, each State agency shall conduct administrative reviews as prescribed under this section. However, FCS will approve a State agency's written request if FCS determines that the State agency has demonstrated good cause to delay implementation of the provisions specified under this section to January 1, 1993. At State agency discretion, State agencies may begin implementation of the provisions of this section on August 16, 1991, in lieu of implementing the provisions of § 210.18a of this part for school year 1991/1992. FCS review responsibilities are specified under § 210.30 of this part.

(b) *Definitions.* The following definitions are provided in order to clarify State agency administrative review requirements:

(1) *Administrative reviews* means the initial comprehensive on-site evaluation of all school food authorities participating in the Program in accordance with the provisions of this section. The term ''administrative review'' is used to reflect a review of both critical and general areas in accordance with paragraphs (g) and (h) of this section, and includes other areas of Program operations determined by the State agency to be important to Program performance.

(2) *Critical areas* means the following two performance standards described in detail in paragraph (g) of this section which serve as measures of compliance with Program regulations:

(i) Performance Standard 1—Certification/Counting/Claiming—All free, reduced price and paid lunches claimed for reimbursement are served only to children eligible for free, reduced price and paid lunches, respectively; and counted, recorded, consolidated and reported through a system which consistently yields correct claims.

(ii) Performance Standard 2—Components—Lunches claimed for reimbursement within the school food authority contain food items/components as required by Program regulations.

(3) *Documented corrective action* means written notification required of the school food authority to certify that the corrective action required for each violation has been completed and to notify the State agency of the dates of completion. Documented corrective action may be provided at the time of the review or may be submitted to the State agency within specified timeframes.

(4) *Follow-up reviews* means any visit(s) to the school food authority subsequent to the administrative review to ensure corrective actions are taken.

(5) *General areas* means the areas of review specified in paragraph (h) of this section.

(6) *Large school food authority* means, in any State:

(i) All school food authorities that participate in the Program and have enrollments of 40,000 children or more each; or

(ii) If there are less than two school food authorities with enrollments of 40,000 or more, the two largest school food authorities that participate in the Program and have enrollments of 2,000 children or more each.

(7) *Participation factor* means the percentages of children approved by the school for free lunches, reduced price lunches, and paid lunches, respectively, who are participating in the Program. The free participation factor is derived by dividing the number of free lunches claimed for any given period by the product of the number of children approved for free lunches for the same period times the operating days in that period. A similar computation is used to determine the reduced price and paid participation factors. The number of children approved for paid lunches is derived by subtracting the number of children approved for free and reduced price lunches for any given period from the total number of children enrolled in the reviewed school for the same period of time, if available. If such enrollment figures are not available, the most recent total number of children enrolled shall be used. If school food authority participation factors are unavailable or unreliable, State-wide data shall be employed.

(8) *Review period* means the period of time covered by the administrative review or follow-up review. The review period is specified in paragraph (f)(2) of this section.

(9) *Review threshold* means the degree of error in a critical area of review which, if exceeded during an administrative review or follow-up review of a school food authority, may trigger a follow-up review of that school food authority.

(10) *Small school food authority* means, in any State, a school food authority that participates in the Program and is not a large school food authority, as defined in this section.

(c) *Timing of reviews.* The first year of the first 5-year review cycle began on July 1, 1992, or as otherwise authorized under paragraph (a) of this section and shall end on June 30, 1994. For each State agency, the first 5-year review cycle shall end on June 30, 1998. Administrative reviews and follow-up reviews shall be conducted as follows:

(1) *Administrative reviews.* At a minimum, State agencies shall conduct administrative reviews of all school food authorities at least once during each 5-year review cycle; provided that each school food authority is reviewed at least once every 6 years. The on-site portion of the administrative review shall be completed during the school year in which the review was begun.

(2) *Expanded review cycle.* State agencies are encouraged to conduct administrative reviews of large school food authorities and of any school food authorities which may benefit from a more frequent interval than the minimum 5-year cycle required in paragraph (c)(1) of this section.

(3) *Exceptions.* FCS may, on an individual school food authority basis, approve written requests for 1-year extensions to the 6-year review interval specified in paragraph (c)(1) of this section if FCS determines this requirement conflicts with efficient State agency management of the Program.

(4) *Follow-up reviews.* The State agency is encouraged to conduct first follow-up reviews in the same school year as the administrative review; but in no event shall first follow-up reviews be conducted later than December 31 of the school year following the administrative review. Subsequent follow-up reviews shall be scheduled in accordance with paragraph (i)(5) of this section.

(d) *Scheduling school food authorities.* The State agency shall use its own criteria to schedule school food authorities for administrative reviews; provided that the requirements of paragraph (c) of this section are met. State agencies are encouraged to take into consideration the findings of the claims review process required under § 210.8(b)(2) of this part in the selection of school food authorities.

(1) *Schedule of reviews.* To ensure no unintended overlap occurs, the State agency shall inform FCS of the anticipated schedule of school food authority reviews upon request.

(2) *Reporting follow-up review activity.* At such time as the State agency determines that a follow-up review is needed, the State agency shall notify FCS of the names of those large school food authorities exceeding any one of the critical area review thresholds specified in paragraph (i) of this section.

(3) *Exceptions.* In any school year in which FCS or OIG conducts a review or investigation of a school food authority in accordance with § 210.19(a)(5) of this part, the State agency shall, unless otherwise authorized by FCS, delay conduct of a scheduled administrative review until the following school year. The State agency shall document any exception authorized under this paragraph.

(e) *Number of schools to review.* The State agency is encouraged to review all schools meeting the school selection criteria specified in paragraph (e)(1) of this section. At a minimum, the State agency shall review the number of schools specified in paragraph (e)(1) of this section and shall select the schools to be reviewed on the basis of the school selection criteria specified in paragraph (e)(2) of this section.

(1) *Minimum number of schools.* Except for residential child care institutions, the State agency shall review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. In no event shall the State agency review less than the minimum number of schools illustrated in table A:

TABLE A

| No. of schools in the school food authority | Minimum no. of schools to be reviewed |
|---|---|
| 1 to 5 | 1 |
| 6 to 10 | 2 |
| 11 to 20 | 3 |
| 21 to 40 | 4 |
| 41 to 60 | 6 |
| 61 to 80 | 8 |
| 81 to 100 | 10 |
| 101 or more | [1] 12 |

[1] Twelve plus 5 percent of the number of schools over 100. Fractions shall be rounded to the nearest whole number.

(2) *School selection criteria.*

(i) Selection of additional schools to meet the minimum number of schools required under paragraph (e)(1) of this section, shall be based on the following criteria:

(A) Elementary schools with a free average daily participation of 100 or more and a free participation factor of 97 percent or more;

(B) Secondary schools with a free average daily participation of 100 or more and a free participation factor of 77 percent or more; and

(C) Combination schools with a free average daily participation of 100 or more and a free participation factor of 87 percent or more. A combination school means a school with a mixture of elementary and secondary grades.

(ii) When the number of schools selected on the basis of the criteria established in paragraph (A) through paragraph (C) of this paragraph are not sufficient to meet the minimum number of schools required under paragraph (e)(1) of this section, the schools selected for review shall be selected on the basis of State agency criteria which may include low participation schools, recommendations from a food service director based on findings from the on-site visits or the claims review process required under §210.8(a) of this part; or any school in which the daily lunch counts appear questionable, e.g., identical or very similar claiming patterns, and/or large changes in free lunch counts.

(3) *Pervasive problems.* If the State agency review finds pervasive problems in a school food authority, FCS may authorize the State agency to cease review activities prior to reviewing the required number of schools under paragraph (e)(1) of this section. Where FCS authorizes the State agency to cease review activity, FCS may either conduct the review activity itself or refer the school food authority to OIG.

(f) *Scope of review.* During the course of an administrative review, each State agency shall monitor compliance with the critical and general areas identified in paragraphs (g) and (h) of this section.

(1) *Review form.* State agencies shall use the administrative review form prescribed by FCS for the critical areas of review specified in paragraph (g) of this section. State agencies may use their own administrative review form for the general areas of review specified in paragraph (h) of this section.

(2) *Review period.*

(i) The review period for administrative reviews and follow-up reviews shall cover, at a minimum, the most recent month for which a Claim for Reimbursement was submitted; provided that such Claim for Reimbursement covers at least 10 operating days.

(ii) Subject to FCS approval, the State agency may conduct a review early in the school year, prior to the submission of a Claim for Reimbursement. In such cases, the review period shall be the prior month of operation in the current school year, provided that such month includes at least 10 operating days.

(3) *Audit findings.* To prevent duplication of effort, the State agency may use any recent and currently applicable findings from Federally-required audit activity or from any State-imposed audit requirements. Such findings may be used only insofar as they pertain to the reviewed school(s) or the overall operation of the school food authority and they are relevant to the review period. The State agency shall document the source and the date of the audit.

(g) *Critical areas of review.* The performance standards listed in this paragraph are deemed critical since compliance in these areas is directly linked to the service of a reimbursable lunch.

(1) *Performance Standard 1 (All free, reduced price and paid lunches claimed for reimbursement are served only to children eligible for free, reduced price and paid lunches, respectively; and are counted, recorded, consolidated and reported through a system which consistently yields correct*

*claims.)* The State agency shall determine that the free and reduced price eligibility determinations are correct. In addition, the State agency shall determine that for each day of operation for the review period, the number of free, reduced price and paid lunches claimed for each reviewed school is not more than the number of lunches served to children eligible for free, reduced price and paid lunches, respectively, in those schools for the review period. The State agency shall also determine that a lunch counting system is being used which accurately counts, records, consolidates and reports the reimbursable lunches served, by type.

(i) For each school reviewed, the State agency shall:

(A) Determine the number of children eligible for free, reduced price and paid lunches, by type, for the review period. To make this determination:

(*1*) The State agency shall:

(*i*) Review all approved free and reduced price applications for children in the reviewed schools back to the beginning of the school year to determine whether each child's application is complete and correctly approved in accordance with all applicable provisions of 7 CFR part 245; or

(*ii*) Review all approved free and reduced price applications effective for the review period for children in the reviewed schools; or

(*iii*) Review all approved free and reduced price applications effective on the day(s) the review is conducted for children in the reviewed schools.

(*2*) In lieu of reviewing all of the free and reduced price applications as required under paragraph (g)(1)(i)(A)(*1*) of this section, the State agency may review a statistically valid sample of those applications. If the State agency chooses to review a statistically valid sample of applications, the State agency shall ensure that the sample size is large enough so that there is a 95 percent chance that the actual error rate for all applications is not less than 2 percentage points less than the error rate found in the sample (i.e., the lower bound of the one-sided 95 percent confidence interval is no more than 2 percentage points less than the point estimate). In addition, the State agency shall determine the need for follow-up reviews and base fiscal action upon the error rate found in the sample.

(*3*) Evaluate whether the previous year's eligibility determinations are used after 30 operating days following the first day of school, or as otherwise established by the State agency; provided that the State agency-developed timeframe does not exceed the 30 operating day limit.

(*4*) In the case where child(ren) are determined eligible for free lunches based on documentation from the local food stamp or AFDC agency which certifies that the child(ren) is currently a member of a household receiving benefits under the Food Stamp or AFDC Program, determine that the certification from the Food Stamp Program or AFDC Program is official; all the information required under § 245.6 of this title is complete; and such children were enrolled in the school under review during the review period.

(B) Evaluate the system for issuing benefits and updating eligibility status by validating the mechanism(s) the reviewed school uses to provide benefits to eligible children, e.g., master list. The State agency shall determine whether the system is adequate and, within the timeframes established in § 210.7(c)(1)(ii)(B), reflects changes due to verification findings, transfers, reported changes in household size or income, or from a household's decision to decline school lunch benefits or any notification from the household that it is no longer certified to receive food stamp or AFDC benefits.

(C) Determine whether the lunch counting system yields correct claims. At a minimum, the State agency shall determine whether:

(*1*) The daily lunch counts, by type, for the review period are more than the product of the number of children determined by the school/school food authority to be eligible for free, reduced price, and paid lunches for the review period times an attendance factor. If the lunch count, for any type, appears questionable or significantly exceeds the product of the number of eligibles, for that type, times an attendance factor, documentation showing good cause must be available for review by the State agency.

(*2*) Each type of food service line provides accurate point of service lunch counts, by type, and those lunch counts are correctly counted and recorded. If an alternative counting system is employed (in accordance with § 210.7(c)(2)), the State agency shall ensure that it provides accurate counts of reimbursable lunches, by type, and is correctly implemented as approved by the State agency.

(*3*) All lunches are correctly counted, recorded, consolidated and reported for the day they are served.

(ii) For each school food authority reviewed, the State agency shall review lunch count records to ensure that the lunch counts submitted by each reviewed school are correctly consolidated, recorded, and reported by the school food authority on the Claim for Reimbursement.

(2) *Performance Standard 2 (Lunches claimed for reimbursement within the school food authority contain food items/components as required by Program regulations.)* For each school reviewed, the State agency shall:

(i) For the day of the review, observe the serving line(s) to determine whether all required food items/components are offered.

(ii) For the day of the review, observe a significant number of the Program lunches counted at the point of service for each type of serving line, to determine whether those lunches contain the required number of food items/components.

(iii) Review menu records for the review period to determine whether all required food items/components have been offered.

(h) *General areas of review.* The general areas listed in this paragraph reflect major Program requirements. The general areas of review shall include, but are not limited to, the following areas:

(1) *Free and reduced price process.* In the course of the review of each school food authority, the State agency shall:

(i) Review the implementation of the free and reduced price policy statement to ensure it is implemented as approved.

(ii) Evaluate whether the required minimum number of applications are verified with respect to the selection method used.

(iii) Determine that applications for verification are selected through random or focused sampling in accordance with the provisions of § 245.6a of this title and FCS Instructions, and that no discrimination exists in the selection process.

(iv) Establish that verification is completed by December 15. If the administrative review occurs prior to the December 15 deadline, the State agency shall evaluate the verification activities that have occurred to date and assess whether these activities represent a good faith effort that will result in compliance with the requirements of § 245.6a of this title.

(v) Confirm that the verification process is complete for each application verified by or on behalf of the reviewed schools. Verification is considered complete either when a child's eligibility for the level of benefits for which he or she was approved is confirmed, changed to a higher level of benefit, or a letter of adverse action has been sent.

(vi) Ensure that verification records are maintained as required by § 245.6a(c) of this title.

(vii) Determine that, for each reviewed school, the lunch count system does not overtly identify children eligible for free and reduced price lunches.

(viii) Review a representative sample of denied applications to evaluate whether the determining official correctly denied applicants for free and reduced price lunches.

(2) *Food quantities.* For each school reviewed, the State agency shall observe a significant number of Program lunches counted at the point of service for each type of serving line to determine whether those lunches appear to provide food items/components in the quantities required under § 210.10 or § 210.10a, in whichever is applicable. If visual observation suggests that quantities are insufficient, the State agency shall require the reviewed schools to provide documentation demonstrating that the required amounts of food were available for service for each day of the review period.

(3) *Civil rights.* The State agency shall examine the school food authority's

compliance with the civil rights provisions specified in § 210.23(b) of this part.

(4) *Monitoring responsibilities.* The State agency shall ensure that the school food authority conducts on-site reviews in accordance with § 210.8(a)(1) of this part and monitors claims in accordance with § 210.8(a)(2) and (a)(3) of this part.

(5) *Reporting and recordkeeping.* The State agency shall determine that the school food authority submits reports and maintains records as required under 7 CFR parts 210 and 245.

(i) *Follow-up reviews.* All school food authorities found to have a critical area violation in excess of any one of the review thresholds specified in this paragraph are subject to follow-up reviews. State agencies shall notify FCS of the names of large school food authorities exceeding critical area review thresholds in accordance with paragraph (d)(2) of this section. The State agency shall conduct a first follow-up review of any large school food authority found on an administrative review to have critical area violations in excess of any one of the review thresholds. State agencies shall also conduct a first follow-up review of at least 25 percent of the small school food authorities found on a review to have critical area violations in excess of any one of the review thresholds. State agencies shall conduct additional follow-up reviews of any school food authority which has a critical area violation exceeding a review threshold on the first follow-up or any subsequent follow-up review regardless of whether such review is conducted by FCS or the State agency.

(1) *Selection of small school food authorities.* In determining which small school food authorities to include in the follow-up review sample, State agencies shall select those school food authorities which have the most serious problems, including, but not limited to, systemic accountability problems, large overclaims, significant lunch pattern violations, etc.

(2) *Selection of schools.*

(i) If the critical area violation(s) responsible for follow-up review activity are limited to school food authority level problems (e.g. centralized application processing or centralized kitchen), the State agency may limit the follow-up review to the school food authority level.

(ii) If the critical area violation(s) responsible for follow-up review activity were identified in the review of a school(s), then State agencies shall review at least the minimum number of schools required under paragraph (e)(1) of this section. State agencies shall meet the minimum number of schools requirement by selecting those schools found, on a previous review, to have significant critical area violations. If any additional schools must be selected to meet the minimum required number, the State agency shall select from those schools which meet State agency-developed criteria identified under paragraph (e)(2)(ii) of this section.

(3) *Review thresholds.* The review thresholds apply only to the critical areas of review and are designed to limit follow-up reviews to those school food authorities with serious problems. The provisions of paragraph (i) of this section apply when:

(i) For Performance Standard 1—

(A) a number of the reviewed schools in a school food authority, as specified in Table B, have an inadequate system for certification, issuing benefits or updating eligibility status; or for counting, recording, consolidating or reporting lunches, by type; or

(B) the school food authority has an inadequate system for consolidating lunch counts, by type, or for reporting claims; or, if applicable, for certification, issuing benefits or updating eligibility status.

At the school and school food authority level, a system for certification, issuing benefits or updating eligibility status is inadequate if 10 percent or more (but not less than 10 lunches) of the free and reduced price lunches claimed for the review period (for any school reviewed) are claimed incorrectly due to errors of certification, benefit issuance or updating of eligibility status.

TABLE B

| Number of schools reviewed | Number of schools violating performance standard 1 |
|---|---|
| 1 to 5 | 1 |
| 6 to 10 | 2 |
| 11 to 20 | 3 |
| 21 to 30 | 4 |
| 31 to 40 | 5 |
| 41 to 50 | 6 |
| 51 to 60 | 7 |
| 61 to 70 | 8 |
| 71 to 80 | 9 |
| 81 to 90 | 10 |
| 91 to 100 | 11 |
| 101 or more | 11* |

*11 plus the number identified above for the appropriate increment.

(ii) For Performance Standard 2–10 percent or more of the total number of Program lunches observed in a school food authority are missing one or more of the required food items/components.

(4) *Scope of follow-up reviews.* On any follow-up review, the State agency is encouraged to review all of the critical and general areas of review specified in paragraph (g) and (h) of this section for those schools which were not reviewed during the administrative review. At a minimum, the State agency shall:

(i) For each school selected for review (or for the school food authority, as applicable,) review the critical areas for which the review thresholds were exceeded by the school food authority on a previous review;

(ii) Determine whether the school food authority has satisfactorily completed the corrective actions in accordance with paragraph (k) of this section required for both critical and general areas within the timeframes established by the State agency;

(iii) Evaluate whether these corrective actions resolved the problem(s); and

(iv) If the State agency did not evaluate the certification, count and milk/meal service procedures for the School Breakfast Program (7 CFR part 220) and/or the Special Milk Program for Children (7 CFR part 215) or offering meal supplements in after hour care programs (7 CFR part 210) in those schools selected for the administrative review and participating in those Programs, the State agency shall do so for those schools selected for the first follow-up review.

(5) *Critical area violations identified in a follow-up review.* Critical area violations identified on a follow-up review shall be addressed as follows:

(i) If, during a follow-up review, the State agency determines, that corrective actions have not been satisfactorily completed in accordance with the documented corrective action, the State agency shall: require the school food authority to resolve the problems and to submit documented corrective action to the State agency ; take fiscal action for critical area violations as specified in paragraph (m) of this section; and withhold Program payments in accordance with paragraph (l) of this section, until such time as a follow-up review, requested by the school food authority, indicates the problem has been corrected. If the State agency determines that the corrective actions have been completed as specified in the documented corrective action, but those corrective actions do not effectively resolve the problem, the State agency shall follow the requirements for new critical area violations specified in paragraphs (i)(5)(ii) and (iii) of this section.

(ii) If new critical area violations are observed that exceed a review threshold, the State agency shall: Require the school food authority to resolve the problems and to submit documented corrective action to the State agency; take fiscal action as specified in paragraph (m) of this section; and conduct a follow-up review within 6 operating months of the first follow-up review.

(iii) If new critical area violations are observed which do not exceed review thresholds, the State agency shall: Require the school food authority to resolve the problem and to submit documented corrective action to the State agency within specified timeframes; and take fiscal action in accordance with paragraph (m) of this section. If adequate documented corrective action is not received within those timeframes, the State agency shall withhold Program payments in accordance with paragraph (l) of this section, until such time as adequate documented corrective action is received.

(6) *General area violations identified in a follow-up review.* General area violations identified in a follow-up review shall be addressed as follows:

(i) If, during a follow-up review, the State agency determines that corrective actions have not been taken in accordance with the documented corrective action, the State agency shall withhold Program payments in accordance with paragraph (l) of this section, until such time as the State agency receives adequate documented corrective action.

(ii) If the State agency determines that the corrective actions taken did not effectively resolve the problem, or if new general area violations are observed on a follow-up review, the State agency shall require the school food authority to resolve the problem and to submit documented corrective action to the State agency within specified timeframes. If adequate documented corrective action is not received within those timeframes, the State agency shall withhold Program payments in accordance with paragraph (l) of this section, until such time as adequate documented corrective action is received.

(7) *Exceptions.* FCS may, on an individual school food authority basis, approve written requests for exceptions to the follow-up review requirement specified in paragraph (i)(1) of this section if FCS determines that the requirement conflicts with efficient State agency management of the program.

(j) *Exit conference and notification.* The State agency shall hold an exit conference at the close of the administrative review and of any subsequent follow-up review to discuss the violations observed, the extent of the violations and a preliminary assessment of the actions needed to correct the violations. The State agency shall discuss an appropriate deadline(s) for completion of corrective action, provided that the deadline(s) results in the completion of corrective action on a timely basis. After every review, the State agency shall provide written notification of the review findings to the school food authority's Superintendent (or equivalent in a non-public school food authority) or authorized representative. The written notification shall include the review findings, the needed corrective actions, the deadlines for completion of the corrective action, and the potential fiscal action. As a part of the denial of all or a part of a Claim for Reimbursement or withholding payment in accordance with the provisions of this section, the State agency shall provide the school food authority a written notice which details the grounds on which the denial of all or a part of the Claim for Reimbursement or withholding payment is based. This notice, which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the school food authority may appeal the denial of all or a part of a Claim for Reimbursement or withholding payment and the entity (i.e., FCS or State agency) to which the appeal should be directed. The State agency shall notify the school food authority, in writing, of the appeal procedures as specified in § 210.18(q) for appeals of State agency findings, and for appeals of FCS findings, provide a copy of § 210.30(d)(3) of the regulations.

(k) *Corrective action.* Corrective action is required for any violation under either the critical or general areas of the review. Corrective action shall be applied to all schools in the school food authority, as appropriate, to ensure that previously deficient practices and procedures are revised system-wide.

Corrective actions may include training, technical assistance, recalculation of data to ensure the correctness of any claim that the school food authority is preparing at the time of the review, or other actions. Fiscal action shall be taken in accordance with paragraph (m) of this section.

(1) *Extensions of the timeframes.* If extraordinary circumstances arise where a school food authority is unable to complete the required corrective action within the timeframes specified by the State agency, the State agency may extend the timeframes upon written request of the school food authority.

(2) *Documented corrective action.* Documented corrective action is required for any degree of violation of general

or critical areas identified in an administrative review or on any follow-up review. Documented corrective action may be provided at the time of the review; however, it shall be postmarked or submitted to the State agency no later than 30 days from the deadline for completion of each required corrective action, as specified under paragraph (j) of this section or as otherwise extended by the State agency under paragraph (k)(1) of this section. The State agency shall maintain any documented corrective action on file for review by FCS.

(l) *Withholding payment.* At a minimum, the State agency shall withhold Program payments to a school food authority as follows:

(1) *Cause.* (i) The State agency shall withhold all Program payments to a school food authority if documented corrective action for critical area violation(s) which exceed the review threshold(s) is not provided within the deadlines specified in paragraph (k)(2) of this section; and/or

(ii) The State agency shall withhold all Program payments to a school food authority if, in the event that a follow-up review is not conducted, the State agency finds that corrective action for a critical area violation which exceeded the review threshold was not completed within the deadlines specified in paragraph (j) of this section or as otherwise extended by the State agency under paragraph (k)(1) of this section; and/or

(iii) The State agency shall withhold all Program payments to a school food authority if, on a follow-up review, the State agency finds a critical area violation which exceeded the review threshold on a previous review and continues to exceed the review threshold on a follow-up review.

(iv) The State agency may withhold payments at its discretion, if the State agency finds that documented corrective action is not provided within the deadlines specified in paragraph (k)(2) of this section, that corrective action is not complete or that corrective action was not taken as specified in the documented corrective action for a general area violation or for a critical area violation which did not exceed the review threshold.

(2) *Duration.* In all cases, Program payments shall be withheld until such time as corrective action is completed, and documented corrective action is received and deemed acceptable by the State agency or as otherwise specified in paragraph (i)(5) of this section. Subsequent to the State agency's acceptance of the corrective actions (and a follow-up review, when required), payments will be released for all lunches served in accordance with the provisions of this part during the period the payments were withheld. In very serious cases, the State agency will evaluate whether the degree of non-compliance warrants termination in accordance with § 210.25 of this part.

(3) *Exceptions.* The State agency may, at its discretion, reduce the amount required to be withheld from a school food authority pursuant to paragraph (l)(1)(i) through (iii) of this section by as much as 60 percent of the total Program payments when it is determined to be in the best interest of the Program. FCS may authorize a State agency to limit withholding of funds to an amount less than 40 percent of the total Program payments, if FCS determines such action to be in the best interest of the Program.

(4) *Failure to withhold payments.* FCS may suspend or withhold Program payments, in whole or in part, to those State agencies failing to withhold Program payments in accordance with paragraph (l)(1) of this section and may withhold administrative funds in accordance with § 235.11(b) of this title. The withholding of Program payments will remain in effect until such time as the State agency documents compliance with paragraph (l)(1) of this section to FCS. Subsequent to the documentation of compliance, any withheld administrative funds will be released and payment will be released for any lunches served in accordance with the provisions of this part during the period the payments were withheld.

(m) *Fiscal action.* For purposes of the critical areas of the administrative review and any follow-up reviews, fiscal action is required for all violations of Performance Standards 1 and 2. Except that, on an administrative review, the State agency may limit fiscal action from the point corrective action occurs

back through the beginning of the review period for errors identified under paragraphs (g)(1)(i)(A) and (g)(1)(i)(B) of this section, provided corrective action occurs. Fiscal action shall be taken in accordance with the provisions identified under § 210.19(c) of this part.

(n) *Miscellaneous reporting requirement.* Each State agency shall report to FCS the results of reviews by March 1 of each school year, on a form designated by FCS. In such annual reports, the State agency shall include the results of all administrative reviews and follow-up reviews conducted in the preceding school year.

(o) *Summary of reporting requirements.* Each State agency shall report to FCS:

(1) The names of those large school food authorities exceeding any one of the critical area review thresholds as described in paragraph (d)(2) of this section.

(2) The results of reviews by March 1 of each school year on a form designated by FCS, as specified under paragraph (n) of this section.

(p) *Recordkeeping.* Each State agency shall keep records which document the details of all reviews and demonstrate the degree of compliance with the critical and general areas of review. Records shall be retained by the State agency as specified in § 210.23(c) of this part. Such records shall include documentation of administrative reviews and follow-up reviews. As appropriate, the records shall include documented corrective action, and documentation of withholding of payments and fiscal action, including recoveries made. Additionally, the State agency must have on file:

(1) Criteria for selecting schools on first and follow-up reviews in accordance with paragraphs (e)(2)(ii) and (i)(2)(ii) of this section.

(2) Its system for selecting small school food authorities for follow-up reviews in accordance with paragraph (i)(1) of this section.

(3) Documentation demonstrating compliance with the statistical sampling requirements in accordance with paragraph (g)(1)(i)(A)(1) of this section, if applicable.

(q) *School food authority appeal of State agency findings.* Except for FCS-conducted reviews authorized under § 210.30(d)(2) of this part, each State agency shall establish an appeal procedure to be followed by a school food authority requesting a review of a denial of all or a part of the Claim for Reimbursement or withholding payment arising from administrative or follow-up review activity conducted by the State agency under § 210.18 of this part. State agencies may use their own appeal procedures provided the same procedures are applied to all appellants in the State and the procedures meet the following requirements: appellants are assured of a fair and impartial hearing before an independent official at which they may be represented by legal counsel; decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review; appellants are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person; and adequate notice is given of the time, date, place and procedures of the hearing. If the State agency has not established its own appeal procedures or the procedures do not meet the above listed criteria, the State agency shall observe the following procedures at a minimum:

(1) The written request for a review shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of the Claim for Reimbursement or withholding of payment, and the State agency shall acknowledge the receipt of the request for appeal within 10 calendar days;

(2) The appellant may refute the action specified in the notice in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at

a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

(3) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time, date and place of the hearing;

(4) Any information on which the State agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(5) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(6) The review official shall make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(7) Within 60 calendar days of the State agency's receipt of the request for review, by written notice, sent by certified mail, return receipt requested, the review official shall inform the State agency and the appellant of the determination of the review official. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(8) The State agency's action shall remain in effect during the appeal process;

(9) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(r) *FCS review activity*. The term ''State agency'' and all the provisions specified in paragraphs (a)–(h) of this section refer to FCS when FCS conducts administrative reviews or follow-up reviews in accordance with § 210.30(d)(2) of this part. FCS will notify the State agency of the review findings and the need for corrective action and fiscal action. The State agency shall pursue any needed follow-up activity.

[56 FR 32942, July 17, 1991; 56 FR 55527, Oct. 28, 1991, as amended at 57 FR 38584, Aug. 26, 1992; 57 FR 40729, Sept. 4, 1992; 59 FR 1894, Jan. 13, 1994; 60 FR 31215, June 13, 1995; 60 FR 57147, Nov. 14, 1995]

### § 210.18a Assessment, improvement and monitoring system.

(a) *Effective date.* The provisions of this section are effective through June 30, 1992.

(b) *Assessment, Improvement and Monitoring System (AIMS).* Each State agency shall perform AIMS reviews, audits or a combination thereof of all school food authorities participating in the Program in accordance with the provisions of this section; or a State agency may develop an alternate monitoring system as specified in paragraph (j) of this section.

(c) *AIMS definitions.* The following definitions are provided in order to clarify AIMS requirements:

(1) *AIMS* means the Assessment, Improvement and Monitoring System. This is a management improvement system used in the National School Lunch and Commodity School Programs.

(2) *AIMS audits* means on-site evaluations of school food authorities participating in the Program for compliance with AIMS performance standards, by State auditors or State contracted auditors once every 2 years, in accordance with USDA's audit guide or an audit guide approved by FCS and USDA's OIG.

(3) *AIMS performance standards* means the following standards which measure compliance with Program regulations:

(i) Performance Standard 1—Certification—Within the school food authority, each child's application for free and reduced price meals is correctly approved or denied in accordance with the applicable provisions of part 245.

(ii) Performance Standard 2—Claims—The number of free and reduced price meals claimed for reimbursement by each school for any period are, in each case, equal to the number of meals which are served to children who are correctly approved for

free and for reduced price meals, respectively, during the period.

(iii) Performance Standard 3—Counting—The *system* used for counting and recording meal totals, by type, claimed for reimbursement at both the school food authority and school levels yields correct claims.

(iv) Performance Standard 4—Components—Meals claimed for reimbursement within the school food authority contain food items as required by § 210.10.

(4) *AIMS reviews* means on-site evaluation, of all school food authorities participating in the Program during each 4-year AIMS review period, by the State agency or State auditors for compliance with the AIMS performance standards and follow-up reviews, as required.

(5) *Corrective action plan* means the written description a school food authority submits to the State agency to explain how and when a program deficiency will be corrected.

(6) *Large school food authority* means, in any State:

(i) All school food authorities that participate in the Program and have enrollments of 40,000 students or more each; and

(ii) The two largest school food authorities that participate in the Program and have enrollments of 2,000 students or more each.

(7) *Second review thresholds* means the degree of error of an AIMS performance standard as specified in paragraph (e)(4) of this section which, if exceeded in a reviewed school food authority, triggers a second AIMS review in all large school food authorities and in at least 25 percent of those small school food authorities which exceed second review thresholds on a first review.

(8) *Small school food authority* means, in any State, a school food authority that participates in the Program and is not a large school food authority.

(d) *Number of schools reviewed or audited under AIMS.* The number of schools within the school food authority which must be included in a review or audit is dependent upon the total number of schools in the school food authority. The minimum number of schools the State agency shall review or audit is illustrated in Table A:

TABLE A

| Number of schools in the school food authority | Minimum[1] |
|---|---|
| 1 to 5 | 1 |
| 6 to 10 | 2 |
| 11 to 20 | 3 |
| 21 to 40 | 4 |
| 41 to 60 | 6 |
| 61 to 80 | 8 |
| 81 to 100 | 10 |
| 101 or more | [2]12 |

[1] Minimum number of schools to be reviewed or audited.
[2] Twelve plus 5 percent of the number of schools over 100. Fractions shall be rounded to the nearest whole number.

(e) *AIMS reviews.* States performing AIMS reviews shall monitor compliance with the AIMS performance standards described in paragraph (c) of this section. On the first AIMS review, the State agency shall review the school food authority for Performance Standards 1–4. On second AIMS reviews, the State agency shall, at a minimum, review the school food authority for the performance standards which exceeded second review thresholds in the first review.

(1) *Scope of AIMS reviews.* In reviewing performance standards:

(i) The State agency shall analyze and determine the adequacy of local approval procedures for free and reduced price meals by examining the eligibility determinations made within the school food authority. The State agency shall review the applications for all children for whom application was made attending the reviewed schools, or a statistically valid sample of the applications for such children. The State agency shall also ensure that the system to update the application file is adequate. If the State agency chooses to review a statistically valid sample of applications, the State agency shall ensure that the sample size is large enough so that there is a 95 percent chance that the actual error rate for all applications is not less than 2 percentage points less than the error rate found in the sample (i.e., the lower bound of the one-sided 95 percent confidence interval is no more than 2 percentage points less than the point estimate). In addition, the State agency shall determine the need for a second review and base fiscal action upon the error rate found in the sample.

(ii) The State agency shall determine that, for each school reviewed, the number of free and reduced price meals

claimed for each day of the most recent month for which the school food authority has submitted a claim are equal to the number of meals served to eligible children for that claiming month. In order to make this determination, State agencies shall review the data required to be maintained by the school food authority under § 210.8(a) and observe the meal counting and claiming procedures employed by each school reviewed.

(iii) The State agency shall ensure that each school reviewed has an adequate system for counting and claiming meals served by reimbursement type. An adequate system is one which meets the following objectives:

(A) Provides accurate counts of the number of reimbursable free, reduced price and paid meals served to eligible children on a daily basis;

(B) Accurately records and reports those counts to the school food authority;

(C) Prevents the overt identification of free and reduced price meal recipients in accordance with 7 CFR part 245; and

(D) Is monitored by the school food authority in accordance with § 210.8(a) to ensure that internal controls exist.

State agencies shall review each system to determine whether counts are taken at the point of service and whether the counting and claiming system, as implemented, meets these objectives. If an alternative counting system is employed, State agencies shall ensure that it achieves the desired objectives, is correctly implemented and is approved by the State agency. The State agency shall also ensure that the school food authority properly consolidates meal counts from its schools.

(iv) The State agency shall determine by observation of a representative sample of meals that meals contain food items as required in § 210.10.

(2) *Timing of AIMS reviews.* During each 4-year AIMS review period, the first AIMS review of a school food authority shall be completed within the school year in which the review was begun. A second AIMS review, when required, is recommended to be conducted in the same school year as the first review and is required to be conducted no later than December 31 of the school year following the first review.

(3) *Method of selecting school food authorities and schools to review.* (i) Each school year, the State agency shall use its own criteria to select school food authorities for AIMS reviews; *provided that* all participating school food authorities are reviewed at least once every 4 years and that school food authorities found on the first review to exceed second review thresholds are subject to second reviews as specified in paragraph (e)(4) of this section.

(ii) On a first AIMS review of a school food authority, the State agency shall select the required minimum number of schools to review from those which consistently claim that a high proportion of children eligible for free or reduced price meals have been served. However, if the State agency has reason to believe that this criterion will not lead to a review of problem schools, the State agency shall substitute schools with the likelihood of problems. The State's reasons for substitution shall be kept on file at the State agency and will be subject to review by FCSRO.

(4) *Second review thresholds.* State agencies shall ensure that corrective action plans are completed by all school food authorities which are found on first reviews to exceed the second review thresholds described below. Further, State agencies shall conduct second reviews of: All large school food authorities found to exceed the second review thresholds on first reviews; and at least 25 percent of small school food authorities found to exceed those thresholds on first reviews. In determining which small school food authorities to include in the second review sample, State agencies shall, at a minimum, select those school food authorities which have the most serious problems on the first review. A second review threshold is exceeded when:

(i) For AIMS Performance Standard 1, 10 percent or more (but not less than 10 children) of the children listed on reviewed applications and attending reviewed schools in a school food authority are incorrectly approved or denied for free or reduced price meal benefits; and/or

(ii) For AIMS Performance Standard 2, a number of schools reviewed in a school food authority, as specified in Table B of paragraph (e)(5) of this section, claim reimbursement for more free or more reduced price meals, respectively, than the number of children correctly approved for such meals for the review period times the days of operation times the attendance factor used by the school food authority under § 210.8(a); and or

(iii) For AIMS Performance Standard 3, a number of schools reviewed in a school food authority, as specified in Table B of paragraph (e)(5), have an inadequate system for counting and recording meal totals by type claimed for reimbursement, or the school food authority does not use valid procedures for consolidating claims; and/or

(iv) For AIMS Performance Standard 4, 10 percent or more of the total meals observed in a school food authority are missing one or more required food items.

(5) *Performance standards 2 and 3 thresholds.* Table B indicates the number of schools violating Performance Standards 2 or 3, thus necessitating a corrective action plan in the applicable school food authority and a second review in all large school authorities and at least 25 percent of the small school food authorities which exceed second review thresholds on a first AIMS review.

TABLE B

| Number of schools reviewed | Number of schools [1] |
|---|---|
| 1 to 10 | 1 |
| 11 to 20 | 2 |
| 21 to 30 | 3 |
| 31 to 40 | 4 |
| 41 to 50 | 5 |
| 51 to 60 | 6 |
| 61 to 70 | 71 |
| 7 to 80 | 8 |
| 81 to 90 | 9 |
| 91 to 100 | 10 |
| 101 or more | [2] 10 |

[1] Number of schools violating Performance Standards 2 or 3 respectively, thus necessitating a second review of the school food authority.

[2] 10 plus the number identified above for the appropriate increment.

(6) *Corrective action plans for AIMS reviews.* Corrective action plans are required to address AIMS performance standard deficiencies exceeding the second review thresholds described in this section. The following procedures shall be followed to develop a corrective action plan:

(i) The State agency shall assist the school food authority in developing a mutually agreed upon corrective action plan.

(ii) The corrective action plan shall identify the corrective actions and timeframes needed to correct the deficiencies found during the review. Corrective action shall include all necessary fiscal actions as described in § 210.19(c), including adjusting data to be used in preparing the Claim for Reimbursement.

(iii) The plan shall be written, signed by the proper official of the school food authority, and submitted to and approved by the State agency within 60 days following the exit conference of a review. State agencies may extend this deadline to 90 days. Extensions beyond 90 days may be made, for cause, with written justification to and approval by FCSRO.

(iv) The State agency shall require the school food authority to implement an amended or extended corrective action plan when second review thresholds are exceeded on a second AIMS review.

(7) *New violations found on a second AIMS review.* If, during the course of a second AIMS review, a performance standard violation is found that has not been noted on a previous AIMS review, the State agency shall institute and document appropriate corrective action. If the violation exceeds the second review threshold, the State agency shall require a corrective action plan and the completion of corrective action. The State agency shall take fiscal action as described in § 210.19(c) of this part for any degree of violation of AIMS Performance Standards 2, 3, and 4.

(f) *AIMS audits.* Audits by State agency, State or State-contracted auditors may be used as an alternative to AIMS reviews. if the State agency chooses this option, the audit must ensure that the four performance standards listed under paragraph (c) of this section are being complied with by the audited school food authority. This includes performing all activities described in

paragraph (e)(1) of this section. Additionally, a State using AIMS audits in place of AIMS reviews shall:

(1) Audit school food authorities once every 2 years;

(2) Take fiscal action in accordance with § 210.19(c);

(3) Have a documented system for achieving corrective action;

(4) Select schools within a school food authority based upon generally accepted audit principles; and

(5) Use a State audit guide approved by FCS. A State agency shall submit its guide to FCSRO by February 1 of each year; except that portions of the guide which do not change annually need not be resubmitted. State agencies shall provide the title of the sections that remain unchanged, as well as the year of the last guide in which the sections were submitted.

(g) *AIMS exit conference, notification and corrective action.* The State agency and the school food authority shall hold an exit conference at the close of an AIMS review or audit to discuss the deficiencies observed, the extent of the deficiencies and the corrective action needed to correct the deficiencies. If a corrective action plan is required as described in paragraph (e)(6) of this seciton, it shall be discussed during the exit conference. After every AIMS review or audit, the State shall provide written notification of the review or audit findings to the school food authority's superintendent or authorized representative who signed the State agency/school food authority agreement or who is otherwise authorized to represent the superintendent. The State shall require that the school food authority take and document corrective action for any program deficiency found on any review or audit. Corrective action may include training, assistance, recalculation of data to ensure the correctness of any claim that the school food authority is preparing at the time of the review, or other actions.

(h) *AIMS reporting.* Each State agency shall report to FCSRO:

(1) The name of any school food authority which exceeds a second review on a second AIMS review in any review period and the type and extent of the regulatory violations; and

(2) Beginning March 1, 1989, the results of AIMS reviews/audits by March 1 of each school year, on a form designated by FCS. In such annual reports, the State agency shall include the results of all AIMS reviews/audits conducted in the preceding school year and any consequent second AIMS reviews performed in the preceding school year or by December 31 of the current school year.

(i) *AIMS recordkeeping.* Each State agency shall keep records which document the details of all AIMS reviews or audits and demonstrate the degree of compliance with AIMS performance standards. AIMS records shall be kept on file by the State agency for a minimum of 3 years after the end of the school year in which the review or audit was conducted or after the school year in which problems have been resolved, whichever is later. Such records shall include documentation of AIMS first reviews and any consequent second reviews. When necessary, the records must include a corrective action plan as described in this section. Additionally, the State agency must have on file:

(1) Criteria for selecting schools on first and second reviews;

(2) Its system for selecting small school food authorities for second reviews; and

(3) Documentation demonstrating compliance with the statistical sampling requirements specified in paragraph (e) of this section.

(j) *State alternate to AIMS.* Any State developed monitoring system shall:

(1) Be equivalent to AIMS in scope;

(2) Monitor compliance with AIMS Performance Standards 1–4;

(3) Include on-site visits of all school food authorities on a cyclical basis;

(4) Require that corrective action be taken and documented for any Program deficiency found;

(5) Require that fiscal action is taken on any reviews where deficiencies are found and set forth the State agency's criteria for taking fiscal action.

(6) Provide for the maintenance of a detailed description of the system and records of all monitoring visits and activities which demonstrate the degree of compliance with AIMS performance

standards, corrective action needed and taken, and fiscal action taken;

(7) Receive approval by the appropriate FCSRO prior to implementation; and

(8) Beginning March 1, 1989, submit annual reports of the results of such alternate State monitoring reviews to FCSRO on a form designated by FCS.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12582, Mar. 28, 1989. Redesignated at 56 FR 32942, July 17, 1991, and amended at 56 FR 32947, July 17, 1991]

### §210.19 Additional responsibilities.

(a) *General Program management.* Each State agency shall provide an adequate number of consultative, technical and managerial personnel to administer programs and monitor performance in complying with all Program requirements.

(1) *Compliance with nutrition standards.* Beginning with School Year 1996–1997 (unless the school food authority has an implementation waiver as provided in §210.10(o)), State agencies shall evaluate compliance, over the school week, with the nutrition standards in §210.10(b) and §210.10(c) or (d), whichever is applicable. At a minimum, these evaluations shall be conducted once every 5 years and may be conducted at the same time a school food authority is scheduled for an administrative review in accordance with §210.18. State agencies may also conduct these evaluations in conjunction with technical assistance visits, other reviews, or separately. The type of evaluation conducted by the State agency shall be determined by the menu planning alternative chosen by the school food authority.

(i) For school food authorities choosing the nutrient standard menu planning or assisted nutrient standard menu planning options provided in §210.10(i) and §210.10(j), respectively, the State agency shall assess the nutrient analysis for the last completed school week prior to the review period to determine if the school food authority is applying the methodology in §210.10(i) or §210.10(j), as appropriate. Part of this assessment shall be an independent review of menus and production records to determine if they correspond to the analysis conducted by the school food authority and if the menu, as offered, over a school week, corresponds to the nutrition standards set forth in §210.10(b) and the appropriate calorie and nutrient levels in §210.10(c) or §210.10(i)(1), whichever is applicable.

(ii) For school food authorities choosing the food-based menu planning alternative in §210.10(k), the State agency shall conduct nutrient analysis on the menu(s) served during the review period to determine if the nutrition standards set forth in §210.10(b) and §210.10(d) are met, except that, the State agency may:

(A) Use the nutrient analysis of any school or school food authority that offers meals using the food-based menu planning alternative provided in §210.10(k) and/or §220.8(g) of this chapter and that conducts its own nutrient analysis under the criteria for nutrient analysis established in §210.10 and §220.8 for nutrient standard menu planning and assisted nutrient standard menu planning of those meals; or

(B) Develop its own method for compliance review, subject to USDA approval.

(iii) If the menu for the school week fails to comply with the nutrition standards specified in §210.10(b) and/or §220.8(a) and the appropriate nutrient levels in either §210.10(c), §210.10(d), or §210.10(i)(1) whichever is applicable, and/or §220.8(b), §220.8(c) or §220.8(e)(1) of this chapter, whichever is applicable, the school food authority shall develop, with the assistance and concurrence of the State agency, a corrective action plan designed to rectify those deficiencies. The State agency shall monitor the school food authority's execution of the plan to ensure that the terms of the corrective action plan are met.

(iv) If a school food authority fails to meet the terms of the corrective action plan, the State agency shall determine if the school food authority is working in good faith towards compliance and, if so, may renegotiate the corrective action plan, if warranted. However, if the school food authority has not been acting in good faith to meet the terms of the corrective action plan and refuses to renegotiate the plan, the State

agency shall determine if a disallowance of reimbursement funds as authorized under paragraph (c) of this section is warranted.

(2) *Assurance of compliance for finances.* Each State agency shall ensure that school food authorities comply with the requirements to account for all revenues and expenditures of their nonprofit school food service. School food authorities shall meet the requirements for the allowability of nonprofit school food service expenditures in accordance with this part and, as applicable, 7 CFR part 3015. The State agency shall ensure compliance with the requirements to limit net cash resources and shall provide for approval of net cash resources in excess of three months' average expenditures. Each State agency shall monitor, through review or audit or by other means, the net cash resources of the nonprofit school food service in each school food authority participating in the Program. In the event that net cash resources exceed 3 months' average expenditures for the school food authority's nonprofit school food service or such other amount as may be approved in accordance with this paragraph, the State agency may require the school food authority to reduce the price children are charged for lunches, improve food quality or take other action designed to improve the nonprofit school food service. In the absence of any such action, the State agency shall make adjustments in the rate of reimbursement under the Program.

(3) *Improved management practices.* The State agency shall work with the school food authority toward improving the school food authority's management practices where the State agency has found poor food service management practices leading to decreasing or low child participation and/or poor child acceptance of the Program or of foods served. If a substantial number of children who routinely and over a period of time do not favorably accept a particular item that is offered; return foods; or choose less than all food items/components or foods and menu items, as authorized under §210.10 or §210.10a, whichever is applicable, poor acceptance of certain menus may be indicated.

(4) *Program compliance.* Each State agency shall require that school food authorities comply with the applicable provisions of this part. The State agency shall ensure compliance through audits, administrative reviews, technical assistance, training guidance materials or by other means.

(5) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. State agencies shall maintain on file, evidence of such investigations and actions. FCS and OIG may make reviews or investigations at the request of the State agency or where FCS or OIG determines reviews or investigations are appropriate.

(6) *Food service management companies.* Each State agency shall annually review each contract between any school food authority and food service management company to ensure compliance with all the provisions and standards set forth in §210.16 of this part. Each State agency shall perform an on-site review of each school food authority contracting with a food service management company, at least once during each 5-year period. The State agency is encouraged to conduct such a review when performing reviews in accordance with §210.18 or §210.18a of the part. Such reviews shall include an assessment of the school food authority's compliance with §210.16 of this part. The State agency may require that all food service management companies that wish to contract for food service with any school food authority in the State register with the State agency. State agencies shall provide assistance upon request of a school food authority to assure compliance with Program requirements.

(b) *Commodity distribution information.* The State agency shall periodically assess school needs for donated foods under 7 CFR part 250, notify the distributing agency of the schools' commodity needs, and recommend appropriate variations in rates of distribution. In assessing the commodity needs of schools, usage history and existing donated food inventories should be considered. As early as practicable each

school year, but later than September 1, the State agency shall forward to the distributing agency and FCSRO an estimate of the average daily number of Program lunches to be served by school food authorities; an estimate of the average daily number of lunches to be served by commodity schools; and the amount of any cash payments in lieu of commodities for donated food processing and handling expenses to be received by or on behalf of commodity schools in accordance with § 240.5 of this chapter. That State agency shall promptly revise the information required by this paragraph to reflect additions or deletions of eligible schools and provide any necessary adjustment in the number of lunches served.

(c) *Fiscal action.* State agencies are responsible for ensuring Program integrity at the school food authority level. State agencies shall take fiscal action against school food authorities for Claims for Reimbursement that are not properly payable under this part including, if warranted, the disallowance of funds for failure to take corrective action in accordance with paragraph (a)(1) of this section. In taking fiscal action, State agencies shall use their own procedures within the constraints of this part and shall maintain all records pertaining to action taken under this section. The State agency may refer to FCS for assistance in making a claims determination under this part.

(1) *Definition.* Fiscal action includes, but is not limited to, the recovery of overpayment through direct assessment or offset of future claims, disallowance of overclaims as reflected in unpaid Claims for Reimbursement, submission of a revised Claim for Reimbursement, and correction of records to ensure that unfiled Claims for Reimbursement are corrected when filed. Fiscal action also includes disallowance of funds for failure to take corrective action in accordance with paragraph (a)(1) of this section.

(2) *General principles.* When taking fiscal action, State agencies shall consider the following:

(i) The State agency shall identify the school food authority's correct entitlement and take fiscal action when any school food authority claims or receives more Federal funds than earned under § 210.7 of this part. In order to take fiscal action, the State agency shall identify accurate counts of reimbursable lunches through available data, if possible. In the absence of reliable data, the State agency shall reconstruct the lunch accounts in accordance with procedures established by FCS. Such procedures will be based on the best available information including, participation factors for the review period, data from similar schools in the school food authority, etc.

(ii) Unless otherwise specified under § 210.18(m) of this part, fiscal action shall be extended back to the beginning of the school year or that point in time during the current school year when the infraction first occurred, as applicable. Based on the severity and longevity of the problem, the State agency may extend fiscal action back to previous school years, as applicable. The State agency shall ensure that any Claim for Reimbursement, filed subsequent to the reviews conducted under § 210.18 or § 210.18a of this part and prior to the implementation of corrective action, is limited to lunches eligible for reimbursement under this part.

(iii) In taking fiscal action, State agencies shall assume that children determined by the reviewer to be incorrectly approved for free and reduced price lunches participated at the same rate as correctly approved children in the corresponding lunch category.

(3) *Failure to collect.* If a State agency fails to disallow a claim or recover an overpayment from a school food authority, as described in this section, FCS will notify the State agency that a claim may be assessed against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning overpayment. If after considering all available information, FCS determines that a claim is warranted, FCS will assess a claim in the amount of such overpayment against the State agency. If the State agency fails to pay any such demand for funds promptly, FCS will reduce the State agency's Letter of Credit by the sum due in accordance with FCS' existing offset procedures for Letter of Credit. In such event, the

State agency shall provide the funds necessary to maintain Program operations at the level of earnings from a source other than the Program.

(4) *Interest charge.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit, interest will be charged against the State agency from the date the demand leter was sent, at the rate established by the Secretary of Treasury.

(5) *Use of recovered payment.* The amounts recovered by the State agency from school food authorities may be utilized during the fiscal year for which the funds were initially available, first, to make payments to school food authorities for the purposes of the Program; and second, to repay any State funds expended in the reimbursement of claims under the Program and not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FCS in accordance with the requirements of this part.

(6) *Exceptions.* The State agency need not disallow payment or collect an overpayment arising out of the situations described in paragraphs (c)(6) (i) and (ii) of this section; provided that the school food authority corrects the problem(s) to the satisfaction of the State agency:

(i) when any review or audit reveals that a school food authority is failing to meet the quantities for each food item required under the meal pattern in §210.10a or the food-based menu planning alternative in §210.10(k), whichever is applicable; or

(ii) when any review or audit reveals that a school food authority is approving applications which indicate that the households' incomes are within the Income Eligibility Guidelines issued by the Department or the applications contain a food stamp or AFDC case number but the applications are missing the documentation specified under 7 CFR 245.2 (a–4) (3) and/or (4); or

(iii) when any review or audit reveals that a school food authority's failure to meet the nutrition standards of §210.10 is unintentional and the school food authority is meeting the requirements of a corrective plan developed and agreed to under paragraph (a)(1)(iii) of this section.

(7) *Claims adjustment.* FCS will have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. FCS will also have the authority to waive such claims if FCS determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of title 28, U.S. Code, to conduct litigation on behalf of the United States.

(d) *Management evaluations.* Each State agency shall provide FCS with full opportunity to conduct management evaluations of all State agency Program operations and shall provide OIG with full opportunity to conduct audits of all State agency Program operations. Each State agency shall make available its records, including records of the receipt and disbursement of funds under the Program and records of any claim compromised in accordance with this paragraph, upon a reasonable request by FCS, OIG, or the Comptroller General of the United States. FCS and OIG retain the right to visit schools and OIG also has the right to make audits of the records and operations of any school. In conducting management evaluations, reviews or audits for any fiscal year, the State agency, FCS, or OIG may disregard any overpayment if the total overpayment does not exceed $600 or, in the case of State agency claims in State administered Programs, it does not exceed the amount established under State law, regulations or procedure as a minimum amount for which claim will be made for State losses but not to exceed $600. However, no overpayment is to be disregarded where there is substantial evidence of violations of criminal law or civil fraud statutes.

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

(f) *Cooperation with the Child and Adult Care Food Program.* No later than March 15, 1997, and no later than February 1 each year thereafter, the State agency shall provide the State agency

which administers the Child and Adult Care Food Program with a list of all elementary schools in the State participating in the National School Lunch Program in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the preceding October. In addition, the State agency shall provide the current list, upon request, to sponsoring organizations of day care homes participating in the Child and Adult Care Food Program.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12582, Mar. 28, 1989; 56 FR 32947, July 17, 1991; 57 FR 38586, Aug. 26, 1992; 59 FR 1894, Jan. 13, 1994; 60 FR 31215, June 13, 1995; 60 FR 57147, Nov. 14, 1995; 62 FR 901, Jan. 7, 1997]

### §210.20 Reporting and recordkeeping.

(a) *Reporting summary.* Participating State agencies shall submit forms and reports to FCS to demonstrate compliance with Program requirements. The reports include but are not limited to:

(1) Requests for cash to make reimbursement payments to school food authorities as required under §210.5(a);

(2) Information on the amounts of Federal Program funds expended and obligated to date (SF–269) as required under §210.5(d);

(3) Statewide totals on Program participation (FCS–10) as required under §210.5(d);

(4) Information on State funds provided by the State to meet the State matching requirements (FCS–13) specified under §210.17(g);

(5) The names of school food authorities in need of a follow-up review;

(6) Results of reviews and audits; and

(7) Results of the commodity preference survey and recommendations for commodity purchases as required under §210.28(d).

(b) *Recordkeeping summary.* Participating State agencies are required to maintain records to demonstrate compliance with Program requirements. The records include but are not limited to:

(1) Accounting records and source documents to control the receipt, custody and disbursement of Federal Program funds as required under §210.5(a);

(2) Documentation supporting all school food authority claims paid by the State agency as required under §210.5(d);

(3) Documentation to support the amount the State agency reported having used for State revenue matching as required under §210.17(h);

(4) Records supporting the State agency's review of net cash resources as required under §210.19(a);

(5) Reports on the results of investigations of complaints received or irregularities noted in connection with Program operations as required under §210.19(a)

(6) Records of all reviews and audits, including records of action taken to correct Program violations; and records of fiscal action taken, including documentation of recoveries made;

(7) State agency criteria for selecting schools for reviews and small school food authorities for follow-up reviews;

(8) Documentation of action taken to disallow improper claims submitted by school food authorities, as required by §210.19(c) and as determined through claims processing, resulting from actions such as reviews, audits and USDA audits;

(9) Records of USDA audit findings, State agency's and school food authorities' responses to them and of corrective action taken as required by §210.22(a);

(10) Records pertaining to civil rights responsibilities as defined under §210.23(b); and

(11) Records pertaining to the annual food preference survey of school food authorities as required by §210.28(d).

[53 FR 29147, Aug. 2, 1988, as amended at 56 FR 32948, July 17, 1991; 56 FR 55527, Oct. 28, 1991]

## Subpart E—State Agency and School Food Authority Responsibilities

### §210.21 Procurement.

(a) *General.* State agencies and school food authorities shall comply with the requirements of 7 CFR part 3015 concerning the procurement of supplies, food, equipment and other services with Program funds. These requirements ensure that such materials and services are obtained for the Program efficiently and economically and in

compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in 7 CFR part 3015 do not relieve the State agency or school food authority of any contractual responsibilities under its contracts. The State agency or school food authority is the responsible authority, without recourse to FCS, 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 or school food authority may use its own procurement procedures which reflect applicable State and local laws and regulations, *provided that* procurements made with Program funds adhere to the standards set forth in 7 CFR part 3015.

### § 210.22 Audits.

(a) *General.* State agencies and school food authorities shall comply with the requirements of 7 CFR part 3015 concerning the audit requirements for recipients and subrecipients of the Department's financial assistance.

(b) *Audit procedure.* These requirements call for organization-wide financial and compliance audits to ascertain whether financial operations are conducted properly; financial statements are presented fairly; recipients and subrecipients comply with the laws and regulations that affect the expenditures of Federal funds; recipients and subrecipients have established procedures to meet the objectives of federally assisted programs; and recipients and subrecipients are providing accurate and reliable information concerning grant funds. States and school food authorities shall use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in 7 CFR part 3015.

### § 210.23 Other responsibilities.

(a) *Free and reduced price lunches and meal supplements.* State agencies and school food authorities shall ensure that lunches and meal supplements are made available free or at a reduced price to all children who are determined by the school food authority to be eligible for such benefits. The determination of a child's eligibility for free or reduced price lunches and meal supplements is to be made in accordance with 7 CFR part 245.

(b) *Civil rights.* In the operation of the Program, no child shall be denied benefits or be otherwise discriminated against because of race, color, national origin, age, sex, or handicap. State agencies and school food authorities shall comply with the requirements of: Title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a, and 15b); and FCS Instruction 113–6.

(c) *Retention of records.* State agencies and school food authorities may retain necessary records in their original form or on microfilm. State agency records shall be retained for a period of 3 years after the date of submission of the final Financial Status Report for the fiscal year. School food authority records shall be retained for a period of 3 years after submission of the final Claim for Reimbursement for the fiscal year. In either case, if audit findings have not been resolved, the records shall be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

[53 FR 29147, Aug. 2, 1988, as amended at 58 FR 42489, Aug. 10, 1993]

## Subpart F—Additional Provisions

### § 210.24 Withholding payments.

In accordance with § 3015.103 of this title, the State agency shall withhold Program payments, in whole or in part, to any school food authority which has failed to comply with the provisions of this part. Program payments shall be withheld until the school food authority takes corrective action satisfactory

to the State agency, or gives evidence that such corrective action will be taken, or until the State agency terminates the grant in accordance with §210.25 of this part. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any lunches served in accordance with the provisions of this part during the period the payments were withheld.

[56 FR 32948, July 17, 1991]

### §210.25 Suspension, termination and grant closeout procedures.

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FCS guidelines and instructions, FCS may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A State agency may also terminate the Program by mutual agreement with FCS. FCS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015, subpart N concerning grant suspension, termination and closeout procedures. Furthermore, the State agency shall apply these provisions to suspension or termination of the Program in school food authorities.

[53 FR 29147, Aug. 2, 1988. Redesignated at 56 FR 32948, July 17, 1991]

### §210.26 Penalties.

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 if such funds, assets, or property are of a value of $100 or more, be fined no more than $10,000 or imprisoned not more than 5 years or both; or 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 1 year or both. Whoever receives, conceals, or retains for personal 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.

[53 FR 29147, Aug. 2, 1988. Redesignated at 56 FR 32948, July 17, 1991]

### §210.27 Educational prohibitions.

In carrying out the provisions of the Act, neither the Department nor the State agency shall impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, or materials of instruction in any school as a condition for participation in the Program.

[53 FR 29147, Aug. 2, 1988. Redesignated at 56 FR 32948, July 17, 1991]

### §210.28 State Food Distribution Advisory Council.

(a) *Council composition.* Each State educational agency, in cooperation with the State distributing agency, shall establish a State Food Distribution (SFD) Advisory Council which is composed of at least five representatives, excluding ex officio representatives, of schools which participate in the Program in the State. The State should make every effort to appoint individuals who represent large urban public schools; small rural public schools; residential child care institutions; private schools; parent teacher organizations; students from junior or senior high schools; nutritionists; school administrators; and teachers. These representatives shall be appointed for not more than 3 years.

(b) *Council leadership.* The Chairman and Vice Chairman of the SFD Advisory Council shall be elected by members of the Council. The Chief State School Officer, or designee, shall be an ex officio member of the SFD Advisory Council acting in an advisory capacity and as a non-voting member. The Chief Officer of the State distributing agency which distributes USDA donated foods to schools within the State, or designee will be an ex officio member of the SFD Advisory Council, also acting in an advisory capacity and as a non-voting member. If the State educational agency and the State distributing agency are the same entity within the State, the ex officio member of the SFD Advisory Council shall be the

Chief Food Distribution Officer of the State educational agency, or designee.

(c) *Council timeframe.* The Council shall meet at least once a year and shall report to the State educational agency and State distributing agency, if it is a different entity, no later than March 30 of each year, recommendations concerning the manner of selection and distribution of commodity assistance for the next school year. The State educational agency shall inform FCSRO of the Council's recommendations no later than April 30 of each year.

(d) *Council responsibilities.* Major responsibilites of the Council include providing the State educational and distributing agencies with information concerning the most desired foods and the least desired foods. This information shall be obtained in a survey of school food authorities within the State. The Council shall also advise the State educational and distributing agencies on the types and amounts of available donated food items to order, the preferred available package size, and donated foods school food authorities would like processed and desired end products. The Council may also advise the State educational and distributing agency on intra State distribution systems, delivery schedules, and State food distribution program operations. Recommendations for the Department regarding national purchasing practices, changes in donated food specifications and packaging improvements may also be included in the report.

(e) *State responsibilities.* In reporting the Council's recommendations to FCSRO, the State educational agency shall include the number of school food authorities providing the required information to the Council; the average daily number of lunches served by schools in these school food authorities during April of the previous year; and the average daily number of lunches served by all school food authorities within the State during April of the previous year.

(f) *State recordkeeping.* The State educational agency shall maintain records concerning the survey of school food authorities including, at a minimum, a description of survey methods and a copy of the format used to obtain food preferences; the name and address of each school food authority included in the survey; and a record of the data obtained from each school food authority.

(g) *Expenses.* The State educational agency may make payment for justified expenses incurred for or by the SFD Advisory Council from State Administrative Expense funds. In instances when State Administrative Expense funds are used, payments shall be made in accordance with part 235 of this chapter. State agencies which are the same entity as the State distributing agency may also use food distribution assessment funds as provided for in § 250.6 (i) and (j) of this chapter. Members of the SFD Advisory Council shall serve without compensation. The State educational agency shall provide compensation for necessary travel and subsistence expenses incurred by Council members in the performance of Council duties. Parent and student participant members, in addition to necessary travel and subsistence expenses, shall be compensated for personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings. The State educational agency shall establish a system whereby expenses are paid in advance for any member who indicates that they cannot financially afford to meet any of the allowed expenses. In instances where members can meet these expenses, a reimbursement shall be provided in a timely manner.

[53 FR 29147, Aug. 2, 1988. Redesignated at 56 FR 32948, July 17, 1991]

### § 210.29 Pilot project exemptions.

Those State agencies or school food authorities selected for the pilot projects mandated under section 18(d) of the Act may be exempted by the Department from some or all of the counting and free and reduced price application requirements of this part and 7 CFR part 245, as necessary, to conduct an approved pilot project. Additionally, those schools selected for pilot projects that also operate the School Breakfast Program (7 CFR part 220) and/or the Special Milk Program for Children (7 CFR part 215), may be exempted from the counting and free

and reduced price application requirements mandated under these Programs. The Department shall notify the appropriate State agencies and school food authorities of its determination of which requirements are exempted after the Department's selection of pilot projects.

[55 FR 41504, Oct. 12, 1990. Redesignated at 56 FR 32948, July 17, 1991]

### §210.30 Management evaluations.

(a) *Management evaluations.* FCS will conduct a comprehensive management evaluation of each State agency's administration of the National School Lunch Program.

(b) *Basis for evaluations.* FCS will evaluate all aspects of State agency management of the Program using tools such as State agency reviews as required under §210.18 or §210.18a of this part; reviews conducted by FCS in accordance with §210.18 of this part; FCS reviews of school food authorities and schools authorized under §210.19(a)(4) of this part; follow-up reviews and actions taken by the State agency to correct violations found during reviews; FCS observations of State agency reviews; and audit reports.

(c) *Scope of management evaluations.* The management evaluation will determine whether the State agency has taken steps to ensure school food authority compliance with Program regulations, and whether the State agency is administering the Program in accordance with Program requirements and good management practices.

(1) *Local compliance.* FCS will evaluate whether the State agency has actively taken steps to ensure that school food authorities comply with the provisions of this part.

(2) *State agency compliance.* FCS will evaluate whether the State agency has fulfilled its State level responsibilities, including, but not limited to the following areas: use of Federal funds; reporting and recordkeeping; agreements with school food authorities; review of food service management company contracts; review of the claims payment process; implementation of the State agency's monitoring responsibilities; initiation and completion of corrective action; recovery of overpayments; disallowance of claims that are not properly payable; withholding of Program payments; oversight of school food authority procurement activities; training and guidance activities; civil rights; and compliance with the State Administrative Expense Funds requirements as specified in 7 CFR part 235.

(d) *School food authority reviews.* FCS will examine State agency administration of the Program by reviewing local Program operations. When conducting these reviews under paragraph (d)(2) of this section, FCS will follow all the administrative review requirements specified in §210.18(a)–(h) of this part. When FCS conducts reviews, the findings will be sent to the State agency to ensure all the needed follow-up activity occurs. The State agency will, in all cases, be invited to accompany FCS reviewers.

(1) *Observation of State agency reviews.* FCS may observe the State agency conduct of any review and/or any follow-up review as required under this part. At State agency request, FCS may assist in the conduct of the review.

(2) *Section 210.18 reviews.* FCS will conduct administrative reviews or follow-up reviews in accordance with §210.18(a)–(h) of this part which will count toward meeting the State agency responsibilities identified under §210.18 of this part.

(3) *School food authority appeal of FCS findings.* When administrative or follow-up review activity conducted by FCS in accordance with the provisions of paragraph (d)(2) of this section results in the denial of all or part of a Claim for Reimbursement or withholding of payment, a school food authority may appeal the FCS findings by filing a written request with the Chief, Administrative Review Branch, U.S. Department of Agriculture, Food and Consumer Service, 3101 Park Center Drive, Alexandria, Virginia, 22302, in accordance with the appeal procedures specified in this paragraph:

(i) The written request for a review of the record shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of the Claim for Reimbursement or withholding payment and the envelope containing the request

shall be prominently marked ''REQUEST FOR REVIEW''. FCS will acknowledge the receipt of the request for appeal within 10 calendar days. The acknowledgement will include the name and address of the FCS Administrative Review Officer (ARO) reviewing the case. FCS will also notify the State agency of the request for appeal.

(ii) The appellant may refute the action specified in the notice in person and by written documentation to the ARO. In order to be considered, written documentation must be filed with the ARO not later than 30 calendar days after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the ARO in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the ARO, unless the ARO agrees to reschedule the hearing. A representative of FCS shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the ARO;

(iii) If the appellant has requested a hearing, the appellant shall be provided with a least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time, date, and place of the hearing;

(iv) Any information on which FCS's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(v) The ARO shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(vi) The ARO shall make a determination based on information provided by FCS and the appellant, and on Program regulations;

(vii) Within 60 calendar days of the receipt of the request for review, by written notice, sent by certified mail, return receipt requested, the ARO shall inform FCS, the State agency and the appellant of the determination of the ARO. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(viii) The action being appealed shall remain in effect during the appeal process;

(ix) The determination by the ARO is the final administrative determination to be afforded to the appellant.

(4) *Coordination with State agency.* FCS will coordinate school food authority selection with the State agency to ensure that no unintended overlap exists and to ensure reviews are conducted in a consistent manner.

(e) *Management evaluation findings.* FCS will consider the results of all its review activity within each State, including school food authority reviews, in performing management evaluations and issuing management evaluation reports. FCS will communicate the findings of the management evaluation to appropriate State agency personnel in an exit conference. Subsequent to the exit conference, the State agency will be notified in writing of the management evaluation findings and any needed corrective actions or fiscal sanctions in accordance with the provisions § 210.25 of this part and/or 7 CFR part 235.

[56 FR 32949, July 17, 1991, as amended at 57 FR 38586, Aug. 26, 1992]

### § 210.31 Regional office addresses.

School food authorities desiring information concerning the Program should write to their State educational agency or to the appropriate Regional Office of FCS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FCS, U.S. Department of Agriculture, 10 Causeway Street, Room 501, Boston, Massachusetts 02222–1065.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FCS, U.S. Department of Agriculture, 1100 Spring Street, NW., Atlanta, Georgia 30367.

(c) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FCS, U.S. Department of Agriculture, 50 E. Washington Street, Chicago, Illinois 60602.

(d) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FCS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75242.

(e) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FCS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

(f) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FCS, U.S. Department of Agriculture, Mercer Corporate Park, Corporate Boulevard, CN 02150, Trenton, New Jersey 08650.

(g) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FCS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, Colorado 80204.

[53 FR 29147, Aug. 2, 1988. Redesignated at 55 FR 41503, Oct. 12, 1990. Further redesignated at 56 FR 32948, July 17, 1991]

### § 210.32 OMB control numbers.

The following control numbers have been assigned to the information collection requirements in 7 CFR part 210 by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

| 7 CFR section where requirements are described | Current OMB control No. |
|---|---|
| 210.3(b) | 0584–0327 |
| 210.5(d) | 0584–0006 |
| 210.5(d)(1) | 0584–0002 |
| 210.5(d)(2) | 0584–0341 |
| 210.5(d)(3) | 0584–0341 |
| 210.6(b) | 0584–0006 |
| 210.8 | 0584–0006<br>0584–0284 |
| 210.9 | 0584–0006<br>0584–0026<br>0584–0329 |
| 210.10(b) | 0584–0006 |
| 210.10(i)(1) | 0584–0006 |
| 210.14(c) | 0584–0006 |
| 210.16 | 0584–0006 |
| 210.17 | 0584–0006 |
| 210.17(g) | 0584–0075 |
| 210.18 | 0584–0006 |
| 210.19 | 0584–0006 |
| 210.22 | 0584–0006 |
| 210.23(c) | 0584–0006 |
| 210.24 | 0584–0006 |
| 210.27 | 0584–0006 |

[53 FR 29147, Aug. 2, 1990. Redesignated at 55 FR 41503, Oct. 12, 1990. Further redesignated at 56 FR 32948, July 17, 1991]

## APPENDIX A TO PART 210—ALTERNATE FOODS FOR MEALS

### ENRICHED MACARONI PRODUCTS WITH FORTIFIED PROTEIN

1. Schools may utilize the enriched macaroni products with fortified protein defined in paragraph 3 as a food item in meeting the meal requirements of this part under the following terms and conditions:

(a) One ounce (28.35 grams) of a dry enriched macaroni product with fortified protein may be used to meet not more than one-half of the meat or meat alternate requirements specified in §210.10 or §210.10a, whichever is applicable, when served in combination with 1 or more ounces (28.35 grams) of cooked meat, poultry, fish, or cheese. The size of servings of the cooked combination may be adjusted for various age groups.

(b) Only enriched macaroni products with fortified protein that bear a label containing substantially the following legend shall be so utilized: ''One ounce (28.35 grams) dry weight of this product meets one-half of the meat or meat alternate requirements of lunch or supper of the USDA child nutrition programs when served in combination with 1 or more ounces (28.35 grams) of cooked meat, poultry, fish, or cheese. In those States where State or local law prohibits the wording specified, a legend acceptable to both the State or local authorities and FCS shall be substituted.''

(c) Enriched macaroni product may not be used for infants under 1 year of age.

2. Only enriched macaroni products with fortified protein that have been accepted by FCS for use in the USDA Child Nutrition Programs may be labeled as provided in paragraph 1(b) of this appendix. Manufacturers seeking acceptance of their product shall furnish FCS a chemical analysis, the Protein Digestibility-Corrected Amino Acid Score (PDCAAS), and such other pertinent data as may be requested by FCS, except that prior to November 7, 1994, manufacturers may submit protein efficiency ratio analysis in lieu of the PDCAAS. This information is to be

forwarded to: Director, Nutrition and Technical Services Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, room 607, Alexandria, VA 22302. All laboratory analyses are to be performed by independent or other laboratories acceptable to FCS. (FCS prefers an independent laboratory.) All laboratories shall retain the ''raw'' laboratory data for a period of 1 year. Such information shall be made available to FCS upon request. Manufacturers must notify FCS if there is a change in the protein portion of their product after the original testing. Manufacturers who report such a change in protein in a previously approved product must submit protein data in accordance with the method specified in this paragraph.

3. The product should not be designed in such a manner that would require it to be classified as a Dietary Supplement as described by the Food and Drug Administration (FDA) in 21 CFR part 105. To be accepted by FCS, enriched macaroni products with fortified protein must conform to the following requirements:

(a)(1) Each of these foods is produced by drying formed units of dough made with one or more of the milled wheat ingredients designated in 21 CFR 139.110(a) and 139.138(a), and other ingredients to enable the finished food to meet the protein requirements set out in paragraph 3.(a)(2)(i) under Enriched Macaroni Products with Fortified Protein in this appendix. Edible protein sources, including food grade flours or meals made from nonwheat cereals or from oilseeds, may be used. Vitamin and mineral enrichment nutrients are added to bring the food into conformity with the requirements of paragraph (b) under Enriched Macaroni Products with Fortified Protein in this appendix. Safe and suitable ingredients, as provided for in paragraph (c) under Enriched Macaroni Products with Fortified Protein in this appendix, may be added. The proportion of the milled wheat ingredient is larger than the proportion of any other ingredient used.

(2) Each such finished food, when tested by the methods described in the pertinent sections of ''Official Methods of Analysis of the AOAC International,'' (formerly the Association of Official Analytical Chemists), 15th Ed. (1990) meets the following specifications. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the AOAC International, 2200 Wilson Blvd., suite 400, Arlington, VA 22201–3301. This publication may be examined at the Food and Consumer Service, Nutrition and Technical Services Division, 3101 Park Center Drive, room 607, Alexandria, Virginia 22302 or the Office of the Federal Register, 800 North Capital Street, NW., suite 700, Washington, DC.

(i) The protein content (N x 6.25) is not less than 20 percent by weight (on a 13 percent moisture basis) as determined by the appropriate method of analysis in the AOAC manual cited in (a)(2) under Enriched Macaroni Products with Fortified Protein in this appendix. The protein quality is not less than 95 percent that of casein as determined on a dry basis by the PDCAAS method as described below:

(A) The PDCAAS shall be determined by the methods given in sections 5.4.1, 7.2.1. and 8.0 as described in ''Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation,'' Rome, 1990, as published by the Food and Agriculture Organization (FAO) of the United Nations/World Health Organization (WHO). This report is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this report may be obtained from the Nutrition and Technical Services Division, Food and Consumer Service, 3101 Park Center Drive, room 607, Alexandria, Virginia 22302. This report may also be inspected at the Office of the Federal Register 800 North Capitol St., NW., suite 700, Washington, DC.

(B) The standard used for assessing protein quality in the PDCAAS method is the amino acid scoring pattern established by FAO/WHO and United Nations University (UNU) in 1985 for preschool children 2 to 5 years of age which has been adopted by the National Academy of Sciences, Recommended Dietary Allowances (RDA), 1989.

(C) To calculate the PDCAAS for an individual food, the test food must be analyzed for proximate analysis and amino acid composition according to AOAC methods.

(D) The PDCAAS may be calculated using FDA's limited data base of published true digestibility values (determined using humans and rats). The true digestibility values contained in the WHO/FAO report referenced in paragraph 3.(a)(2)(i)(A) under Enriched Macaroni Products with Fortified Protein in this appendix may also be used. If the digestibility of the protein is not available from these sources it must be determined by a laboratory according to methods in the FAO/WHO report (sections 7.2.1 and 8.0).

(E) The most limiting essential amino acid (that is, the amino acid that is present at the lowest level in the test food compared to the standard) is identified in the test food by comparing the levels of individual amino acids in the test food with the 1985 FAO/WHO/UNU pattern of essential amino acids established as a standard for children 2 to 5 years of age.

(F) The value of the most limiting amino acid (the ratio of the amino acid in the test food over the amino acid value from the pattern) is multiplied by the percent of digestibility of the protein. The resulting number is the PDCAAS.

(G) The PDCAAS of food mixtures must be calculated from data for the amino acid composition and digestibility of the individual components by means of a weighted average procedure. An example for calculating a PDCAAS for a food mixture of varying protein sources is shown in section 8.0 of the FAO/WHO report cited in paragraph 3.(a)(2)(i)(A) under Enriched Macaroni Products with Fortified Protein in this appendix.

(H) For the purpose of this regulation, each 100 grams of the product (on a 13 percent moisture basis) must contain protein in amounts which is equivalent to that provided by 20 grams of protein with a quality of not less than 95 percent casein. The equivalent grams of protein required per 100 grams of product (on a 13 percent moisture basis) would be determined by the following equation:

$$X = \frac{a \times b}{c}$$

X=grams of protein required per 100 grams of product

a=20 grams (amount of protein if casein)

b=.95 [95% ×1 (PDCAAS of casein)

c=PDCAAS for protein used in formulation

(ii) The total solids content is not less than 87 percent by weight as determined by the methods described in the ''Official Methods of Analysis of the AOAC International'' cited in paragraph (a)(2) under Enriched Macaroni Products with Fortified Protein in this appendix.

(b)(1) Each pound of food covered by this section shall contain 5 milligrams of thiamine, 2.2 milligrams of riboflavin, 34 milligrams of niacin or niacinamide, and 16.5 milligrams of iron.

(2) Each pound of such food may also contain 625 milligrams of calcium.

(3) Only harmless and assimilable forms of iron and calcium may be added. The enrichment nutrients may be added in a harmless carrier used only in a quantity necessary to effect a uniform distribution of the nutrients in the finished food. Reasonable overages, within the limits of good manufacturing practice, may be used to assure that the prescribed levels of the vitamins and mineral(s) in paragraphs (b)(1) and (2) under Enriched Macaroni Products with Fortified Protein in this appendix are maintained throughout the expected shelf life of the food under customary conditions of distribution.

(c) Ingredients that serve a useful purpose such as to fortify the protein or facilitate production of the food are the safe and suitable ingredients referred to in paragraph (a) under Enriched Macaroni Products with Fortified Protein in this appendix. This does not include color additives, artificial flavorings, artificial sweeteners, chemical preservatives, or starches. Ingredients deemed suitable for use by this paragraph are added in amounts that are not in excess of those reasonably required to achieve their intended purposes. Ingredients are deemed to be safe if they are not food additives within the meaning of section 201(s) of the Federal Food, Drug and Cosmetic Act, or in case they are food additives if they are used in conformity with regulations established pursuant to section 409 of the act.

(d)(1) The name of any food covered by this section is ''Enriched Wheat _____ Macaroni Product with Fortified Protein'', the blank being filled in with appropriate word(s) such as ''Soy'' to show the source of any flours or meals used that were made from non-wheat cereals or from oilseeds. In lieu of the words ''Macaroni Product'' the words ''Macaroni'', ''Spaghetti'', or ''Vermicelli'' as appropriate, may be used if the units conform in shape and size to the requirements of 21 CFR 139.110 (b), (c), or (d).

(2) When any ingredient not designated in the part of the name prescribed in paragraph (d)(1) under Enriched Macaroni Products with Fortified Protein in this appendix, is added in such proportion as to contribute 10 percent or more of the quantity of protein contained in the finished food, the name shall include the statement ''Made with _____'', the blank being filled in with the name of each such ingredient, e.g. ''Made with nonfat milk''.

(3) When, in conformity with paragraph (d)(1) or (d)(2) under Enriched Macaroni Products with Fortified Protein in this appendix, two or more ingredients are listed in the name, their designations shall be arranged in descending order of predominance by weight.

(4) If a food is made to comply with a section of 21 CFR part 139, but also meets the compositional requirements of the Enriched Macaroni with Fortified Protein Appendix, it may alternatively bear the name set out in the other section.

(e) Each ingredient used shall declare its common name as required by the applicable section of 21 CFR part 101. In addition, the ingredients statement shall appear in letters not less than one half the size of that required by 21 CFR 101.105 for the declaration of net quantity of contents, and in no case less than one-sixteenth of an inch in height.

### VEGETABLE PROTEIN PRODUCTS

1. Schools, institutions, and service institutions may use a vegetable product, defined in paragraph 2, as a food component meeting the meal requirements specified in §210.10 or §210.10a, whichever is applicable, §225.20 or §226.20 under the following terms and conditions:

(a) The vegetable protein product must be prepared in combination with raw or cooked meat, poultry or seafood and shall resemble as well as substitute, in part, for one of these major protein foods. Substitute refers to a

vegetable protein product whose presence in another food results in the presence of a smaller amount of meat, poultry or seafood than is customarily expected or than appears to be present in that food. Examples of items in which a vegetable protein product may be used include, but are not limited to, beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

(b) Vegetable protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form in combination with meat, poultry or seafood. The moisture content of the fully hydrated vegetable protein product shall be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

(c) The quantity, by weight, of the fully hydrated vegetable protein product must not exceed 30 parts to 70 parts meat, poultry or seafood on an uncooked basis. The quantity by weight of the dry or partially hydrated vegetable protein product must not exceed a level equivalent to the amount (dry weight) used in the fully hydrated product at the 30 percent level of substitution. The dry or partially hydrated product's replacement of meat, poultry or seafood will be based on the level of substitution it would provide if it were fully hydrated.

(d) A vegetable protein product may be used to satisfy the meat/meat alternate requirement when combined with meat, poultry or seafood and when it meets the other requirements of this section. The combination of the vegetable protein product and meat, poultry or seafood may meet all or part of the meat/meat alternate requirement specified in §210.10 or §210.10a, whichever is applicable, §225.20 or §226.20.

(e) The contribution vegetable protein products make toward the meat/meat alternate requirement specified in §210.10 or §210.10a, whichever is applicable, §225.20, or §226.20 shall be determined on the basis of the preparation yield of the meat, poultry or seafood with which it is combined. When computing the preparation yield of a product containing meat, poultry or seafood and vegetable protein product, the vegetable protein product shall be evaluated as having the same preparation yield that is applied to the meat, poultry or seafood it replaces.

(f) When vegetable protein products are served in a meal with other alternate foods authorized in appendix A, each individual alternate food shall be used as specifically directed.

2. A vegetable protein product to be used to resemble and substitute, in part, for meat, poultry or seafood, as specified in paragraph 1 must meet the following criteria:

(a) The vegetable protein product (substitute food) shall contain one or more vegetable protein products which are defined as foods which are processed so that some portion of the nonprotein constituents of the vegetable is removed. These vegetable protein products are safe and suitable edible products produced from vegetable (plant) sources including, but not limited to soybeans, peanuts, wheat, and corn.

(b) The types of vegetable protein products described in paragraph 2(a)(1) above shall include flour, concentrate, and isolate as defined below:

(1) When a product contains less than 65 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances it is a ''_____ flour,'' the blank is to be filled with the name of the source of the protein, e.g., ''soy'' or ''peanuts.''

(2) When a product contains 65 percent or more but less than 90 percent protein by weight calculated on a moisture-free basis excluding added flavors,colors, or other added substances, it is a ''_____ protein concentrate,'' the blank to be filled with the name of the source of the protein, e.g., ''soy'' or ''peanut.''

(3) When a product contains 90 percent or more protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances, it is a ''protein isolate'' or ''isolated _____ protein,'' the blank to be filled in with the name of the source of the protein, e.g., ''soy'' or ''peanut.''

(c) Compliance with the moisture and protein provisions of paragraph 2(b) (1), (2), and (3) above shall be determined by the appropriate methods described in ''Official Methods of Analysis of the Association of Official Analytical Chemists'' (latest edition).

(d) Vegetable protein products which are used to resemble and substitute, in part, for meat, poultry or seafood shall be labeled in conformance with applicable paragraphs of 102.76, tentative final regulations published by the Food and Drug Administration in the FEDERAL REGISTER of July 14, 1978 (43 FR 30472). Adopted for the purpose of this regulation are the following:

(1) The common or usual names for a vegetable protein product used to resemble and substitute, in part, for meat, poultry or seafood shall include the term ''vegetable protein product'' and may include the term ''textured'' or ''texturized'' and/or a term e.g., ''granules,'' when such term is appropriate. The term ''plant'' may be used in the name in lieu of the term ''vegetable.''

(2) The vegetable protein products used as ingredients in the substitute food shall be listed by source (e.g., soy or peanut) and product type (i.e., flour, concentrate, isolate) in the ingredient statement of the label. Product type(s) listed shall comply with the

appropriate definition(s) set forth in paragraph 2(b) (1), (2) and (3), and may include a term which accurately describes the physical form of the product, e.g., ''granules'' when such term is appropriate.

(e) Vegetable protein products which are used to resemble and substitute, in part, for meat, poultry or seafood shall meet the following nutritional specifications adopted from §102.76(f)(1)(ii)(*a*)(*b*) tentative final regulations, published by the Food and Drug Administration in the FEDERAL REGISTER of July 14, 1978 (43 FR 30472).

(1) The biological quality of the protein in the vegetable protein product shall be at least 80 percent that of casein, determined by performing PER assay or unless FCS grants an exception by approving an alternate test.

(2) The vegetable protein product shall contain at least 18 percent protein by weight when hydrated or formulated to be used in combination with meat, poultry or seafood. (''When hydrated or formulated'' refers to a dry vegetable protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added in order to make the resultant mixture resemble the meat, poultry or seafood).

(3) The vegetable protein product must contain the following levels of nutrients per gram of protein:

| Nutrient | Amount |
|---|---|
| Vitamin A (IU) | 13. |
| Thiamine (milligrams) | 0.02 |
| Riboflavin (milligrams) | .01 |
| Niacin (milligrams) | .3 |
| Pantothenic acid (milligrams) | .04 |
| Vitamin $B_6$ (milligrams) | .02 |
| Vitamin $B_{12}$ (micrograms) | .1 |
| Iron (milligrams) | .15 |
| Magnesium (milligrams) | 1.15 |
| Zinc (milligrams) | .5 |
| Copper (micrograms) | 24. |
| Potassium (milligrams) | 17. |

(4) Compliance with the nutrient provisions set forth in paragraph 2(e) (1), (2) and (3) above shall be determined by the appropriate methods described in ''Official Methods of Analysis of the Association of Official Analytical Chemists'' (latest edition).

(f) Vegetable protein products to be used in the Child Nutrition Programs to resemble and substitute, in part, for meat, poultry or seafood that comply with the labeling and nutrition specifications set forth in paragraph 2(d) (1) and (2) and paragraph 2(e) (1), (2) and (3) shall bear a label containing the following statement: ''This product meets USDA–FCS requirements for use in meeting a portion of the meat/meat alternate requirement of Child Nutrition Programs''. This statement shall appear on the principal display panel area of the package.

(g) It is recommended that for vegetable protein products to be used to resemble and substitute, in part, for meat, poultry or seafood and labeled as specified in paragraph 2(f) above, manufacturers provide information on the percent protein contained in the dry vegetable protein product (on an as is basis).

(h) It is recommended that for a vegetable protein product mix, manufacturers provide information on (1) the amount by weight of dry vegetable protein product in the package, (2) hydration instructions, and (3) instructions on how to combine the mix with meat, poultry or seafood. A vegetable protein product mix is defined as a dry product containing vegetable protein products that comply with the labeling and nutritional specifications set forth in paragraphs 2(d) (1) and (2) and paragraphs 2(e) (1), (2), and (3) along with substantial levels (more than 5 percent) of seasonings, bread crumbs, flavorings, etc.

3. Schools, institutions, and service institutions may use a commercially prepared meat, poultry or seafood product combined with vegetable protein products to meet all or part of the meat/meat alternate requirement specified in §210.10 or §210.10a, whichever is applicable, §225.10 or §226.21 if the product bears a label containing the statement: ''This item contains vegetable protein product(s) which is authorized as an alternate food in the Child Nutrition Programs.'' (Outlined in paragraph 2 above). This would designate that the vegetable protein product used in the formulation of the meat, poultry or seafood item complies with the naming and nutritional specifications set forth in paragraph 2 above. The presence of this label does not insure the proper level of hydration, ratio of substitution nor the contribution that the product makes toward meal pattern requirements for the Child Nutrition Programs.

[51 FR 34874, Sept. 30, 1986; 51 FR 41295, Nov. 14, 1986, as amended at 53 FR 29164, Aug. 2, 1988; 59 FR 51086, Oct. 7, 1994; 60 FR 31216; June 13, 1995; 61 FR 37671, July 19, 1996]

## APPENDIX B TO PART 210—CATEGORIES OF FOODS OF MINIMAL NUTRITIONAL VALUE

(a) *Foods of minimal nutritional value*—Foods of minimal nutritional value are:

(1) Soda Water—A class of beverages made by absorbing carbon dioxide in potable water. The amount of carbon dioxide used is not less than that which will be absorbed by the beverage at a pressure of one atmosphere and at a temperature of 60° F. It either contains no alcohol or only such alcohol, not in excess of 0.5 percent by weight of the finished beverage, as is contributed by the flavoring ingredient used. No product shall be

excluded from this definition because it contains artificial sweeteners or discrete nutrients added to the food such as vitamins, minerals and protein.

(2) *Water Ices*—As defined by 21 CFR 135.160 Food and Drug Administration Regulations except that water ices which contain fruit or fruit juices are not included in this definition.

(3) *Chewing Gum*—Flavored products from natural or synthetic gums and other ingredients which form an insoluble mass for chewing.

(4) *Certain Candies*—Processed foods made predominantly from sweeteners or artifical sweeteners with a variety of minor ingredients which characterize the following types:

(i) *Hard Candy*—A product made predominantly from sugar (sucrose) and corn syrup which may be flavored and colored, is characterized by a hard, brittle texture, and includes such items as sour balls, fruit balls, candy sticks, lollipops, starlight mints, after dinner mints, sugar wafers, rock candy, cinnamon candies, breath mints, jaw breakers and cough drops.

(ii) *Jellies and Gums*—A mixture of carbohydrates which are combined to form a stable gelatinous system of jelly-like character, and are generally flavored and colored, and include gum drops, jelly beans, jellied and fruit-flavored slices.

(iii) *Marshmallow Candies*—An aerated confection composed as sugar, corn syrup, invert sugar, 20 percent water and gelatin or egg white to which flavors and colors may be added.

(iv) *Fondant*—A product consisting of microscopic-sized sugar crystals which are separated by thin film of sugar and/or invert sugar in solution such as candy corn, soft mints.

(v) *Licorice*—A product made predominantly from sugar and corn syrup which is flavored with an extract made from the licorice root.

(vi) *Spun Candy*—A product that is made from sugar that has been boiled at high temperature and spun at a high speed in a special machine.

(vii) *Candy Coated Popcorn*—Popcorn which is coated with a mixture made predominantly from sugar and corn syrup.

(b) *Petitioning Procedures*—Reconsideration of the list of foods of minimal nutritional value identified in paragraph (a) of this section may be pursued as follows:

(1) Any person may submit a petition to FCS requesting that an individual food be exempted from a category of foods of minimal nutritional value listed in paragraph (a). In the case of artificially sweetened foods, the petition must include a statement of the percent of Reference Daily Intake (RDI) for the eight nutrients listed in §210.11(a)(2) ''Foods of minimal nutritional value,'' that the food provides per serving and the petitioner's source of this information. In the case of all other foods, the petition must include a statement of the percent of RDI for the eight nutrients listed in §210.11(a)(2) ''Foods of minimal nutritional value,'' that the food provides per serving and per 100 calories and the petitioner's source of this information. The Department will determine whether or not the individual food is a food of minimal nutritional value as defined in §210.11(a)(2) and will inform the petitioner in writing of such determination, and the public by notice in the FEDERAL REGISTER as indicated below under paragraph (b)(3) of this section. In determining whether an individual food is a food of minimal nutritional value, discrete nutrients added to the food will not be taken into account.

(2) Any person may submit a petition to FCS requesting that foods in a particular category of foods be classified as foods of minimal nutritional value as defined in §210.11(a)(2). The petition must identify and define the food category in easily understood language, list examples of the food contained in the category and include a list of ingredients which the foods in that category usually contain. If, upon review of the petition, the Department determines that the foods in that category should not be classified as foods of minimal nutritional value, the petitioners will be so notified in writing. If, upon review of the petition, the Department determines that there is a substantial likelihood that the foods in that category should be classified as foods of minimal nutritional value as defined in §210.11(a)(2), the Department shall at that time inform the petitioner. In addition, the Department shall publish a proposed rule restricting the sale of foods in that category, setting forth the reasons for this action, and soliciting public comments. On the basis of comments received within 60 days of publication of the proposed rule and other available information, the Department will determine whether the nutrient composition of the foods indicates that the category should be classified as a category of foods of minimal nutritional value. The petitioner shall be notified in writing and the public shall be notified of the Department's final determination upon publication in the FEDERAL REGISTER as indicated under paragraph (b)(3) of this section.

(3) By May 1 and November 1 of each year, the Department will amend appendix B to exclude those individual foods identified under paragraph (b)(1) of this section, and to include those categories of foods identified under paragraph (b)(2) of this section, *provided*, that there are necessary changes. The schedule for amending appendix B is as follows:

| Actions for publication | Publication | |
|---|---|---|
| | May | November |
| Deadline for receipt of petitions by USDA. | Nov. 15 ..... | May 15. |
| USDA to notify petitioners of results of Departmental review and publish proposed rule (if applicable). | Feb. 1 ..... | Aug. 1. |
| 60 Day comment period ..... | Feb. 1 through Apr. 1. | Aug. 1 through Oct. 1. |
| Public notice of amendment of appendix B by. | May 1 ..... | Nov. 1. |

(4) Written petitions should be sent to the Chief, Technical Assistance Branch, Nutrition and Technical Services Division, FCS, USDA, Alexandria, Virginia 22302, on or before November 15 or May 15 of each year. Petitions must include all information specified in paragraph (b) of this appendix and §220.12(b) (1) or (2) as appropriate.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 18465, May 1, 1989; 59 FR 23614, May 6, 1994]

## APPENDIX C TO PART 210—CHILD NUTRITION LABELING PROGRAM

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Consumer Service in conjunction with the Food Safety and Inspection Service (FSIS), and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture, and National Marine Fisheries Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. This program essentially involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this rule.

2. Products eligible for CN labels are as follows:

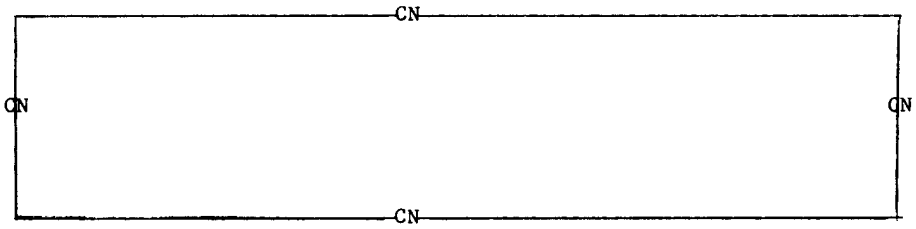
(a) Commercially prepared food products that contribute significantly to the meat/meat alternate component of meal pattern requirements of 7 CFR 210.10 or 210.10a, whichever is applicable, 225.20, and 226.20 and are served in the main dish.

(b) Juice drinks and juice drink products that contain a minimum of 50 percent full-strength juice by volume.

3. For the purpose of this appendix the following definitions apply:

(a) ''CN label'' is a food product label that contains a CN label statement and CN logo as defined in paragraph 3 (b) and (c) below.

(b) The ''CN logo'' (as shown below) is a distinct border which is used around the edges of a ''CN label statement'' as defined in paragraph 3(c).




(c) The ''CN label statement'' includes the following:

(1) The product identification number (assigned by FCS),

(2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10 or 210.10a, whichever is applicable, §220.8 or §220.8a, whichever is applicable, §§225.20, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, bread/bread alternate, and/or vegetable/fruit component of the meal pattern requirements. For juice drinks and juice drink products the statement shall identify their contribution toward the vegetable/fruit component of the meal pattern requirements,

(3) Statement specifying that the use of the CN logo and CN statement was authorized by FCS, and

(4) The approval date.

For example:

CN

000000

This 3.00 oz serving of raw beef pattie provides when cooked
CN 2.00 oz equivalent meat for Child Nutrition Meal Pattern CN
Requirements. (Use of this logo and statement authorized
by the Food and Nutrition Service, USDA 05-84.)

CN

(d) *Federal inspection* means inspection of food products by FSIS, AMS or USDC.

4. Food processors or manufacturers may use the CN label statement and CN logo as defined in paragraph 3 (b) and (c) under the following terms and conditions:

(a) The CN label must be reviewed and approved at the national level by FCS and appropriate USDA or USDC Federal agency responsible for the inspection of the product.

(b) The CN labeled product must be produced under Federal inspection by USDA or USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal inspection service.

(c) The CN label statement must be printed as an integral part of the product label along with the product name, ingredient listing, the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate, and the manufacturer's or distributor's name and address. The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products with the exception of juice drinks and juice drink products is established as follows:

INSPECTED BY THE
U.S. DEPT. OF AGRICULTURE
IN ACCORDANCE WITH
FNS REQUIREMENTS

(d) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the *Food Buying Guide for Child Nutrition Programs* (Program AID Number 1331).

5. In the event a company uses the CN logo and CN label statement inappropriately, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

6. Products that bear a CN label statement as set forth in paragraph 3(c) carry a warranty. This means that if a food service authority participating in the Child Nutrition Programs purchases a CN labeled product and uses it in accordance with the manufacturer's directions, the school or institution will not have an audit claim filed against it for the CN labeled product for noncompliance with the meal pattern requirements of 7 CFR 210.10 or 210.10a, whichever is applicable, §220.8 or §220.8a, whichever is applicable, §§225.20, and 226.20. If a State or Federal auditor finds that a product that is CN labeled does not actually meet the meal pattern requirements claimed on the label, the auditor will report this finding to FCS. FCS will prepare a report of the findings and send it to the appropriate divisions of FSIS and AMS of the USDA, National Marine Fisheries Services of the USDC, Food and Drug Administration, or the Department of Justice for action against the company. Any or all of the following courses of action may be taken:

(a) The company's CN label may be revoked for a specific period of time;

(b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product;

(c) The company's name will be circulated to regional FCS offices;

(d) FCS will require the food service program involved to notify the State agency of the labeling violation.

7. FCS is authorized to issue operational policies, procedures, and instructions for the CN Labeling Program. To apply for a CN label and to obtain additional information on CN label application procedures write to: CN Labels, U.S. Department of Agriculture, Food and Consumer Service, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia 22302.

[51 FR 34874, Sept. 30, 1986, as amended at 53 FR 29164, Aug. 2, 1988; 60 FR 31216, June 13, 1995]

## PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

Sec.

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215.11 Special responsibilities of State agencies.
215.12 Claims against schools or child-care institutions.
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215.13a Determining eligibility for free milk in child-care institutions.
215.14 Nondiscrimination.
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215.15 Suspension, termination and grant closeout procedures.
215.16 Program information.
215.17 Information collection/recordkeeping—OMB assigned control numbers.

APPENDIX TO PART 215—APPORTIONMENT OF SPECIAL MILK PROGRAM FUNDS PURSUANT TO CHILD NUTRITION ACT OF 1966, FISCAL YEAR 1976

AUTHORITY: 42 U.S.C. 1772, 1779.

## §215.1 General purpose and scope.

This part announces the policies and prescribes the general regulations with respect to the Special Milk Program for Children, under the Child Nutrition Act of 1966, as amended, and sets forth the general requirements for participation in the program. The Act reads in pertinent part as follows:

Section 3(a)(1) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and for each succeeding fiscal year such sums as may be necessary to enable the Secretary of Agriculture, under such rules and regulations as he may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (A) nonprofit schools of high school grade and under, except as provided in paragraph (2), which do not participate in a meal service program authorized under this Act or the National School Lunch Act, and (B) nonprofit nursery schools, child care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children, which do not participate in a meal service program authorized under this Act or the National School Lunch Act.

(2) The limitation imposed under paragraph (1)(A) for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized under this Act or the National School Lunch Act (42 U.S.C. 1751 *et seq.*).

(3) For the purposes of this section ''United States'' means the fifty States, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the District of Columbia.

(4) The Secretary shall administer the special milk program provided for by this section to the maximum extent practicable in the same manner as he administered the special milk program provided for by Pub. L. 89–642, as amended, during the fiscal year ending June 30, 1969.

(5) Any school or nonprofit child care institution which does not participate in a meal service program authorized under this Act or the National School Lunch Act shall receive the special milk program upon their request.

(6) Children who qualify for free lunches under guidelines established by the Secretary shall, at the option of the school involved (or of the local educational agency involved in the case of a public school) be eligible for free milk upon their request.

(7) For the fiscal year ending June 30, 1975, and for subsequent school years, the minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions shall not be less than 5 cents per half-pint served to eligible children, and such minimum rate of reimbursement shall be adjusted on an annual basis each school year to reflect changes in the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor.

(8) Such adjustment shall be computed to the nearest one-fourth cent.

(9) Notwithstanding any other provision of this section, in no event shall the minimum rate of reimbursement exceed the cost to the school or institution of milk served to children.

[52 FR 7562, Mar. 12, 1987]

## §215.2 Definitions.

For the purpose of this part, the term:

(a) *Act* means the Child Nutrition Act of 1966.

(b) *Adults* means those persons not included under the definition of children.

(c) [Reserved]

(d) *Child and Adult Care Food Program* means the program authorized by section 17 of the National School Lunch Act, as amended.

(e) *Child-care institution* means any nonprofit nursery school, child-care center, settlement house, summer camp, service institution participating in the Summer Food Program for Children pursuant to part 225 of this chapter, institution participating in the Child and Adult Care Food Program pursuant to part 226 of this chapter, or similar nonprofit institution devoted to the care and training of children.

The term ''child-care institution'' also includes a nonprofit agency to which such institution has delegated authority for the operation of a milk program in the institution. It does not include any institution falling within the definition of ''School'' in paragraph (v) of this section.

(e–1) *Children* means persons under 19 chronological years of age in child-care institutions as defined in §215.2(e); or persons under 21 chronological years of age attending schools as defined in §215.2(v)(3) and (4) of this part; or students, including students who are mentally or physically handicapped as defined by the State and who are participating in a school program established for the mentally or physically handicapped, of high school grade or under as determined by the State educational agency in schools as defined in §215.2(v)(1) and (2) of this part.

(e–2) *CND* means the Child Nutrition Division of the Food and Consumer Service of the Department.

(f) *FCS* means the Food and Consumer Service of the U.S. Department of Agriculture.

(g) *FCSRO* means Food and Consumer Services Regional Offices, of the Food and Consumer Service of the U.S. Department of Agriculture.

(h) *Cost of milk* means the net purchase price paid by the school or child-care institution to the milk supplier for milk delivered to the school or child-care institution. This shall not include any amount paid to the milk supplier for servicing, rental of or installment purchase of milk service equipment.

(i) *Department* means the U.S. Department of Agriculture.

(j) *Family* means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.

(j–1) *Free milk* means milk for which neither the child nor any member of his family pays or is required to work in the school or child-care institution or in its food service.

(k) *Fiscal year* means the period of 12 calendar months beginning October 1, 1977, and each October 1 of any calendar year thereafter and ending September 30 of the following calendar year.

(l) *Milk* means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, *milk* shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk.

(m) *National School Lunch Program* means the program under which general cash-for-food assistance and special cash assistance are made available to schools pursuant to part 210 of this chapter.

(n) *Needy children* means: (1) Children who attend schools participating in the Program and who meet the School Food Authority's eligibility standards for free milk approved by the State agency, or FCSRO where applicable, under part 245 of this chapter; and (2) children who attend child-care institutions participating in the Program and who meet the eligibility standards for free milk approved by the State agency, or FCSRO where applicable, under §215.13a of this part.

(o) [Reserved]

(p) *Nonpricing program* means a program which does not sell milk to children. This shall include any such program in which children are normally provided milk, along with food and other services, in a school or child-care institution financed by a tuition, boarding, camping or other fee, or by private donations or endowments.

(q) *Nonprofit milk service* means milk service maintained by or on behalf of the school or child-care institution for the benefit of the children, all of the income from which is used solely for the operation or improvement of such milk service.

(r) *Nonprofit* means exempt from income tax under the Internal Revenue Code, as amended.

(s) *OA* means the Office of Audit of the United States Department of Agriculture.

(s–1) *OIG* means the Office of the Inspector General of the Department.

(t) *Pricing program* means a program which sells milk to children. This shall include any such program in which maximum use is made of Program reimbursement payments in lowering, or reducing to ''zero,'' wherever possible, the price per half pint which children would normally pay for milk.

(u) *Program* means the Special Milk Program for Children.

(u–1) *Reimbursement* means financial assistance paid or payable to participating schools and child-care institutions for milk served to eligible children.

(v) *School* means: (1) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (2) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; (3) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term *residential child care institutions* includes, but is not limited to: Homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more; or (4) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

(w) *School Breakfast Program* means the program authorized by section 4 of the Child Nutrition Act of 1966, as amended.

(w–1) *School Food Authority* means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a milk program therein. The term ''School Food Authority'' also includes a nonprofit agency to which such governing body has delegated authority for the operation of a milk program in a school.

(x) *School year* means the period of 12 calendar months beginning July 1, 1977, and each July 1 of any calendar year thereafter and ending June 30 of the following calendar year.

(x–1) *7 CFR part 3015* means the Uniform Federal Assistance Regulations published by the Department to implement Office of Management and Budget Circulars A–21, A–87, A–102, A–110, A–122, and A–128; the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*); and Executive Order 12372.

NOTE: OMB Circulars, referred to in this definition, are available from the EOP Publications, New Executive Office Building, 726 Jackson Place NW., Room 2200, Washington, DC 20503.

(x–2) *Split-session* means an educational program operating for approximately one-half of the normal school day.

(y) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa or the Trust Territory of the Pacific Islands.

(z) *State agency* means the State educational agency or any other State agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program.

(aa) *Summer Food Service Program for Children* means the program authorized by section 13 of the National School Lunch Act, as amended.

(Sec. 11, Pub. L. 95–166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766; sec. 10(a), Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760; sec. 10(d)), Pub. L. 95–627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95–627, 92 Stat. 3625–3626; sec.

205, Pub. L. 96–499, The Omnibus Reconciliation Act of 1980, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1772, 1784, 1760))

[32 FR 12587, Aug. 31, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §215.2, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

### § 215.3 Administration.

(a) Within the Department, FCS shall act on behalf of the Department in the administration of the Program. Within FCS, CND shall be responsible for Program administration.

(b) Within the States, to the extent practicable and permissible under State law, responsibility for the administration of the Program in schools and child-care institutions shall be in the educational agency of the State: *Provided, however,* That another State agency, upon request by the Governor or other appropriate State executive or legislative authority, may be approved to administer the Program in schools as defined in §215.2(v)(3) or §215.2(v)(4) or in child-care institutions.

(c) FCSRO shall administer the Program in any school as defined in §215.2(v)(1), §215.2(v)(2) or §215.2(v)(3) or in any child-care institution as defined in §215.2(e) wherein the State agency is not permitted by law to disburse Federal funds paid to it under the Program; *Provided, however,* That FCSRO shall also administer the Program in all other schools and child-care institutions which have been under continuous FCS administration since October 1, 1980 unless the administration of such schools and institutions is assumed by a State agency. References in this part to ''FCSRO where applicable'' are to FCSRO as the agency administering the Program to schools or child-care institutions within certain States.

(d) Each State agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part. Such agreement shall cover the operation of the Program during the period specified therein and may be extended at the option of the Department.

(Secs. 804, 816 and 817, Pub. L. 97–35; 95 Stat. 521–535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785))

[Amdt. 14, 41 FR 31174, July 27, 1976, as amended by Amdt. 24, 47 FR 14133 Apr. 2, 1982; Amdt. 36, 54 FR 2989, Jan. 23, 1989]

### § 215.4 Payments of funds to States and FCSROs.

(a) For each fiscal year, the Secretary shall make payments to each State agency at such times as he may determine from the funds appropriated for Program reimbursement. Subject to §215.11(c)(2), the total of these payments for each State for any fiscal year shall be limited to the amount of reimbursement payable to School Food Authorities and child care institutions under §215.8 of this part for the total number of half-pints of milk served under the Program to eligible children from October 1 to September 30.

(b) Each State agency shall be responsible for controlling Program reimbursement payments so as to keep within the funds made available to it, and for the timely reporting to FCS of the number of half pints of milk actually served. The Secretary shall increase or decrease the available level of funding by adjusting the State agency's Letter of Credit when appropriate.

(Pub. L. 97–370, 96 Stat. 1806)

[Amdt. 14, 41 FR 31174, July 27, 1976, as amended by Amdt. 30, 49 FR 18986, May 4, 1984]

### § 215.5 Method of payment to States.

(a) Funds to be paid to any State shall be made available by means of Letters of Credit issued by FCS in favor of the State agency. The State agency shall:

(1) Obtain funds needed to reimburse School Food Authorities and child-care institutions through presentation by designated State officials of a Payment Voucher on Letter of Credit (Treasury Form GFO 7578) in accordance with procedures prescribed by FCS and approved by the U.S. Treasury Department; (2) submit requests for funds only at such times and in such amounts as will permit prompt payment of claims; (3) use the funds received from such requests without delay for the purpose for which drawn.

Notwithstanding the foregoing provisions, if funds are made available by Congress for the operation of the Program under a continuing resolution, Letters of Credit shall reflect only the amount available for the effective period of the resolution.

(b) [Reserved]

(c) The State agency shall release to FCS any Federal funds made available to it under the Program which are unobligated at the end of each fiscal year. Release of funds by the State agency shall be made as soon as practicable but in no event later than 30 days following demand by FCSRO, and shall be reflected by a related adjustment in the State agency's Letter of Credit.

[Amdt. 13, 39 FR 28416, Aug. 7, 1974, as amended by Amdt. 14, 41 FR 31174, July 27, 1976]

### §215.6 Use of funds.

(a) Federal funds made available under the Program shall be used to encourage the consumption of milk through reimbursement payments to schools and child-care institutions in connection with the purchase and service of milk to children in accordance with the provisions of this part: *Provided, however,* That, with the approval of FCS, any State agency, or FCSRO where applicable, may reserve for use in carrying out special developmental projects an amount equal to not more than 1 per centum of the Federal funds so made available for any fiscal year.

(b) 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 $10,000 or imprisoned not more than 5 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.

(c) 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 (b) of this section.

(Sec. 10(a), Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760; sec. 10(d)(3), Pub. L. 95–627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95–627, 92 Stat. 3625–3626; 44 U.S.C. 3506))

[Amdt. 14, 41 FR 31174, July 27, 1976, as amended by Amdt. 18, 44 FR 37898, June 29, 1979; 47 FR 746, Jan. 7, 1982]

### §215.7 Requirements for participation.

(a) Any school or nonprofit child care institution shall receive the Special Milk Program upon request provided it does not participate in a meal service program authorized under the Child Nutrition Act of 1966 or the National School Lunch Act; except that schools with such meal service may receive the Special Milk Program upon request only for the children attending split-session kindergarten programs who do not have access to the meal service. Each School Food Authority or child-care institution shall make written application to the State agency, or FCSRO where applicable, for any school or child-care institution in which it desires to operate the Program, if such school or child-care institution did not participate in the Program in the prior fiscal year.

(b) Any School Food Authority or child care institution participating in the Program may elect to serve free milk to children eligible for free meals. Upon application for the Program and thereafter at least annually, each School Food Authority or child care institution:

(1) Shall be required by the State agency, or FCSRO where applicable, to state whether or not it wishes to provide free milk in the schools or institutions participating under its jurisdiction and

(2) If it so wishes to provide free milk, shall also submit for approval a free milk policy statement which, if for a school, shall be in accordance with part 245 of this chapter or, if for a child care institution, shall be in accordance with §215.13a of this part.

(c) The application shall include information in sufficient detail to enable the State agency, or FCSRO where applicable, to determine whether the School Food Authority or child-care institution is eligible to participate in

the Program and extent of the need for Program payments.

(d) The State agency, or the Department through FCSRO where applicable, shall enter into a written agreement with each School Food Authority or child-care institution approved for participation in the Program. Such agreement shall provide that the School Food Authority or child-care institution shall, with respect to participating schools and child-care institutions under its jurisdiction:

(1) Operate a nonprofit milk service. However, school food authorities may use facilities, equipment, and personnel supported with funds provided to a school food authority under this part to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

(2) If electing to provide free milk (i) serve milk free to all eligible children, at times that milk is made available to nonneedy children under the Program; and (ii) make no discrimination against any needy child because of his inability to pay for the milk.

(3) Comply with the requirements of the Department's regulations respecting nondiscrimination (7 CFR part 15);

(4) Claim reimbursement only for milk as defined in this part and in accordance with the provisions of § 215.8 and § 215.10;

(5) Submit Claims for Reimbursement in accordance with § 215.10 of this part and procedures established by the State agency or FCSRO where applicable;

(6) Maintain a financial management system as prescribed by the State agency, or FCSRO where applicable;

(7) Upon request, make all records pertaining to its milk program available to the State agency and to FCS or OA for audit and administrative review, at any reasonable time and place. Such records shall be retained for a period of three years after the end of the fiscal year to which they pertain, except that, 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;

(8) Retain the individual applications for free milk submitted by families for a period of three years after the end of the fiscal year to which they pertain, except that, 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.

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

(Sec. 11, Pub. L. 95–166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766); sec. 5, Pub. L. 95–627, 92 Stat. 3619 (42 U.S.C. 1772); secs. 801, 803, 812; Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1753, 1759(a), 1773, 1758); 44 U.S.C. 3506)

[Amdt. 13, 39 FR 28416, Aug. 7, 1974, as amended by Amdt. 14, 41 FR 31174, July 27, 1976; Amdt. 16, 43 FR 1059, Jan. 6, 1978; 44 FR 10700, Feb. 23, 1979; Amdt. 17, 44 FR 33047, June 8, 1979; 46 FR 51635, Oct. 20, 1981; 47 FR 745, Jan. 7, 1982; Amdt. 30, 49 FR 18986, 18987, May 4, 1984; 52 FR 7562, Mar. 12, 1987; 52 FR 15298, Apr. 28, 1987]

### § 215.8 Reimbursement payments.

(a) [Reserved]

(b)(1) The rate of reimbursement per half-pint of milk purchased and (i) served in nonpricing programs to all children; (ii) served to all children in pricing programs by institutions and School Food Authorities not electing to provide free milk; and (iii) served to children other than needy children in pricing programs by institutions and School Food Authorities electing to provide free milk shall be the rate announced by the Secretary for the applicable school year. However, in no event shall the reimbursement for each half-pint (236 ml.) of milk served to children exceed the cost of the milk to the school or child care institution.

(2) The rate of reimbursement for milk purchased and served free to needy children in pricing programs by institutions and School Food Authorities electing to provide free milk shall be the average cost of milk, i.e., the total cost of all milk purchased during the claim period, divided by the total number of purchased half-pints.

(c) Schools and child-care institutions having pricing programs shall use the reimbursement payments received to reduce the price of milk to children.

(Sec. 11, Pub. L. 95–166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766); sec. 5, Pub. L. 95–627, 92 Stat. 3619 (42 U.S.C. 1772); Omnibus Reconciliation Act of 1980, sec. 209, Pub. L. 96–499, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97–35, 95 Stat. 521–535, 42 U.S.C. 1772, 1784, 1760; secs. 805 and 819, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1773))

[Amdt. 13, 39 FR 28416, Aug. 7, 1974, as amended by Amdt. 16, 43 FR 1060, Jan. 6, 1978; 44 FR 10700, Feb. 23, 1979; Amdt. 17, 44 FR 33047, June 8, 1979; 46 FR 51365, Oct. 20, 1981; Amdt. 23, 47 FR 14134, Apr. 2, 1982]

### §215.9 Effective date for reimbursement.

(a) A State Agency, or FCSRO where applicable, may grant written approval to begin operations under the Program prior to the receipt of the application from the School Food Authority or child-care institution. Such written approval shall be attached to the subsequently filed application, and the agreement executed by the School Food Authority or child-care institution shall be effective from the date upon which the School Food Authority or child-care institution was authorized to begin operations: *Provided, however,* That such effective date shall not be earlier than the calendar month preceding the calendar month in which the agreement is executed by the State Agency or by the Department.

(b) Reimbursement payments pursuant to §215.8 shall be made for milk purchased and served to children at any time during the effective period of an agreement between a School Food Authority or child care institution and the State agency or the Department.

(Sec. 11, Pub. L. 95–166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766))

[32 FR 12587, Aug. 31, 1967, as amended by Amdt. 5, 37 FR 14686, July 22, 1972; Amdt. 13, 39 FR 28417, Aug. 7, 1974; Amdt. 16, 43 FR 1060, Jan. 6, 1978; 44 FR 10700, Feb. 23, 1979]

### §215.10 Reimbursement procedures.

(a) To be entitled to reimbursement under this part, each School Food Authority shall submit to the State agency, or FCSRO where applicable, a monthly Claim for Reimbursement.

(b) Claims for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of School Program Operations required under §215.11(c)(2). Unless otherwise approved by FCS, the Claim for Reimbursement for any month shall include only milk served in that month except if the first or last month of Program operations for any year contains 10 operating days or less, such month may be added to the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years. A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency, or FCSRO where applicable, not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless FCS determines that an exception should be granted. The State agency, or FCSRO where applicable, shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of School Program Operations (FCS–10) for the claim month which is required under §215.11(c)(2). Upward adjustments in Program funds claimed which are not reflected in the final FCS–10 for the claim month shall not be made unless authorized by FCS. Downward adjustments in Program funds claimed shall always be made, without FCS authorization, regardless of when it is determined that such adjustments are necessary.

(c) [Reserved]

(d) In submitting a Claim for Reimbursement, each School Food Authority or child-care institution shall certify that the claim is true and correct; that records are available to support the claim; that the claim is in accordance with the existing agreement; and that payment therefor has not been received.

(e) Milk served to adults is not eligible for reimbursement.

(f) Any School Food Authority or child care institution which operates both a nonpricing and pricing milk program in the same school or child care institution, may elect to claim reimbursement for:

(1) All milk purchased and served to children under the Program at the nonpricing rate prescribed in §215.8(b) (1), or (2) only milk purchased and served to children in the pricing program at the rates prescribed in §215.8(b) (1) and (2) for pricing programs.

(Sec. 11, Pub. L. 95–166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766); Pub. L. 97–370, 96 Stat. 1806)

[Amdt. 13, 39 FR 28417, Aug. 7, 1974, as amended by Amdt. 14, 41 FR 31175, July 27, 1976; Amdt. 16, 43 FR 1060, Jan. 6, 1978; 44 FR 10700, Feb. 23, 1979; 45 FR 82622, Dec. 16, 1980; 48 FR 20896, May 10, 1983; Amdt. 30, 49 FR 18986, May 4, 1984]

### §215.11 Special responsibilities of State agencies.

(a) [Reserved]

(b) *Program assistance.* Each State agency, or FCSRO where applicable, shall provide Program assistance, as follows:

(1) Consultive, technical, and managerial personnel to administer the Program and monitor performance of schools and child-care institutions and to measure progress toward achieving Program goals.

(2) Visits to participating schools and child-care institutions to ensure compliance with Program regulations and with the Department's nondiscrimination regulations (part 15 of this title), issued under title VI of the Civil Rights Act of 1964. State agencies shall conduct reviews of schools participating in the Program for compliance with the provisions of this part when such schools are being reviewed under the provisions identified under §210.18(i) of this title. Compliance reviews of participating schools shall focus on the reviewed school's compliance with the required certification, counting and milk service procedures. School food authorities may appeal a denial of all or a part of the Claim for Reimbursement or withholding of payment arising from review activity conducted by the State agency under §210.18 of this title or by FCS under §210.30(d)(2) of this title. Any such appeal shall be subject to the procedures set forth under §210.18(q) of this title or §210.30(d)(3) of this title, as appropriate.

(3) Documentation of such Program assistance shall be maintained on file by the State agency, or FCSRO where applicable.

(c) *Records and reports.* (1) Each State agency shall maintain Program records as necessary to support the reimbursement payments made to child care institutions or School Food Authorities under §215.8 and §215.10 and the reports submitted to FCS under §215.11(c)(2). 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 submission of the final Financial Status Report for the fiscal year, except that 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) Each State agency shall submit to FCS a final Report of School Program Operations (FCS–10) for each month which shall be limited to claims submitted in accordance with §215.10(b) and which shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FCS grants an exception. Upward adjustments to a State agency's report shall not be made after 90 days from the month covered by the report unless authorized by FCS. Downward adjustments shall always be made, without FCS authorization, regardless of when it is determined that such adjustments are necessary. Adjustments shall be reported to FCS in accordance with procedures established by FCS. Each State agency shall also submit to FCS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. A final Financial Status Report for each fiscal

year shall be postmarked and/or submitted to FCS within 120 days after the end of the fiscal year. FCS shall not be responsible for reimbursing unpaid program obligations reported later than 120 days after the close of the fiscal year in which they were incurred.

(d) *Compliance.* State agencies, or FCSROs where applicable, shall require School Food Authorities and child-care institutions to comply with applicable provisions of this part.

(e) *Investigations.* Each State Agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program and shall take appropriate action to correct any irregularities. State Agencies shall maintain on file evidence of such investigations and actions. The Office of Investigation of the Department (OI) shall make investigations at the request of the State Agency or if CND or FCSRO determines investigations by OI are appropriate.

(Sec. 11, Pub. L. 95–166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766); 44 U.S.C. 3506; sec. 812, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1759a))

[32 FR 12587, Aug. 31, 1967, as amended by Amdt. 13, 39 FR 28417, Aug. 7, 1974; Amdt. 14, 41 FR 31175, July 27, 1976; 47 FR 745, Jan. 7, 1982; Amdt. 25, 47 FR 18564, Apr. 30, 1982; Amdt. 30, 49 FR 18987, May 4, 1984; 56 FR 32949, July 17, 1991; 57 FR 38586, Aug. 26, 1992]

### §215.12 Claims against schools or child-care institutions.

(a) State agencies, or FCSROs where applicable, shall disallow any portion of a claim and recover any payment made to a School Food Authority or child-care institution that was not properly payable under this part. State agencies will use their own procedures to disallow claims and recover overpayments already made.

(b) [Reserved]

(c) The State Agency may refer any matter in connection with this section to FCSRO and CND for determination of the action to be taken.

(d) Each State agency shall maintain all records pertaining to action taken under this section. Such records shall be retained for a period of three years after the date of the submission of the final Financial Status Report, except that, 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.

(e) If CND does not concur with the State Agency action in paying a claim or a reclaim, or in failing to collect an overpayment FCSRO shall assert a claim against the State Agency for the amount of such claim, reclaim or overpayment. In all such cases, the State Agency shall have full opportunity to submit to CND evidence or information concerning the action taken. If in the determination of CND, the State Agency's action was unwarranted, the State Agency shall promptly pay to FCS the amount of the claim, reclaim, or overpayment.

(f) The amounts recovered by the State Agency from schools and child-care institutions may be utilized, first, to make reimbursement payments for milk served during the fiscal year for which the funds were initially available, and second, to repay any State funds expended in the reimbursement of claims under the program and not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FCS in accordance with the requirements of §215.5(c).

(g) With respect to schools or child-care institutions in which FCSRO administers the Program, when FCSRO disallows a claim or a portion of a claim, or makes a demand for refund of an alleged overpayment, it shall notify the School Food Authority or child-care institutions of the reasons for such disallowance or demand and the School Food Authority or child-care institutions shall have full opportunity to submit evidence or to file reclaim for any amount disallowed or demanded in the same manner afforded in this section to schools or child-care institutions administered by State Agencies.

(h) The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claims arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the

authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

(47 FR 745, Jan. 7, 1982 (44 U.S.C. 3506; secs. 804, 816 and 817, Pub. L. 97–35; 95 Stat. 521–535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785))

[32 FR 12587, Aug. 31, 1967, as amended by Amdt. 5, 37 FR 14686, July 22, 1972; Amdt. 13, 39 FR 28418, Aug. 7, 1974; Amdt. 14, 41 FR 31175, July 27, 1976; 47 FR 745, Jan. 7, 1982; Amdt. 24, 47 FR 14133, Apr. 2, 1982]

### § 215.13 Management evaluations and audits.

(a)(1) The State agency shall ensure that all organizations within the State that administer or participate in the Program covered by this part comply with the audit requirements of 7 CFR part 3015. The term ''organization'', as used in this section, shall refer to the entity whose financial management system controls the receipt, custody and disbursement of the Federal grant funds made available for the Program. The audits shall ascertain the effectiveness of the financial management systems and internal procedures that have been established by the auditee organization to meet the terms and conditions of its Federal grants. It is not required that the Program covered by this part be included in every audit. Rather, the audits shall be conducted on an organization-wide basis, and shall include an appropriate random sampling of Federal grant programs administered or operated by the auditee organization. The Program covered by this part shall be adequately represented in the universe from which each such sample is selected.

(2) The State agency, or FCSRO where applicable, shall establish procedures to ensure that it obtains the following information pertaining to each School Food Authority or child-care institution organization under its jurisdiction:

(i) The names of the Federal grant programs included in each audit obtained by the School Food Authority or child-care institution pursuant to the requirements of this part, regardless of whether such programs include the Program covered by this part; and (ii) the nature of any deficiencies intrinsic to the auditee's grants management system as revealed by audit. When system deficiencies, as discussed in the preceding sentence, are reported in audits that did not specifically test the Program covered by this part, the State agency, or FCSRO where applicable, should make, or cause to be made, follow-up audits to determine the impact of such deficiencies upon the Program covered by this part. The State agency, or FCSRO where applicable, shall establish procedures to assure timely and appropriate resolution of audit findings and recommendations, including findings relating to deficiencies such as those cited in paragraph (a)(2)(ii) of this section, which may impact upon the Program covered by this part.

(3) Audits shall be made in accordance with generally accepted auditing standards, including the standards published by the General Accounting Office, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. Audits may be made by any of the following audit groups:

(i) School Food Authority and State agency staff auditors who are totally independent of the auditee;

(ii) State Auditors General;

(iii) State Comptrollers;

(iv) Other comparable independent State audit groups;

(v) Certified Public Accountants or

(vi) State licensed public accountants.

(4) Except as provided for in this section, each organization at the State agency, School Food Authority and child-care institution level shall obtain audits, meeting the conditions discussed in this section, on a continuing basis or at scheduled intervals, usually annually, but not less frequently than once every 2 years. The State agency, or FCSRO where applicable, may elect not to require this audit frequency of School Food Authority organizations to which *both* of the following conditions apply:

(i) The only Federal grant program or programs operated by the School Food Authority organization are the Program covered by this part, the National School Lunch Program, the School Breakfast Program, or any combination of such programs; and

(ii) The level of Federal grant funds disbursed to the School Food Authority organization in any fiscal year does not exceed $10,000: *Provided, however,* That the State agency, or FCSRO where applicable, shall make or require an audit of such a School Food Authority when conditions indicate a need for such an audit. The provision of the preceding sentence does not apply to child-care institutions as defined in §215.2(e) of this part.

(b) While OA shall rely to the fullest extent feasible upon State sponsored audits, it shall, whenever considered necessary:

(1) Make audits on a statewide basis,

(2) Perform on-site test audits, and

(3) Review audit reports and related working papers of audits performed by or for State agencies.

(c) Use of audit guides available from OA is encouraged. When these guides are utilized, OA will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(d) Each State agency shall provide FCS with full opportunity to conduct management evaluations (including visits to schools and child-care institutions) of any operations of the State agency under the Program and shall provide OA with full opportunity to conduct audits (including visits to schools and child-care institutions) of all operations of the State agency under the Program. Each State agency shall make available its records, including records of the receipt and expenditure of funds under the Program, upon a reasonable request by FCS or OA. OA shall also have the right to make audits of the records and operations of any school or child-care institution.

(e) In conducting management evaluations, reviews or audits for any fiscal year, the State agency, FCS, or OIG may disregard any overpayment if the total overpayment does not exceed $600 or, in the case of State agency claims in State administered Programs, it does not exceed the amount established under State law, regulations or procedure as a minimum amount for which claim will be made for State losses but not to exceed $600. However, no overpayment is to be disregarded where there is substantial evidence of violations of criminal law or civil fraud statutes.

(Secs. 805 and 819, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1773); sec. 812, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1759a))

[Amdt. 14, 41 FR 31175, July 27, 1976, as amended at 43 FR 58925, Dec. 22, 1978; Amdt. 23, 47 FR 14135, Apr. 2, 1982; Amdt. 25, 47 FR 18564, Apr. 30, 1982; Amdt. 36, 54 FR 2990, Jan. 23, 1989; 57 FR 38586, Aug. 26, 1992; 59 FR 1894, Jan. 13, 1994]

### §215.13a Determining eligibility for free milk in child-care institutions.

(a) *General.* Child care institutions which operate pricing programs may elect to make free milk available, as set forth in §215.7(d)(2), to children who meet the approved eligibility criteria. Such child care institutions shall determine the children who are eligible for free milk and assure that there is no physical segregation of, or other discrimination against, or overt identification of, children unable to pay the full price for milk.

(b) *Action by State agencies and FCSROs.* Each State agency, or FCSRO where applicable, upon application for the program by a child care institution operating a pricing program, and annually thereafter, shall require the institution to state whether or not it wishes to serve free milk to eligible children at times that milk is provided under the Program. It shall annually require each child care institution electing to provide free milk to submit a free milk policy statement and shall provide such institutions with a prototype free milk policy statement and a copy of the State's family-size income standards for determining eligibility for free meals and milk under the National School Lunch and School Breakfast Programs to assist the institutions in meeting its responsibilities.

(c) *Action by institutions.* Each child care institution which operates a pricing program shall inform the State agency, or FCSRO where applicable, at the time it applies for Program participation and at least annually thereafter, whether or not it wishes to provide free milk. Institutions electing to

provide free milk shall annually submit a written free milk policy statement for determining free milk eligibility of children under their jurisdiction, which shall contain the items specified in paragraph (d) of this section. Such institutions shall not be approved for Program participation of their agreements renewed unless the free milk policy has been reviewed and approved. Pending approval or a revision of a policy statement, the existing policy shall remain in effect.

(d) *Policy statement.* A free milk policy statement as required in paragraph (c) of this section shall contain the following:

(1) The specific criteria to be used in determining eligibility for free milk. These criteria shall give consideration to economic need as reflected by family size and income. The criteria used by the child-care institution may not result in the eligibility of children from families whose incomes exceed the State's family-size income standards for determining eligibility for free meals under the National School Lunch and School Breakfast Programs.

(2) The method by which the child-care institution will collect information from families in order to determine a child's eligibility for free milk.

(3) The method by which the child-care institution will collect milk payments so as to prevent the overt identification of children receiving free milk.

(4) A hearing procedure substantially like that outlined in part 245 of this chapter.

(5) An assurance that there will be no discrimination against free milk recipients and no discrimination against any child on the basis of race, color, or national origin.

(e) *Public announcement of eligibility criteria.* Each child care institution which elects to make free milk available under the Program shall annually make a public announcement of the availability of free milk to children who meet the approved eligibility criteria to the information media serving the area from which its attendance is drawn. The public announcement must also state that milk is available to all children in attendance without regard to race, color, or national origin.

(Sec. 11, Pub. L. 95–166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766); sec. 5, Pub. L. 95–627, 92 Stat. 3619 (42 U.S.C. 1772))

[Amdt. 14, 41 FR 31176, July 27, 1976, as amended by Amdt. 16, 43 FR 1060, Jan. 6, 1978; 44 FR 10700, Feb. 23, 1979; Amdt. 17, 44 FR 33047, June 8, 1979]

### § 215.14 Nondiscrimination.

The Department's regulations on nondiscrimination in federally assisted programs are set forth in part 15 of this title. The Department's agreements with State agencies, the State agencies' agreements with School Food Authorities and child-care institutions and the FCSRO agreements with School Food Authorities administering nonprofit private schools and with child-care institutions shall contain the assurances required by such regulations. When different types of milk are served to children, (a) a uniform price for each type of milk served shall be charged to all non-needy children in the school or child-care institution who purchase milk, and (b) needy children shall be given the opportunity to select any type of milk offered.

(44 U.S.C. 3506)

[Amdt. 13, 39 FR 28418, Aug. 7, 1974, as amended at 47 FR 745, Jan. 7, 1982]

### § 215.14a Procurement standards.

(a) *Requirements.* State agencies and School Food Authorities shall comply with the requirements of the Office of Management and Budget (OMB) Circular A–102 and the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015, subpart S (46 FR 55658) concerning the procurement of supplies, food, equipment and other services with Program funds. These requirements are adopted by FCS to ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in OMB Circular A–102 and 7 CFR part 3015, do not relieve the State agency or School Food Authority of any contractual responsibilities under its contract. The State agency or School Food Authority is the

responsible authority, without recourse to FCS, 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 or School Food Authority may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds adhere to the standards set forth in OMB Circular A–102 and 7 CFR part 3015.

(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. 27, 48 FR 19355, Apr. 29, 1983]

### §215.15 Suspension, termination and grant closeout procedures.

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FCS guidelines and instructions, FCS may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A State agency may also terminate the Program by mutual agreement with FCS. FCS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015, subpart N concerning grant suspension, termination and closeout procedures. Furthermore, the State agency, or FCSRO where applicable, shall apply these provisions to suspension or termination of the Program in School Food Authorities.

[Amdt. 30, 49 FR 18987, May 4, 1984]

### §215.16 Program information.

School Food Authorities and childcare institutions desiring information concerning the Program should write to their State educational agency, or the appropriate Food and Consumer Service Regional Office of FCS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FCS, U.S. Department of Agriculture, 10 Causeway Street, Room 501, Boston, Massachusetts 02222–1065.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FCS, U.S. Department of Agriculture, Mercer Corporate Park, Corporate Boulevard, CN02150, Trenton, New Jersey 08650.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FCS, U.S. Department of Agriculture, 1100 Spring Street, NW., Atlanta, Georgia 30367.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FCS Department of Agriculture, 50 E. Washington Street, Chicago, Illinois 60602.

(e) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, Texas: Southwest Regional Office, Food and Consumer Service, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75242.

(f) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, The Commonwealth of the Northern Mariana Islands and Washington: Western Regional Office, Food and Consumer Service, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

(g) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FCS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, Colorado 80204.

(Sec. 11, Pub. L. 95–166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766); sec. 10(a), Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 10(d)(3), Pub. L. 95–627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95–627, 92 Stat. 3625–3626);

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)

[Amdt. 14, 41 FR 31178, July 27, 1976, as amended by Amdt. 18, 44 FR 37898, June 29, 1979; Amdt. 27, 48 FR 195, Jan. 4, 1983; Amdt. 36, 54 FR 2990, Jan. 23, 1989]

### § 215.17 Information collection/recordkeeping—OMB assigned control numbers.

| 7 CFR section where requirements are described | Current OMB control number |
|---|---|
| 215.3(d) | 0584–0327 |
| 215.5(a) | 0584–0005 |
| | 0584–0002 |
| 215.5(c) | 0584–0341 |
| 215.7 (a), (c) | 0584–0005 |
| 215.7 (b)(2) | 0584–0026 |
| 215.7(d) | 0584–0329 |
| | 0584–0005 |
| 215.10 (a), (b), (d) | 0584–0005 |
| | 0584–0284 |
| 215.11 (b), (c)(1), (e) | 0584–0005 |
| 215.11(c)(2) | 0584–0002 |
| | 0584–0341 |
| 215.12 (a), (d), (e), (g) | 0584–0005 |
| 215.13(a) | 0584–0005 |
| 215.13a(a)–(e) | 0584–0026 |
| 215.14 | 0584–0005 |
| 215.14a(a)–(c) | 0584–0005 |
| 215.15 | 0584–0005 |

[50 FR 53258, Dec. 31, 1985]

APPENDIX TO PART 215—APPORTIONMENT OF SPECIAL MILK PROGRAM FUNDS PURSUANT TO CHILD NUTRITION ACT OF 1966, FISCAL YEAR 1976

Pursuant to section 3 of the Child Nutrition Act of 1966, as amended, milk assistance funds available for the fiscal year ending June 30, 1976, are apportioned among the States as follows:

| State | Total apportionment | State agency | Withheld for private schools |
|---|---|---|---|
| Alabama | $2,169,198 | $2,123,262 | $45,936 |
| Alaska | 35,728 | 35,728 | ..... |
| Arizona | 257,241 | 257,241 | ..... |
| Arkansas | 1,136,150 | 1,093,276 | 42,874 |
| California | 7,301,774 | 7,301,774 | ..... |
| Colorado | 929,948 | 856,450 | 73,498 |
| Connecticut | 1,778,232 | 1,778,232 | ..... |
| Delaware | 285,824 | 285,824 | ..... |
| District of Columbia | 146,995 | 146,995 | ..... |
| Florida | 1,379,099 | 1,379,099 | ..... |
| Georgia | 2,599,975 | 2,546,893 | 53,082 |
| Hawaii | 139,849 | 116,371 | 23,478 |
| Idaho | 118,413 | 118,413 | ..... |
| Illinois | 6,758,710 | 6,758,710 | ..... |
| Indiana | 2,723,491 | 2,723,491 | ..... |
| Iowa | 1,336,226 | 1,336,226 | ..... |
| Kansas | 995,279 | 995,279 | ..... |
| Kentucky | 2,390,711 | 2,390,711 | ..... |
| Louisiana | 835,014 | 835,014 | ..... |
| Maine | 750,287 | 670,665 | 79,622 |
| Maryland | 2,525,456 | 2,525,456 | ..... |
| Massachusetts | 3,561,567 | 3,561,567 | ..... |
| Michigan | 4,944,750 | 4,944,750 | ..... |
| Minnesota | 2,400,919 | 2,400,919 | ..... |
| Mississippi | 996,300 | 996,300 | ..... |
| Missouri | 2,017,099 | 1,935,435 | 81,664 |
| Montana | 204,160 | 169,453 | 34,707 |
| Nebraska | $616,562 | $526,732 | $89,830 |
| Nevada | 110,246 | 90,246 | 20,000 |
| New Hampshire | 644,124 | 644,124 | ..... |
| New Jersey | 4,006,636 | 4,006,636 | ..... |
| New Mexico | 741,100 | 327,676 | 413,424 |
| New York | 8,967,718 | 8,967,718 | ..... |
| North Carolina | 4,839,608 | 4,839,608 | ..... |
| North Dakota | 289,907 | 258,262 | 31,645 |
| Ohio | 7,795,841 | 7,121,093 | 674,748 |
| Oklahoma | 955,468 | 955,468 | ..... |
| Oregon | 835,013 | 805,410 | 29,603 |
| Pennsylvania | 3,551,359 | 3,551,359 | ..... |
| Rhode Island | 489,983 | 489,983 | ..... |
| South Carolina | 1,131,046 | 1,047,340 | 83,706 |
| South Dakota | 308,281 | 308,281 | ..... |
| Tennessee | 3,131,811 | 3,052,189 | 79,622 |
| Texas | 4,478,245 | 4,278,168 | 200,077 |
| Utah | 198,035 | 198,035 | ..... |
| Vermont | 407,299 | 407,299 | ..... |
| Virginia | 2,286,589 | 2,141,636 | 144,953 |
| Washington | 1,471,992 | 1,202,501 | 269,491 |
| West Virginia | 483,859 | 483,859 | ..... |
| Wisconsin | 3,561,567 | 3,561,567 | ..... |
| Wyoming | 59,206 | 59,206 | ..... |
| Total | 102,079,890 | 99,607,930 | 2,471,960 |

NOTE: The remainder of the $144,000,000 appropriated is distributed as follows: $889,000 for administrative expenses; $1,031,110 in reserve to meet unforeseen contingencies; and $40,000,000 proposed for rescission.

(Secs. 2, 3, 6 and 8–16, 80 Stat. 885–890; 42 U.S.C. 1771, 1772, 1775, 1777–1785)

[41 FR 7752, Feb. 20, 1976; 41 FR 9533, Mar. 5, 1976]

## PART 220—SCHOOL BREAKFAST PROGRAM

Sec.
220.1 General purpose and scope.
220.2 Definitions.
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220.5 Method of payment to States.
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220.12 Competitive food services.
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220.19 Free and reduced price breakfasts.
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APPENDIX A TO PART 220—ALTERNATE FOODS FOR MEALS
APPENDIX B TO PART 220—CATEGORIES OF FOODS OF MINIMAL NUTRITIONAL VALUE
APPENDIX C TO PART 220—CHILD NUTRITION (CN) LABELING PROGRAM

AUTHORITY: 42 U.S.C. 1773, 1779, unless otherwise noted.

### §220.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out the provisions of section 4 of the Child Nutrition Act of 1966, as amended, which authorizes payments to the States to assist them to initiate, maintain, or expand nonprofit breakfast programs in schools.

[Amdt. 25, 41 FR 34758, Aug. 17, 1976]

### §220.2 Definitions.

For the purpose of this part the term:

(a) *Act* means the Child Nutrition Act of 1966, as amended.

(b) *Breakfast* means a meal which meets the nutritional requirements set out in §220.8 or §220.8a, whichever is applicable, and which is served to a child in the morning hours. The meal shall be served at or close to the beginning of the child's day at school.

(c) *Child* means: (1) A student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (1) and (2) of the definition of ''School'', including students who are mentally or physically handicapped as defined by the State and who are participating in a school program established for the mentally or physically handicapped; or (2) a person under 21 chronological years of age who is enrolled in an institution or center as described in paragraphs (3) and (4) of the definition of ''School''.

(c–1) *Competitive foods* means any foods sold in competition with the School Breakfast Program to children in food service areas during the breakfast period.

(d) *CND* means the Child Nutrition Division of the Food and Consumer Service of the Department.

(e) *Department* means the U.S. Department of Agriculture.

(f) *Distributing agency* means a State, Federal, or private agency which enters into an agreement with the Department for the distribution of commodities pursuant to part 250 of this chapter.

(g) *Fiscal year* means the period of 15 calendar months beginning July 1, 1976, and ending September 30, 1977; and the period of 12 calendar months beginning October 1, 1977, and each October 1 of any calendar year thereafter and ending September 30 of the following calendar year.

(h) *FCS* means the Food and Consumer Service of the Department.

(i) *FCSRO* means the appropriate Food and Consumer Service Regional Office of the Food and Consumer Service of the Department.

(i-1) *Foods of minimal nutritional value* means: (1) In the case of artificially sweetened foods, a food which provides less than five percent of the Reference Daily Intake (RDI) for each of eight specified nutrients per serving; (2) in the case of all other foods, a food that provides less than five percent of the RDI for each of eight specified nutrients per 100 calories and less than five percent of the RDI for each of eight specified nutrients per serving. The eight nutrients to be assessed for this purpose are: Protein, vitamin A, vitamin C, niacin, riboflavin, thiamin, calcium and iron. Categories of foods of minimal nutritional value are listed in appendix B of this part.

(j) *Free breakfast* means a breakfast for which neither the child nor any member of his family pays or is required to work in the school or in the school's food service.

(k) *Infant cereal* means any iron fortified dry cereal especially formulated and generally recognized as cereal for

infants that is routinely mixed with formula or milk prior to consumption.

(l) *Infant formula* means any iron-fortified infant formula intended for dietary use solely as a food for normal healthy infants excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

(m) *Menu item* means, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, any single food or combination of foods. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards provided in § 220.8, except for those foods that are considered as foods of minimal nutritional value as provided for in § 220.2(i–1) which are not offered as part of a menu item in a reimbursable meal. For the purposes of a reimbursable breakfast, a minimum of three menu items must be offered, one of which shall be fluid milk served as a beverage or on cereal or both; under offer versus serve, a student may decline only one menu item.

(n) *Milk* means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk except that, in the meal pattern for infants (0 to 1 year of age) milk means unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meet such standards. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, ''milk'' shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk.

(o) *National School Lunch Program* means the Program authorized by the National School Lunch Act.

(o–1) *Net cash resources* means all monies as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a School Food Authority's nonprofit school food service at any given time, less cash payable. Such monies may include but are not limited to, cash on hand, cash receivable, earnings or investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

(o–2) *Nonprofit school food service* means all food service operations conducted by the School Food Authority principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food service.

(p) *Nonprofit* when applied to schools or institutions eligible for the Program means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; or in the Commonwealth of Puerto Rico, certified by the Governor.

(p–1) *Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning* mean ways to develop menus based on the analysis of nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met. Such analysis is based on averages weighted in accordance with the criteria in § 220.8(e)(5). Such analysis is normally done by a school or a school food authority. However, for the purposes of Assisted Nutrient Standard Menu Planning, menu planning and analysis are completed by other entities and shall incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority.

(q) *OA* means the Office of Audit of the Department.

(q–1) *OI* means the Office of Investigation of the Department.

(q–2) OIG means the Office of the Inspector General of the Department.

(r) *Program* means the School Breakfast Program.

(s) *Reduced price breakfast* means a breakfast which meets all of the following criteria: (1) The price shall be less than the full price of the breakfast, (2) the price shall be 30 cents or lower, and (3) neither the child nor any member of his family shall be required to supply an equivalent value in work

for the school or the school's food service.

(t) *Reimbursement* means financial assistance paid or payable to participating schools for breakfasts meeting the requirements of § 220.8 or § 220.8, whichever is applicable, served to eligible children at rates assigned by the State agency, or FCSRO where applicable. The term ''reimbursement'' also includes financial assistance made available through advances to School Food Authorities.

(t–1) *Revenue* when applied to nonprofit school food service means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

(u) *School* means: (1) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (2) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; (3) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term ''residential child care institutions'' includes, but is not limited to: Homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is entended for the care of children confined for 30 days or more; or (4) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

(v) *School Breakfast Program* means the program authorized by section 4 of the Child Nutrition Act of 1966.

(v–1) *School in severe need* means a school determined to be eligible for rates of reimbursement in excess of the prescribed National Average Payment Factors, based upon the criteria set forth in § 220.9(e).

(w) *School Food Authority* means the governing body which is responsible for the administration of one or more schools and which has legal authority to operate a breakfast program therein.

(w–1) *School week* means the period of time used to determine compliance with the nutrition standards and the appropriate calorie and nutrient levels in § 220.8. Further, if applicable, school week is the basis for conducting Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning for breakfasts as provided in § 220.8(e) and § 220.8(f). The period shall be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, the period shall be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school breakfasts are offered less than three times shall be combined with either the previous or the coming week.

(x) *Secretary* means the Secretary of Agriculture.

(x–1) *7 CFR part 3015* means the Uniform Federal Assistance Regulations published by the Department to implement Office of Management and Budget Circulars A–21, A–87, A–102, A–110, A–122, and A–128; the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*); and Executive Order 12372.

NOTE: OMB Circulars, referred to in this definition, are available from the EOP Publications, New Executive Office Building, 726 Jackson Place NW., Room 2200, Washington, DC 20503.

(y) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(z) *State agency* means: (1) The State educational agency or (2) such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools as defined in § 220.2(u)(3) of this part.

(aa) *State educational agency* means, as the State legislature may determine: (1) The chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State department of education.

(bb) *Yogurt* means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Definition and Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, 21 CFR 131.200, 21 CFR 131.203, and 21 CFR 131.206, respectively.

(Sec. 6, Pub. L. 95–627, 92 Stat. 3620 (42 U.S.C. 1760); sec. 205, Pub. L. 96–499, The Omnibus Reconciliation Act of 1980, 94 Stat. 2599; secs. 801, 803, 812; Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1753, 1759(a), 1773, 1758; secs. 807 and 808, Pub. L. 97–35, 95 Stat. 521–535, 42 U.S.C. 1772, 1784, 1760; sec. 819, Pub. L. 97–35; 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757))

[Amdt. 25, 41 FR 34758, Aug. 17, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 220.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### § 220.3 Administration.

(a) Within the Department, FCS shall act on behalf of the Department in the administration of the Program covered by this part. Within FCS, CND shall be responsible for administration of the Program.

(b) Within the States, responsibility for the administration of the Program in schools as defined in § 220.2(u)(1), (u)(2) and (u)(4) shall be in the State educational agency, except that FCSRO shall administer the Program with respect to nonprofit private schools as defined in § 220.2(u)(1) of any State wherein the State educational agency is not permitted by law to disburse Federal funds paid to it under the Program; *Provided, however,* That FCSRO shall also administer the Program in all other nonprofit private schools which have been under continuous FCS administration since October 1, 1980, unless the administration of such private schools is assumed by a State agency.

(c) Within the States, responsibility for the administration of the Program in schools as defined in § 220.2(u)(3) shall be in the State educational agency, or if the State educational agency cannot administer the Program in such schools, such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in such schools: *Provided, however,* That FCSRO shall administer the Program in such schools if the State agency is not permitted by law to disburse Federal funds paid to it under the Program to such schools; and *Provided, further,* That FCSRO shall also administer the Program in all other such schools which have been under continuous FCS administration since October 1, 1980, unless the administration of such schools is assumed by a State agency.

(d) References in this part to ''FCSRO where applicable'' are to FCSRO as the agency administering the Program.

(e) Each State agency desiring to take part in any of the programs shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part. Such agreement shall cover the operation of the Program during the period specified therein and may be extended at the option of the Department.

(Sec. 804, 816 and 817, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785); 44 U.S.C. 3506)

[Amdt. 25, 41 FR 34759, Aug. 17, 1976, as amended at 47 FR 745, Jan. 7, 1982; Amdt. 42, 47 FR 14133, Apr. 2, 1982; Amdt. 56, 54 FR 2990, Jan. 23, 1989]

### §220.4 Payment of funds to States and FCSROs.

(a) To the extent funds are available, the Secretary shall make breakfast assistance payments to each State agency for breakfasts served to children under the Program. Subject to §220.13(b)(2), the total of these payments for each State for any fiscal year shall be limited to the total amount of reimbursement payable to eligible schools within the State under this part for the fiscal year.

(b) The Secretary shall prescribe by July 1 of each fiscal year annual adjustments to the nearest one-fourth cent in the national average per breakfast factors for all breakfasts and for free and reduced price breakfasts, that shall reflect changes in the cost of operating a breakfast program.

(c) In addition to the funds made available under paragraph (a) of this section, funds shall be made available to the State agencies, and FCSROs where applicable, in such amounts as are needed to finance reimbursement rates assigned in accordance with the provisions of §220.9(c).

(Secs. 801, 803, 812; Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1753, 1759(a), 1773, 1758); Pub. L. 97–370, 96 Stat. 1806)

[38 FR 35554, Dec. 28, 1973, as amended at 40 FR 30923, July 24, 1975; 46 FR 51367, Oct. 20, 1981; 48 FR 20896, May 10, 1983; Amdt. 49, 49 FR 18987, May 4, 1984]

### §220.5 Method of payment to States.

Funds to be paid to any State for the School Breakfast Program shall be made available by means of Letters of Credit issued by FCS in favor of the State agency. The State agency shall:

(a) Obtain funds needed for reimbursement to School Food Authorities through presentation by designated State officials of a payment Voucher on Letter of Credit in accordance with procedures prescribed by FCS and approved by the U.S. Treasury Department; (b) submit requests for funds only at such times and in such amounts, as will permit prompt payment of claims or authorized advances; and (c) use the funds received from such requests without delay for the purpose for which drawn.

[Amdt. 25, 41 FR 34759, Aug. 17, 1976]

### §220.6 Use of funds.

(a) Federal funds made available under the School Breakfast Program shall be used by State agencies, or FCSROs where applicable, to reimburse or make advance payments to School Food Authorities in connection with breakfasts served in accordance with the provisions of this part. However, with the approval of FCS, any State agency, or FCSRO where applicable, may reserve for use in carrying out special developmental projects an amount up to 1 per centum of the funds earned in any fiscal year under the School Breakfast Program. Advance payments to School Food Authorities may be made at such times and in such amounts as are necessary to meet current obligations.

(b) 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 $10,000 or imprisoned not more than 5 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.

(c) 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 (b) of this section.

(Sec. 10(a), Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 10(d)(3), Pub. L. 95–627, 92

Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95–627, 92 Stat. 3625–3626)

[40 FR 30923, July 24, 1975, as amended by Amdt. 25, 41 FR 34759, Aug. 17, 1976; Amdt. 28, 44 FR 37899, June 29, 1979]

### § 220.7 Requirements for participation.

(a) The School Food Authority shall make written application to the State agency, or FCSRO where applicable, for any school in which it desires to operate the School Breakfast Program, if such school did not participate in the Program in the prior fiscal year. The School Food Authority shall also submit for approval, either with the application or at the request of the State agency, or FCSRO where applicable, a free and reduced price policy statement in accordance with part 245 of this chapter. A School Food Authority which simultaneously makes application for the National School Lunch Program and the School Breakfast Program shall submit one free and reduced price policy statement which shall provide that the terms, conditions, and eligibility criteria set forth in such policy statement shall apply to the service of free and reduced price lunches and to the service of free and reduced price breakfasts. If, at the time application is made for the School Breakfast Program, a School Food Authority has an approved free and reduced price policy statement on file with the State agency, or FCSRO where applicable, for the National School Lunch Program, it need only confirm in writing that such approved policy statement will also apply to the operation of its School Breakfast Program. Applications for the School Breakfast Program shall not be approved in the absence of an approved free and reduced price policy statement.

(a–1) A school which also either participates in the National School Lunch Program or only receives donations of commodities for its nonprofit lunch program under the provisions of part 250 of this chapter (commodity only school) shall apply the same set of eligibility criteria so that children who are eligible for free lunches shall also be eligible for free breakfasts and children who are eligible for reduced price lunches shall also be eligible for reduced price breakfasts.

(b) Applications shall solicit information in sufficient detail to enable the State agency to determine whether the School Food Authority is eligible to participate in the Program and extent of the need for Program payments.

(c) Within the funds available to them, State agencies, or FCSRO's where applicable, shall approve for participation in the School Breakfast Program any school making application and agreeing to carry out the program in accordance with this part. State agencies, or FCSRO's where applicable, have a positive obligation, however, to extend the benefits of the School Breakfast Program to children attending schools in areas where poor economic conditions exist.

(d) Any School Food Authority may employ a food service management company (or other nonprofit agency or nonprofit organization) in the conduct of its feeding operation in one or more of its schools. A School Food Authority that employs a food service management company shall remain responsible for seeing that the feeding operation is in conformance with its agreement with the State Agency or the FCS Regional Office. The contract between the School Food Authority and the food service management company shall expressly provide that:

(1) The food service management company shall maintain such records (supported by invoices, receipts, or other evidence) as the School Food Authority will need to meet its responsibilities under this part, and shall report thereon to the School Food Authority promptly at the end of each month;

(2) Any federally donated commodities received by the School Food Authority and made available to the food service management company shall enure only to the benefit to the School Food Authority's nonprofit school food service and be utilized therein; and

(3) The books and records of the food service management company pertaining to the School Food Authority's feeding operation shall be available for a period of 3 years from the date of the submission of the final Financial Status Report, for inspection and audit by

representatives of the State agency, of the Department, and of the General Accounting Office at any reasonable time and place, except that 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.

(e) The State agency, or the Department through FCSRO where applicable, shall enter into a written agreement with each School Food Authority for schools approved for participation in the School Breakfast Program. Such agreements shall provide that the School Food Authority shall, with respect to participating schools under its jurisdiction:

(1)(i) Maintain a nonprofit school food service; (ii) in accordance with the financial management system established under § 220.13(i) of this part, use all revenues received by such food service only for the operation or improvement of that food service *Except that*, facilities, equipment, and personnel support with funds provided to a school food authority under this part may be used to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*); (iii) revenues received by the nonprofit school food service shall not be used to purchase land or buildings or to contruct buildings; (iv) limit its net cash resources to an amount that does not exceed three months average expenditure for its nonprofit school food service or such other amount as may be approved by the State agency; and (v) observe the limitations on any competitive food service as set forth in § 220.12 of this part;

(2) Serve breakfasts which meet the minimum requirements prescribed in § 220.8 or § 220.8a, whichever is applicable, during a period designated as the breakfast period by the school;

(3) Price the breakfast as a unit;

(4) Supply breakfast without cost or at reduced price to all children who are determined by the School Food Authority to be unable to pay the full price thereof in accordance with the free and reduced price policy statements approved under part 245 of this chapter;

(5) Make no discrimination against any child because of his inability to pay the full price of the breakfasts;

(6) Claim reimbursement at the assigned rates only for breakfasts served in accordance with the agreement;

(7) Submit Claims for Reimbursement in accordance with § 220.11 of this part and procedures established by the State agency, or FCSRO where applicable;

(8) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(9) Purchase, in as large quantities as may be efficiently utilized in its nonprofit school food service, foods designated as plentiful by the State Agency, or CFPDO, where applicable;

(10) Accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department;

(11) Maintain necessary facilities for storing, preparing, and serving food;

(12) Maintain a financial management system as prescribed by the State agency, or FCSRO where applicable;

(13) Upon request, make all accounts and records pertaining to its nonprofit school food service available to the State agency, to FCS and to OA for audit or review at a reasonable time and place. Such records shall be retained for a period of three years after the end of the fiscal year to which they pertain, except that 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;

(14) Retain the individual application for free and reduced price breakfasts submitted by families for a period of three years after the end of the fiscal year to which they pertain; and

(15) Comply with the requirements of the Department's regulations respecting nondiscrimination (7 CFR part 15).

(f) Nothing contained in this part shall prevent the State Agency from imposing additional requirements for participation in the program which are not inconsistent with the provisions of this part.

(44 U.S.C. 3506; sec. 819, Pub. L. 97–35, 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757); Pub. L. 79–396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89–647, 80 Stat. 885–890 (42 U.S.C. 1773); Pub. L. 91–248, 84 Stat. 207 (42 U.S.C. 1759))

[32 FR 34, Jan. 5, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 220.7, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### § 220.8 Nutrition standards for breakfast and menu planning alternatives.

(a) *Nutrition standards for breakfasts for children age 2 and over.* School food authorities shall ensure that participating schools provide nutritious and well-balanced breakfasts. For children age 2 and over, breakfasts shall be offered based on the nutrition standards provided in this section when averaged over a school week. For the purposes of this section, the nutrition standards are:

(1) Provision of one-fourth of the Recommended Dietary Allowances (RDA) of protein, calcium, iron, vitamin A and vitamin C to the applicable age or grade groups in accordance with the appropriate levels provided in paragraphs (b), (c), or (e)(1) of this section, whichever is applicable;

(2) Provision of the breakfast energy allowances for children based on the age or grade groups in accordance with the appropriate levels provided in paragraphs (b), (c) or (e)(1) of this section, whichever is applicable;

(3) The applicable recommendations of the *1990 Dietary Guidelines for Americans* which are:

(i) Eat a variety of foods;

(ii) Limit total fat to 30 percent of calories;

(iii) Limit saturated fat to less than 10 percent of calories;

(iv) Choose a diet low in cholesterol;

(v) Choose a diet with plenty of vegetables, fruits, and grain products; and

(vi) Use salt and sodium in moderation.

(4) The following measures of compliance with the applicable recommendations of the *1990 Dietary Guidelines for Americans:*

(i) A limit on the percent of calories from total fat to 30 percent based on the actual number of calories offered;

(ii) A limit on the percent of calories from saturated fat to less than 10 percent based on the actual number of calories offered;

(iii) A reduction of the levels of sodium and cholesterol; and

(iv) An increase in the level of dietary fiber.

(5) School food authorities have three alternatives for menu planning in order to meet the requirements of this paragraph and the appropriate nutrient and calorie levels in paragraphs (b), (c) or (e)(1) of this section, whichever is applicable: nutrient standard menu planning as provided in paragraph (e) of this section, assisted nutrient standard menu planning as provided for in paragraph (f) of this section, or food-based menu planning as provided for in paragraph (g) of this section. The actual minimum calorie and nutrient levels vary depending upon the alternative followed due to the differences in age/grade groupings of each alternative.

(6) Production and menu records shall include sufficient information to evaluate the menu's contribution to the requirements on nutrition standards in paragraph (a) of this section and the appropriate levels of nutrient and calorie levels in paragraphs (b), (c) or (e)(1) of this section, whichever is applicable. If applicable, schools or school food authorities shall maintain nutritional analysis records to demonstrate that breakfasts meet, when averaged over each school week, the nutrition standards provided in paragraph (a) of this section and the nutrient and calorie levels for children for each age or grade group in accordance with paragraphs (b) or (e)(1) of this section.

(b) *Nutrient levels/nutrient analysis.* (1) For the purposes of nutrient standard and assisted nutrient standard menu planning, as provided for in paragraphs (e) and (f), respectively, of this section, schools shall, at a minimum, provide the calorie and nutrient levels for school breakfasts (offered over a school week) for required grade groups specified in the following chart:

MINIMUM REQUIREMENTS FOR NUTRIENT AND CALORIE LEVELS FOR SCHOOL BREAKFAST

[School week averages]

| | Preschool | Grades K–12 | Option for grades 7–12 |
|---|---|---|---|
| Energy Allowances (calories) | 388 | 554 | 618 |
| Total Fat (as a Percentage of Actual Total Food Energy) | (1) | (1) | (1) |
| Total Saturated Fat (as a Percentage of Actual Total Food Energy) | (2) | (2) | (2) |
| Protein (g) | 5 | 10 | 12 |
| Calcium (mg) | 200 | 257 | 300 |
| Iron (mg) | 2.5 | 3.0 | 3.4 |
| Vitamin A (RE) | 113 | 197 | 225 |
| Vitamin C (mg) | 11 | 13 | 14 |

[1] Not to exceed 30 percent over a school week.
[2] Less than 10 percent over a school week.

(2) At their option, schools may provide for calorie and nutrient levels for school breakfasts (offered over a school week) for the age groups specified in the following chart or may develop their own age groups and their corresponding levels in accordance with paragraph (e)(1) of this section.

OPTIONAL MINIMUM NUTRIENT LEVELS FOR SCHOOL BREAKFASTS/NUTRIENT ANALYSIS

[School week averages]

| Nutrients and energy allowances | Ages 3–6 years | Ages 7–10 years | Ages 11–13 years | Ages 14 and above |
|---|---|---|---|---|
| Energy Allowances/Calories | 419 | 500 | 588 | 625 |
| Total Fat (as a percent of actual total food energy) | (1) | (1) | (1) | (1) |
| Saturated Fat (as a percent of actual total food energy) | (2) | (2) | (2) | (2) |
| RDA for Protein (g) | 5.50 | 7.00 | 11.25 | 12.50 |
| RDA for Calcium (mg) | 200 | 200 | 300 | 300 |
| RDA for Iron (mg) | 2.5 | 2.5 | 3.4 | 3.4 |
| RDA for Vitamin A (RE) | 119 | 175 | 225 | 225 |
| RDA for Vitamin C (mg) | 11.00 | 11.25 | 12.50 | 14.40 |

[1] Not to exceed 30 percent over a school week.
[2] Less than 10 percent over a school week.

(c) *Nutrient levels/food-based menu planning.* For the purposes of the food-based menu planning alternative as provided for in paragraph (g) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school breakfasts offered over a school week:

CALORIE AND NUTRIENT LEVELS FOR SCHOOL BREAKFAST

[School week averages]

| | Preschool | Grades K–12 | Option for grades 7–12 |
|---|---|---|---|
| Energy Allowances (Calories) | 388 | 554 | 618 |
| Total Fat (as a percentage of actual total food energy) | 1 | 1 | 1 |
| Total Saturated Fat (as a percentage of actual total food energy) | 2 | 2 | 2 |
| Protein (g) | 5 | 10 | 12 |
| Calcium (mg) | 200 | 257 | 300 |
| Iron (mg) | 2.5 | 3.0 | 3.4 |
| Vitamin A (RE) | 113 | 197 | 225 |
| Vitamin C (mg) | 11 | 13 | 14 |

[1] Not to Exceed 30 Percent Over a School Week
[2] Less Than 10 Percent Over a School Week

(d) *Exceptions.* Breakfasts claimed for reimbursement shall meet the nutrition requirements for reimbursable meals specified in this section. However, breakfasts served which accommodate the exceptions and variations

authorized under this paragraph are also reimbursable. Exceptions and variations are restricted to the following:

(1) *Medical or dietary needs.* Schools shall make substitutions in the foods or menu items offered in accordance with this section for students who are considered to have a disability under 7 CFR part 15b and whose disability restricts their diet. Schools may also make substitutions for students who do not have a disability but who are unable to consume the regular breakfast because of medical or other special dietary needs. Substitutions shall be made on a case-by-case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FCS. Such statement shall, in the case of a disabled student, be signed by a physician or, in the case of a student who is not disabled, by a recognized medical authority.

(2) FCS encourages school food authorities to consider ethnic and religious preferences when planning and preparing meals. For the purposes of the food-based menu planning alternative, FCS may approve variations in the food components of the breakfast on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, or economic needs.

(e) *Nutrient Standard Menu Planning.* (1) *Adjusted nutrient levels.* (i) At a minimum, schools that choose the nutrient standard menu planning alternative and that have children age 2 enrolled shall ensure that the nutrition standards in paragraph (a) of this section and the required preschool levels for nutrients and calories in paragraph (b)(1) of this section are met except that, such schools have the option of either using the nutrient and calorie levels for preschool children in paragraph (b)(2) of this section, or developing separate nutrient levels for this age group. The methodology for determining such levels will be available in menu planning guidance material provided by FCS.

(ii) At a minimum, schools shall offer meals to children based on the required grade groups in paragraph (b)(1) of this section. However, schools may, at their option, offer meals to children using the age groups and their corresponding nutrient and calorie levels in paragraph (c)(2) of this section or, following guidance provided by FCS, develop their own age or grade groups and their corresponding nutrient and calorie levels. However, if only one age or grade is outside the established levels, schools may use the levels for the majority of children regardless of the option selected.

(2) *Contents of reimbursable meal and offer versus serve.* (i) *Minimum requirements.* For the purposes of this menu planning alternative, a reimbursable breakfast shall include a minimum of three menu items as defined in § 220.2. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraphs (b) or (e)(1) of this section, whichever is applicable, except for those foods that are considered foods of minimal nutritional value as provided for in § 220.2(i–1) which are not offered as part of a menu item in a reimbursable meal. Such reimbursable breakfasts, as offered, shall meet the established nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraphs (b) or (e)(1) of this section, whichever is applicable, when averaged over a school week.

(ii) *Offer versus serve.* Each participating school shall offer its students at least three menu items as required by paragraph (e)(2)(i) of this section. Under offer versus serve, students must select at least two menu items and may decline a maximum of one menu item offered. The price of a reimbursable breakfast shall not be affected if a student declines a menu item or requests smaller portions.

(3) *Nutrient analysis under Nutrient Standard Menu Planning.* School food authorities choosing the nutrient analysis alternative shall conduct nutrient analysis on all menu items or foods offered as part of the reimbursable meal. However, those foods that are considered as foods of minimal nutritional

value as provided for in § 220.2(i–1) which are not offered as part of a menu item in a reimbursable meal shall not be included. Such analysis shall be over the course of each school week.

(4) *The National Nutrient Database and software specifications.* (i) Nutrient analysis shall be based on information provided in the National Nutrient Database for Child Nutrition Programs. This database shall be incorporated into software used to conduct nutrient analysis. Upon request, FCS will provide information about the database to software companies that wish to develop school food service software systems.

(ii) Any software used to conduct nutrient analysis shall be evaluated beforehand by FCS or by an FCS designee and, as submitted, has been determined to meet the minimum requirements established by FCS. However, such review does not constitute endorsement by FCS or USDA. Such software shall provide the capability to perform all functions required after the basic data has been entered including calculation of weighted averages and the optional combining of analysis of the breakfast and lunch programs as provided in paragraph (e)(5) of this section.

(5) *Determination of weighted averages.* (i) Menu items and foods offered as part of a reimbursable meal shall be analyzed based on portion sizes and projected serving amounts and shall be weighted based on their proportionate contribution to the meals. Therefore, in determining whether meals satisfy nutritional requirements, menu items or foods more frequently offered will be weighted more heavily than menu items or foods which are less frequently offered. Such weighting shall be done in accordance with guidance issued by FCS as well as that provided by the software used.

(ii) An analysis of all menu items and foods offered in the menu over each school week shall be computed for calories and for each of the following nutrients: protein; vitamin A; vitamin C; iron; calcium; total fat; saturated fat; and sodium. The analysis shall also include the dietary components of cholesterol and dietary fiber.

(iii) At its option, a school food authority may combine analysis of the National School Lunch and School Breakfast Programs. Such analysis shall be proportionate to the levels of participation in the two programs in accordance with guidance issued by FCS.

(6) *Comparing average nutrient levels.* Once the appropriate procedures of paragraph (e)(5) of this section have been completed, the results shall be compared to the appropriate nutrient and calorie levels, by age/grade group, in paragraphs (b)(1) or (b)(2) of this section or the levels developed in accordance with paragraph (e)(1) of this section, whichever is applicable to determine the school week's average. In addition, comparisons shall be made to the nutrition standards provided in paragraph (a) of this section in order to determine the degree of conformity over the school week.

(7) *Adjustments based on students' selections.* The results obtained under paragraphs (e)(5) and (e)(6) of this section shall be used to adjust future menu cycles to accurately reflect production and the frequency with which menu items and foods are offered. Menus may require further analysis and comparison, depending on the results obtained in paragraph (e)(6) of this section when production and selection patterns of students change. The school food authority may need to consider modifications to the menu items and foods offered based on student selections as well as modifications to recipes and other specifications to ensure that the nutrition standards provided in paragraph (a) of this section and the appropriate calorie and nutrient levels in paragraphs (b) or (e)(1) of this section, whichever is applicable, are met.

(8) *Standardized recipes.* Under Nutrient Standard Menu Planning, standardized recipes shall be developed and followed. A standardized recipe is one that was tested to provide an established yield and quantity through the use of ingredients that remain constant in both measurement and preparation methods. USDA/FCS standardized recipes are included in the National Nutrient Database for the Child Nutrition Programs. In addition, local standardized recipes used by school food authorities shall be analyzed for

their calories, nutrients and dietary components, as provided for in paragraph (e)(5)(ii) of this section, and added to the local databases by school food authorities in accordance with guidance issued by FCS.

(9) *Processed foods.* Unless already included in the National Nutrient Database, the calorie amounts, nutrients and dietary components, as provided in paragraph (e)(5)(ii) of this section, of purchased processed foods and menu items used by the school food authority shall be obtained by the school food authority or State agency and incorporated into the database at the local level in accordance with FCS guidance.

(10) *Menu substitutions.* If the need for serving a substitute food(s) or menu item(s) occurs at least two weeks prior to serving the planned menu, the revised menu shall be reanalyzed based on the changes. If the need for serving a substitute food(s) or menu item(s) occurs two weeks or less prior to serving the planned menu, no reanalysis is required. However, to the extent possible, substitutions should be made using similar foods.

(11) *Compliance with the nutrition standards.* If the analysis conducted in accordance with paragraphs (e)(1) through (e)(10) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (a) of this section and the appropriate levels of nutrients and calories in paragraphs (b)(1) or (b)(2) of this section or the levels developed in accordance with paragraph (e)(1), whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the breakfasts offered to children comply with the nutrition standards established by paragraph (a) of this section and the appropriate levels of nutrients and calories in paragraphs (b) or (e)(1) of this section, whichever is applicable.

(12) *Other programs.* Any school food authority that operates the Summer Food Service Program under part 225 of this chapter and/or the Child and Adult Care Food Program under part 226 of this chapter may, at its option and with State agency approval, prepare meals provided for those programs using the nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed.

(f) *Assisted Nutrient Standard Menu Planning.* (1) School food authorities without the capability to conduct Nutrient Standard Menu Planning, as provided in paragraph (e) of this section may choose an alternative which uses menu cycles developed by other sources. Such sources may include but are not limited to the State agency, other school food authorities, consultants, or food service management companies. This alternative is Assisted Nutrient Standard Menu Planning.

(2) Assisted Nutrient Standard Menu Planning shall establish menu cycles that have been developed in accordance with paragraphs (e)(1) through (e)(10) of this section as well as local food preferences and local food service operations. These menu cycles shall incorporate the nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraph (b) or (e)(1) of this section, whichever is applicable. In addition to the menu cycle, recipes, food product specifications and preparation techniques shall also be developed and provided by the entity furnishing Assisted Nutrient Standard Menu Planning to ensure that the menu items and foods offered conform to the nutrient analysis determinations of the menu cycle.

(3) At the inception of any use of Assisted Nutrient Standard Menu Planning, the State agency shall approve the initial menu cycle, recipes, and other specifications to determine that all required elements for correct nutrient analysis are incorporated. The State agency shall also, upon request of the school food authority, provide assistance with implementation of the chosen system.

(4) After initial service of the menu cycle under the Assisted Nutrient Standard Menu Planning, the nutrient analysis shall be reassessed and appropriate adjustments made in accordance with paragraph (e)(7) of this section.

(5) Under Assisted Nutrient Standard Menu Planning, the school food authority retains final responsibility for ensuring that all nutrition standards established in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraphs (b) or (e)(1) of this section, whichever is applicable, are met.

(6) If the analysis conducted in accordance with paragraphs (e)(1) through (e)(10) and paragraph (f)(4) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraph (b) of this section or the levels developed in accordance with paragraph (e)(1) of this section, whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the breakfasts offered to children comply with the nutrition standards established by paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraphs (b) or (e)(1) of this section, whichever is applicable.

(7) Any school food authority that operates the Summer Food Service Program under part 225 of this chapter and/or the Child and Adult Care Food Program under part 226 of this chapter may, at its option and with State agency approval, prepare meals provided for those programs using the assisted nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed.

(g) *Food-based menu planning.* (1) *Food components.* Except as otherwise provided in this paragraph and in any appendix to this part to be eligible for Federal cash reimbursement, a breakfast planned using the food-based menu planning alternative shall contain, at a minimum, the following food components in the quantities specified in the table in paragraph (g)(2) of this section:

(i) A serving of fluid milk served as a beverage or on cereal or used in part for each purpose;

(ii) A serving of fruit or vegetable or both, or full-strength fruit or vegetable juice; and

(iii) Two servings from one of the following components or one serving from each:

(A) Grains/breads;

(B) Meat/Meat alternate.

(2) *Minimum quantities.* At a minimum, schools shall serve meals in the quantities provided in the following chart:

| Meal component | Minimum quantities required for | | | |
|---|---|---|---|---|
| | Ages 1–2 | Preschool | Grades K–12 | Option for grades 7–12 |
| Milk (Fluid) (As a beverage, on cereal or both) | ½ Cup | ¾ Cup | 8 Ounces | 8 Ounces |
| Juice/Fruit/Vegetable: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice. | ¼ Cup | ½ Cup | ½ Cup | ½ Cup |
| **SELECT ONE SERVING FROM EACH OF THE FOLLOWING COMPONENTS OR TWO FROM ONE COMPONENT:** | | | | |
| Grains/Breads–One of the following or an equivalent combination: | | | | |
| Whole-Grain or Enriched Bread | ½ Slice | ½ Slice | 1 Slice | 1 Slice. |
| Whole-Grain or Enriched Biscuit, Roll, Muffin, Etc. | ½ Serving | ½ Serving | 1 Serving | 1 Serving. |
| Whole-Grain, Enriched or Fortified Cereal | ¼ Cup or ⅓ Ounce. | ⅓ Cup or ½ Ounce. | ¾ Cup or 1 Ounce. | ¾ Cup or 1 Ounce. Plus an Additional Serving of one of the Grains/Breads Above. |
| Meat or Meat Alternates: | | | | |
| Meat/poultry or fish | ½ Ounce | ½ Ounce | 1 Ounce | 1 Ounce. |
| Cheese | ½ Ounce | ½ Ounce | 1 Ounce | 1 Ounce. |
| Egg (large) | ½ | ½ | ½ | ½. |
| Peanut butter or other nut or seed butters | 1 Tablespoon | 1 Tablespoon | 2 Tablespoons | 2 Tablespoons. |
| Cooked dry beans and peas | 2 Tablespoons | 2 Tablespoons | 4 Tablespoons | 4 Tablespoons |

| Meal component | Minimum quantities required for | | | |
|---|---|---|---|---|
| | Ages 1–2 | Preschool | Grades K–12 | Option for grades 7–12 |
| Nut and/or seeds (as listed in program guidance)[1]. | ½ Ounce ..... | ½ Ounce ..... | 1 Ounce ..... | 1 Ounce. |
| Yogurt, plain or flavored, unsweetened or sweetened. | 2 oz. or ¼ cup | 2 oz. or ¼ cup | 4 oz. or ½ cup | 4 oz. or ½ cup |

[1] No more than 1 ounce of nuts and/or seeds may be served in any one meal.

(3) *Offer Versus Serve.* Each school shall offer its students all four required food items as set forth under paragraph (g)(1) of this section. At the option of the school food authority, each school may allow students to refuse *one* food item from any component that the student does not intend to consume. The refused food item may be any of the four items offered to the student. A student's decision to accept all four food items or to decline one of the four food items shall not affect the charge for breakfast.

(4) *Outlying areas.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the grain/bread requirement. For the Commonwealth of the Northern Mariana Islands, FCS has established a menu consistent with the food-based menu alternative and with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provides optimum nutrition consistent with sound dietary habits for participating children. The State agency shall attach to and make a part of the written agreement required under § 210.9 of this chapter the requirements of that menu option.

(h) *Milk requirement for children ages 2–17.* (1) A serving of milk as a beverage or on cereal or used in part for each purpose shall be offered for school breakfasts.

(2) If emergency conditions prevent a school normally having a supply of milk from temporarily obtaining delivery thereof, the State agency, or FCSRO where applicable, may approve reimbursement for breakfast served without milk during the emergency period.

(3) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of breakfasts without milk if the school uses an equivalent amount of canned or dry milk in the preparation of breakfasts. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, ''milk'' shall include reconstituted or recombined milk, or as otherwise provided under written exception by FCS.

(i) *Infant meal pattern.* When infants from birth through 11 months of age participate in the Program, an infant breakfast shall be offered. Foods within the infant breakfast pattern shall be of texture and consistency appropriate for the particular age group being served, and shall be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible, the school should consult with the infant's parent in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food authorized in the meal patterns set forth below must be provided in order to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months or older may be claimed for reimbursement when the other meal component or components

are supplied by the school. Although it is recommended that either breast milk or iron-fortified infant formula be served for the entire first year, whole milk may be served beginning at 8 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to ensure adequate sources of iron and vitamin C. The infant breakfast pattern shall contain, at a minimum, each of the following components in the amounts indicated for the appropriate age groups:

(1) *Birth through 3 months.* 4 to 6 fluid ounces of iron-fortified infant formula.

(2) *4 through 7 months.* 4 to 8 fluid ounces of iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal (optional).

(3) *8 through 11 months.* 6 to 8 fluid ounces of iron-fortified infant formula or 6 to 8 fluid ounces of whole milk; 2 to 4 tablespoons of iron-fortified dry infant cereal; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(j) *Additional foods.* Additional foods may be served with breakfasts as desired to participating children over 1 year of age.

(k) *Choice.* To provide variety and to encourage consumption and participation, schools should, whenever possible, provide a selection of menu items and foods from which children may make choices. When a school offers a selection of more than one type of breakfast or when it offers a variety of menu items and foods and milk for choice as a reimbursable breakfast, the school shall offer all children the same selection regardless of whether the children are eligible for free or reduced price breakfasts or pay the school food authority designated full price. The school may establish different unit prices for each type of breakfast offered provided that the benefits made available to children eligible for free or reduced price breakfasts are not affected.

(l) *Nutrition disclosure.* School food authorities are encouraged to make information available indicating efforts to meet the nutrition standards in paragraph (a) of this section.

(m) *Implementation of nutrition standards.* School food authorities shall comply with the *1990 Dietary Guidelines for Americans* as provided in paragraph (a) of this section no later than School Year 1996–97 except that State agencies may grant waivers to postpone implementation until no later than School Year 1998–99. Such waivers shall be granted by the State agency using guidance provided by the Secretary.

[60 FR 31217, June 13, 1995, 60 FR 57147, Nov. 14, 1995, as amended at 62 FR 10190, Mar. 6, 1997]

### § 220.8a Breakfast components and quantities for the meal pattern.

(a)(1) *Food components*—Except as otherwise provided in this section and in any appendix to this part, a breakfast eligible for Federal cash reimbursement shall contain, at a minimum, the following food components in the quantities specified in the table in paragraph (a)(2) of this section:

(i) A serving of fluid milk served as a beverage or on cereal or used in part for each purpose;

(ii) A serving of fruit or vegetable or both, or full-strength fruit or vegetable juice; and

(iii) Two servings from one of the following components or one serving from each:

(A) Bread/Bread alternate

(B) Meat/Meat alternate

(2) *Minimum required breakfast quantities.* Except as otherwise provided in this section and in any appendix to this part, a breakfast eligible for Federal cash reimbursement shall contain at least the per breakfast minimum quantities of each item for the age and grade levels specified in the following table:

SCHOOL BREAKFAST PATTERN

[Required minimum serving sizes]

| Food components/items | Ages 1 and 2 | Ages 3, 4, and 5 | Grades K–12 |
|---|---|---|---|
| Milk (Fluid): | | | |
| (As a beverage, on cereal, or both) | ½ cup | ¾ cup | ½ pint. |

SCHOOL BREAKFAST PATTERN—Continued

[Required minimum serving sizes]

| Food components/items | Ages 1 and 2 | Ages 3, 4, and 5 | Grades K–12 |
|---|---|---|---|
| JUICE/FRUIT/VEGETABLE:[1] | | | |
| Fruit and/or vegetable; or Full-strength: Fruit Juice or Vegetable Juice. | ¼ cup | ½ cup | ½ cup. |
| Bread/Bread Alternates:[2] | | | |
| —Bread (whole-grain or enriched) | ½ slice | ½ slice | 1 slice. |
| —Biscuit, rolll, muffin or equal serving of cornbread, etc. (whole-grain or enriched meal or flour. | ½ serving | ½ serving | 1 serving. |
| —Cereal (whole-grain or enriched or fortified) | ¼ cup or ⅓ oz | ⅓ cup or ½ oz | ¾ cup or 1 oz. |
| Meat/Meat Alternates: | | | |
| —Meat/poultry, or fish | ½ oz | ½ oz | 1 oz. |
| —Cheese | ½ oz | ½ oz | 1 oz. |
| —Egg (large) | ½ | 1/2 | ½. |
| —Peanut Butter of other nut or seed butters | 1 Tbsp | 1 Tbsp | 2 Tbsp. |
| —Cooked dry beans and peas | 2 Tbsp | 2 Tbsp | 4 Tbsp. |
| —Nuts and/or Seeds (as listed in program guidance)[3] | ½ oz | ½ oz | 1 oz. |
| —Yogurt, plain or flavored, unsweetened or sweetened | 2 oz. or ¼ cup | 2 oz. or ¼ cup | 4 oz. or ½ cup. |

[1] A citrus juice or fruit or a fruit or vegetable or juice that is a good source of vitamin C (See Menu Planning Guide for School Food Service—PA–1260) is recommended to be offered daily.
[2] See Food Buying Guide for Child Nutrition Programs, PA–1331 (1984) for serving sizes for breads and bread alternates.
[3] No more than one ounce of nuts and/or seeds may be served in any one meal.

(3) *Offer Versus Serve.* Each school shall offer its students all four required food items as set forth under paragraph (a)(1) of this section. At the option of the school food authority, each school may allow students to refuse *one* food item from any component that the student does not intend to consume. The refused food item may be any of the four items offered to the student. A student's decision to accept all four food items or to decline one of the four food items shall not affect the charge for breakfast.

(b) *Infant meal pattern.* When infants from birth through 11 months of age participate in the Program, an infant breakfast shall be offered. Foods within the infant breakfast pattern shall be of texture and consistency appropriate for the particular age group being served, and shall be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible, the school should consult with the infant's parent in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food authorized in the meal patterns set forth below must be provided in order to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months or older may be claimed for reimbursement when the other meal component or components are supplied by the school. Although it is recommended that either breast milk or iron-fortified infant formula be served for the entire first year, whole milk may be served beginning at 8 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to ensure adequate sources of iron and vitamin C. The infant breakfast pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age groups:

(1) *Birth through 3 months.* 4 to 6 fluid ounces of iron-fortified infant formula.

(2) *4 through 7 months.* 4 to 8 fluid ounces of iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal (optional).

(3) *8 through 11 months.* 6 to 8 fluid ounces of iron-fortified infant formula

or 6 to 8 fluid ounces of whole milk; 2 to 4 tablespoons of iron-fortified dry infant cereal; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(c) Additional foods may be served with breakfasts as desired to participating children over 1 year of age.

(d) If emergency conditions prevent a school normally having a supply of milk from temporarily obtaining delivery thereof, the State agency, or FCSRO where applicable, may approve reimbursement for breakfast served without milk during the emergency period.

(e) FCS may approve variations in the food components of the breakfast on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic or physical needs.

(f) Schools shall make substitutions in foods listed in this section for students who are considered handicapped under 7 CFR part 15b and whose handicap restricts their diet. Schools may also make substitutions for nonhandicapped students who are unable to consume the regular breakfast because of medical or other special dietary needs. Substitutions shall be made on a case-by-case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FCS. Such statement shall, in the case of a handicapped student, be signed by a physician or, in the case of a nonhandicapped student, by a recognized medical authority.

(g) The inability of a school to obtain a supply of milk on a continuing basis to meet the breakfast requirements in paragraphs (a) and (b) of this section shall not bar it from participation in the Program. In such cases the State agency, or FCSRO were applicable, may approve the service of breakfasts without milk: *Provided, however,* That an equivalent amount of canned, whole dry, or nonfat dry milk is used in the preparation of the components of the breakfast patterns listed in paragraphs (a)(1) and (b)(3) of this section.

(h) For the period ending September 30, 1977, the Secretary, with the concurrence of officials of the Trust Territory of the Pacific Islands, shall establish a breakfast pattern or patterns which are consonant with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provide optimum nutrition consistent with sound dietary habits for participating children, for use in the Trust Territory in lieu of the breakfast patterns listed in paragraphs (a) and (b) of this section. The requirements for such patterns shall be attached to and made a part of the written agreement required under §220.3 of this part.

(44 U.S.C. 3506)

[Amdt. 25, 41 FR 34759, Aug. 17, 1976, as amended by Amdt. 26, 41 FR 52057, Nov. 26, 1976; 47 FR 746, Jan. 7, 1982; 53 FR 25308, July 6, 1988, 53 FR 48632; Amdt. 56, 54 FR 2990, Jan. 23, 1989; Amdt. 57, 54 FR 13047, Mar. 30, 1989, 54 FR 13605, Apr. 4, 1989. Redesignated at 60 FR 31217, June 13, 1995; amended at 60 FR 31222, June 13, 1995; 62 FR 10191, Mar. 6, 1997]

### §220.9 Reimbursement payments.

(a) State agencies, or FCSRO's where applicable, shall make reimbursement payments to schools only in connection with breakfasts meeting the requirements of §220.8 or §220.8a, whichever is applicable, and reported in accordance with §220.11(b) of this part. School Food Authorities shall plan for and prepare breakfasts on the basis of participation trends, with the objective of providing one breakfast per child per day. Production and participation records shall be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to precisely estimate the number of breakfasts needed and to reduce the resultant waste, any excess breakfasts that are prepared may be served to eligible children and may be claimed for reimbursement unless the State agency, or FCSRO where applicable, determines that the School Food Authority has failed to plan and prepare breakfasts with the objective of providing one breakfast per child per day. In no event shall the School Food Authority claim reimbursement for free and reduced price breakfasts in excess of the number of children approved for free and reduced price meals.

(b) The rates of reimbursement for breakfasts served to eligible children in schools not in severe need are the applicable national average payment factors for breakfasts. The maximum rates of reimbursement for breakfasts served to eligible children in schools determined to be in severe need are those prescribed by the Secretary. National average payment factors and maximum rates of reimbursement for the School Breakfast Program shall be prescribed annually by the Secretary in the FEDERAL REGISTER.

(c) The total reimbursement for breakfasts served to eligible children in, (1) schools not in severe need, and (2) severe need schools in State's with State Breakfast mandates as provided for in § 220.9(e)(3) (i) and (ii) in any School Food Authority during the school year shall not exceed the sum of the products obtained by multiplying the total numbers of such free, reduced price and paid breakfasts, respectively, by the applicable rate of reimbursement for each type of breakfast as prescribed for the school year.

(d) For any school year, severe need reimbursement payments to any School Food Authority except as provided for in paragraph (c) of this section shall be the lesser of: (1) The cost of providing free and reduced price breakfast to eligible children in schools determined to be in severe need, less the reduced price payments received by such schools; or (2) the number of free and the number of reduced price breakfasts, respectively, that are served to eligible children in schools determined to be in severe need, multiplied by the applicable severe need reimbursement rates for such breakfasts.

(e) *Severe need schools.* The State agency, or FCSRO where applicable, shall determine whether a school is in severe need based on the following eligibility criteria: (1) The reimbursement rate per meal established by the Secretary is insufficient to cover the costs of the school's breakfast program; (2) the school is participating in or desiring to initiate a breakfast program; and (3) 40 percent or more of the lunches served to students at the school in the second preceding school year were served free or at a reduced price. In addition, schools which are required by State law to serve breakfasts and which fail to satisfy the required 40 percent eligibility criteria are eligible for severe need reimbursement rates only for the following limited time periods:

(i) In States where the State legislature meets annually, the schools may receive severe need reimbursement rates until July 1, 1983; and (ii) in States where the State legislature meets biennially, the schools may receive severe need reimbursement rates until July 1, 1984. State agencies shall maintain on file, and have available for review and audits, their eligibility criteria for determining the severe need of schools and the source of the data to be used in making individual determinations. The State agency, or FCSRO where applicable, shall be responsible for establishing systems for determining breakfast costs where such costs are necessary to the determination of whether or not a school is in severe need.

(Sec. 6, Pub. L. 95–627, 92 Stat. 3620 (42 U.S.C. 1776; secs. 801, 803, 812; Pub. L. 97–35, 95 Stat. 521–535, 42 U.S.C. 1753, 1759(a), 1758, 1773; sec. 819, Pub. L. 97–35, 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757); 44 U.S.C. 3506))

[Amdt. 25, 41 FR 34760, Aug. 17, 1976, as amended by Amdt. 29, 44 FR 48159, Aug. 17, 1979; Amdt. No. 38, 46 FR 50928, Oct. 16, 1981; 46 FR 51368, Oct. 20, 1981; 47 FR 746, Jan. 7, 1982; 47 FR 31375, July 20, 1982; 48 FR 40196, 40197, Sept. 6, 1983; 60 FR 31222, June 13, 1995]

### § 220.10 Effective date for reimbursement.

Reimbursement payments under the School Breakfast Program may be made only to School Food Authorities operating under an agreement with the State Agency or the Department, and may be made only after execution of the agreement. Such payments may include reimbursement in connection with breakfasts served in accordance with provisions of the program in the calendar month preceding the calendar month in which the agreement is executed.

[32 FR 35, Jan. 5, 1967, as amended by Amdt. 9, 37 FR 9613, May 13, 1972]

**§220.11 Reimbursement procedures.**

(a) To be entitled to reimbursement under this part, each School Food Authority shall submit to the State agency, or FCSRO where applicable, a monthly Claim for Reimbursement.

(b) Claims for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of School Program Operations required under §220.13(b)(2). Unless otherwise approved by FCS, the Claim for Reimbursement for any month shall include only breakfasts served in that month except if the first or last month of Program operations for any year contains 10 operating days or less, such month may be added to the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years. A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency, or FCSRO where applicable, not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless FCS determines that an exception should be granted. The State agency, or FCSRO where applicable, shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of School Program Operations (FCS–10) for the claim month which is required under §220.13(b)(2). Upward adjustments in Program funds claimed which are not reflected in the final FCS–10 for the claim month shall not be made unless authorized by FCS. Downward adjustments in Program funds claimed shall always be made, without FCS authorization, regardless of when it is determined that such adjustments are necessary.

(c) Where a school participates in both the National School Lunch Program and the School Breakfast Program, the State agency or FCSRO, where applicable, may authorize the submission of one claim for reimbursement to cover both programs.

(d) [Reserved]

(e) Notwithstanding any other provision of this section, the State agency, or FCSRO where applicable, may advance funds available for the School Breakfast Program to a School Food Authority in an amount equal to the reimbursement estimated for the total number of breakfasts, including free and reduced price breakfasts, to be served to children for 1 month. The State agency, or FCSRO where applicable, shall require School Food Authorities who receive advances of funds under the provisions of this paragraph to make timely submissions of claims for reimbursement on a monthly basis and shall suspend advances of funds in the absence of such timely submissions. Following the receipt of claims the State agency, or FCSRO where applicable, shall make such adjustments as are necessary in such advances of funds to insure that the total amount of reimbursement received by a School Food Authority for the fiscal year will not exceed an amount equal to the number of breakfasts, including free and reduced price breakfast, served to children times the respective rates of reimbursement assigned by the State agency, or FCSRO where applicable, in accordance with §220.9.

(Title 1, Chapter I, Pub. L. 96–38, 93 Stat. 98 (42 U.S.C. 1776a); secs. 807 and 808, Pub. L. 97–35, 95 Stat. 521–535, 42 U.S.C. 1772, 1784, 1760; sec. 819, Pub. L. 97–35, 95 Stat. 533 (42 U.S.C. 1759a, 1773, 1757); Pub. L. 97–370, 96 Stat. 1806)

[32 FR 35, Jan. 5, 1967, as amended by Amdt. 9, 37 FR 9613, May 13, 1972; 40 FR 30924, July 24, 1975; 45 FR 82622, Dec. 16, 1980; 47 FR 31376, July 20, 1982; 48 FR 40196, Sept. 6, 1983; Amdt. 49, 49 FR 18987, May 4, 1984]

**§220.12 Competitive food services.**

(a) State agencies and School Food Authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with breakfasts served under the Program. Such rules or regulations shall prohibit the sale of foods of minimal

nutritional value, as listed in appendix B of this part, in the food service areas during the breakfast periods. The sale of other competitive foods may, at the discretion of the State agency and the School Food Authority, be allowed in the food service area during the breakfast period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service or the school or student organizations approved by the school. State agencies and School Food Authorities may impose additional restrictions on the sale of and income from all foods sold at any time throughout schools participating in the School Breakfast Program.

(b)(1) Any person may submit a petition to FCS requesting that an individual food be exempted from a category of foods of minimal nutritional value listed in appendix B. In the case of artificially sweetened foods, the petition must include a statement of the percent of RDI for the eight nutrients listed in § 220.2(i–1) that the food provides per serving and the petitioner's source of this information. In the case of all other foods, the petition must include a statement of the percent of RDI for the eight nutrients listed in § 220.2(i–1) that the food provides per serving and per 100 calories and the petitioner's source of this information. The Department will determine whether or not the individual food is a food of minimal nutritional value as defined § 220.2(i–1), and will inform the petitioner in writing of such determination, and the public by notice in the FEDERAL REGISTER as indicated under paragraph (b)(3) of this section. In determining whether an individual food is a food of minimal nutritional value, discrete nutrients added to the food will not be taken into account.

(2) Any person may submit a petition to FCS requesting that foods in a particular category of foods be classified as foods of minimal nutritional value as defined in § 220.2(i–1). The petition must identify and define the food category in easily understood language, list examples of the foods contained in the category and include a list which the foods in that category usually contain. If, upon review of the petition, the Department determines that the foods in that category should not be classified as foods of minimal nutritional value, the petitioner will be so notified in writing. If upon review of the petition, the Department determines that there is a substantial likelihood that the foods in that category should be classified as foods of minimal nutritional value as defined in § 220.2(i–1), the Department shall at that time inform the petitioner. In addition, the Department shall publish a proposed rule restricting the sale of the foods in that category, setting forth the reasons for this action, and soliciting public comments. On the basis of comments received within 60 days of publication of the proposed rule and other available information, the Department will determine whether the nutrient composition of the foods indicates that the category should be classified as a category of foods of minimal nutritional value.

The petitioner shall be notified in writing and the public shall be notified of the Department's final determination upon publication in the FEDERAL REGISTER as indicated under section (b)(3) of this section.

(3) By May 1 and November 1 of each year, the Department shall amend appendix B to exclude those individual foods identified under paragraph (b)(1) of this section, and to include those categories of foods identified under paragraph (b)(2) of this section, *Provided* That there are necessary changes.

(Sec. 819, Pub. L. 97–35, 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757))

[Amdt. 32, 45 FR 6771, Jan. 29, 1980, as amended by Amdt. 34, 45 FR 76937, Nov. 21, 1980; 50 FR 20547, May 17, 1985; 59 FR 23614, May 6, 1994]

### § 220.13 Special responsibilities of State agencies.

(a) [Reserved]

(a–1) Each State agency, or FCSRO where applicable, shall require each School Food Authority of a school participating in the School Breakfast Program to develop and file for approval a free and reduced price policy statement in accordance with paragraph (a) of § 220.7.

(b) *Records and reports.* (1) Each State agency shall maintain Program records

as necessary to support the reimbursement payments made to School Food Authorities under § 220.9 and the reports submitted to FCS under § 220.13(b)(2). 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 submission of the final Financial Status Report for the fiscal year, except that 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) Each State agency shall submit to FCS a final Report of School Program Operations (FCS–10) for each month which shall be limited to claims submitted in accordance with § 220.11(b) and which shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FCS grants an exception. Upward adjustments to a State agency's report shall not be made after 90 days from the month covered by the report unless authorized by FCS. Downward adjustments shall always be made, without FCS authorization, regardless of when it is determined that such adjustments are necessary. Adjustments shall be reported to FCS in accordance with procedures established by FCS. Each State agency shall also submit to FCS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. A final Financial Status Report for each fiscal year shall be postmarked and/or submitted to FCS within 120 days after the end of the fiscal year. FCS shall not be responsible for reimbursing unpaid Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred.

(c) Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of either program, and shall take appropriate action to correct any irregularities. State Agencies shall maintain on file evidence of such investigations and actions. FCS or OI shall make investigations at the request of the State Agency or where FCS or OI determines investigations are appropriate.

(d) The State agency shall release to FCS any Federal funds made available to it under the Act which are unobligated at the end of each fiscal year. Any such funds shall remain available to FCS for the purposes of the programs authorized by the Act until expended. Release of funds by the State Agency shall be made as soon as practicable, but in any event not later than 30 days following demand by FCSRO and shall be reflected by related adjustment in the State Agency's Letter of Credit.

(e) State agencies shall provide School Food Authorities with monthly information on foods available in plentiful supply, based on information provided by the Department.

(f) Each State agency shall provide program assistance as follows:

(1) Each State agency or FCSRO where applicable shall provide consultative, technical, and managerial personnel to administer programs, monitor performance, and measure progress toward achieving program goals.

(2) State agencies shall conduct reviews of schools participating in the Program for compliance with the provisions of this part when such schools are being reviewed under the provisions identified under § 210.18(i) of this title. Compliance reviews of participating schools shall focus on the reviewed school's compliance with the required certification, counting and breakfast service procedures. School food authorities may appeal a denial of all or a part of the Claim for Reimbursement or withholding of payment arising from review activity conducted by the State agency under § 210.18 of this title or by FCS under § 210.30(d)(2) of this title. Any such appeal shall be subject to the procedures set forth under § 210.18(q) of this title or § 210.30(d)(3) of this title, as appropriate.

(3) For the purposes of compliance with the *1990 Dietary Guidelines for Americans* and the calorie and nutrient levels specified in § 220.8, the State

agency shall follow the provisions specified in § 210.19(a)(1) of this chapter.

(4) Such assistance shall include visits to participating schools to ensure compliance with program regulations and with the Department's nondiscrimination regulations (part 15 of this title), issued under title VI, of the Civil Rights Act of 1964.

(5) Documentation of such assistance shall be maintained on file by the State agency, or FCSRO where applicable.

(g) State agencies shall adequately safeguard all assets and assure that they are used solely for authorized purposes.

(h) [Reserved]

(i) Each State agency, or FCS where applicable, shall establish a financial management system under which School Food Authorities shall account for all revenues and expenditures of their nonprofit school food service. The system shall prescribe the allowability of nonprofit school food service expenditures in accordance with this part and, as applicable, the cost principles contained in OMB Circular A–87 and 7 CFR part 3015. The system shall permit determination of school food service net cash resources, and shall include any criteria for approval of net cash resources in excess of three months average expenditures. In addition, School Food Authorities shall be required to account separately for other food services which are operated by the School Food Authority.

(j) During audits, supervisory assistance reviews, or by other means, State agencies, or FCSROs where applicable, shall be responsible for monitoring the net cash resources of the nonprofit school food service of each School Food Authority participating in the Program. In the event that such resources exceed three months average expenditures for the School Food Authority's nonprofit school food service, or such amount as may be approved by the State agency or FCSRO where applicable, the State agency or FCSRO where applicable, may require the School Food Authority to reduce children's prices, improve food quality or take other actions designed to improve the nonprofit school food service. In the absence of any such action, adjustments in the rates of reimbursement under the Program shall be made.

(k) State agencies shall require compliance by School Food Authorities with applicable provisions of this part.

(l) Each State agency, or FCSRO where applicable, shall:

(1) Provide information to school boards and public officials concerning the benefits and availability of the program; and

(2) Select each year, for additional informational efforts concerning the program, nonparticipating schools in which a substantial portion of the enrollment is eligible for free or reduced-price meals.

(44 U.S.C. 3506; sec. 812, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1759a); sec. 819, Pub. L. 97–35, 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757); 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))

[32 FR 37, Jan. 5, 1967. Redesignated by Amdt. 2, 33 FR 14513, Sept. 27, 1968]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 220.13, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### § 220.14 Claims against school food authorities.

(a) State agencies shall disallow any portion of a claim and recover any payment made to a School Food Authority that was not properly payable under this part. State agencies will use their own procedures to disallow claims and recover overpayments already made.

(b) [Reserved]

(c) The State agency may refer to CND through the FCSRO for determination any action it proposes to take under this section.

(d) The State agency shall maintain all records pertaining to action taken under this section. Such records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain.

(e) If CND does not concur with the State agency's action in paying a claim or a reclaim, or in failing to collect an overpayment, CND shall assert a claim against the State agency for the amount of such claim, reclaim, or overpayment. In all such cases the State agency shall have full opportunity to submit to CND evidence or information

concerning the action taken. If, in the determination of CND, the State agency's action was unwarranted, the State agency shall promptly pay to FCS the amount of the claim, reclaim, or overpayment.

(f) The amounts recovered by the State agency from Schools may be utilized, first, to make payments to School Food Authorities for the purposes of the related program during the fiscal year for which the funds were initially available, and second to repay any State funds expended in the reimbursement of claims under the program and not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FCS in accordance with the requirements of this part.

(g) With respect to School Food Authorities of schools in which the program is administered by FCSRO, when FCSRO disallows a claim or a portion of a claim, or makes a demand for refund of an alleged overpayment, it shall notify the School Food Authority of the reasons for such disallowance or demand and the School Food Authority shall have full opportunity to submit evidence or to file reclaims for any amounts disallowed or demanded in the same manner as that afforded in this section to School Food Authorities of schools in which the program is administered by State agencies.

(h) In the event that the State agency or FCSRO, where applicable, finds that a school is failing to meet the requirements of §220.8(g), §220.8(i)(2) and (i)(3) or 220.8a(a)(1), (b)(2), and (b)(3), whichever is applicable, the State agency or FCSRO need not disallow payment or collect an overpayment arising out of such failure, if the State agency or FCSRO takes such other action as, in its opinion, will have a corrective effect.

(i) The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

(44 U.S.C. 3506; secs. 804, 816 and 817, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785))

[32 FR 37, Jan. 5, 1967. Redesignated by Amdt. 2, 33 FR 14513, Sept. 27, 1968, and amended by Amdt. 9, 37 FR 9614, May 13, 1972; 40 FR 30925, July 24, 1975. Redesignated and amended by Amdt. 25, 41 FR 34757, 34760, Aug. 17, 1976; 47 FR 746, Jan. 7, 1982; Amdt. 42, 47 FR 14134, Apr. 2, 1982; 60 FR 31222, June 13, 1995]

### §220.15 Management evaluations and audits.

(a)(1) The State agency shall ensure that all organizations within the State that administer or participate in the program covered by this part comply with the audit requirements of 7 CFR part 3015. The term ''organization,'' as used in this section, shall refer to the entity whose financial management system controls the receipt, custody and disbursement of the Federal grant funds made available for the Program. The audits shall ascertain the effectiveness of the financial management systems and internal procedures that have been established by the auditee organization to meet the terms and conditions of its Federal grants. It is not required that the Program covered by this part be included in every audit. Rather, the audits shall be conducted on an organization-wide basis, and shall include an appropriate random sampling of Federal grant programs administered or operated by the auditee organization. The Program covered by this part shall be adequately represented in the universe from which each such sample is selected.

(2) The State agency, or FCSRO where applicable, shall establish procedures to insure that it obtains the following information pertaining to each School Food Authority organization under its jurisdiction:

(i) The names of the Federal grant programs included in each audit obtained by the School Food Authority pursuant to the requirements of this part, regardless of whether such programs include the Program covered by this part; and

(ii) the nature of any deficiencies intrinsic to the auditee's grants management system as revealed by audit. When system deficiencies, as discussed in the preceding sentence, are reported in audits that did not specifically test the Program covered by this part, the State agency, or FCSRO where applicable, should make, or cause to be made, follow-up audits to determine the impact of such deficiencies upon the Program covered by this part. The State agency, or FCSRO where applicable, shall establish procedures to assure timely and appropriate resolution of audit findings and recommendations including findings relating to deficiencies such as those cited in paragraph (a)(2)(ii) of this section, which may impact upon the Program covered by this part.

(3) Audits shall be made in accordance with generally accepted auditing standards, including the standards published by the General Accounting Office, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. Audits may be made by any of the following audit groups:

(i) School Food Authority and State agency staff auditors who are totally independent of the auditee;

(ii) State Auditors General;

(iii) State Comptrollers;

(iv) Other comparable independent State audit groups;

(v) Certified Public Accountants or

(vi) State licensed public accountants.

(4) Except as provided for in this section, each organization at the State agency and School Food Authority level shall obtain audits, meeting the conditions discussed in this section, on a continuing basis or at scheduled intervals, usually annually, but not less frequently than once every 2 years. The State agency, or FCSRO where applicable, may elect not to require this audit frequency of School Food Authority organizations to which *both* of the following conditions apply:

(i) The only Federal grant program or programs operated by the School Food Authority organization are the Program covered by this part, the National School Lunch Program, the Special Milk Program for Children, or any combination of such programs; and (ii) the level of Federal grant funds disbursed to the School Food Authority organization in any fiscal year does not exceed $10,000; *Provided, however,* That the State agency, or FCSRO where applicable, shall make or require an audit of such a School Food Authority when conditions indicate a need for such an audit.

(b) [Reserved]

(c) While OA shall rely to the fullest extent feasible upon State sponsored audits, it shall, whenever considered necessary:

(1) Make audits on a statewide basis,

(2) Perform on-site test audits, and

(3) Review audit reports and related working papers of audits performed by or for State agencies.

(d) Use of audit guides available from OA is encouraged. When these guides are utilized, OA will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(e) Each State agency shall provide FCS with full opportunity to conduct management evaluations (including visits to schools) of all operations of the State agency under the programs covered by this part and shall provide OA with full opportunity to conduct audits (including visits to schools) of all operations of the State agency under such programs. Each State agency shall make available its records, including records of the receipt and expenditure of funds under such programs, upon a reasonable request by FCS or OA. OA shall also have the right to make audits of the records and operations of any school.

(f) In conducting management evaluations, reviews or audits for any fiscal year, the State agency, FCS, or OIG may disregard any overpayment if the total overpayment does not exceed $600 or, in the case of State agency claims in State administered Programs, it does not exceed the amount established under State law, regulations or procedure as a minimum amount for which claim will be made for State losses but not to exceed $600. However, no overpayment is to be disregarded where there is substantial evidence of violations of criminal law or civil fraud statutes.

(Secs. 805 and 819, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1773); sec. 812, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1759a))

[40 FR 30925, July 24, 1975. Redesignated and amended by Amdt. 25, 41 FR 34757, 34760, Aug. 17, 1976; 43 FR 59825, Dec. 22, 1978; Amdt. 41, 47 FR 14135, Apr. 2, 1982; Amdt. 43, 47 FR 18564, Apr. 30, 1982; Amdt. 56, 54 FR 2990, Jan. 23, 1989; 57 FR 38587, Aug. 26, 1992; 59 FR 1894, Jan. 13, 1994]

### § 220.16 Procurement standards.

(a) *Requirements.* State agencies and School Food Authorities shall comply with the requirements of the Office of Management and Budget (OMB) Circular A–102 and the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015, subpart S (46 FR 55658) concerning the procurement of supplies, food, equipment and other services with Program funds. These requirements are adopted by FCS to ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in OMB Circular A–102 and 7 CFR 3015, do not relieve the State agency or School Food Authority of any contractual responsibilities under its contract. The State agency or School Food Authority is the responsible authority, without recourse to FCS, 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 or School Food Authority may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds adhere to the standards set forth in OMB Circular A–102 and 7 CFR part 3015.

(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. 45, 48 FR 19355, Apr. 29, 1983]

### § 220.17 Prohibitions.

(a) In carrying out the provisions of this part, neither the Department nor the State shall impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, and materials of instruction in any school as a condition for participation in the Program.

(b) The value of assistance to children under the Act shall not be considered to be income or resources for any purposes under any Federal or State laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs. Expenditure of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under the Act.

[32 FR 37, Jan. 5, 1967. Redesignated by Amdt. 2, 33 FR 14513, Sept. 27, 1968. Redesignated and amended by Amdt. 25, 41 FR 34757, 34760, Aug. 17, 1976]

### § 220.18 Suspension, termination and grant closeout procedures.

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FCS guidelines and instructions, FCS may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A State agency may also terminate the Program by mutual agreement with FCS. FCS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015, subpart N concerning grant suspension, termination and closeout procedures. Furthermore, the State agency or FCSRO were applicable, shall apply these provisions to suspension or termination of the Program in School Food Authorities.

[Amdt. 49, 49 FR 18988, May 4, 1984]

### § 220.19 Free and reduced price breakfasts.

The determination of the children to whom free and reduced price breakfasts are to be served because of inability to pay the full price thereof, and the serving of the breakfasts to such children, shall be effected in accordance with part 245 of this chapter.

[Amdt. 25, 41 FR 34760, Aug. 17, 1976]

### § 220.20 Program information.

School Food Authorities desiring information concerning the program should write to their State educational agency or to the appropriate Food and Consumer Service Regional Office as indicated below:

(a) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FCS, U.S. Department of Agriculture, Mercer Corporate Park, Corporate Boulevard, CN02150, Trenton, New Jersey 08650.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FCS, U.S. Department of Agriculture, 1100 Spring Street, NW., Atlanta, Georgia 30367.

(c) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FCS U.S. Department of Agriculture, 50 E. Washington Street, Chicago, Illinois 60602.

(d) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FCS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75202.

(e) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Island, and Washington: Western Regional Office, FCS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

(f) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FCS, U.S. Department of Agriculture, 10 Causeway Street, Room 501, Boston, Massachusetts 02222–1065.

(g) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FCS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, Colorado 80204.

(Sec. 10(a), Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 10(d)(3), Pub. L. 95–627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95–627, 92 Stat. 3625–3626; 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))

[32 FR 37, Jan. 5, 1967. Redesignated at 49 FR 18988, May 4, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 220.20, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### § 220.21 Information collection/recordkeeping—OMB assigned control numbers.

| 7 CFR section where requirements are described | Current OMB control number |
|---|---|
| 220.3(e) | 0584–0327 |
| 220.5 | 0584–0012 |
| 220.7(a)–(e) | 0584–0329 |
| | 0584–0012 |
| | 0584–0026 |
| 220.8(f) | 0584–0012 |
| 220.9(a) | 0584–0012 |
| 220.11 (a), (b), (e) | 0584–0012 |
| | 0584–0002 |
| | 0584–0341 |
| 220.12(b) | 0584–0012 |
| 220.13 (a–1)–(c), (f) | 0584–0026 |
| | 0584–0002 |
| | 0584–0341 |
| | 0584–0012 |
| 220.14(d) | 0584–0012 |
| 220.15 | 0584–0012 |

[Amdt. 56, 54 FR 2990, Jan. 23, 1989]

## APPENDIX A TO PART 220—ALTERNATE FOODS FOR MEALS

### FORMULATED GRAIN-FRUIT PRODUCTS

1. Schools may utilize the formulated grain-fruit products defined in paragraph 3 as a food component in meeting the meal requirements of this part under the following terms and conditions:

(a) Formulated grain-fruit products may be used to meet *one* bread/bread alternate and

the fruit/vegetable requirement in the breakfast pattern specified in §220.8 or 220.8a, whichever is applicable.

(b) Only individually wrapped formulated grain-fruit products which bear a label conforming to the following legend shall be utilized. ''This product conforms to U.S.D.A. Child Nutrition Program specifications. For breakfast, it meets the requirements for fruit/vegetable/juice and one bread/bread alternate.''

2. Only formulated grain-fruit products that have been accepted by the Food and Consumer Service (FCS) for use in the USDA child nutrition programs may be labeled as provided in paragraph 1.(b) of this appendix. Manufacturers seeking acceptance of their product shall furnish FCS a chemical analysis, protein efficiency ratio analysis, and such other pertinent data as may be requested by FCS. This information shall be forwarded to: Director, Nutrition and Technical Services Staff, Food and Consumer Service, U.S. Department of Agriculture, Alexandria, Virginia 22302. All laboratory analyses are to be performed by independent or other laboratories acceptable to FCS. (FCS prefers an independent laboratory.) All laboratories shall retain the ''raw'' laboratory data for a period of one year. Such information shall be made available to FCS upon request.

3. To be accepted by FCS, products must have the following characteristics and meet the following nutritional specifications:

(a) Types. There are two types of products: one is a grain-type product and the other a grain-fruit type product.

(b) Ingredients. A grain-type product shall have grain as its primary ingredient. A grain-fruit type product shall have fruit as its primary ingredient. Both types of products must have at least 25 percent of their weight derived from grain. All ingredients and/or components shall comply with pertinent requirements or standards of the USDA and the Food, Drug, and Cosmetic Act, as amended, and any regulations issued thereunder.

(c) Nutritional specifications. Each serving of the product shall meet the minimum compositional requirements in the following table. The requirements as specified for those nutrients not limited by maximum values will be deemed to have been met if reasonable overages of the vitamins and minerals, within the limits of good manufacturing practice, are present to insure that the required levels are maintained throughout the expected shelf life under customary conditions of distribution and storage. An exception will be made for vitamins or minerals which occur naturally in an ingredient at such concentration that the level specified will be substantially exceeded in the final product. Such excess will be permitted but no lable claim of nutritional advantage can be made for overages for any nutrients. Analytical methods employed should be according to the standard procedures defined in the Association of Official Analytical Chemists, 1970, ''Official Methods of Analysis,'' 11th edition, Washington, DC or by appropriate analytical procedures FCS considers reliable.

NUTRITIONAL LEVELS OF GRAIN-FRUIT PRODUCTS [1]

| Nutrient | Unit | Minimum | Maximum |
|---|---|---|---|
| Weight | Ounce | 2 | 4.0 |
| PER | Casein=2.5 | 2.0 | ..... |
| Moisture | Percent weight | ..... | 40.0 |
| Fat [2] | .....do | ..... | 22.0 |
| Fiber | .....do | ..... | 0.8 |
| Protein (N×6.25) | Gram | 5.0 | ..... |
| Energy | Kilocalorie | 250 | ..... |
| Vitamin A [3] | International unit | 1,115 | 1,675.0 |
| Vitamin E | .....do | 5 | ..... |
| Vitamin $B_{12}$ | Microgram | 1.25 | ..... |
| Thiamin | Milligram | .26 | ..... |
| Riboflavin | .....do | .13 | ..... |
| Vitamin $B_6$ | .....do | .26 | ..... |
| Vitamin C | .....do | 20 | ..... |
| Niacin | .....do | 2.65 | ..... |
| Folacin | .....do | .04 | ..... |
| Iron [4] | .....do | 4.4 | ..... |
| Calcium | .....do | 120 | ..... |
| Phosphorus | .....do | 120 | ..... |
| Magnesium | .....do | 30 | ..... |

[1] These specifications are based on a nutrient level for acceptable products plus ½ pint of fluid milk (as defined in §220.2 of the regulations (7 CFR part 220)) to provide at least 25 percent of the Recommended Dietary Allowances (RDA), 1968, for 10– to 12–year-old boys and girls for specified nutrients except magnesium and kilocalories. Magnesium and kilocalories—at least 13 percent of this RDA.

[2] Although the maximum fat in these specifications is 22 percent, consideration should be given to the development of formulated items containing less fat. Most medical authorities recommend keeping the dietary intake of fats at about ⅓ of the day's calories. At least 5 percent of the total calories shall be from linoleic acid.

[3] Vitamin A levels above the maximum of 1,675 I.U. will be allowed in products containing this nutrient as a natural food, and if the vitamin has not been added to the ingredients or foods.

[4] Recommended sources of iron are ferric ammonium citrate, ferrous fumarate, ferrous sulfates ($FeSO_4$ or $FeSO_4$ $7H_2O$), ferrous gluconate, reduced iron, or other sources known to have a similar relative biological value.

(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))

[Amdt. 18, 39 FR 11249, Mar. 27, 1974, as amended at 40 FR 37027, Aug. 25, 1975; Amdt. 45, 48 FR 195, Jan. 4, 1983; Amdt. 57, 54 FR 13048, Mar. 30, 1989; 60 FR 31222, June 13, 1995]

## APPENDIX B TO PART 220—CATEGORIES OF FOODS OF MINIMAL NUTRITIONAL VALUE

(1) Soda Water—A class of beverages made by absorbing carbon dioxide in potable water. The amount of carbon dioxide used is not less than that which will be absorbed by the beverage at a pressure of one atmosphere

and at a temperature of 60° F. It either contains no alcohol or only such alcohol, not in excess of 0.5 percent by weight of the finished beverage, as is contributed by the flavoring ingredient used. No product shall be excluded from this definition because it contains artificial sweeteners or discrete nutrients added to the food such as vitamins, minerals and protein.

(2) *Water ices.* As defined by 21 CFR 135.160 Food and Drug Administration Regulations except that water ices which contain fruit or fruit juices are not included in this definition.

(3) *Chewing gum.* Flavored products from natural or synthetic gums and other ingredients which form an insoluble mass for chewing.

(4) *Certain candies.* Processed foods made predominantly from sweeteners or artificial sweeteners with a variety of minor ingredients which characterize the following types:

(a) *Hard candy.* A product made predominantly from sugar (sucrose) and corn syrup which may be flavored and colored, is characterized by a hard, brittle texture, and includes such items as sour balls, fruit balls, candy sticks, lollipops, starlight mints, after dinner mints, sugar wafers, rock candy, cinnamon candies, breath mints, jaw breakers and cough drops.

(b) *Jellies and gums.* A mixture of carbohydrates which are combined to form a stable gelatinous system of jelly-like character, and are generally flavored and colored, and include gum drops, jelly beans, jellied and fruit-flavored slices.

(c) *Marshmallow candies.* An aerated confection composed of sugar, corn syrup, invert sugar, 20% water and gelatin or egg white to which flavors and colors may be added.

(d) *Fondant.* A product consisting of microscopic-sized sugar crystals which are separated by a thin film of sugar and/or invert sugar in solution such as candy corn, soft mints.

(e) *Licorice.* A product made predominantly from sugar and corn syrup which is flavored with an extract made from the licorice root.

(f) *Spun candy.* A product that is made from sugar that has been boiled at high temperature and spun at a high speed in a special machine.

(g) *Candy coated popcorn.* Popcorn which is coated with a mixture made predominantly from sugar and corn syrup.

Schedule for Amending Appendix B

| Actions for publication | Publication | |
|---|---|---|
| | May | November |
| Deadline for receipt of petitions by USDA. | Nov. 15 ..... | May 15. |
| USDA to notify petitioners of results of Departmental review and publish proposed rule (if applicable). | Feb. 1 ..... | Aug. 1. |
| 60 Day Comment Period. | Feb 1 through Apr. 1. | Aug. 1 through Oct. 1. |
| Public Notice of Amendment of Appendix B by. | May 1 ..... | Nov. 1. |

Written petitions should be sent to the Chief, Technical Assistance Branch, Nutrition and Technical Services Divisions, FCS, USDA, Alexandria, Virginia 22302 on or before November 15 or May 15 of each year. Petitions must include all information specified in §210.15b(b) (1) or (2), and §220.12(b) (1) or (2) as appropriate.

(Sec. 17, Pub. L. 95–166, 91 Stat. 1345 (42 U.S.C. 1779); 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))

[Amdt. 32, 45 FR 6772, Jan. 29, 1980, as amended at 45 FR 72081, Oct. 31, 1980; 45 FR 76937, Nov. 21, 1980; Amdt. 45, 48 FR 195, Jan. 4, 1983; 54 FR 18466, May 1, 1989]

## APPENDIX C TO PART 220—CHILD NUTRITION (CN) LABELING PROGRAM

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Consumer Service (FCS) in conjunction with the Food Safety and Inspection Service (FSIS), and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA), and National Marine Fisheries Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. This program essentially involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this rule.

2. Products eligible for CN labels are as follows:

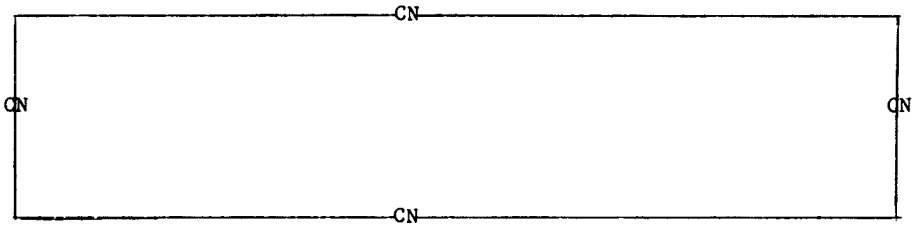
(a) Commercially prepared food products that contribute significantly to the meat/meat alternate component of meal pattern requirements of 7 CFR 210.10 or 210.10a, whichever ia applicable, 225.21, and 226.20 and are served in the main dish.

(b) Juice drinks and juice drink products that contain a minimum of 50 percent full-strength juice by volume.

3. For the purpose of this appendix the following definitions apply:

(a) ''CN label'' is a food product label that contains a CN label statement and CN logo as defined in paragraph 3 (b) and (c) below.

(b) The ''CN logo'' (as shown below) is a distinct border which is used around the edges of a ''CN label statement'' as defined in paragraph 3(c).




(c) The ''CN label statement'' includes the following:

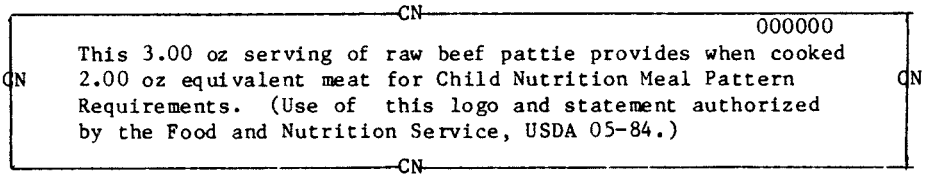
(1) The product identification number (assigned by FCS),

(2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10 or 210.10a, whichever is applicable, 220.8 or 220.8a, whichever is applicable, 225.21, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, bread/bread alternate, and/or vegetable/fruit component of the meal pattern requirements. For juice drinks and juice drink products the statement shall identify their contribution toward the vegetable/fruit component of the meal pattern requirements,

(3) Statement specifying that the use of the CN logo and CN statement was authorized by FCS, and

(4) The approval date.

For example:




(d) *Federal inspection* means inspection of food products by FSIS, AMS or USDC.

4. Food processors or manufacturers may use the CN label statement and CN logo as defined in paragraph 3 (b) and (c) under the following terms and conditions:

(a) The CN label must be reviewed and approved at the national level by the Food and Consumer Service and appropriate USDA or USDC Federal agency responsible for the inspection of the product.

(b) The CN labeled product must be produced under Federal inspection by USDA or USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal inspection service.

(c) The CN label statement must be printed as an integral part of the product label along with the product name, ingredient listing, the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate, and the manufacturer's or distributor's name and address.

(1) The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products with the exception of juice drinks and juice drink products is established as follows:

INSPECTED BY THE
U.S. DEPT. OF AGRICULTURE
IN ACCORDANCE WITH
FNS REQUIREMENTS

(d) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the *Food Buying Guide for Child Nutrition Programs* (Program Aid Number 1331).

5. In the event a company uses the CN logo and CN label statement inappropriately, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

6. Products that bear a CN label statement as set forth in paragraph 3(c) carry a warranty. This means that if a food service authority participating in the child nutrition programs purchases a CN labeled product and uses it in accordance with the manufacturer's directions, the school or institution will not have an audit claim filed against it for the CN labeled product for noncompliance with the meal pattern requirements of 7 CFR 210.10 or 210.10a, whichever is applicable, 220.8 or 220.8a, whichever is applicable, 225.21, and 226.20. If a State or Federal auditor finds that a product that is CN labeled does not actually meet the meal pattern requirements claimed on the label, the auditor will report this finding to FCS. FCS will prepare a report of the findings and send it to the appropriate divisions of FSIS and AMS of the USDA, National Marine Fisheries Services of the USDC, Food and Drug Administration, or the Department of Justice for action against the company.

Any or all of the following courses of action may be taken:

(a) The company's CN label may be revoked for a specific period of time;

(b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product;

(c) The company's name will be circulated to regional FCS offices;

(d) FCS will require the food service program involved to notify the State agency of the labeling violation.

7. FCS is authorized to issue operational policies, procedures, and instructions for the CN Labeling Program.

To apply for a CN label and to obtain additional information on CN label application procedures write to: CN Labels, U.S. Department of Agriculture, Food and Consumer Service, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia 22302.

(National School Lunch Act, secs. 9, 13, 17; 42 U.S.C. 1758, 1761, 1766; 7 CFR 210.10, 220.8, 225.21, 226.20)

[49 FR 18457, May 1, 1984; 49 FR 45109, Nov. 15, 1984; 60 FR 31222, June 13, 1995]

# PART 225—SUMMER FOOD SERVICE PROGRAM

## Subpart A—General

Sec.
225.1 General purpose and scope.
225.2 Definitions.
225.3 Administration.

## Subpart B—State Agency Provisions

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225.5 Payments to State agencies and use of Program funds.
225.6 State agency responsibilities.
225.7 Program monitoring and assistance.
225.8 Records and reports.
225.9 Program assistance to sponsors.
225.10 Audits and management evaluations.
225.11 Corrective action procedures.
225.12 Claims against sponsors.
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## Subpart C—Sponsor and Site Provisions

225.14 Requirements for sponsor participation.
225.15 Management responsibilities of sponsors.
225.16 Meal service requirements.

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225.17 Procurement standards.
225.18 Miscellaneous administrative provisions.
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APPENDIX A TO PART 225—ALTERNATE FOODS FOR MEALS
APPENDIX B TO PART 225 [RESERVED]
APPENDIX C TO PART 225—CHILD NUTRITION (CN) LABELING PROGRAM

AUTHORITY: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

SOURCE: 54 FR 18208, Apr. 27, 1989, unless otherwise noted.

## Subpart A—General

### §225.1 General purpose and scope.

This part establishes the regulations under which the Secretary will administer a Summer Food Service Program. Section 13 of the Act authorizes the Secretary to assist States through grants-in-aid to conduct nonprofit food service programs for children during the summer months and at other approved times. The primary purpose of the Program is to provide food service to children from needy areas during periods when area schools are closed for vacation.

### §225.2 Definitions.

*Academic-Year NYSP* means that portion of the NYSP operating drug awareness and counseling programs during the months October through April, as authorized under Public Law 100–690, the Anti-Drug Abuse Act of 1988.

*Act* means the National School Lunch Act, as amended.

*Administrative costs* means costs incurred by a sponsor related to planning, organizing, and managing a food service under the Program, and excluding interest costs and operating costs.

*Adult* means, for the purposes of the collection of social security numbers as a condition of eligibility for Program meals, any individual 21 years of age or older.

*Advance payments* means financial assistance made available to a sponsor for its operating costs and/or administrative costs prior to the end of the month in which such costs will be incurred.

*AFDC assistance unit* means any individual or group of individuals which is currently certified to receive assistance under the Aid to Families with Dependent Children Program in a State where the standard of eligibility for AFDC benefits does not exceed the income standards for free meals under the National School Lunch Program (7 CFR part 245).

*Areas in which poor economic conditions exist* means (a) the local areas from which a site draws its attendance in which at least 50 percent of the children are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined (1) by information provided from departments of welfare, education, zoning commissions, census tracts, and organizations determined by the State agency to be migrant organizations, (2) by the number of free and reduced price lunches or breakfasts served to children attending public and nonprofit private schools located in the areas of Program sites, or (3) from other appropriate sources, or

(b) An enrollment program in which at least 50 percent of the enrolled children at the site are eligible for free or reduced price school meals as determined by approval of applications in accordance with §225.15(f) of this part.

*Camps* means residential summer camps and nonresidential day camps which offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camp sites shall offer a continuous schedule of organized cultural or recreational programs for enrolled children between meal services.

*Children* means (a) persons 18 years of age and under, and (b) persons over 18 years of age who are determined by a State educational agency or a local public educational agency of a State to be mentally or physically handicapped and who participate in a public or nonprofit private school program established for the mentally or physically handicapped.

*Continuous school calendar* means a situation in which all or part of the student body of a school is (a) on a vacation for periods of 15 continuous school days or more during the period October through April and (b) in attendance at regularly scheduled classes during most of the period May through September.

*Costs of obtaining food* means costs related to obtaining food for consumption by children. Such costs may include, in addition to the purchase price of agricultural commodities and other food, the cost of processing, distributing, transporting, storing, or handling any food purchased for, or donated to, the Program.

*Current income* means income, as defined in Section 225.15(f)(2)(iv), received during the month prior to application

for free meals. If such income does not accurately reflect the household's annual income, income shall be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

*Department* means the U.S. Department of Agriculture.

*Documentation* means (a) the completion of the following information on a free meal application:

(1) Names of all household members;

(2) Income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income);

(3) The signature of an adult household member; and

(4) The social security number of the adult household member who signs the application, or an indication that the he/she does not possess a social security number; or,

(b) For a child who is a member of a food stamp household or an AFDC assistance unit, ''documentation'' means completion of only the following information on a free meal application: (1) The name(s) and appropriate food stamp or AFDC case number(s) for the child(ren); and (2) the signature of an adult member of the household.

*Family* means a group of related or nonrelated individuals who are not residents of an institution or boarding house but who are living as one economic unit.

*Fiscal year* means the period beginning October 1 of any calendar year and ending September 30 of the following calendar year.

*FCS* means the Food and Consumer Service of the Department.

*FCSRO* means the appropriate FCS Regional Office.

*Food service management company* means any commercial enterprise or nonprofit organization with which a sponsor may contract for preparing unitized meals, with or without milk, for use in the Program, or for managing a sponsor's food service operations in accordance with the limitations set forth in § 225.15. Food service management companies may be: (a) Public agencies or entities; (b) private, nonprofit organizations; or (c) private, forprofit companies.

*Food stamp household* means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

*Homeless feeding site* means a feeding site whose primary purpose is to provide shelter and one or more regularly scheduled meal services per day to homeless families and which is not a residential child care institution as defined in paragraph (c), definition of 'school', § 210.2 of the National School Lunch Program regulations.

*Household* means ''family,'' as defined in this section.

*Income accruing to the program* means all funds used by a sponsor in its food service program, including but not limited to all monies, other than program payments, received from Federal, State and local governments, from food sales to adults, and from any other source including cash donations or grants. Income accruing to the Program will be deducted from combined operating and administrative costs.

*Income standards* means the family-size and income standards prescribed annually by the Secretary for determining eligibility for reduced price meals under the National School Lunch Program and the School Breakfast Program.

*Meals* means food which is served to children at a food service site and which meets the nutritional requirements set out in this part.

*Milk* means whole milk, lowfat milk, skim milk, and buttermilk. All milk must be fluid and pasteurized and must meet State and local standards for the appropriate type of milk. Milk served may be flavored or unflavored. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands of the United States, if a sufficient supply of such types of fluid milk cannot be obtained, reconstituted or recombined milk may be used. All milk should contain Vitamins A and D at the levels specified by the Food and Drug Administration and at levels consistent with

State and local standards for such milk.

*Needy children* means children from families whose incomes are equal to or below the Secretary's Guidelines for Determining Eligibility for Reduced Price School Meals.

*NYSP* means the National Youth Sports Program administered by the National Collegiate Athletic Association.

*NYSP feeding site* means a site which qualifies for Program participation on the basis of free meal applications taken from enrolled children and at which all of the children receiving Program meals are enrolled in the NYSP.

*OIG* means the Office of the Inspector General of the Department.

*Operating costs* means the cost of operating a food service under the Program,

(a) Including the (1) cost of obtaining food, (2) labor directly involved in the preparation and service of food, (3) cost of nonfood supplies, (4) rental and use allowances for equipment and space, and (5) cost of transporting children in rural areas to feeding sites in rural areas, but

(b) Excluding (1) the cost of the purchase of land, acquisition or construction of buildings, (2) alteration of existing buildings, (3) interest costs, (4) the value of in-kind donations, and (5) administrative costs.

*Private nonprofit* means tax exempt under the Internal Revenue Code of 1986, as amended.

*Private nonprofit organization* means an organization (other than private nonprofit residential camps, school food authorities, or colleges or universities participating in the NYSP) which meets the definition of ''private nonprofit'' in this section and which:

(a) Serves a total of not more than 2,500 children per day;

(b) Administers the Program at no more than five sites in any urban area or 20 sites in any rural area, with not more than 300 children being served at any approved meal service at any one site (or, with a waiver granted by the State in accordance with § 225.6(b)(6)(iii) of this part, not more than 500 children being served at any approved meal service at any one site);

(c) Either uses self-preparation facilities to prepare meals or obtains meals from a public facility (such as a school district, public hospital, or State university) or a school participating in the National School Lunch Program;

(d) Operates in areas where a school food authority or the local, municipal, or county government has not indicated by March 1 of the current year that such authority or unit of government will operate the Program in the current year (except that, if a school food authority or local, municipal, or county government has served that area in the prior year's Program, the private nonprofit organization may only sponsor the Program in that area if it receives a waiver from the State agency in accordance with § 225.6(a)(3)(iv)(B));

(e) Exercises full control and authority over the operation of the Program at all sites under its sponsorship;

(f) Provides ongoing year-round activities for children or families;

(g) Demonstrates that it possesses adequate management and the fiscal capacity to operate the Program; and

(h) Meets applicable State and local health, safety, and sanitation standards.

*Program* means the Summer Food Service Program for Children authorized by Section 13 of the Act.

*Program funds* means Federal financial assistance made available to State agencies for the purpose of making Program payments.

*Program payments* means financial assistance in the form of start-up payments, advance payments, or reimbursement paid to sponsors for operating and administrative costs.

*Rural* means (a) any area in a county which is not a part of a Metropolitan Statistical Area or (b) any ''pocket'' within a Metropolitan Statistical Area which, at the option of the State agency and with FCSRO concurrence, is determined to be geographically isolated from urban areas.

*School food authority* means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program in those schools. In addition, for the purpose of determining the applicability of food

service management company registration and bid procedure requirements, ''school food authority'' also means any college or university which participates in the Program.

*Secretary* means the Secretary of Agriculture.

*Self-preparation sponsor* means a sponsor which prepares the meals that will be served at its site(s) and does not contract with a food service management company for unitized meals, with or without milk, or for management services.

*Session* means a specified period of time during which an enrolled group of children attend camp.

*Site* means a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.

*Special account* means an account which a State agency may require a vended sponsor to establish with the State agency or with a Federally insured bank. Operating costs payable to the sponsor by the State agency are deposited in the account and disbursement of monies from the account must be authorized by both the sponsor and the food service management company.

*Sponsor* means a public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county or State government, a public or private nonprofit college or university currently participating in the NYSP, or a private nonprofit organization which develops a special summer or other school vacation program providing food service similar to that made available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program. In addition, ''sponsor'' may also mean a public or private nonprofit college or university which participates in the NYSP during the months of October through April and is approved to participate in the Program. Sponsors are referred to in the Act as ''service institutions''.

*Start-up payments* means financial assistance made available to a sponsor for administrative costs to enable it to effectively plan a summer food service, and to establish effective management procedures for such a service. These payments shall be deducted from subsequent administrative cost payments.

*State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

*State agency* means the State educational agency or an alternate agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and which has been approved by the Department to administer the Program within the State, or, in States where FCS administers the Program, FCSRO.

*Unit of local, municipal, county or State government* means an entity which is so recognized by the State constitution or State laws, such as the State administrative procedures act, tax laws, or other applicable State laws which delineate authority for government responsibility in the State.

*Vended sponsor* means a sponsor which purchases from a food service management company the unitized meals, with or without milk, which it will serve at its site(s), or a sponsor which purchases management services, subject to the limitations set forth in § 225.15, from a food service management company.

*Yogurt* means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, (21 CFR 131.200), (21 CFR 131.203), (21 CFR 131.206), respectively.

[54 FR 18208, Apr. 27, 1989, as amended at 54 FR 27153, June 28, 1989; 55 FR 13466, Apr. 10, 1990; 61 FR 25553, May 22, 1996]

### § 225.3 Administration.

(a) *Responsibility within the Department.* FCS shall act on behalf of the Department in the administration of the Program.

(b) *State administered programs.* Within the State, responsibility for the administration of the Program shall be in

the State agency. With the exception of State agencies having academic-year NYSP sponsors, each State agency shall notify the Department by November 1 of the fiscal year regarding its intention to administer the Program. Those State agencies whose Program will include academic-year NYSP sponsors shall enter into an agreement with FCS by October 1 which shall cover the entire fiscal year and shall administer the Program for all eligible sponsors within the State during the agreement period. Each State agency desiring to take part in the Program shall enter into a written agreement with FCS for the administration of the Program in accordance with the provisions of this part. The agreement shall cover the operation of the Program during the period specified therein and may be extended by written consent of both parties. The agreement shall contain an assurance that the State agency will comply with the Department's nondiscrimination regulations (7 CFR part 15) issued under title VI of the Civil Rights Act of 1964, and any Instructions issued by FCS pursuant to those regulations, title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973. However, if a State educational agency is not permitted by law to disburse funds to any of the nonpublic schools in the State, the Secretary shall disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as the disbursements to public schools within the State by the State educational agency.

(c) *Regional office administered programs.* The Secretary shall not administer the Program in the States, except that if a FCSRO has continuously administered the Program in any State since October 1, 1980, FCS shall continue to administer the Program in that State. In States in which FCSRO administers the Program, it shall have all of the responsibilities of a State agency and shall earn State administrative and Program funds as set forth in this part. A State in which FCS administers the Program may, upon request to FCS, assume administration of the Program.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13466, Apr. 10, 1990]

## Subpart B—State Agency Provisions

### §225.4 Program management and administration plan.

(a) Not later than February 15 of each year, each State agency shall submit to FCSRO a Program management and administration plan for that fiscal year.

(b) Each plan shall be acted on or approved by March 15 or, if it is submitted late, within 30 calendar days of receipt of the plan. If the plan initially submitted is not approved, the State agency and FCS shall work together to ensure that changes to the plan, in the form of amendments, are submitted so that the plan can be approved within 60 calendar days following the initial submission of the plan. Upon approval of the plan, the State agency shall be notified of the level of State administrative funding which it is assured of receiving under §225.5(a)(3).

(c) Approval of the Plan by FCS shall be a prerequisite to the withdrawal of Program funds by the State from the Letter of Credit and to the donation by the Department of any commodities for use in the State's Program.

(d) The Plan shall include, at a minimum, the following information:

(1) The State's administrative budget for the fiscal year, and the State's plan to comply with any standards prescribed by the Secretary for the use of these funds;

(2) The State's plans for use of Program funds and funds from within the State to the maximum extent practicable to reach needy children, including the State's methods for assessing need, its plans and schedule for informing sponsors of the availability of the Program, and, beginning in Fiscal Year 1991, its plans for making efforts to inform private nonprofit organizations of their potential eligibility for Program sponsorship;

(3) The State's best estimate of the number and character of sponsors and sites to be approved, the number of

means to be served, the number of children who will participate, and a description of the estimating methods used by the State. Estimates of participation by private nonprofit organizations and their potential impact on the number of children and meals served need not be included in the plan until Fiscal Year 1991;

(4) The State's schedule for application by sponsors;

(5) The actions to be taken to maximize the use of meals prepared by sponsors and to maximize the use of school food service facilities;

(6) The State's plans and schedule for providing technical assistance and training to eligible sponsors;

(7) The State's plans for monitoring and inspecting sponsors, feeding sites, and food service management companies and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently;

(8) The State's plan and schedule for registering food service management companies;

(9) The State's plan for timely and effective action against Program violators;

(10) The State's plan for determining the amounts of Program payments to sponsors and for disbursing such payments;

(11) The State's plan for ensuring the fiscal integrity of sponsors not subject to auditing requirements prescribed by the Secretary;

(12) The State's procedure for granting a hearing and prompt determination to any sponsors wishing to appeal a State ruling, as specified in § 225.13;

(13) Beginning January 1, 1990, the State's plan for ensuring compliance with the food service management company procurement monitoring requirements set forth at § 225.6(h); and

(14) Beginning January 1, 1990, an estimate of the State's need, if any, for monies available to pay for the cost of conducting health inspections and meal quality tests.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13466, Apr. 10, 1990]

**§ 225.5 Payments to State agencies and use of Program funds.**

(a) *State administrative funds.* (1) *Administrative funding formula.* For each fiscal year, FCS shall pay to each State agency for administrative expenses incurred in the Program an amount equal to

(i) 20 percent of the first $50,000 in Program funds properly payable to the State in the preceding fiscal year;

(ii) 10 percent of the next $100,000 in Program funds properly payable to the State in the preceding fiscal year;

(iii) 5 percent of the next $250,000 in Program funds properly payable to the State in the preceding fiscal year; and

(iv) 2½ percent of any remaining Program funds properly payable to the State in the preceding fiscal year,

*Provided, however,* That FCS may make appropriate adjustments in the level of State administrative funds to reflect changes in Program size from the preceding fiscal year as evidenced by information submitted in the State Program management and administration plan and any other information available to FCS. If a State agency fails to submit timely and accurate reports under § 225.8(c) of this part, State administrative funds payable under this paragraph shall be subject to sanction. For such failure, FCS may recover, withhold, or cancel payment of up to one hundred percent of the funds payable to the State agency under this paragraph during the fiscal year.

(2) *Use of State administrative funds.* State administrative funds paid to any State shall be used by State agencies to employ personnel, including travel and related expenses, and to supervise and give technical assistance to sponsors in their initiation, expansion, and conduct of any food service for which Program funds are made available. State agencies may also use administrative funds for such other administrative expenses as are set forth in their approved Program management and administration plan.

(3) *Funding assurance.* At the time FCS approves the State's management and administration plan, the State shall be assured of receiving State administrative funding equal to the lesser of the following amounts: 80 percent of the amount obtained by applying the

formula set forth in paragraph (a)(1) of this section to the total amount of Program payments made within the State during the prior fiscal year; or, 80 percent of the amount obtained by applying the formula set forth in paragraph (a)(1) to the amount of Program funds estimated to be needed in the management and administration plan. The State agency shall be assured that it will receive no less than this level unless FCS determines that the State agency has failed or is failing to meet its responsibilities under this part.

(4) *Limitation.* In no event may the total payment for State administrative costs in any fiscal year exceed the total amount of expenditures incurred by the State agency in administering the Program.

(b) *State administrative funds Letter of Credit.* (1) At the beginning of each fiscal year, FCS shall make available to each participating State agency by Letter of Credit an initial allocation of State administrative funds for use in that fiscal year. This allocation shall not exceed one-third of the administrative funds provided to the State in the preceding fiscal year. For State agencies which did not receive any Program funds during the preceding fiscal year, the amount to be made available shall be determined by FCS.

(2) Additional State administrative funds shall be made available upon the receipt and approval by FCS of the State's Program management and administration plan. The amount of such funds, plus the initial allocation, shall not exceed 80 percent of the State administrative funds determined by the formula set forth in paragraph (a)(1) of this section and based on the estimates set forth in the approved Program management and administration plan.

(3) Any remaining State administrative funds shall be paid to each State agency as soon as practicable after the conduct of the funding assessment described in paragraph (c) of this section. However, regardless of whether such assessment is made, the remaining administrative funds shall be paid no later than September 1. The remaining administrative payment shall be in an amount equal to that determined to be needed during the funding evaluation or, if such evaluation is not conducted, the amount owed the State in accordance with paragraph (a)(1) of this section, less the amounts paid under paragraphs (b) (1) and (2) of this section.

(c) *Administrative funding evaluation.* FCSRO shall conduct data on the need for Program and State administrative funding within any State agency *if* the funding needs estimated in a State's management and administration plan are no longer accurate. Based on this data, FCS may make adjustments in the level of State administrative funding paid or payable to the State agency under paragraph (b) of this section to reflect changes in the size of the State's Program as compared to that estimated in its management and administration plan. The data shall be based on approved Program participation levels and shall be collected during the period of Program operations. As soon as possible following this data collection, payment of any additional administrative funds owed shall be made to the State agency. The payment may reflect adjustments made to the level of State administrative funding based on the information collected during the funding assessment. However, FCS shall not decrease the amount of a State's administrative funds as a result of this assessment unless the State failed to make reasonable efforts to administer the Program as proposed in its management and administration plan or the State incurred unnecessary expenses.

(d) *Letter of Credit for Program payments.* (1) Not later than April 15 of each fiscal year, FCS shall make available to each participating State in a Letter of Credit an amount equal to 65 percent of the preceding fiscal year's Program payments for operating costs plus 65 percent of the preceding fiscal year's Program payments for administrative costs in the State. This amount may be adjusted to reflect changes in reimbursement rates made pursuant to § 225.9(d)(8). However, the State shall not withdraw funds from this Letter of Credit until its Program management and administration plan is approved by FCS.

(2) Based on the State agency's approved management and administration plan, FCS shall, if necessary, adjust the State's Letter of Credit to ensure that 65 percent of estimated current year Program operating and administrative funding needs is available. Such adjustment shall be made no later than May 15, or within 90 days of FCS receipt of the State agency's management and administration plan, whichever date is later.

(3) Subsequent to the adjustment provided for in paragraph (d)(2) of this section, FCS will, if necessary, make one additional adjustment to ensure that the State agency's Letter of Credit contains at least 65 percent of the Program operating and administrative funds needed during the current fiscal year. Such adjustment may be based on the administrative funding assessment provided for in paragraph (c) of this section, if one is conducted, or on any additional information which demonstrates that the funds available in the Letter of Credit do not equal at least 65 percent of current year Program needs. In no case will such adjustments be made later than September 1. Funds made available in the Letter of Credit shall be used by the State agency to make Program payments to sponsors.

(4) The Letter of Credit shall include sufficient funds to enable the State agency to make advance payments to sponsors serving areas in which schools operate under a continuous school calendar. These funds shall be made available no later than the first day of the month prior to the month during which the food service will be conducted.

(5) FCS shall make available any remaining Program funds due within 45 days of the receipt of valid claims for reimbursement from sponsors by the State agency. However, no payment shall be made for claims submitted later than 60 days after the month covered by the claim unless an exception is granted by FCS.

(6) Each State agency shall release to FCS any Program funds which it determines are unobligated as of September 30 of each fiscal year. Release of funds by the State agency shall be made as soon as practicable, but in no event later than 30 calendar days following demand by FCS, and shall be accomplished by an adjustment in the State agency's Letter of Credit.

(e) *Adjustment to Letter of Credit.* Prior to May 15 of each fiscal year, FCS shall make any adjustments necessary in each State's Letter of Credit to reflect actual expenditures in the preceding fiscal year's Program.

(f) *Health inspection funds.* If the State agency's approved management and administration plan estimates a need for health inspection funding, FCS shall make available by letter of credit an amount up to one percent of Program funds estimated to be needed in the management and administration plan. Such amount may be adjusted, based on the administrative funding assessment provided for in paragraph (c) of this section, if such assessment is conducted. Health inspection funds shall be used solely to enable State or local health departments or other governmental agencies charged with health inspection functions to carry out health inspections and meal quality tests, provided that if these agencies cannot perform such inspections or tests, the State agency may use the funds to contract with an independent agency to conduct the inspection or meal quality tests. Funds so provided but not expended or obligated shall be returned to the Department by September 30 of the same fiscal year.

### § 225.6 State agency responsibilities.

(a) *General responsibilities.* (1) The State agency shall provide sufficient qualified consultative, technical, and managerial personnel to administer the Program, monitor performance, and measure progress in achieving Program goals. The State agency shall assign Program responsibilities to personnel to ensure that all applicable requirements under this part are met.

(2) By February 1 of each fiscal year, each State agency shall announce the purpose, eligibility criteria, and availability of the Program throughout the State, through appropriate means of communication. As part of this effort, each State agency shall identify rural areas, Indian tribal territories, and areas with a concentration of migrant farm workers which qualify for the

Program and actively seek eligible applicant sponsors to serve such areas. State agencies shall identify priority outreach areas in accordance with FNA guidance and target outreach efforts in these areas.

(3) Each State agency shall take the following steps to determine the eligibility of private nonprofit organizations to apply to sponsor the Program in particular areas:

(i) By February 1 each year, compile a list of potentially eligible sponsors (except potential sponsors which are private nonprofit organizations, discussed in paragraph (a)(3)(iii) of this section) which have not previously participated in the Program and contact them. These potential sponsors shall be encouraged to use their own facilities or the facilities of public or nonprofit private schools for the preparation, delivery, and service of meals under the Program.

(ii) By February 1 each year, when contacting the previous year's school food authority and governmental sponsors as required by paragraph (a)(3)(i) of this section, ask them to indicate in writing, no later than March 1, their interest in again serving as Program sponsors, in providing Program meals at the same sites which they served in the prior year, and in providing Program meals in new areas which they did not serve in the previous year. In addition, such entities shall be asked to list those sites or areas which they served in the prior year but do not intend to serve in the current year's Program. For each new area which these entities propose to serve, the school food authority or governmental sponsor shall describe the area's geographical boundaries and, whenever possible, the location and estimated dates of operation and daily attendance of each proposed new site. If such entities indicate their intention not to provide Program service at a site or in an area in which they sponsored the Program in the previous year, the State agency shall consult with the school food authority or unit of government to determine their reasons for discontinuing service at that site, and such reasons shall be accurately documented by the State agency;

(iii) Analyze the information collected as a result of the efforts described in paragraphs (a)(3)(i) and (a)(3)(ii) of this section and identify areas which apparently will be unserved in the current year's Program. After identifying potentially unserved areas, the State agency shall compile a list of potentially eligible private nonprofit organizations and contact them to ask that they provide, no later than April 25, a written indication of their interest in serving as Program sponsors, the geographical area(s) they propose to serve, and the approximate number of sites which they propose to serve. For each area which they propose to serve, the private nonprofit organization shall describe the area's geographical boundaries and, whenever possible, the location and estimated dates of operation and daily attendance of each proposed site. Private nonprofit organizations shall be advised that they are required to use their own facilities for meal preparation or to obtain meals from a public facility or a school participating in the National School Lunch Program; and

(iv) Analyze the information collected as a result of the efforts described in paragraphs (a)(3)(i)–(a)(3)(iii) of this section and, no later than May 1, notify private nonprofit organizations responding to the solicitation of interest described in paragraph (a)(3)(iii) of this section, of any sites which they would *not* be allowed to include in their formal application for Program sponsorships. This analysis shall be based upon:

(A) The State agency's application of the priority system described in paragraph (b)(5) of this section; and

(B) The ineligibility of private nonprofit organizations to sponsor the Program in an area where a school food authority or governmental sponsor had provided Program meal service during the previous 12 months. Such ineligibility may be waived by the State agency only if it is convinced (based on the contact described in paragraph (a)(3)(ii) of this section or, if the former sponsor did not respond, direct contact with the school food authority or governmental sponsor) that the school food authority or governmental sponsor

would not have a particular area regardless of the potential availability of a private nonprofit organization to sponsor the Program in that area.

(4) Each State agency shall require applicant sponsors submitting Program application site information sheets, Program agreements, or a request for advance payments, and sponsors submitting claims for reimbursement to certify that the information submitted on these forms is true and correct and that the sponsor is aware that deliberate misrepresentation or withholding of information may result in prosecution under applicable State and Federal statutes.

(5) In addition to the warnings specified in paragraph (a)(4) of this section, applications and pre-application materials distributed to private nonprofit organizations shall include, in bold lettering:

(i) The following criminal penalties and provisions established in section 13(o) of the National School Lunch Act (42 U.S.C. 1761(o)):

(A) Whoever, in connection with any application, procurement, recordkeeping entry, claim for reimbursement, or other document or statement made in connection with the Program, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or whoever, in connection with the Program, knowingly makes an opportunity for any person to defraud the United States, or does or omits to do any act with intent to enable any person to defraud the United States, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(B) Whoever being a partner, officer, director, or managing agent connected in any capacity with any partnership, association, corporation, business, or organization, either public or private, that receives benefits under the Program, knowingly or willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any benefits provided by this Program, or any money, funds, assets, or property derived from benefits provided by this Program, shall be fined not more than $10,000 or imprisoned for not more than five years, or both (but, if the benefits, money, funds, assets, or property involved is not over $200, then the penalty shall be a fine of not more than $1,000 or imprisonment for not more than one year, or both).

(C) If two or more persons conspire or collude to accomplish any act described in paragraphs (a)(5)(i) (A) and (B) of this section, and one or more of such persons do any act to effect the object of the conspiracy or collusion, each shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(ii) The procedures for termination from Program participation of any site or sponsor which is determined to be seriously deficient in its administration of the Program. In addition, the application shall also state that appeals of sponsor or site terminations shall follow procedures mandated by the State agency and shall also meet the minimum requirements of 7 CFR 225.13.

(b) *Approval of sponsor applications.* (1) Each State agency shall inform all of the previous year's sponsors which meet current eligibility requirements and all other potential sponsors of the deadline date for submitting a written application for participation in the Program. The State agency shall require that all applicant sponsors submit written applications for Program participation to the State agency by June 15 or, in the case of sponsors applying to administer the Program at academic-year NYSP sites when they did not participate in the previous summer's Program, by September 15. However, the State agency may establish an earlier deadline date for the Program application submission.

(2) Each State agency shall inform potential sponsors of the procedure for applying for advance operating and administrative costs payments as provided for in § 225.9(c). Where applicable, each State agency shall inform sponsors of the procedure for applying for start-up payments provided for in § 225.9(a).

(3) Within 30 days of receiving a complete and correct application, the State agency shall notify the applicant of its approval or disapproval. If an incomplete application is received, the State agency shall so notify the applicant within 15 days and shall provide technical assistance for the purpose of completing the application. Any disapproved applicant shall be notified of its right to appeal under §225.13.

(4) The State agency shall determine the eligibility of applicant sponsors applying for participation in the Program in accordance with the applicant sponsor eligibility criteria outlined in §225.14. However, State agencies may approve the application of an otherwise eligible applicant which does not provide a year-round service to the community which it proposes to serve under the Program only if it meets one or more of the following criteria: (i) It is a residential camp; (ii) it proposes to provide a food service for the children of migrant workers; (iii) a failure to do so would deny the Program to an area in which poor economic conditions exist; or (iv) a significant number of needy children will not otherwise have reasonable access to the Program.

(5) The State agency shall use the following order of priority in approving applicants to operate sites which propose to serve the same area or the same enrolled children:

(i) Applicants which are public or nonprofit private school food authorities and other applicants which have demonstrated successful Program performance in a prior year;

(ii) Applicants which propose to prepare meals at their own facilities or which operate only one site;

(iii) Applicants which propose to utilize local school food service facilities for the preparation of meals;

(iv) Other applicants which have demonstrated ability for successful Program operations;

(v) Applicants which plan to integrate the Program with Federal, State, or local employment or training programs; and

(vi) Applicants which are private nonprofit organizations.

(6)(i) With the exception of private nonprofit organizations, the State agency shall not approve any applicant sponsor to operate more than 200 sites or to serve an average daily attendance of more than 50,000 children unless the applicant can demonstrate to the satisfaction of the State agency that it has the capability of managing a program of that size.

(ii) State agencies shall approve no applicant private nonprofit organization to administer more than 5 urban or 20 rural sites or to serve more than 2,500 children per day. In addition, no private nonprofit organization shall be approved to serve any site with an anticipated attendance of more than 300 children at any approved meal service at any one site. However, private nonprofit organizations may apply for a waiver of the limit on the number of children served at a site in accordance with paragraph (b)(6)(iii) of this section. In instances where the private nonprofit organization is approved to administer both rural and urban sites, it may serve a maximum of 20 sites, of which no more than 5 many be urban.

(iii) No applicant private nonprofit organization may apply for a waiver of the limits on the number of urban, rural, or total sites, or the total number of children served at each approved meal service at such sites, which are set forth in paragraph (b)(6)(ii) of this section. Such applicant private nonprofit organization may, however, apply for a waiver of the 300-child per site limit set forth at paragraph (b)(6)(ii) of this section. Such waiver application shall demonstrate to the satisfaction of the State agency, through the use of school food service, census tract, or other data, that more than 300 children are likely to be served at an approved meal service at a given site and that the sponsor is fully capable of managing a site of this size. In addition, State agencies shall grant such waivers only if they are satisfied that no other sponsor is capable of serving the children in excess of 300 which the applicant sponsor proposes to serve at a particular meal service and site. In no case may a State agency approve an applicant private nonprofit organization to serve more than 500 children at any approved meal service at any one site.

(7) The State agency shall review each applicant's administrative budget

as a part of the application approval process in order to assess the applicant's ability to operate in compliance with these regulations within its projected reimbursement. In approving the applicant's administrative budget, the State agency shall take into consideration the number of sites and children to be served, as well as any other relevant factors. A sponsor's administrative budget shall be subject to review for adjustments by the State agency if the sponsor's level of site participation or the number of meals served to children changes significantly.

(8) Applicants which qualify as camps shall be approved for reimbursement only for meals served free to enrolled children who meet the Program's eligibility standards.

(9) The State agency shall not approve the application of any applicant sponsor identifiable through its organization or principals as a sponsor which has been determined to be seriously deficient as described in § 225.11(c). However, the State agency may approve the application of a sponsor which has been disapproved or terminated in prior years in accordance with this paragraph if the applicant demonstrates to the satisfaction of the State agency that it has taken appropriate corrective actions to prevent recurrence of the deficiencies.

(10) If the sponsor's application to participate is denied, the official making the determination of denial must notify the applicant sponsor in writing stating all of the grounds on which the State agency based the denial. Pending the outcome of a review of a denial, the State agency shall proceed to approve other applicants in accordance with its responsibilities under paragraph (b)(5) of this section, without regard to the application under review.

(11) The State agency shall not approve the application of any applicant sponsor which submits fraudulent information or documentation when applying for Program participation or which knowingly withholds information that may lead to the disapproval of its application. Complete information regarding such disapproval of an applicant shall be submitted by the State agency through FCSRO to OIG.

(c) *Content of sponsor application.* (1) The applicant shall submit a written application to the State agency for participation in the Program as a sponsor. The State agency may use the application form developed by FCS or it may develop an application form for use in the Program. Application shall be made on a timely basis in accordance with the deadline date established under § 225.6(b)(1).

(2) At a minimum, the application shall include:

(i) A site information sheet, as developed by the State agency, for each site where a food service operation is proposed. The site information sheet shall demonstrate or describe the following:

(A) An organized and supervised system for serving meals to attending children;

(B) The estimated number and types of meals to be served and the times of service;

(C) Arrangements, within standards prescribed by the State or local health authorities, for delivery and holding of meals until time of service, and arrangements for storing and refrigerating any leftover meals until the next day;

(D) Arrangements for food service during periods of inclement weather;

(E) Access to a means of communication for making necessary adjustments in the number of meals delivered in accordance with the number of children attending daily at each site;

(F) The geographic area to be served by the site;

(G) The percentage of children in the area to be served by the site who meet the Program's income standards; and

(H) Whether the site is rural, as defined in § 225.2, or non-rural, and whether the site's food service will be self-prepared or vended.

(ii) Along with its site information sheet for a site that is not a camp or a homeless feeding site, documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist.

(A) For those sites at which applicants will serve children of migrant workers, the documentation requirement may be met by providing the State agency with data from an organization determined by the State agency

to be a migrant organization which supports the eligibility of those children as a group.

(B) When a sponsor proposes to serve a site which it served in the previous year, documentation from the previous year may be used to support the eligibility of the site. For such sites, applicants shall only be required to obtain new documentation every other year.

(iii) Along with its site information sheet for a site which is a camp, documentation showing the number of children enrolled in each session who meet the Program's income standards. If such documentation is not available at the time of application, it shall be submitted as soon as possible thereafter and in no case later than the filing of the camp's claim for reimbursement for each session.

(iv) Along with its site information sheet for a homeless feeding site, information sufficient to demonstrate that the site is not a residential child care institution as defined in paragraph (c), definition of 'school', §210.2 of the National School Lunch Program regulations, and that the site's primary purpose is to provide shelter and one or more meal services per day to homeless families. In addition, if cash payments, food stamps, or any in-kind service are required of any meal recipient at such site, sponsors shall describe the method(s) used to ensure that no such payments or services are received for any Program meal served to children.

(v) Along with its site information sheet for NYSP sites, sponsors shall certify: That all of the children who will receive Program meals are enrolled participants in the NYSP; that no child participating in the NYSP during both the summer months and the academic year shall be required to submit more than one application to participate in the summer and academic-year phases of the Program; and that such applications shall be valid for a period commencing no earlier than May 1 and ending no later than April 30 of the following fiscal year.

(vi) Information in sufficient detail to enable the State agency to determine whether the applicant meets the criteria for participation in the Program as set forth in §225.14; the extent of Program payments needed, including a request for advance payments and start-up payments, if applicable; and a staffing and monitoring plan.

(vii) A complete administrative and operating budget for State agency review and approval. The administrative budget shall contain the projected administrative expenses which a sponsor expects to incur during the operation of the Program, and shall include information in sufficient detail to enable the State agency to assess the sponsor's ability to operate the Program within its estimated reimbursement. A sponsor's approved administrative budget shall be subject to subsequent review by the State agency for adjustments in projected administrative costs.

(viii) A plan for and a synopsis of its invitation to bid for food service, if an invitation to bid is required under §225.15(g).

(ix) A free meal policy statement, as described in paragraph (c)(3) of this section.

(x) For each applicant which seeks approval under §225.14(b)(3) as a unit of local, municipal, county or State government, or under §225.14(b)(5) as a private nonprofit organization, certification that it will directly operate the Program in accordance with §225.14(d)(4).

(3) Each applicant shall submit a statement of its policy for serving free meals at all sites under its jurisdiction.

(i) The policy statement shall consist of an assurance to the State agency that all children are served the same meals at no separate charge and that there is no discrimination in the course of the food service.

(ii) In addition, the policy statement for camps that charge separately for meals shall include the following:

(A) A statement that the eligibility standards conform to the Secretary's family size and income standards for reduced price school meals;

(B) A description of the method or methods to be used in accepting applications from families for Program meals. Such methods shall ensure that households are permitted to apply on behalf of children who are members of food stamp households or AFDC assistance units using the categorical eligibility procedures described in §225.15(f);

(C) A description of the method used by camps for collecting payments from children who pay the full price of the meal while preventing the overt identification of children receiving a free meal;

(D) An assurance that the camp will establish a hearing procedure for families wishing to appeal a denial of an application for free meals. Such hearing procedures shall meet the requirements set forth in paragraph (c)(4) of this section;

(E) An assurance that, if a family requests a hearing, the child shall continue to receive free meals until a decision is rendered; and

(F) An assurance that there will be no overt identification of free meal recipients and no discrimination against any child on the basis of race, color, national origin, sex, age, or handicap.

(4) Each applicant that is a camp shall submit with its application a copy of its hearing procedures. At a minimum, these procedures shall provide:

(i) That a simple, publicly announced method will be used for a family to make an oral or written request for a hearing;

(ii) That the family will have the opportunity to be assisted or represented by an attorney or other person;

(iii) That the family will have an opportunity to examine the documents and records supporting the decision being appealed both before and during the hearing;

(iv) That the hearing will be reasonably prompt and convenient for the family;

(v) That adequate notice will be given to the family of the time and place of the hearing;

(vi) That the family will have an opportunity to present oral or documentary evidence and arguments supporting its position;

(vii) That the family will have an opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(viii) That the hearing shall be conducted and the decision made by a hearing official who did not participate in the action being appealed;

(ix) That the decision shall be based on the oral and documentary evidence presented at the hearing and made a part of the record;

(x) That the family and any designated representative shall be notified in writing of the decision;

(xi) That a written record shall be prepared for each hearing which includes the action being appealed, any documentary evidence and a summary of oral testimony presented at the hearing, the decision and the reasons for the decision, and a copy of the notice sent to the family; and

(xii) That the written record shall be maintained for a period of three years following the conclusion of the hearing, during which it shall be available for examination by the family or its representatives at any reasonable time and place.

(d) *Approval of sites.* (1) When evaluating a proposed food service site, the State agency shall ensure that:

(i) If not a camp, or a homeless feeding site, the proposed site serves an area in which poor economic conditions exist, as defined by § 225.2;

(ii) The area which the site proposes to serve is not or will not be served in whole or in part by another site, unless it can be demonstrated to the satisfaction of the State agency that each site will serve children not served by any other site in the same area for the same meal; and

(iii) The site is approved to serve no more than the number of children for which its facilities are adequate.

(2) When approving the application of a site which will serve meals prepared by a food service management company, the State agency shall establish for each meal service an approved level for the maximum number of children's meals which may be served under the Program. These approved levels shall be established in accordance with the following provisions:

(i) The initial maximum approved level shall be based upon the historical record of attendance at the site if such a record has been established in prior years and the State agency determines that it is accurate. The State agency shall develop a procedure for establishing initial maximum approved levels

for sites when no accurate record from prior years is available.

(ii) The maximum approved level shall be adjusted, if warranted, based upon information collected during site reviews. If attendance at the site on the day of the review is significantly below the site's approved level, the State agency should consider making a downward adjustment in the approved level with the objective of providing only one meal per child.

(iii) The sponsor may seek an upward adjustment in the approved level for its sites by requesting a site review or by providing the State agency with evidence that attendance exceeds the sites' approved levels.

(iv) Whenever the State agency establishes or adjusts approved levels of meal service for a site, it shall document the action in its files, and it shall provide the sponsor with immediate written confirmation of the approved level.

(v) Upon approval of its application or any adjustment to its maximum approved levels, the sponsor shall inform the food service management company with which it contracts of the approved level for each meal service at each site served by the food service management company. This notification of any adjustments in approved levels shall take place within the time frames set forth in the contract for adjusting meal orders. Whenever the sponsor notifies the food service management company of the approved levels or any adjustments to these levels for any of its sites, the sponsor shall clearly inform the food service management company that an approved level of meal service represents the maximum number of meals which may be served at a site and is not a standing order for a specific number of meals at that site. When the number of children attending is below the site's approved level, the sponsor shall adjust meal orders with the objective of serving only one meal per child as required under §225.15(b)(3).

(e) *State-Sponsor Agreement.* Sponsors approved for participation in the Program shall enter into written agreements with the State agency. The agreements shall provide that the sponsor shall:

(1) Operate a nonprofit food service during any period from May through September for children on school vacation; or, at any time of the year, in the case of sponsors administering the Program under a continuous school calendar system; or during the period from October through April under the academic-year NYSP. Sponsors participating in both the summer and academic-year phases of the NYSP shall be required to enter into one agreement with the State agency which shall be valid for a 12-month period commencing no earlier than May 1 and ending no later than April 30 of the following fiscal year;

(2) Serve meals which meet the requirements and provisions set forth in §225.16 during times designated as meal service periods by the sponsor, and serve the same meals to all children;

(3) Serve meals without cost to all children, except that camps may charge for meals served to children who are not served meals under the Program;

(4) Issue a free meal policy statement in accordance with §225.6(c);

(5) Meet the training requirement for its administrative and site personnel, as required under §225.15(d)(1);

(6) Claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children at approved sites during the approved meal service period, except that camps shall claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children who meet the Program's income standards. The agreement shall specify the approved levels of meal service for the sponsor's sites if such levels are required under §225.6(d)(2). No permanent changes may be made in the serving time of any meal unless the changes are approved by the State agency;

(7) Submit claims for reimbursement in accordance with procedures established by the State agency, and those stated in §225.9;

(8) In the storage, preparation and service of food, maintain proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(9) Accept and use, in quantities that may be efficiently utilized in the Program, such foods as may be offered as a donation by the Department;

(10) Have access to facilities necessary for storing, preparing, and serving food;

(11) Maintain a financial management system as prescribed by the State agency;

(12) Maintain on file documentation of site visits and reviews in accordance with § 225.15(d) (2) and (3);

(13) Upon request, make all accounts and records pertaining to the Program available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place. The records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain, unless audit or investigative findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved;

(14) Maintain children on site while meals are consumed; and

(15) Retain final financial and administrative responsibility for its program.

(f) *Special Account*. In addition, the State agency may require any vended sponsor to enter into a special account agreement with the State agency. The special account agreement shall stipulate that the sponsor shall establish a special account with a State agency or Federally insured bank for operating costs payable to the sponsor by the State. The agreement shall also stipulate that any disbursement of monies from the account must be authorized by both the sponsor and the food service management company. The special account agreement may contain such other terms, agreed to by both the sponsor and the food service management company, which are consistent with the terms of the contract between the sponsor and the food service management company. A copy of the special account agreement shall be submitted to the State agency and another copy maintained on file by the sponsor. Any charges made by the bank for the account described in this section shall be considered an allowable sponsor administrative cost.

(g) *Food service management company registration*. (1) With the exception of the exemptions described in paragraph (g)(9) of this section, each food service management company shall register with the State by March 15 of each fiscal year. A State agency shall consider a food service management company's application for registration submitted after March 15 of the current year only if the State agency determines and documents that failing to consider the company's application could potentially result in a significant number of needy children not having reasonable access to the Program.

(2) By February 1, each State agency shall notify each food service management company which participated in the State's Program during the previous two years that it must register with the State agency. This notification shall include, at a minimum:

(i) A statement that registration with the State agency is a prerequisite to participation in the Program;

(ii) A list of the items which must be submitted with the application for registration as set forth in paragraph (g)(4) of this section;

(iii) A complete description of the criteria developed by the State agency for determining registrant eligibility; and

(iv) Any other information necessary to apply for registration.

In addition, each State agency shall by February 1 issue a public announcement of the registration requirement, including all the information necessary to apply for registration.

(3) Each State agency shall require food service management companies submitting applications for registration to certify that the information submitted is true and correct and that the food service management company is aware that misrepresentation may result in prosecution under applicable State and Federal statutes.

(4) At a minimum registration shall require:

(i) Submission of the food service management company's name and mailing address and any other names under which the company has operated during the past two years;

(ii) A certification that the food service management company meets applicable State and local health, safety, and sanitation standards;

(iii) Disclosure of present company owners, directors, and officers, and their relationship in the past two years to any sponsor or food service management company which participated in the Program;

(iv) Records of contract terminations, disallowances, and health, safety, and sanitation code violations related to Program participation during the past two years;

(v) Records of any other contract terminations and health, safety, and sanitation code violations during the past two years;

(vi) The address or addresses of the company's food preparation and distribution facilities which will be used in the Program and the name of the local official responsible for the operation of these facilities;

(vii) The number of Program meals which can be prepared in each preparation facility during a twenty-four hour period;

(viii) A certification that the food service management company will operate in accordance with current Program regulations;

(ix) A statement that the food service management company understands that it will not be paid for meals which are delivered to non-approved sites, or for meals which are delivered to approved sites outside of the agreed upon delivery time, or for meals that do not meet the meal requirements and food specifications contained in the contract between the sponsor and the food service management company;

(x) Submission of a Certified Public Accountant's audit report if an audit was performed during the prior year; and

(xi) A statement as to whether the organization is a minority business enterprise. A minority business enterprise is a business in which:

(A) The management and daily operations of the business are controlled by a member or members of a minority group (minority groups are Blacks, Hispanics, American Indians, Alaskan Natives, Orientals and Aleuts); and

(B) At least 51 percent of which is owned by a member or members of a minority group. If the business is a corporation, at least 51 percent of all classes of voting stock of the corporation must be owned by members of a minority group; if the business is a partnership, at least 51 percent of the partnership must be owned by a member or members of a minority group.

(5) Prior to approving a food service management company's request for registration, the State agency shall provide for inspection of all food preparation facilities listed on the application for registration, except those located outside the State. The State agency shall promptly notify FCSRO of the name and location of any out-of-State facility, and FCSRO shall ensure that the facility is inspected prior to registration. The purpose of the inspection is to evaluate each facility's suitability for preparation of Program meals. The State agency may waive this inspection requirement if a facility was registered during the previous summer and operated in accordance with Program requirements.

(6) No food service management company shall be registered if the State agency determines that the company lacks the administrative and financial capability to perform under the Program or if it is identifiable through its organization or principals as a food service management company which participated in the Program during any previous year and was seriously deficient in its Program operation. Serious deficiencies which are grounds for non-registration include, but are not limited to, any of the following:

(i) Noncompliance with the applicable bid procedures, contract requirements, or Program regulations;

(ii) Submission of false information to the State agency;

(iii) Failure to conform meal deliveries to meal orders;

(iv) Delivery of a significant number of meals which did not meet contract requirements;

(v) Failure to maintain adequate records;

(vi) Significant health code violations which were not corrected upon reinspection;

(vii) Failure to deliver meals; or

(viii) The conviction of any officer, owner, partner, or manager of the company for a crime in connection with the prior Program operation.

(7) The State agency shall notify in writing each food service management company which applied for registration of its determination within 30 calendar days of receiving the complete application. If the application for registration is denied, the official making the determination must notify the food service management company in writing, stating all the grounds on which the State agency based the denial.

(8) Each State agency shall submit information to FCS regarding registration of food service management companies, as required under § 225.8(d).

(9) The following types of food service management companies are exempt from the requirement for registration: (i) A school or school food authority acting as a food service management company; and (ii) a food service management company which has an exclusive contract with a school or school food authority for year-round service and has no contracts with other Program sponsors.

(h) *Monitoring of food service management company procurements.* (1) The State agency shall ensure that sponsors' food service management company procurements are carried out in accordance with §§ 225.15(g) and 225.17 of this part.

(2) Each State agency shall develop a standard form of contract for use by sponsors in contracting with food service management companies. Sponsors which are public entities, sponsors with exclusive year-round contracts with a food service management company, and sponsors whose food service management company contract(s) do not exceed $10,000 in aggregate value may use their existing or usual form of contract, provided that such form of contract has been submitted to and approved by the State agency. The standard contract developed by the State agency shall expressly and without exception provide that:

(i) All meals prepared by a food service management company shall be unitized, with or without milk or juice, unless the State agency has approved, pursuant to paragraph (h)(3) of this section, a request for exceptions to the unitizing requirement for certain components of a meal;

(ii) A food service management company entering into a contract with a sponsor under the Program shall not subcontract for the total meal, with or without milk, or for the assembly of the meal;

(iii) The sponsor shall provide to the food service management company a list of State agency approved food service sites, along with the approved level for the number of meals which may be claimed for reimbursement for each site, established under § 225.6(d)(2), and shall notify the food service management company of all sites which have been approved, cancelled, or terminated subsequent to the submission of the initial approved site list and of any changes in the approved level of meal service for a site. Such notification shall be provided within the time limits mutually agreed upon in the contract;

(iv) The food service management company shall maintain such records (supported by invoices, receipts, or other evidence) as the sponsor will need to meet its responsibilities under this part, and shall submit all required reports to the sponsor promptly at the end of each month, unless more frequent reports are required by the sponsor;

(v) The food service management company shall have State or local health certification for the facility in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the food service management company shall provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being served. These levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals served by other food service establishments in the locality. The results of the inspections shall be submitted promptly to the sponsor and to the State agency;

(vi) The meals served under the contract shall conform to the cycle menus and meal quality standards and food specifications approved by the State agency and upon which the bid was based;

(vii) The books and records of the food service management company pertaining to the sponsor's food service operation shall be available for inspection and audit by representatives of the State agency, the Department and the U.S. General Accounting Office at any reasonable time and place for a period of 3 years from the date of receipt of final payment under the contract, except that, if audit or investigation findings have not been resolved, such records shall be retained until all issues raised by the audit or investigation have been resolved;

(viii) The sponsor and the food service management company shall operate in accordance with current Program regulations;

(ix) The food service management company shall be paid by the sponsor for all meals delivered in accordance with the contract and this part. However, neither the Department nor the State agency assumes any liability for payment of differences between the number of meals delivered by the food service management company and the number of meals served by the sponsor that are eligible for reimbursement;

(x) Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;

(xi) Increases and decreases in the number of meals ordered shall be made by the sponsor, as needed, within a prior notice period mutually agreed upon;

(xii) All meals served under the Program shall meet the requirements of § 225.16;

(xiii) In cases of nonperformance or noncompliance on the part of the food service management company, the company shall pay the sponsor for any excess costs which the sponsor may incur by obtaining meals from another source;

(xiv) If the State agency requires the sponsor to establish a special account for the deposit of operating costs payments in accordance with the conditions set forth in § 225.6(f), the contract shall so specify;

(xv) The food service management company shall submit records of all costs incurred in the sponsor's food service operation in sufficient time to allow the sponsor to prepare and submit the claim for reimbursement to meet the 60-day submission deadline; and

(xvi) The food service management company shall comply with the appropriate bonding requirements, as set forth in § 225.15(g) (6)–(8).

(3) All meals prepared by a food service management company shall be unitized, with or without milk or juice, unless the sponsor submits to the State agency a request for exceptions to the unitizing requirement for certain components of a meal. These requests shall be submitted to the State agency in writing in sufficient time for the State agency to respond prior to the sponsor's advertising for bids. The State agency shall notify the sponsor in writing of its determination in a timely manner.

(4) Each State agency shall have a representative present at all food service management company procurement bid openings when sponsors are expected to receive more than $100,000 in Program payments.

(5) Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, shall be submitted to the State agency prior to the beginning of Program operations. Sponsors shall also submit to the State agency copies of all bids received and their reason for selecting the food service management company chosen.

(6) All bids in an amount which exceeds the lowest bid shall be submitted to the State agency for approval before acceptance. All bids totaling $100,000 or more shall be submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.

(7) Failure by a sponsor to comply with the provisions of this paragraph or § 225.15(g)(1) shall be sufficient

grounds for the State agency to terminate participation by the sponsor in accordance with § 225.18(b).

(i) *Meal pattern exceptions.* The State agency shall review and act upon requests for exceptions to the meal pattern in accordance with the guidelines and limitations set forth in § 225.16.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13467, Apr. 10, 1990]

### § 225.7 Program monitoring and assistance.

(a) *Training.* Prior to the beginning of Program operations, each State agency shall make available training in all necessary areas of Program administration to sponsor personnel, food service management company representatives, auditors, and health inspectors who will participate in the Program in that State. Prior to Program operations, the State agency shall ensure that the sponsor's supervisory personnel responsible for the food service receive training in all necessary areas of Program administration and operations. This training shall reflect the fact that individual sponsors or groups of sponsors require different levels and areas of Program training. State agencies are encouraged to utilize in such training, and in the training of site personnel, sponsor personnel who have previously participated in the Program. Training should be made available at convenient locations. In the training of private nonprofit organizations, State agencies shall give special emphasis to proper meal counting techniques, meal pattern requirements, free and reduced price application requirements, restrictions on second meal service, the prohibition on off-site meal consumption, timely and accurate claims submission, and recordkeeping.

(b) *Program materials.* Each State agency shall develop and make available all necessary Program materials in sufficient time to enable applicant sponsors to prepare adequately for the Program.

(c) *Food specifications and meal quality standards.* With the assistance of the Department, each State agency shall develop and make available to all sponsors minimum food specifications and model meal quality standards which shall become part of all contracts between vended sponsors and food service management companies.

(d) *Program monitoring and assistance.* The State agency shall conduct Program monitoring and provide Program assistance according to the following provisions:

(1) *Pre-approval visits.* The State agency shall conduct pre-approval visits of sponsors and sites, as specified below, to assess the applicant sponsor's or site's potential for successful Program operations and to verify information provided in the application. The State agency shall visit prior to approval:

(i) All applicant sponsors which did not participate in the program in the prior year. However, if a sponsor is a school food authority, has been reviewed by the State agency under the National School Lunch Program during the preceding 12 months, and had no significant deficiencies noted in that review, a pre-approval visit may be conducted at the discretion of the State agency;

(ii) All applicant sponsors which, as a result of operational problems noted in the prior year, the State agency has determined need a pre-approval visit; and

(iii) With the exception of sites administered by private nonprofit organizations, all proposed nonschool sites with an expected average daily attendance of 300 children or more which did not participate in the Program in the prior year.

(iv) In the case of private nonprofit organizations, all proposed sites with an expected attendance at an approved meal service of 100 children or more which did not participate in the Program in the prior year.

(2) *Sponsor and site reviews.* The State agency shall review sponsors and sites to ensure compliance with Program regulations, the Department's nondiscrimination regulations (7 CFR part 15) and any other applicable instructions issued by the Department. In determining which sponsors and sites to review under this paragraph, the State agency shall, at a minimum, consider the sponsors' and sites' previous participation in the Program, their current and previous Program performance, and the results of any previous

reviews of the sponsor and sites. Reviews shall be conducted as follows:

(i) State agencies conduct both a review of sponsor operations and review an average of 15 percent of the following sponsors' sites (with a minimum of one site reviewed per sponsor) during the first four weeks of operation:

(A) Private nonprofit organizations which administer only urban sites, when such sponsors did not participate in the prior year's SFSP and administer three or more urban sites;

(B) Other private nonprofit organizations which are determined by the State agency to need early reviews;

(C) Any sponsors, including private nonprofit organizations, which have 10 or more sites and which did not operate the Program in the prior year; and

(D) Other sponsors of 10 or more sites which are determined by the State agency to need early reviews.

(ii) Beginning in Fiscal Year 1991, State agencies shall conduct a review of academic-year NYSP sponsors, and at least one of their sites, during the period October through April.

(iii) In addition to the reviews specified in paragraphs (d)(2)(i) and (d)(2)(ii) of this section, the State agency shall also conduct the following reviews (with a minimum of one site reviewed per sponsor) at least once during the Program:

(A) For all remaining sponsors with 10 or more sites, an average of at least 15 percent of their sites; and

(B) For 70 percent of sponsors with fewer than 10 sites, an average of at least 10 percent of their sites.

(3) *Follow-up reviews.* The State agency shall conduct follow-up reviews of sponsors and sites as necessary.

(4) *Monitoring system.* Each State agency shall develop and implement a monitoring system to ensure that sponsors, including site personnel, and the sponsor's food service management company, if applicable, immediately receive a copy of any review reports which indicate Program violations and which could result in a Program disallowance.

(5) *Records.* Documentation of Program assistance and the results of such assistance shall be maintained on file by the State agency.

(6) *Food service management company facility visits.* As a part of the review of any vended sponsor which contracts for the preparation of meals, the State agency shall inspect the food service management company's facilities. Each State agency shall establish an order of priority for visiting facilities at which food is prepared for the Program. The State agency shall respond promptly to complaints concerning facilities. If a food service management company fails to correct violations noted by the State agency during a review, the State agency shall notify the sponsor and the food service management company that reimbursement shall not be paid for meals prepared by the food service management company after a date specified in the notification. Funds provided for in § 225.5(f) may be used for conducting food service management company facility inspections.

(7) *Forms for reviews by sponsors.* Each State agency shall develop and provide monitor review forms to all approved sponsors. These forms shall be completed by sponsor monitors. The monitor review form shall include, but not be limited to, the time of the reviewer's arrival and departure, the site supervisor's signature, a certification statement to be signed by the monitor, the number of meals prepared or delivered, the number of meals served to children, the deficiencies noted, the corrective actions taken by the sponsor, and the date of such actions.

(8) *Statistical monitoring.* State agencies may use statistical monitoring procedures in lieu of the site monitoring requirements prescribed in paragraph (d)(2) of this section to accomplish the monitoring and technical assistance aspects of the Program. State agencies which use statistical monitoring procedures may use the findings in evaluating claims for reimbursement. Statistical monitoring may be used for some or all of a State's sponsors. Use of statistical monitoring does not eliminate the requirements for reviewing sponsors as specified in paragraph (d)(2) of this section.

(9) *Corrective actions.* Corrective actions which the State agency may take when Program violations are observed

during the conduct of a review are discussed in § 225.11. The State agency shall conduct follow-up reviews as appropriate when corrective actions are required.

(e) *Other facility inspections and meal quality tests.* In addition to those inspections required by paragraph (d)(6) of this section, the State agency may also conduct, or arrange to have conducted: inspections of self-preparation and vended sponsors' food preparation facilities; inspections of food service sites; and meal quality tests. The procedures for carrying out these inspections and tests shall be consistent with procedures used by local health authorities. For inspections of food service management companies' facilities not conducted by State agency personnel, copies of the results shall be provided to the State agency. The company and the sponsor shall also immediately receive a copy of the results of these inspections when corrective action is required. If a food service management company fails to correct violations noted by the State agency during a review, the State agency shall notify the sponsor and the food service management company that reimbursement shall not be paid for meals prepared by the food service management company after a date specified in the notification. Funds provided for in § 225.5(f) may be used for conducting these inspections and tests.

(f) *Financial management.* Each State agency shall establish a financial management system, in accordance with the Department's Uniform Financial Assistance Regulations (7 CFR part 3015) and FCS guidance, to identify allowable Program costs and to establish standards for sponsor recordkeeping and reporting. The State agency shall provide guidance on these financial management standards to each sponsor.

(g) *Nondiscrimination.* (1) Each State agency shall comply with all requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR parts 15, 15a and 15b), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person shall, on the grounds of race, color, national origin, sex, age, or handicap, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, the Program.

(2) Complaints of discrimination filed by applicants or participants shall be referred to FCS or the Secretary of Agriculture, Washington, DC 20250. A State agency which has an established grievance or complaint handling procedure may resolve sex and handicap discrimination complaints before referring a report to FCS.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13468, Apr. 10, 1990]

### § 225.8 Records and reports.

(a) Each State agency shall maintain complete and accurate current accounting records of its Program operations which will adequately identify funds authorizations, obligations, unobligated balances, assets, liabilities, income, claims against sponsors and efforts to recover overpayments, and expenditures for administrative and operating costs. These records shall be retained for a period of three years after the date of the submission of the final Program Operations and Financial Status Report (SF–269), except that, if audit findings have not been resolved, the affected records shall be retained beyond the three year period until such time as any issues raised by the audit findings have been resolved. The State agency shall also retain a complete record of each review or appeal conducted, as required under § 225.13, for a period of three years following the date of the final determination on the review or appeal. Records may be kept in their original form or on microfilm.

(b) Each State agency shall submit to FCS a final report on the Summer Food Service Program Operations (FCS–418) for each month no more than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not postmarked and/or submitted within this time limit unless FCS grants an

exception. Upward adjustments to a State's report shall not be made after 90 days from the month covered by the report unless authorized by FCS. Downward adjustments shall always be made without FCS authorization, regardless of when it is determined that such adjustments need to be made. Adjustments to a State's report shall be reported to FCS in accordance with procedures established by FCS. Each State agency shall also submit to FCS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. Action may be taken against the State agency, in accordance with §225.5(a)(1), for failure to submit accurate and timely reports.

(c) The State agency must submit to FCS a final Financial Status Report no later than 120 days after the end of the fiscal year, on a form (SF–269) provided by FCS. Any requested increase in reimbursement levels for a fiscal year resulting from corrective action taken after submission of the final Program Operations and Financial Status Reports shall be submitted to FCS for approval. The request shall be accompanied by a written explanation of the basis for the adjustment and the actions taken to minimize the need for such adjustments in the future. If FCS approves such an increase, it will make payment, subject to availability of funds. Any reduction in reimbursement for that fiscal year resulting from corrective action taken after submission of the final fiscal year Program Operations and Financial Status Reports shall be handled in accordance with the provisions of §225.12(d), except that amounts recovered may not be used to make Program payments.

(d) By October 15, each State agency shall submit to FCS, on a form provided by FCS, information concerning each food service management company which applied to the State agency for registration for that calendar year's Program. This information shall be made available to State agencies upon request in order to ensure that only qualified food service management companies contract for services in all States. FCS shall allow any food service management company to review the information concerning that company which was submitted to FCS in accordance with this paragraph.

(e) No later than May 1 of each year, State agencies shall submit to the appropriate FCSRO a list of names and addresses of each potential private nonprofit organization, the geographical area(s) which such potential sponsors propose to serve, the approximate number of sites which they propose to serve and, whenever possible, the location and estimated dates of operation and daily attendance of each proposed site. Such listing shall be based on the information gathered and analyzed in accordance with §225.6(a)(3) of this part. In addition, within five working days of approving a private nonprofit organization to participate in the Program, State agencies shall notify FCS of such approval and shall provide updated information for each of the private nonprofit organization's approved sites regarding the sites' locations, dates of operation, and estimated daily attendance; the duration, number, and type(s) of approved meal service at each site; and whether the site is rural or urban, vended or self-preparation, enrolled or open, or is a homeless feeding site.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13469, Apr. 10, 1990]

### §225.9 Program assistance to sponsors.

(a) *Start-up payments.* At their discretion, State agencies may make start-up payments to sponsors which have executed Program agreements. Start-up payments shall not be made more than two months before the sponsor is scheduled to begin food service operations and shall not exceed 20 percent of the sponsor's approved administrative budget. The amount of the start-up payment shall be deducted from the first advance payment for administrative costs or, if the sponsor does not receive advance payments, from the first administrative reimbursement.

(b) *Commodity assistance.* (1) Sponsors eligible to receive commodities under the Program include: Self-preparation sponsors; sponsors which have entered into an agreement with a school or

school food authority for the preparation of meals; and sponsors which are school food authorities and have competitively procured Program meals from the same food service management company from which they competitively procured meals for the National School Lunch Program during the last period in which school was in session. The State agency shall make available to these sponsors information on available commodities. Sponsors shall use in the Program food donated by the Department and accepted by sponsors.

(2) Not later than June 1 of each year, State agencies shall prepare a list of the sponsors which are eligible to receive commodities and the average daily number of eligible meals to be served by each of these sponsors. If the State agency does not handle the distribution of commodities donated by the Department, this list shall be forwarded to the agency of the State responsible for the distribution of commodities. The State agency shall be responsible for promptly revising the list to reflect additions or terminations of sponsors and for adjusting the average daily participation data as it deems necessary.

(c) *Advance payments.* At the sponsor's request, State agencies shall make advance payments to sponsors which have executed Program agreements in order to assist these sponsors in meeting operating costs and administrative expenses. For sponsors operating under a continuous school calendar, all advance payments shall be forwarded on the first day of each month of operation. Advance payments shall be made by the dates specified in paragraphs (c) (1) and (2) of this section for all other sponsors whose requests are received at least 30 days prior to those dates. Requests received less than 30 days prior to those dates shall be acted upon within 30 days of receipt. When making advance payments, State agencies shall observe the following criteria:

(1) *Operating costs.* (i) State agencies shall make advance payments for operating costs by June 1, July 15, and August 15. To be eligible for the second advance payment, the sponsor must have conducted training sessions covering Program duties and responsibilities for its own personnel and for site personnel. A sponsor shall not receive advance operating cost payments for any month in which it will participate in the Program for less than ten days.

(ii) To determine the amount of the advance payment to any sponsor, the State agency shall employ whichever of the following methods will result in the larger payment:

(A) The total operating costs paid to the sponsor for the same calendar month in the preceding year; or

(B) For vended sponsors, 50 percent of the amount determined by the State agency to be needed that month for meals, and, for self-preparation sponsors, 65 percent of the amount determined by the State agency to be needed that month for meals.

(2) *Administrative costs.* (i) State agencies shall make advance payments for administrative costs by June 1 and July 15. To be eligible for the second advance payment, the sponsor must certify that it is operating the number of sites for which the administrative budget was approved and that its projected administrative costs do not differ significantly from the approved budget. A sponsor shall not receive advance administrative costs payments for any month in which it will participate in the Program for less than 10 days. However, if a sponsor operates for less than 10 days in June but for at least 10 days in August, the second advance administrative costs payment shall be made by August 15.

(ii) Each payment shall equal one-third of the total amount which the State agency determines the sponsor will need to administer its program. For sponsors which will operate for 10 or more days in only one month and, therefore, will qualify for only one advance administrative costs payment, the payment shall be no less than one-half, and no more than two-thirds, of the total amount which the State agency determines the sponsor will need to administer its program.

(3) *Advance payment estimates.* When determining the amount of advance payments payable to the sponsor, the State agency shall make the best possible estimate based on the sponsor's request and any other available data.

Under no circumstances may the amount of the advance payment for operating or administrative costs exceed the amount estimated by the State agency to be needed by the sponsor to meet operating or administrative costs, respectively.

(4) *Limit.* The sum of the advance operating and administrative costs payments to a sponsor for any one month shall not exceed $40,000 unless the State agency determines that a larger payment is necessary for the effective operation of the Program and the sponsor demonstrates sufficient administrative and managerial capability to justify a larger payment.

(5) *Deductions from advance payments.* The State agency shall deduct from either advance operating payments or advance administrative payments the amount of any previous payment which is under dispute or which is part of a demand for recovery under § 225.12.

(6) *Withholding of advance payments.* If the State agency has reason to believe that a sponsor will not be able to submit a valid claim for reimbursement covering the month for which advance payments have already been made, the subsequent month's advance payment shall be withheld until a valid claim is received.

(7) *Repayment of excess advance payments.* Upon demand of the State agency, sponsors shall repay any advance Program payments in excess of the amount cited on a valid claim for reimbursement.

(d) *Reimbursements.* Sponsors shall not be eligible for reimbursements for operating and administrative costs unless they have executed an agreement with the State agency. All reimbursements shall be in accordance with the terms of this agreement. Reimbursements shall not be paid for meals served at a site before the sponsor has received written notification that the site has been approved for participation in the Program. Income accruing to a sponsor's program shall be deducted from combined operating and administrative costs. The State agency may make full or partial reimbursement upon receipt of a claim for reimbursement, but shall first make any necessary adjustments in the amount to be paid. The following requirements shall be observed in submitting and paying claims:

(1) No reimbursement may be issued until the sponsor certifies that it operated all sites for which it is approved and that there has been no significant change in its projected administrative costs since its preceding claim and, for a sponsor receiving an advance payment for only one month, that there has been no significant change in its projected administrative costs since its initial advance administrative costs payment.

(2) Sponsors which operate less than 10 days in the final month of operations shall submit a combined claim for the final month and the immediate preceding month within 60 days of the last day of operation.

(3) The State agency shall forward reimbursements within 45 days of receiving valid claims. If a claim is incomplete or invalid, the State agency shall return the claim to the sponsor within 30 days with an explanation of the reason for disapproval. If the sponsor submits a revised claim, final action shall be completed within 45 days of receipt.

(4) Claims for reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of Summer Food Service Program Operations required under § 225.8(b). In submitting a claim for reimbursement, each sponsor shall certify that the claim is correct and that records are available to support this claim. Failure to maintain such records may be grounds for denial of reimbursement for meals served and/or administrative costs claimed during the period covered by the records in question. The costs of meals served to adults performing necessary food service labor may be included in the claim. Under no circumstances may a sponsor claim the cost of any disallowed meals as operating costs.

(5) A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency not later than 60 days after the last day of the month covered by the claim. State agencies may establish shorter deadlines at

their discretion. Claims not filed within the 60 day deadline shall not be paid with Program funds unless FCS determines that an exception should be granted. The State agency shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the month covered by the claim and are reflected in the final Program Operations Report (FCS–418). Upward adjustments in Program funds claimed which are not reflected in the final FCS–418 for the month covered by the claim cannot be made unless authorized by FCS. Downward adjustments in Program funds claimed shall always be made without FCS authorization, regardless of when it is determined that such adjustments are necessary.

(6) With the exception of academic-year NYSP sponsors, whose reimbursements are set forth in paragraph (d)(10) of this section, payments to a sponsor for operating costs shall equal the lesser of the following totals:

(i) The actual operating costs incurred by the sponsor; or

(ii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by the current rates for each meal type, as adjusted in accordance with paragraph (d)(8) of this section.

(7) With the exception of academic-year NYSP sponsors, whose reimbursements are set forth in paragraph (d)(10) of this section, payments to a sponsor for administrative costs shall equal the lowest of the following totals:

(i) The amount estimated in the sponsor's approved administrative budget (taking into account any amendments);

(ii) The actual administrative costs incurred by the sponsor; or

(iii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by the current administrative rates for each meal type, as adjusted in accordance with paragraph (d)(8) of this section. Sponsors shall be eligible to receive additional administrative reimbursement for each meal served to participating children at rural or self-preparation sites, and the rates for such additional administrative reimbursement shall be adjusted in accordance with paragraph (d)(8) of this section.

(8) Each January 1, FCS shall publish a notice in the FEDERAL REGISTER announcing any adjustment to the reimbursement rates described in paragraphs (d) (6)(ii) and (7)(iii) of this section. Adjustments shall be based upon changes in the series for food away from home of the Consumer Price Index for all Urban Consumers since the establishment of the rates.

(9) Sponsors of camps shall be reimbursed only for meals served to children in camps whose eligibility for Program meals is documented. Sponsors of NYSP sites shall only claim reimbursement for meals served to children enrolled in the NYSP.

(10) Sponsors of NYSP sites operating during the academic year shall claim reimbursement for no more than 30 days of meal service for the period October through April. For meals served to children at NYSP sites during the months October through April, sponsors shall be reimbursed as follows:

(i) For each eligible lunch or supper served, the rate for lunches served free in the National School Lunch Program, as described in 7 CFR part 210, § 210.4(b).

(ii) For each eligible breakfast or supplement served, the rate for severe need breakfasts served free in the School Breakfast Program, as described in 7 CFR part 220, § 220.9(b).

(11) If a State agency has reason to believe that a sponsor or food service management company has engaged in unlawful acts in connection with Program operations, evidence found in audits, reviews, or investigations shall be a basis for nonpayment of the applicable sponsor's claims for reimbursement.

(e) The sponsor may claim reimbursement for any meals which are examined for meal quality by the State

agency, auditors, or local health authorities and found to meet the meal pattern requirements.

(f) The sponsor shall not claim reimbursement for meals served to children at any site in excess of the site's approved level of meal service, if one has been established under §225.6(d)(2). However, the total number of meals for which operating costs are claimed may exceed the approved level of meal service if the meals exceeding this level were served to adults performing necessary food service labor in accordance with paragraph (d)(4) of this section. In reviewing a sponsor's claim, the State agency shall ensure that reimbursements for second meals are limited to the percentage tolerance established in §225.15(b)(4).

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13469, Apr. 10, 1990]

### §225.10 Audits and management evaluations.

(a) *Audits.* State agencies shall arrange for audits of their own operations to be conducted in accordance with the Department's Uniform Federal Assistance Regulations (7 CFR part 3015). Unless otherwise exempt, sponsors shall arrange for audits to be conducted in accordance with 7 CFR part 3015. State agencies shall provide OIG with full opportunity to audit the State agency and sponsors. Each State agency shall make available its records, including records of the receipt and expenditure of funds, upon a reasonable request from OIG. While OIG shall rely to the fullest extent feasible upon State-sponsored audits of sponsors, it shall, when considered necessary, (1) make audits on a State-wide basis, (2) perform on-site test audits, and (3) review audit reports and related working papers of audits performed by or for State agencies.

(b) *Management evaluations.* (1) State agencies shall provide FCS with full opportunity to conduct management evaluations (including visits to sponsors) of all operations of the State agency. Each State agency shall make available its records, including records of the receipts and expenditures of funds, upon a reasonable request by FCS.

(2) The State agency shall fully respond to any recommendations made by FCSRO pursuant to the management evaluation.

(3) FCSRO may require the State agency to submit on 20 days notice a corrective action plan regarding serious problems observed during any phase of the management evaluation.

(c) *Disregards.* In conducting management evaluations or audits for any fiscal year, the State agency, FCS or OIG may disregard overpayment which does not exceed $100 or, in the case of State agency administered programs, does not exceed the amount established by State law, regulations or procedures as a minimum for which claims will be made for State losses generally. No overpayment shall be disregarded, however, when there are unpaid claims for the same fiscal year from which the overpayment can be deducted or when there is substantial evidence of violation of criminal law or civil fraud statutes.

### §225.11 Corrective action procedures.

(a) *Purpose.* The provisions in this section shall be used by the State agency to improve Program performance.

(b) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. The State agency shall maintain on file all evidence relating to such investigations and actions. The State agency shall inform the appropriate FCSRO of any suspected fraud or criminal abuse in the Program which would result in a loss or misuse of Federal funds. The Department may make investigations at the request of the State agency, or where the Department determines investigations are appropriate.

(c) *Denial of applications and termination of sponsors.* Except as specified below, the State agency shall not enter into an agreement with any applicant sponsor identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any Federal child nutrition program and was seriously deficient in its operation of any such

program. The State agency shall terminate the Program agreement with any sponsor which it determines to be seriously deficient. However, the State agency shall afford a sponsor reasonable opportunity to correct problems before terminating the sponsor for being seriously deficient. The State agency may approve the application of a sponsor which has been disapproved or terminated in prior years in accordance with this paragraph if the sponsor demonstrates to the satisfaction of the State agency that the sponsor has taken appropriate corrective actions to prevent recurrence of the deficiencies. Serious deficiencies which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:

(1) Noncompliance with the applicable bid procedures and contract requirements of Federal child nutrition program regulations;

(2) The submission of false information to the State agency;

(3) Failure to return to the State agency any start-up or advance payments which exceeded the amount earned for serving meals in accordance with this part, or failure to submit all claims for reimbursement in any prior year, provided that failure to return any advance payments for months for which claims for reimbursement are under dispute from any prior year shall not be grounds for disapproval in accordance with this paragraph; and

(4) Program violations at a significant proportion of the sponsor's sites. Such violations include, but are not limited to, the following:

(i) Noncompliance with the meal service time restrictions set forth at § 225.16(c);

(ii) Failure to maintain adequate records;

(iii) Failure to adjust meal orders to conform to variations in the number of participating children;

(iv) The simultaneous service of more than one meal to any child;

(v) The claiming of Program payments for meals not served to participating children;

(vi) Service of a significant number of meals which did not include required quantities of all meal components;

(vii) Excessive instances of off-site meal consumption;

(viii) Continued use of food service management companies that are in violation of health codes.

(d) *Meal service restriction.* With the exception for residential camps set forth at § 225.16(b)(1)(ii), the State agency shall restrict to one meal service per day:

(1) Any food service site which is determined to be in violation of the time restrictions for meal service set forth at § 225.16(c) when corrective action is not taken within a reasonable time as determined by the State agency; and

(2) All sites under a sponsor if more than 20 percent of the sponsor's sites are determined to be in violation of the time restrictions set forth at § 225.16(c). If this action results in children not receiving meals under the Program, the State agency shall make reasonable effort to locate another source of meal service for these children.

(e) *Meal disallowances.* (1) If the State agency determines that a sponsor has failed to plan, prepare, or order meals with the objective of providing only one meal per child at each meal service at a site, the State agency shall disallow the number of children's meals prepared or ordered in excess of the number of children served.

(2) If the State agency observes meal service violations during the conduct of a site review, the State agency shall disallow as meals served to children all of the meals observed to be in violation.

(3) The State agency shall also disallow children's meals which are in excess of a site's approved level established under § 225.6(d)(2).

(f) *Corrective action and termination of sites.* (1) Whenever the State agency observes violations during the course of a site review, it shall require the sponsor to take corrective action. If the State agency finds a high level of meal service violations, the State agency shall require a specific immediate corrective action plan to be followed by the sponsor and shall either conduct a follow-up visit or in some other manner verify that the specified corrective action has been taken.

(2) The State agency shall terminate the participation of a sponsor's site if

the sponsor fails to take action to correct the Program violations noted in a State agency review report within the timeframes established by the corrective action plan.

(3) The State agency shall immediately terminate the participation of a sponsor's site if during a review it determines that the health or safety of the participating children is imminently threatened.

(4) If the site is vended, the State agency shall within 48 hours notify the food service management company providing meals to the site of the site's termination.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13469, Apr. 10, 1990]

### §225.12 Claims against sponsors.

(a) The State agency shall disallow any portion of a claim for reimbursement and recover any payment to a sponsor not properly payable under this part, except as provided for in §225.10(c). State agencies may consider claims for reimbursement not properly payable if a sponsor's records do not justify all costs and meals claimed. However, the State agency shall notify the sponsor of the reasons for any disallowance or demand for repayment.

(b) Minimum State agency collection procedures for unearned payments shall include:

(1) Written demand to the sponsor for the return of improper payments;

(2) If after 30 calendar days the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments, sent by certified mail, return receipt requested;

(3) If after 60 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a third written demand for the return of improper payments, sent by certified mail, return receipt requested;

(4) If after 90 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the sponsor to the appropriate State or Federal authorities for pursuit of legal remedies.

(c) If FCS does not concur with the State agency's action in paying a sponsor or in failing to collect an overpayment, FCS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FCS for failure to collect an overpayment unless FCS determines that the State agency has conformed with this part in issuing the payment and has exerted reasonable efforts in accordance with paragraph (b) of this section to recover the improper payment.

(d) The amounts recovered by the State agency from sponsors may be utilized to make Program payments to sponsors for the period for which the funds were initially available and/or to repay the State for any of its own funds used to make payments on claims for reimbursement. Any amounts recovered which are not so utilized shall be returned to FCS in accordance with the requirements of this part.

### §225.13 Appeal procedures.

(a) Each State agency shall establish a procedure to be followed by an applicant appealing: A denial of an application for participation; a denial of a sponsor's request for an advance payment; a denial of a sponsor's claim for reimbursement (except for late submission under §225.9(d)(5)); a State agency's refusal to forward to FCS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim; a claim against a sponsor for remittance of a payment; the termination of the sponsor or a site; a denial of a sponsor's application for a site; a denial of a food service management company's application for registration; or the revocation of a food service management company's registration. Appeals shall not be allowed on decisions made by FCS with respect to late claims or upward adjustments under §225.9(d)(5).

(b) At a minimum, appeal procedures shall provide that:

(1) The sponsor or food service management company be advised in writing of the grounds upon which the State

agency based the action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also state that the sponsor or food service management company has the right to appeal the State's action;

(2) The sponsor or food service management company be advised in writing that the appeal must be made within a specified time and must meet the requirements of paragraph (b)(4) of this section. The State agency shall establish this period of time at not less than one week nor more than two weeks from the date on which the notice of action is received;

(3) The appellant be allowed the opportunity to review any information upon which the action was based;

(4) The appellant be allowed to refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the appellant within seven days of submitting the appeal, must clearly identify the State agency action being appealed, and must include a photocopy of the notice of action issued by the State agency;

(5) A hearing be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter appealing the action. The appellant may retain legal counsel or may be represented by another person. Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official;

(6) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 5 days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

(7) The hearing be held within 14 days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraphs (b) (4) and (5) of this section;

(8) The review official be independent of the original decision-making process;

(9) The review official make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(10) Within 5 working days after the appellant's hearing, or within 5 working days after receipt of written documentation if no hearing is held, the reviewing official make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested;

(11) The State agency's action remain in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued Program operation shall not be allowed if the State agency's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State agency shall so specify in its notice of action; and

(12) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(c) The State agency shall send written notification of the complete appeal procedures and of the actions which are appealable, as specified in paragraph (a) of this section, to each potential sponsor applying to participate and to each food service management company applying to register in accordance with § 225.6(g).

(d) A record regarding each review shall be kept by the State agency, as required under § 225.8(a). The record shall document the State agency's compliance with these regulations and shall include the basis for its decision.

## Subpart C—Sponsor and Site Provisions

### §225.14 Requirements for sponsor participation.

(a) *Applications.* Sponsors shall make written application to the State agency to participate in the Program. Such application shall be made on a timely basis in accordance with the requirements of §225.6(b)(1).

(b) *Sponsor eligibility.* Applicants eligible to sponsor the Program include:

(1) Public or nonprofit private school food authorities;

(2) Public or nonprofit private residential summer camps;

(3) Units of local, municipal, county, or State governments;

(4) Public or private nonprofit colleges or universities which are currently participating in the National Youth Sports Program; and

(5) Private nonprofit organizations as defined in §225.2.

(c) *General requirements.* No applicant sponsor shall be eligible to participate in the Program unless it:

(1) Demonstrates financial and administrative capability for Program operations and accepts final financial and administrative responsibility for total Program operations at all sites at which it proposes to conduct a food service;

(2) Has not been seriously deficient in operating the Program;

(3) Will conduct a regularly scheduled food service for children from areas in which poor economic conditions exist, or qualifies as a camp or a homeless feeding site;

(4) Has adequate supervisory and operational personnel for overall monitoring and management of each site, including adequate personnel to conduct the visits and reviews required in §§225.15(d) (2) and (3);

(5) Provides an ongoing year-round service to the community which it proposes to serve under the Program, except as provided for in §225.6(b)(4);

(6) Certifies that all sites have been visited and have the capability and the facilities to provide the meal service planned for the number of children anticipated to be served; and

(7) Enters into a written agreement with the State agency upon approval of its application, as required in §225.6(e).

(d) *Requirements specific to sponsor types.* (1) If the sponsor is not a camp or a homeless feeding site, it shall provide documentation that its food service will serve children from an area in which poor economic conditions exist, as defined in §225.2.

(2) If the sponsor is a camp, it shall certify that it will collect information on participants' eligibility to support its claim for reimbursement.

(3) If the sponsor administers the Program at sites at which summer school is in session, it shall ensure that such sites are open both to children enrolled in summer school and to all children residing in the area served by the site.

(4) Sponsors which are units of local, municipal, county or State government, and sponsors which are private nonprofit organizations, shall be approved to administer the Program only at sites over which they have direct operational control. Such operational control means that the sponsor shall be responsible for:

(i) Managing site staff, including such areas as hiring, terminating and determining conditions of employment for site staff; and

(ii) Exercising management control over Program operations at sites throughout the period of Program participation by performing the functions specified in §225.15.

(5) If the sponsor administers homeless feeding sites, it shall document that the site is not a residential child care institution as defined in paragraph (c), definition of 'school', §210.2 of the National School Lunch Program regulations, and that the site's primary purpose is to provide shelter and meals to homeless families. In addition, sponsors of homeless feeding sites shall certify that such sites employ meal counting methods which ensure that reimbursement is claimed only for meals served to homeless and non-homeless children.

(6) If the sponsor administers NYSP sites, it shall ensure that applications have been taken to document the site's eligibility and that all children at such

sites are enrolled participants in the NYSP.

(7) If the sponsor is a private nonprofit organization, it shall certify that it:

(i) Serves a total of not more than 2,500 children per day;

(ii) Serves no more than five sites in any urban area, or 20 sites in any rural area, with not more than 300 children being served at any approved meal service at any one site (or, with a waiver granted by the State in accordance with § 225.6(b)(6)(iii) of this part, not more than 500 children being served at any approved meal service at any one site);

(iii) Either uses self-preparation facilities to prepare meals or obtains meals from a public facility (such as a school district, public hospital, or State university) or a school participating in the National School Lunch Program;

(iv) Operates in areas where a school food authority or the local, municipal, or county government has not indicated by March 1 of the current year that such authority or unit of local government will operate the Program in the current year (except that, if a school food authority or local, municipal, or county government has served that area in the prior year's Program, the private nonprofit organization may only operate in that area if it receives a waiver from the State agency in accordance with § 225.6(a)(3)(iv)(B));

(v) Exercises full control and authority over the operation of the Program at all sites under its sponsorship;

(vi) Provides ongoing year-round activities for children or families;

(vii) Demonstrates that it possesses adequate management and the fiscal capacity to operate the Program; and

(viii) Meets applicable State and local health, safety, and sanitation standards.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13469, Apr. 10, 1990]

### § 225.15 Management responsibilities of sponsors.

(a) *General.* (1) Sponsors shall operate the food service in accordance with: the provisions of this part; any instructions and handbooks issued by FCS under this part; and any instructions and handbooks issued by the State agency which are not inconsistent with the provisions of this part.

(2) Sponsors shall not claim reimbursement under parts 210, 215, 220, or 226 of this chapter. In addition, sponsors administering homeless feeding sites shall ensure that, if such sites receive commodities as a ''charitable institution'' pursuant to part 250 of this chapter (§§ 250.3 and 250.41) during their participation in the Program, the site's records establish that its allotment of FDCIP commodities was based only on the number of eligible adult meals served, while the site's SFSP commodity allotment was based only on the number of eligible children's meals served. Sponsors may use funds from other Federally-funded programs to supplement their meal service but must, in calculating their claim for reimbursement, deduct such funds from total operating and administrative costs in accordance with the definition of ''income accruing to the Program'' at § 225.2 and with the regulations at § 225.9(d). Sponsors which are school food authorities may use facilities, equipment and personnel supported by funds provided under this part to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

(3) No sponsor may contract out for the management responsibilities of the Program described in this section.

(b) *Meal Ordering.* (1) Each sponsor shall, to the maximum extent feasible, utilize either its own food service facilities or obtain meals from a school food service facility. If the sponsor obtains meals from a school food service facility, the applicable requirements of this part shall be embodied in a written agreement between the sponsor and the school.

(2) Upon approval of its application or any adjustment in the approved levels of meal service for its sites established under § 225.6(d)(2), vended sponsors shall inform their food service management company of the approved level at each site for which the food service management company will provide meals.

(3) Sponsors shall plan for and prepare or order meals on the basis of participation trends with the objective of providing only one meal per child at each meal service. The sponsor shall make the adjustments necessary to achieve this objective using the results from its monitoring of sites. For sites for which approved levels of meal service have been established in accordance with § 225.6(d)(2), the sponsor shall adjust the number of meals ordered or prepared with the objective of providing only one meal per child whenever the number of children attending the site is below the approved level. The sponsor shall not order or prepare meals for children at any site in excess of the site's approved level, but may order or prepare meals above the approved level if the meals are to be served to adults performing necessary food service labor in accordance with § 225.9(d)(4). Records of participation and of preparation or ordering of meals shall be maintained to demonstrate positive action toward meeting this objective.

(4) In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, sponsors may claim reimbursement for a number of second meals which does not exceed two percent of the number of first meals served to children for each meal type (i.e., breakfasts, lunches, supplements, or suppers) during the claiming period. The State agency shall disallow all claims for second meals if it determines that the sponsor failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. Second meals shall be served only after all participating children at the site's meal service have been served a meal.

(c) *Records and claims.* (1) Sponsors shall maintain accurate records which justify all costs and meals claimed. Failure to maintain such records may be grounds for denial of reimbursement for meals served and/or administrative costs claimed during the period covered by the records in question. The sponsor's records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and the State agency for a period of three years following the date of submission of the final claim for reimbursement for the fiscal year.

(2) Sponsors shall submit claims for reimbursement in accordance with this part. All final claims must be submitted to the State agency within 60 days following the last day of the month covered by the claim.

(d) *Training and monitoring.* (1) Each sponsor shall hold Program training sessions for its administrative and site personnel and shall allow no site to operate until personnel have attended at least one of these training sessions. Training of site personnel shall, at a minimum, include: the purpose of the Program; site eligibility; recordkeeping; site operations; meal pattern requirements; and the duties of a monitor. Each sponsor shall ensure that its administrative personnel attend State agency training provided to sponsors, and sponsors shall provide training throughout the summer to ensure that administrative personnel are thoroughly knowledgeable in all required areas of Program administration and operation and are provided with sufficient information to enable them to carry out their Program responsibilities. Each site shall have present at each meal service at least one person who has received this training.

(2) Sponsors shall visit each of their sites at least once during the first week of operation under the Program and shall promptly take such actions as are necessary to correct any deficiencies.

(3) Sponsors shall review food service operations at each site at least once during the first four weeks of Program operations, and thereafter shall maintain a reasonable level of site monitoring. Sponsors shall complete a monitoring form developed by the State agency during the conduct of these reviews.

(e) *Media Release.* Each sponsor shall annually announce in the media serving the area from which it draws its attendance the availability of free meals. Camps and other programs not eligible under § 225.2 (paragraph (a) of ''areas in which poor economic conditions exist'')

shall annually announce to all participants the availability of free meals for eligible children. All media releases issued by camps and other programs not eligible under § 225.2 (paragraph (a) of ''areas in which poor economic conditions exist'') shall include: the Secretary's family-size and income standards for reduced price school meals labelled ''SFSP Income Eligibility Standards''; a statement that children who are members of food stamp households or AFDC assistance units are automatically eligible to receive free meal benefits at eligible program sites; and a statement that meals are available without regard to race, color, national origin, sex, age, or handicap.

(f) *Application for free Program meals.* (1) For the purpose of determining eligibility for free Program meals, camps and other programs not eligible under § 225.2 (paragraph (a) of ''areas in which poor economic conditions exist'') shall distribute applications for meals to parents or guardians of children enrolled in the program. The application, and any other descriptive material distributed to such persons, shall contain only the family-size and income levels for reduced price school meal eligibility with an explanation that households with incomes less than or equal to these values are eligible for free Program meals. Such forms and descriptive material may not contain the income standards for free meals in the National School Lunch or School Breakfast Programs. In addition, such forms and materials shall state that, if a child is a member of a food stamp household or an AFDC assistance unit, the child is automatically eligible to receive free program meal benefits, subject to completion of the application as described in paragraph (f)(3) of this section.

(2) Except as provided in paragraph (f)(3) of this section, the application shall contain a request for the following information: (i) The names of all children for whom application is made; (ii) the names of all other household members; (iii) the social security number of the adult household member who signs the application, or an indication that he/she does not possess a social security number; (iv) the income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income); (v) a statement to the effect that, ''In certain cases, foster children are eligible for free meals regardless of household income. If such children are living with you and you wish to apply for such meals, please contact us''; (vi) a statement which includes substantially the following information: ''Section 9 of the National School Lunch Act requires that, unless a food stamp or AFDC case number is provided for your child, you must include the social security number of the adult household member signing the application, or indicate that the household member does not have a social security number. Provision of a social security number is not mandatory, but if a social security number is not provided or an indication is not made that the signer does not have a social security number, the application cannot be approved. This notice must be brought to the attention of the household member whose social security number is disclosed. The social security number may be used to identify the household member in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits and investigations and may include contacting employers to determine income; contacting a food stamp or welfare office to determine current certification for receipt of food stamp or AFDC benefits; contacting the State employment security office to determine the amount of benefits received; and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss of benefits, administrative claims, or legal action if incorrect information is reported.'' State agencies and sponsors shall ensure that the notice complies with section 7 of Pub. L. 93–579 (Privacy Act of 1974). If a State or local agency plans to use the social security numbers in a manner not described by this notice, the notice shall be altered to include a description of these uses. The sponsor shall take the income information provided by the

household on the application and calculate the household's total current income; and (vii) the signature of an adult member of the household immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution under applicable State and Federal criminal statutes.

(3) If they so desire, households applying on behalf of children who are members of food stamp households or AFDC assistance units may apply for free meal benefits using the procedures described in this paragraph rather than the procedures described in paragraph (f)(2) of this section. In accordance with paragraph (f)(2)(vi) of this section, if a food stamp or AFDC case number is provided, it may be used to verify the current food stamp or AFDC certification for the child(ren) for whom free meal benefits are being claimed. Whenever households applying for benefits for children not receiving food stamp or AFDC benefits, they must apply for those children in accordance with the requirements set forth in paragraph (f)(2) of this section. Households applying on behalf of children who are members of food stamp households or AFDC assistance units shall be required to provide:

(i) The name(s) and food stamp or AFDC case number(s) of the child(ren) for whom automatic free meal eligibility is claimed; and

(ii) The signature of an adult member of the household below the statement described in paragraph (f)(2)(vii) of this section.

(4) Households selected to provide verification shall provide a social security number for each adult household member or an indication that such member does not have one. The notice to households of selection for verification shall include the following:

(i) Section 9 of the National School Lunch requires that unless the child's food stamp or AFDC case number is provided, households selected for verification must provide the social security number of each adult household member;

(ii) In lieu of providing a social security number, an adult household member may indicate that he/she does not possess one;

(iii) Provision of a social security number is not mandatory but if a social security number is not provided for each adult household member or an indication is not made that he/she does not possess one, benefits will be terminated;

(iv) The social security number may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application and continued eligibility for the program. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss or reduction of benefits, administrative claims or legal actions if incorrect information was reported; and

(v) This information must be provided to the attention of each adult household member disclosing his/her social security number. State agencies shall ensure that the notice complies with section 7 of Pub. L. 93–579 (Privacy Act of 1974). These households shall be provided with the name and phone number of an official who can assist in the verification effort. Selected households shall also be informed that, in lieu of any information that would otherwise be required, they can submit proof of current food stamp or AFDC Program certification as described in paragraph (f)(3) of this section to verify the free meal eligibility of a child who is a member of a food stamp household or AFDC assistance unit. All households selected for verification shall be advised that failure to cooperate with

verification efforts will result in the termination of benefits.

(g) *Food service management companies.* (1) Failure by a sponsor to comply with the provisions of this section shall be sufficient grounds for the State agency to terminate that sponsor's participation in accordance with § 225.18.

(2) A sponsor may contract only with a food service management company which is registered with the State in which the sponsor will operate the Program, unless the food service management company is not required to register in accordance with § 225.6(g)(9).

(3) Any sponsor except a private nonprofit organization may contract with a food service management company to manage the sponsor's food service operations and/or for the preparation of unitized meals with or without milk or juice. Exceptions to the unitizing requirement may only be made in accordance with the provisions set forth at § 225.6(h)(3).

(4) Any vended sponsor shall be responsible for ensuring that its food service operation is in conformity with its agreement with the State agency and with all the applicable provisions of this part.

(5) In addition to any applicable State or local laws governing bid procedures, and with the exceptions identified in this paragraph, each sponsor which contracts with a food service management company shall comply with the competitive bid procedures described in this paragraph. Sponsors which are schools or school food authorities and which have an exclusive contract with a food service management company for year-round service, and sponsors whose total contracts with food service management companies will not exceed $10,000, shall not be required to comply with these procedures. These exceptions do not relieve the sponsor of the responsibility to ensure that competitive procurement procedures are followed in contracting with any food service management company. Each sponsor whose proposed contract is subject to the specific bid procedures set forth in this paragraph shall ensure, at a minimum, that:

(i) All proposed contracts are publicly announced at least once, not less than 14 calendar days prior to the opening of bids, and the announcement includes the time and place of the bid opening;

(ii) The bids are publicly opened;

(iii) The State agency is notified, at least 14 calendar days prior to the opening of the bids, of the time and place of the bid opening;

(iv) The invitation to bid does not specify a minimum price;

(v) The invitation to bid contains a cycle menu approved by the State agency upon which the bid is based;

(vi) The invitation to bid contains food specifications and meal quality standards approved by the State agency upon which the bid is based;

(vii) The invitation to bid does not specify special meal requirements to meet ethnic or religious needs unless such special requirements are necessary to meet the needs of the children to be served;

(viii) Neither the invitation to bid nor the contract provides for loans or any other monetary benefit or term or condition to be made to sponsors by food service management companies;

(ix) Nonfood items are excluded from the invitation to bid, except where such items are essential to the conduct of the food service;

(x) A copy of the food service management company registration determination issued by the State agency is submitted by the food service management company with its bid;

(xi) Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, are submitted to the State agency prior to the beginning of Program operations;

(xii) Copies of all bids received are submitted to the State agency, along with the sponsor's reason for choosing the successful bidder; and

(xiii) All bids in an amount which exceeds the lowest bid and all bids totaling $100,000 or more are submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.

(6) Each food service management company which submits a bid over $100,000 shall obtain a bid bond in an

amount not less than five (5) percent nor more than ten (10) percent, as determined by the sponsor, of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid.

(7) Each food service management company which enters into a food service contract for over $100,000 with a sponsor shall obtain a performance bond in an amount not less than ten (10) percent nor more than twenty-five (25) percent of the value of the contract, as determined by the State agency, of the value of the contract for which the bid is made. Any food service management company which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of the contracts exceeds $100,000. Sponsors shall require the food service management company to furnish a copy of the performance bond within ten days of the awarding of the contract.

(8) Food service management companies shall obtain bid bonds and performance bonds only from surety companies listed in the current Department of the Treasury Circular 570. No sponsor or State agency shall allow food service management companies to post any ''alternative'' forms of bid or performance bonds, including but not limited to cash, certified checks, letters of credit, or escrow accounts.

(h) *Other responsibilities.* Sponsors shall comply with all of the meal service requirements set forth in §225.16.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13470, Apr. 10, 1990; 61 FR 25553, May 22, 1996]

### §225.16 Meal service requirements.

(a) *Sanitation.* Sponsors shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Sponsors shall ensure that adequate facilities are available to store food or hold meals. Within two weeks of receiving notification of their approval, but in any case prior to commencement of Program operation, sponsors shall submit to the State agency a copy of their letter advising the appropriate health department of their intention to provide a food service during a specific period at specific sites.

(b) *Meal Services.* The meals which may be served under the Program are breakfast, lunch, supper, and supplemental food. No sponsor shall be approved to provide more than two services of supplemental food per day. A sponsor shall only be reimbursed for meals served in accordance with this section.

(1) *Camps.* Sponsors of camps shall only be reimbursed for meals served in camps to children from families which meet the eligibility standards for this Program. The sponsor shall maintain a copy of the documentation establishing the eligibility of each child receiving meals under the Program. Meal service at camps shall be subject to the following provisions:

(i) A camp may serve up to four meals each day;

(ii) Residential camps are not subject to the time restrictions for meal service set forth at paragraphs (c) (1) and (2) of this section; and

(iii) A camp shall be approved to serve these meals only if it has the administrative capability to do so; if the service period of the different meals does not coincide or overlap; and, where applicable, if it has adequate food preparation and holding facilities.

(2) *Homeless Feeding Sites.* Sponsors of homeless feeding sites shall ensure that the site's primary purpose is to provide shelter and meals to homeless families and that such sites claim reimbursement only for meals served to homeless and non-homeless children. Homeless feeding sites are not subject to the time restrictions for meal service set forth at paragraphs (c)(1)–(3) of this section.

(3) *NYSP Sites.* Sponsors of NYSP sites shall only be reimbursed for meals served to enrolled NYSP participants at these sites. NYSP sites participating in the Program during the months of October through April shall claim reimbursement for no more than two meals or one meal and one supplement per day for not more than 30 days of meal service.

(4) *Restrictions on the number and type of meals served.* Food service sites other

than camps, NYSP sites operation during the months of October through April, and sites which primarily serve migrant children may serve either: (i) One meal each day, a breakfast, a lunch, or supplement; or (ii) two meals each day, if one is a lunch and the other is a breakfast or a supplement.

(5) *Sites which serve children of migrant families.* Food service sites which primarily serve children from migrant families may be approved to serve up to four meals each day. These sites shall serve children in areas where poor economic conditions exist as defined in § 225.2. A sponsor which operates in accordance with this part shall receive reimbursement for all meals served to children at these sites. A site which primarily serves children from migrant families shall only be approved to serve more than one meal each day if it has the administrative capability to do so; if the service period of the different meals does not coincide or overlap; and, where applicable, if it has adequate food preparation and holding facilities.

(c) *Time restrictions for meal service.* (1) Three hours shall elapse between the beginning of one meal service, including supplements, and the beginning of another, except that 4 hours shall elapse between the service of a lunch and supper when no supplement is served between lunch and supper. The service of supper shall begin no later than 7 p.m., unless the State agency has granted a waiver of this requirement due to extenuating circumstances. These waivers shall be granted only when the State agency and the sponsor ensure that special arrangements shall be made to monitor these sites. In no case may the service of supper extend beyond 8 p.m. The time restrictions in this paragraph shall not apply to residential camps.

(2) The duration of the meal service shall be limited to two hours for lunch or supper and one hour for all other meals.

(3) Meals served outside of the period of approved meal service shall not be eligible for Program payments.

(4) Any permanent or planned changes in meal service periods must be approved by the State agency.

(5) Meals which are not prepared at the food service site shall be delivered no earlier than one hour prior to the beginning of the meal service (unless the site has adequate facilities for holding hot or cold meals within the temperatures required by State or local health regulations) and no later than the beginning of the meal service.

(6) The sponsor shall claim for reimbursement only the type(s) of meals for which it is approved under its agreement with the State agency.

(d) *Meal patterns.* The meal requirements for the Program are designed to provide nutritious and well-balanced meals to each child. Sponsors shall ensure that meals served meet all of the requirements. Except as otherwise provided in this section, the following tables present the minimum requirements for meals served to children in the Program.

BREAKFAST

(1) Except in the case of NYSP sponsors participating during the months of October through April, children age 12 and up may be served adult-size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section. The minimum amount of food components to be served as breakfast are as follows:

| Food components | Minimum amount |
|---|---|
| Vegetables and Fruits | |
| Vegetable(s) and/or fruit(s) ..... | ½ cup.[1] |
| or | |
| Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice. | ½ cup (4 fl. oz.) |
| Bread and Bread Alternates[2] | |
| Bread ..... | 1 slice. |
| or | |
| Cornbread, biscuits, rolls, muffins, etc. | 1 serving.[3] |
| or | |
| Cold dry cereal ..... | ¾ cup or 1 oz.[4] |
| or | |
| Cooked cereal or cereal grains | ½ cup. |

| Food components | Minimum amount |
|---|---|
| or<br>Cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate. | ½ cup. |
| Milk[5] | |
| Milk, fluid | 1 cup (½ pint, 8 fl. oz.) |
| Meat and Meat Alternates (Optional) | |
| Lean meat or poultry or fish<br>or<br>Cheese<br>or<br>Eggs<br>or<br>Cooked dry beans or peas<br>or<br>Peanut butter or an equivalent quantity of any combination of meat/meat alternate.<br>or<br>Yogurt, plain or flavored, unsweetened or sweetened. | 1 oz.<br><br>1 oz.<br><br>1 large egg.<br><br>½ cup.<br><br>2 tbsp.<br><br>4 oz. or ½ cup. |

[1] For the purposes of the requirement outlined in this table, a cup means a standard measuring cup.
[2] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.
[3] Serving sizes and equivalents will be in guidance materials to be distributed by FCS to State agencies.
[4] Either volume (cup) or weight (oz.), whichever is less.
[5] Milk shall be served as a beverage or on cereal, or used in part for each purpose.

LUNCH OR SUPPER

(2) Except in the case of NYSP sponsors participating during the months of October through April, the minimum amounts of food components to be served as lunch or supper are as follows:

| Food components | Minimum amount |
|---|---|
| Meat and Meat Alternates | |
| Lean meat or poultry or fish<br>or<br>Cheese<br>or<br>Eggs<br>or<br>Cooked dry beans or peas<br>or<br>Peanut butter or soynut butter or other nut or seed butters.<br>or<br>Peanuts or soynuts or tree nuts or seed[2].<br>or<br>Yogurt, plain or flavored, unsweetened or sweetened.<br>or<br>An equivalent quantity of any combination of the above meat/meat alternates. | 2 oz.<br><br>2 oz.<br><br>1 large egg<br><br>½ cup[1]<br><br>4 tbsp.<br><br>1 oz. =50%[3]<br><br>8 oz. or 1 cup. |
| Vegetables and Fruit | |
| Vegetable(s) and/or fruit(s)[4] | ¾ cup total |
| Bread and Bread Alternates[5] | |
| Bread<br>or<br>Cornbread, biscuits, rolls, muffins, etc.<br>or<br>Cooked pasta or noodle products.<br>or<br>Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate. | 1 slice<br><br>1 serving[6]<br><br>½ cup<br><br>½ cup |
| Milk | |
| Milk, fluid, served as a beverage. | 1 cup (½ pint, 8 fl. oz.) |

[1] For purposes of the requirements outlined in the table, a cup means a standard measuring cup.
[2] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.
[3] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purposes of determining combinations, 1 oz. of nuts or seeds is equal to 1 oz. of cooked lean meat, poultry or fish.
[4] Serve 2 or more kinds of vegetable(s) and or fruit(s) or a combination of both. Full strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
[5] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.
[6] Serving sizes and equivalents will be in guidance materials to be distributed by FCS to State agencies.

SUPPLEMENTAL FOOD

(3) Except in the case of NYSP sponsors participating during the months of October through April, the minimum amounts of food components to be served as supplemental food are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

| Food components | Minimum amount |
|---|---|
| **Meat and Meat Alternates** | |
| Lean meat or poultry or fish | 1 oz. |
| or | |
| Cheese | 1 oz. |
| or | |
| Eggs | 1 large egg. |
| or | |
| Cooked dry beans or peas | ¼ cup.[1] |
| or | |
| Peanut butter or soynut butter or other nut or seed butters. | 2 tbsp. |
| or | |
| Peanuts or soynuts or tree nuts or seeds.[2]. | 1 oz. |
| or | |
| Yogurt, plain, or sweetened and flavored. | 4 oz. or ½ cup. |
| An equivalent quantity of any combination of the above meat/meat alternates. | |
| **Vegetables and Fruits** | |
| Vegetable(s) and/or fruit(s) | ¾ cup. |
| or | |
| Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice. | ¾ cup (6 fl. oz.). |
| **Bread and Bread Alternates[3]** | |
| Bread | 1 slice. |
| or | |
| Cornbread, biscuits, rolls, muffins, etc. | 1 serving[4]. |
| or | |
| Cold dry cereal | ¾ cup or 1 oz.[5] |
| or | |
| Cooked cereal | ½ cup. |
| or | |
| Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate. | ½ cup. |
| **Milk[6]** | |
| Milk, fluid | 1 cup (½ pint, 8 fl. oz.) |

[1] For purposes of the requirements outlined in this table, a cup means a standard measuring cup.
[2] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.
[3] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc. shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.
[4] Serving sizes and equivalents will be in guidance materials to be distributed by FCS to State agencies.
[5] Either volume (cup) or weight (oz.), whichever is less.
[6] Milk should be served as a beverage or on cereal, or used in part for each purpose.

(e) NYSP sponsors participating in the Program during the months of October through April shall ensure that meals served meet all of the requirements specified in this paragraph.

(1) At a minimum, a breakfast or a supplement shall contain the components and quantities specified for breakfasts in 7 CFR part 220, § 220.8(a)(1)–(2), grades K–12.

(2) At a minimum, a lunch or supper shall contain the components and quantities specified for lunches in 7 CFR part 210, § 210.10 (c) and (d), Group IV (age 9 and older) and, when possible, the recommended quantities for children 12 and older.

(f) *Meat or meat alternate.* Meat or meat alternates served under the Program are subject to the following requirements and recommendations.

(1) The required quantity of meat or meat alternate shall be the quantity of the edible portion as served. These foods must be served in a main dish, or in a main dish and one other menu item.

(2) Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but they may not be used to meet both component requirements in a meal.

(3) Textured vegetable protein products and enriched macaroni with fortified protein may be used to meet part, but not all, of the meat/meat alternate requirement. The Department will provide guidance to State agencies on the part of the meat/meat alternate requirement which these foods may be used to meet. If enriched macaroni with fortified protein is served as a meat alternate it shall not be counted toward the bread requirement.

(4) If the sponsor believes that the recommended portion size of any meat or meat alternate is too large to be appealing to children, the sponsor may reduce the portion size of that meat or meat alternate and supplement it with another meat or meat alternate to meet the full requirement.

(5) Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and

coconuts shall not be used as meat alternates due to their low protein content. Nut and seed meals or flours shall not be used as a meat alternate except as defined in this section under paragraph (e)(3) and in this part under Appendix A: Alternate Foods for Meals. As noted in paragraph (d)(2) of this section, nuts or seeds may be used to meet no more than one-half of the meat/meat alternate requirement for lunch or supper. Therefore, nuts or seeds must be combined with another meat/meat alternate to fulfill the requirement. For the supplemental food pattern, nuts or seeds may be used to fulfill all of the meat/meat alternate requirement.

(g) *Exceptions to and variations from the meal pattern.* (1) *Meals prepared in schools.* The State agency may allow sponsors which serve meals prepared in schools participating in the National School Lunch or School Breakfast Programs to substitute the meal pattern requirements of the regulations governing those programs (7 CFR part 210 and 7 CFR part 220, respectively) for the meal pattern requirements contained in this section.

(2) *Children under 6.* The State agency may authorize the sponsor to serve food in smaller quantities than are indicated in paragraph (d) of this section to children under six years of age if the sponsor has the capability to ensure that variations in portion size are in accordance with the age levels of the children served. Sponsors wishing to serve children under one year of age shall first receive approval to do so from the State agency. In both cases, the sponsor shall follow the age-appropriate meal pattern requirements contained in the Child and Adult Care Food Program regulations (7 CFR part 226).

(3) *Statewide substitutions.* In American Samoa, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, the following variations from the meal requirements are authorized: A serving of a starchy vegetable—such as ufi, tanniers, yams, plantains, or sweet potatoes—may be substituted for the bread requirements.

(4) *Individual substitutions.* Substitutions may be made by sponsors in food listed in paragraph (d) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods. Such statement shall be kept on file by the sponsor.

(5) *Special variations.* FCS may approve variations in the food components of the meals on an experimental or a continuing basis for any sponsor where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(6) *Temporary unavailability of milk.* If emergency conditions prevent a sponsor normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfasts, lunches or suppers without milk during the emergency period.

(7) *Continuing unavailability of milk.* The inability of a sponsor to obtain a supply of milk on a continuing basis shall not bar it from participation in the Program. In such cases, the State agency may approve service of meals without milk, provided that an equivalent amount of canned, whole dry or nonfat dry milk is used in the preparation of the milk components set forth in paragraph (d) of this section. In addition, the State agency may approve the use of nonfat dry milk in meals served to children participating in activities which make the service of fluid milk impracticable, and in locations which are unable to obtain fluid milk. Such authorization shall stipulate that nonfat dry milk be reconstituted at normal dilution and under sanitary conditions consistent with State and local health regulations.

(8) *Additional foods.* To improve the nutrition of participating children, additional foods may be served with each meal.

[54 FR 18208, Apr. 27, 1989, as amended at 54 FR 27153, June 28, 1989; Amdt. 2, 55 FR 1377, Jan. 14, 1990; 55 FR 13470, Apr. 10, 1990; 61 FR 37672, July 19, 1996; 62 FR 10191, Mar. 6, 1997]

## Subpart D—General Administrative Provisions

### § 225.17 Procurement standards.

(a) State agencies and sponsors shall comply with the standards prescribed in the Department's Uniform Federal Assistance Regulations at 7 CFR part 3015, subpart S, in the procurement of food, supplies, goods, and other services with Program payments.

(b) The State agency shall make available to sponsors information on 7 CFR part 3015.

(c) Sponsors may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds conform with provisions of this section, as well as with procurement requirements which may be established by the State agency, with approval of FCS, to prevent fraud, waste, and Program abuse.

(d) The State agency shall ensure that all sponsors are aware of the following practices specified in 7 CFR part 3015, with respect to minority business enterprises:

(1) Including qualified minority business enterprises on solicitation lists,

(2) Soliciting minority business enterprises whenever they are potential sources,

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by minority business enterprises,

(4) Establishing delivery schedules which will assist minority business enterprises to meet deadlines, and

(5) Using the services and assistance of the Small Business Administration, and the Office of Minority Business Enterprise of the Department of Commerce as required.

### § 225.18 Miscellaneous administrative provisions.

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall be in accordance with the Department's Uniform Federal Assistance Regulations (7 CFR part 3015), subpart N.

(b) *Termination for cause.* (1) FCS may terminate a State agency's participation in the Program in whole, or in part, whenever it is determined that the State agency has failed to comply with the conditions of the Program. FCS shall promptly notify the State agency in writing of the termination and reason for the termination, together with the effective date, and shall allow the State 30 calendar days to respond. In instances where the State does respond, FCS shall inform the State of its final determination no later than 30 calendar days after the State responds.

(2) A State agency shall terminate a sponsor's participation in the Program by written notice whenever it is determined by the State agency that the sponsor has failed to comply with the conditions of the Program.

(3) When participation in the Program has been terminated for cause, any funds paid to the State agency or a sponsor or any recoveries by FCS from the State agency or by the State agency from a sponsor shall be in accordance with the legal rights and liabilities of the parties.

(c) *Termination for convenience.* FCS and the State agency may agree to terminate the State agency's participation in the Program in whole, or in part, when both parties agree that the continuation of the Program 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. The Department shall allow full credit to the State agency for the Federal share of the noncancellable obligation properly incurred by the State agency prior to termination. A State agency may terminate a sponsor's participation in the manner provided for in this paragraph.

(d) *Maintenance of effort.* Expenditure of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under the Act and a certification to this effect shall become part of the agreement provided for in § 225.3(c).

(e) *Program benefits.* The value of benefits and assistance available under the Program shall not be considered as income or resources of recipients and their families for any purpose under Federal, State or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs.

(f) *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, provided that such additional requirements shall not deny the Program to an area in which poor economic conditions exist, and shall not result in a significant number of needy children not having access to the Program. Prior to imposing any additional requirements, the State agency must receive approval from FCSRO.

(g) *Fraud penalty.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this part, whether received directly or indirectly from the Department, or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $100,000 or imprisoned not more than five years, or both, or if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(h) *Claims adjustment authority.* The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of title 28, U.S. Code, to conduct litigation on behalf of the United States.

(i) *Special retroactivity provisions.* Notwithstanding any other provisions contained in this part, the following shall apply:

(1) State agencies shall provide reimbursement as set forth in §225.9(d)(10) of this part, for meal service provided by any academic-year NYSP sponsor between October 1, 1989 and the date of the Fiscal Year 1990 academic-year Program agreement between the State agency and the academic year NYSP sponsor under the following conditions, *provided that:*

(i) The sponsor can document, for any meals claimed that:

(A) The NYSP site participated in the Program during the 1989 SFSP or, if the site did not participate in the 1989 SFSP, free meal applications are on file to document the site's eligibility during the Fiscal Year 1990 academic-year phase of the SFSP;

(B) Meal counts by type (breakfast, lunch, supplement, and supper) are available;

(C) Food service revenue and expenditure records are sufficient to support the claim for reimbursement;

(D) Program reimbursement does not duplicate other funding for the same meals;

(E) The meals claimed for reimbursement met the requirements of the appropriate meal patterns set forth at §225.16(e) of this part in terms of items and quantities served; and

(ii) The Fiscal Year 1990 academic-year Program agreement between the State agency and the academic-year NYSP sponsor is executed no later than 90 days after the publication of the 1990 Program regulations; and any claims for reimbursement for meals served between October 1, 1989 and the date of said Program agreement are grouped by month and are received by the State agency no later than 30 days after the execution of the State-sponsor agreement or the date established by §225.9(d)(5), whichever date is later.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13471, Apr. 10, 1990]

### §225.19 Regional office addresses.

Persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FCS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FCS, U.S. Department of Agriculture, 10 Causeway Street, Boston, MA 02222–1065.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FCS, U.S. Department of Agriculture, Corporate Boulevard CN–02150, Trenton, NJ 08650.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FCS, U.S. Department of Agriculture, 77 Forsyth Street, SW, Suite 112, Atlanta, GA 30303.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FCS, U.S. Department of Agriculture, 50 E. Washington Street, Chicago, IL 60602.

(e) In the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas: Southwest Regional Office, FCS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, TX 75242.

(f) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Mountain Plains Regional Office, FCS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, CO 80204.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, and Washington: Western Regional Office, FCS, U.S. Department of Agriculture, 550 Kearney Street, Room 400, San Francisco, CA 94108.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13471, Apr. 10, 1990]

### § 225.20 Information collection/recordkeeping—OMB assigned control numbers.

| 7 CFR section where requirements are described | Current OMB control No. |
|---|---|
| 225.3–225.4. | 0584–0280 |
| 225.6–225.10 | 0584–0280 |
| 225.12–225.13 | 0584–0280 |
| 225.15–225.18 | 0584–0280 |

[61 FR 25554, May 22, 1996]

## APPENDIX A TO PART 225—ALTERNATE FOODS FOR MEALS

### VEGETABLE PROTEIN PRODUCTS

1. Schools, institutions, and service institutions may use a vegetable protein product, defined in paragraph 2, as a food component meeting the meal requirements specified in § 210.10, § 225.16 or § 226.20 under the following terms and conditions:

(a) The vegetable protein product must be prepared in combination with raw or cooked meat, poulty or seafood and shall resemble, as well as substitute in part for, one of these major protein foods. ''Substitute'' refers to a vegetable protein product whose presence in another food results in the presence of a smaller amount of meat, poultry or seafood than is customarily expected or than appears to be present in that food. Examples of items in which a vegetable protein product may be used include, but are not limited to, beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

(b) Vegetable protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form in combination with meat, poultry or seafood. The moisture content of the fully hydrated vegetable protein product shall be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

(c) The quantity, by weight, of the fully hydrated vegetable protein product must not exceed 30 parts to 70 parts meat, poultry or seafood on an uncooked basis. The quantity by weight of the dry or partially hydrated vegetable protein product must not exceed a level equivalent to the amount (dry weight) used in the fully hydrated product at the 30 percent level of substitution. The dry or partially hydrated product's replacement of meat, poultry or seafood will be based on the level of substitution it would provide if it were fully hydrated.

(d) A vegetable protein product may be used to satisfy the meat/meat alternative requirement when combined with meat, poultry or seafood and when it meets the other requirements of this section. The combination of the vegetable protein product and meat, poultry or seafood may meet all or part of the meat/meat alternate requirement specified in § 210.10, § 225.16 or § 226.20.

(e) The contribution vegetable protein products make toward the meat/meat alternate requirement specified in §210.10, §225.16, and §226.20 shall be determined on the basis of the preparation yield of the meat, poultry or seafood with which it is combined. When computing the preparation yield of a product containing meat, poultry or seafood and vegetable protein product, the vegetable protein product shall be evaluated as having the same preparation yield that is applied to the meat, poultry or seafood it replaces.

(f) When vegetable protein products are served in a meal with other alternate food authorized in appendix A, each individual alternate food shall be used as specifically directed.

2. A vegetable protein product to be used to resemble, and substitute in part for, meat, poultry or seafood, as specified in paragraph 1, must meet the following criteria:

(a) The vegetable protein product (substitute food) shall contain one or more vegetable protein products which are defined as follows:

(1) Vegetable (plant) protein products are foods which are processed so that some portion of the nonprotein constituents of the vegetable is removed. These vegetable protein products are safe and suitable edible products produced from vegetable (plant) sources including, but not limited to, soybeans, peanuts, wheat, and corn.

(b) The types of vegetable protein products described in paragraph 2(a)(1) of this appendix shall include flour, concentrate, and isolate as defined below:

(1) When a product contains less than 65 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances it is a ''_____ flour'', the blank to be filled with the name of the source of the protein, e.g., ''soy'' or ''peanut''.

(2) When a product contains 65 percent or more but less than 90 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances, it is a ''_____ protein concentrate'', the blank to be filled with the name of the source of the protein, e.g., ''soy'' or ''peanut''.

(3) When a product contains 90 percent or more protein by weight calculated on a moisture-free basis excluding added flavors, colors or other added substances, it is a ''_____ protein isolate'' or ''_____ isolated protein,'' the blank to be filled in with the name of the source of the protein, e.g., ''soy'' or ''peanut''.

(c) Compliance with the moisture and protein provisions of paragraph 2(b) (1), (2), and (3) of this appendix shall be determined by the appropriate methods described in ''Official Methods of Analysis of the Association of Official Analytical Chemists'' (14th edition, 1984).

(d) Vegetable protein products which are used to resemble, and substitute in part for, meat, poultry or seafood shall be labeled in conformance with the following:

(1) The common or usual names for a vegetable protein product used to resemble, and substitute in part for, meat, poultry or seafood shall include the term ''vegetable protein product'' and may include the term ''textured'' or ''texturized'' and/or a term such as ''granules'' when such term is appropriate. The term ''plant'' may be used in the name in lieu of the term ''vegetable''; and

(2) The vegetable protein products used as ingredients in the substitute food shall be listed by source (e.g, soy or peanut) and product type (e.g., flour, concentrate, isolate) in the ingredient state of the label. Product type(s) listed shall comply with the appropriate definition(s) set forth in paragraph 2(b) (1), (2) and (3), and may include a term which accurately describes the physical form of the product (e.g., ''granules'') when such term is appropriate.

(e) Vegetable protein products which are used to resemble, and substitute in part for, meat, poultry or seafood shall meet the following nutritional specifications:

(1) The biological quality of the protein in the vegetable protein product shall be at least 80 percent that of casein, such percentage to be determined by performing a Protein Efficiency Ratio (PER) assay unless FCS grants an exception to the PER by approving an alternate test;

(2) The vegetable protein product shall contain at least 18 percent protein by weight when hydrated or formulated to be used in combination with meat, poultry or seafood. (''When hydrated or formulated'' refers to a dry vegetable protein product and the amount of water, fat or oil, colors, flavors or any other substances which have been added in order to make the resultant mixture resemble that meat, poultry or seafood);

(3) The vegetable protein produce must contain the following levels of nutrients per gram of protein:

| Nutrient | Amount |
|---|---|
| Vitamin A (IU) | 13 |
| Thiamine (milligrams) | 0.02 |
| Riboflavin (milligrams) | .01 |
| Niacin (milligrams) | .3 |
| Panthothenic acid (milligrams) | .04 |
| Vitamin B6 (milligrams) | .02 |
| Vitamin B12 (micrograms) | .1 |
| Iron (milligrams) | .15 |
| Magnesium (milligrams) | 1.15 |
| Zinc (milligrams) | .5 |
| Copper (micrograms) | 24 |
| Potassium (milligrams) | 17 |

(4) Compliance with the nutrient provisions set forth in paragraph 2(e) (1), (2) and (3) of this appendix shall be determined by the appropriate methods described in ''Official Methods of Analysis of the Association

of Official Analytical Chemists'' (latest edition).

(f) Vegetable protein products to be used in the child nutrition programs to resemble, and substitute in part for, meat, poultry or seafood that comply with the labeling and nutritional specifications set forth in paragraph 2(d) (1) and (2) and paragraph 2(e) (1), (2) and (3) shall bear a label containing the following statement: ''This product meets USDA–FCS requirements for use in meeting a portion of the meat/meat alternate requirement of the child nutrition programs.'' This statement shall appear on the principal display panel area of the package.

(g) It is recommended that, for vegetable protein products to be used to resemble, and substitute in part for, meat, poultry or seafood and labeled as specified in paragraph 2(f) of this appendix, manufacturers provide information on the percent protein contained in the dry vegetable protein product (on an as is basis).

(h) It is recommended that for a vegetable protein product mix, manufacturers provide information on (1) the amount by weight of dry vegetable protein product in the package, (2) hydration instructions, and (3) instructions on how to combine the mix with meat, poultry or seafood. A vegetable protein product mix is defined as a dry product containing vegetable protein products that comply with the labeling and nutritional specifications set forth in paragraphs 2(d) (1) and (2) and paragraph 2(e) (1), (2) and (3) along with substantial levels (more than 5 percent) of seasonings, bread crumbs, flavorings, etc.

3. Schools, institutions, and service institutions may use a commercially prepared meat, poultry or seafood product combined with vegetable protein products to meet all or part of the meat/meat alternate requirement specified in §210.10, §225.16 or §226.20 if the product bears a label containing the statement: ''This item contains vegetable protein product(s) which is authorized as an alternate food in the child nutrition programs'' (outlined in paragraph 2 of this appendix). This would designate that the vegetable protein product used in the formulation of the meat, poultry or seafood item complies with the naming and nutritional specifications set forth in paragraph 2 of this appendix. The presence of this label does not ensure the proper level of hydration, ratio of substitution nor the contribution that the product makes toward meal pattern requirements for the child nutrition programs.

## APPENDIX B TO PART 225 [RESERVED]

## APPENDIX C TO PART 225—CHILD NUTRITION (CN) LABELING PROGRAM

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Consumer Service (FCS) in conjunction with the Food Safety and Inspection Service (FSIS) and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA), and National Marine Fisheries Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. This program essentially involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this rule.

2. Products eligible for CN labels are as follows:

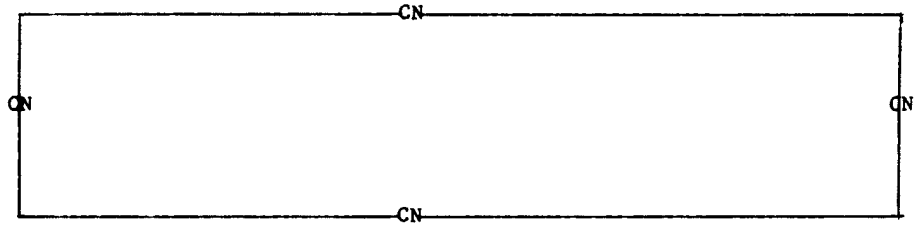
(a) Commercially prepared food products that contribute significantly to the meat/meat alternate component of meal pattern requirements of 7 CFR 210.10, 225.16, and 226.20 and are served in the main dish.

(b) Juice drinks and juice drink products that contain a minimum of 50 percent full strength juice by volume.

3. For the purpose of this appendix the following definitions apply:

(a) *CN label* is a food product label that contains a CN label statement and CN logo as defined in paragraph 3(b) and (c) below.

(b) The *CN logo* (as shown below) is a distinct border which is used around the edges of a ''CN label statement'' as defined in paragraph 3(c).



(c) The *CN label statement* includes the following:

(1) The product identification number (assigned by FCS);

(2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10, 220.8, 225.16, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, bread/bread alternate, and/or vegetable/fruit component of the meal pattern requirements. For juice drinks and juice drink products the statement shall identify their contribution toward the vegetable/fruit component of the meal pattern requirements.

(3) Statement specifying that the use of the CN logo and CN statement was authorized by FCS, and

(4) The approval date.

For example:

```
                         CN
                                                    000000
     This 3.00 oz serving of raw beef pattie provides when cooked
CN   2.00 oz equivalent meat for Child Nutrition Meal Pattern      CN
     Requirements. (Use of this logo and statement authorized
     by the Food and Nutrition Service, USDA 05-84.)
                         CN
```

(d) *Federal inspection* means inspection of food products by FSIS, AMS or USDC.

4. Food processors or manufacturers may use the CN label statement and CN logo as defined in paragraph 3 (b) and (c) under the following terms and conditions:

(a) The CN label must be reviewed and approved at the national level by the Food and Consumer Service and appropriate USDA or USDC Federal agency responsible for the inspection of the product.

(b) The CN labeled product must be produced under Federal inspection by USDA or USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal inspection service.

(c) The CN label statement must be printed as an integral part of the product label along with the product name, ingredient listing, the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate and the manufacturer's or distributor's name and address.

(1) The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products with the exception of juice drinks and juice drink products is established as follows:

```
INSPECTED BY THE
U.S. DEPT. OF AGRICULTURE
IN ACCORDANCE WITH
FNS REQUIREMENTS
```

(d) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the Food Buying Guide for Child Nutrition Programs (Program Aid Number 1331).

5. In the event a company uses the CN logo and CN label statement inappropriately, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

6. Products that bear a CN label statement as set forth in paragraph 3(c) carry a warranty. This means that if a food service authority participating in the child nutrition programs purchases a CN labeled product and uses it in accordance with the manufacturer's directions, the school or institution will not have an audit claim filed against it for the CN labeled product for noncompliance with the meal pattern requirements of 7 CFR 210.10, 220.8, 225.16, and 226.20. If a State or Federal auditor finds that a product that is CN labeled does not actually meet the meal pattern requirements claimed on the label, the auditor will report this finding to FCS. FCS will prepare a report on the findings and send it to the appropriate divisions of FSIS and AMS of the USDA, National Marine Fisheries Service of the USDC, Food and Drug Administration, or the Department of Justice for action against the company. Any or all of the following courses of action may be taken: (a) The company's CN label may be revoked for a specific period of time; (b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product; (c) The company's name will be circulated to regional FCS offices; and (d) FCS will require the food service program involved to notify the State agency of the labeling violation.

7. FCS is authorized to issue operational policies, procedures, and instructions for the CN Labeling Program. To apply for a CN label and to obtain additional information on CN label application procedures, write to:

CN Labels, U.S. Department of Agriculture, Food and Consumer Service, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia 22302.

# PART 226—CHILD AND ADULT CARE FOOD PROGRAM

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226.25 Other provisions.
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APPENDIX A TO PART 226—ALTERNATE FOODS FOR MEALS
APPENDIX B TO PART 226 [RESERVED]
APPENDIX C TO PART 226—CHILD NUTRITION (CN) LABELING PROGRAM

AUTHORITY: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

SOURCE: 47 FR 36527, Aug. 20, 1982, unless otherwise noted.

## Subpart A—General

### § 226.1 General purpose and scope.

This part announces the regulations under which the Secretary of Agriculture will carry out the Child and Adult Care Food Program. Section 17 of the National School Lunch Act, as amended, authorizes assistance to States through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children or adult participants in nonresidential institutions which provide care. The Program is intended to enable such institutions to integrate a nutritious food service with organized care services for enrolled participants. Payments will be made to State agencies or FCS Regional Offices to enable them to reimburse institutions for food service to enrolled participants.

[53 FR 52587, Dec. 28, 1988, as amended by Amdt. 22, 55 FR 1377, Jan. 14, 1990]

### § 226.2 Definitions.

*AFDC assistance unit* means any individual or group of individuals which is currently certified to receive assistance under the Aid to Families with Dependent Children Program in a State where the standard of eligibility for AFDC benefits does not exceed the income eligibility guidelines for free meals under this part.

*Act* means the National School Lunch Act, as amended.

*Administrative costs* means costs incurred by an institution related to planning, organizing, and managing a food service under the Program, and allowed by the State agency financial management instruction.

*Adult* means, for the purposes of the collection of social security numbers as a condition of eligibility for free or reduced-price meals, any individual 21 years of age or older.

*Adult day care center* means any public or private nonprofit organization or any proprietary title XIX or title XX center (as defined in this section) which (a) is licensed or approved by Federal, State or local authorities to provide nonresidential adult day care services to functionally impaired adults (as defined in this section) or persons 60 years of age or older in a group setting outside their homes or a group living arrangement on a less than 24-hour basis and (b) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services. Such centers shall provide a structured, comprehensive program that provides a variety of health, social and related support services to enrolled adult participants through an individual plan of care.

*Adult day care facility* means a licensed or approved adult day care center under the auspices of a sponsoring organization.

*Adult participant* means a person enrolled in an adult day care center who is functionally impaired (as defined in this section) or 60 years of age or older.

*Advanced payments* means financial assistance made available to an institution for its Program costs prior to the month in which such costs will be incurred.

*CACFP child care standards* means the Child and Adult Care Food Program child care standards developed by the Department for alternate approval of child care centers, outside-school-hours care centers, and day care homes by the State agency under the provisions of § 226.6(d)(2) and (3).

*Child care center* means any public or private nonprofit organization, or any proprietary title XX center, as defined in this section (''Proprietary title XX center''), licensed or approved to provide nonresidential child care services to enrolled children, primarily of preschool age, including but not limited to day care centers, settlement houses, neighborhood centers, Head Start centers and organizations providing day care services for children with handicaps. Child care centers may participate in the Program as independent centers or under the auspices of a sponsoring organization.

*Child care facility* means a licensed or approved child care center, day care home, or outside-school-hours care center under the auspices of a sponsoring organization.

*Children* means (a) persons 12 years of age and under, (b) children of migrant workers 15 years of age and under, and (c) persons with mental or physical handicaps, as defined by the State, enrolled in an institution or a child care facility serving a majority of persons 18 years of age and under.

*Claiming percentage* means the ratio of the number of enrolled participants in an institution in each reimbursement category (free, reduced-price or paid) to the total of enrolled participants in the institution.

*Current income* means income received during the month prior to application for free or reduced-price meals. If such income does not accurately reflect the household's annual income, income shall be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

*Day care home* means an organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.

*Department* means the U.S. Department of Agriculture.

*Documentation* means:

(a) The completion of the following information on a free and reduced-price application:

(1) Names of all household members;

(2) Income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income);

(3) The signature of an adult household member; and

(4) The social security number of the adult household member who signs the application, or an indication that he/she does not possess a social security number; or

(b) For a child who is a member of a food stamp or FDPIR household or an AFDC assistance unit, ''documentation'' means the completion of only the following information on a free and reduced-price application:

(1) The name(s) and appropriate food stamp, FDPIR or AFDC case number(s) for the child(ren); and

(2) The signature of an adult member of the household; or

(c) For a child in a tier II day care home who is a member of a household participating in a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free and reduced-price meals:

(1) The name(s), appropriate case number(s) and name of qualifying program(s) for the child(ren); and

(2) The signature of an adult member of the household; or

(d) For an adult participant who is a member of a food stamp or FDPIR household or is an SSI or Medicaid participant, as defined in this section, ''documentation'' means the completion of only the following information on a free and reduced-price application:

(1) The name(s) and appropriate food stamp or FDPIR case number(s) for the participant(s) or the adult participant's SSI or Medicaid identification number, as defined in this section; and

(2) The signature of an adult member of the household.

*Enrolled child* means a child whose parent or guardian has submitted to an institution a signed document which indicates that the child is enrolled for child care.

*Enrolled participant* means an ''Enrolled child'' (as defined in this section) or ''Adult participant'' (as defined in this section).

*Family* means, in the case of children, a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit or, in the case of adult participants, the adult participant, and if residing with the adult participant, the spouse and dependent(s) of the adult participant.

*FCS* means the Food and Consumer Service of the Department.

*FCSRO* means the appropriate Regional Office of the Food and Consumer Service.

*FDPIR household* means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Distribution Program on Indian Reservations.

*Fiscal Year* means a period of 12 calendar months beginning October 1 of any year and ending with September 30 of the following year.

*Food service equipment assistance* means Federal financial assistance formerly made available to State agencies to assist institutions in the purchase or rental of equipment to enable institutions to establish, maintain or expand food service under the Program.

*Food service management company* means an organization other than a public or private nonprofit school, with which an institution may contract for preparing and, unless otherwise provided for, delivering meals, with or without milk for use in the Program.

*Food Stamp household* means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

*Free meal* means a meal served under the Program to a participant from a family that meets the income standards for free school meals; or to a child who is automatically eligible for free meals by virtue of food stamp, FDPIR or AFDC recipiency; or to an adult participant who is automatically eligible for free meals by virtue of food stamp or FDPIR recipiency or is a SSI or Medicaid participant. Regardless of whether the participant qualified for free meals by virtue of meeting one of the criteria of this definition, neither the participant nor any member of their family shall be required to pay or to work in the food service program in order to receive a free meal.

*Functionally impaired adult* means chronically impaired disabled persons 18 years of age or older, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, who are physically or mentally impaired to the extent that their capacity for independence and their ability to carry out activities

of daily living is markedly limited. Activities of daily living include, but are not limited to, adaptive activities such as cleaning, shopping, cooking, taking public transportation, maintaining a residence, caring appropriately for one's grooming or hygiene, using telephones and directories, or using a post office. Marked limitations refer to the severity of impairment, and not the number of limited activities, and occur when the degree of limitation is such as to seriously interfere with the ability to function independently.

*Group living arrangement* means residential communities which may or may not be subsidized by federal, State or local funds but which are private residences housing an individual or a group of individuals who are primarily responsible for their own care and who maintain a presence in the community but who may receive on-site monitoring.

*Household* means ''family'', as defined in § 226.2 (''Family'').

*Income standards* means the family-size and income standards prescribed annually by the Secretary for determining eligibility for free and reduced-price meals under the National School Lunch Program and the School Breakfast Program.

*Income to the program* means any funds used in an institution's food service program, including, but not limited to all monies, other than Program payments, received from other Federal, State, intermediate, or local government sources; participant's payments for meals and food service fees; income from any food sales to adults; and other income, including cash donations or grants from organizations or individuals.

*Independent center* means a child care center, outside-school-hours care center or adult day care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

*Infant cereal* means any iron-fortified dry cereal specially formulated for and generally recognized as cereal for infants that is routinely mixed with formula or milk prior to consumption.

*Infant formula* means any iron-fortified infant formula, intended for dietary use as a sole source of food for normal, healthy infants served in liquid state at manufacturer's recommended dilution.

*Institution* means a sponsoring organization, child care center, outside-school-hours care center or adult day care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

*Key Element Reporting System* (KERS) means a comprehensive national system for reporting critical key element performance data on the operation of the program in institutions.

*Meals* means food which is served to enrolled participants at an institution, child care facility or adult day care facility and which meets the nutritional requirements set forth in this part.

*Medicaid participant* means an adult participant who receives assistance under title XIX of the Social Security Act, the Grant to States for Medical Assistance Programs—Medicaid.

*Milk* means pasteurized fluid types of unflavored or whole flavored milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk except that, in the meal pattern for infants (8 months up to 1 year of age), ''milk'' means unflavored whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meets such standards. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands if a sufficient supply of such types of fluid milk cannot be obtained, ''milk'' shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and be consistent with State and local standards for such milk.

*Nonpricing program* means an institution in which there is no separate identifiable charge made for meals served to participants.

*Nonprofit food service* means all food service operations conducted by the institution principally for the benefit of enrolled participants, from which all of the Program reimbursement funds are

used solely for the operations or improvement of such food service.

*Nonresidential* means that the same participants are not maintained in care for more than 24 hours on a regular basis.

*OIG* means the Office of the Inspector General of the Department.

*Operating costs* means expenses incurred by an institution in serving meals to participants under the Program, and allowed by the State agency financial management instruction.

*Outside-school-hours care center* means a public or private nonprofit organization, or a proprietary title XX center, as defined in this section (''Proprietary title XX center''), licensed or approved to provide organized nonresidential child care services to enrolled children outside of school hours. Outside-school-hours care centers may participate in the Program as independent centers or under the auspices of a sponsoring organization.

*Participants* means ''Children'' or ''Adult participants'' as defined in this section.

*Personal property* means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence such as patents, inventions, and copyrights.

*Pricing program* means an institution in which a separate identifiable charge is made for meals served to participants.

*Program* means the Child and Adult Care Food Program authorized by section 17 of the National School Lunch Act, as amended.

*Program payments* means financial assistance in the form of start-up payments, advance payments, or reimbursement paid or payable to institutions for operating costs and administrative costs.

*Proprietary title XIX center* means any private, for profit center (a) providing nonresidential adult day care services for which it receives compensation from amounts granted to the States under title XIX of the Social Security Act and (b) in which title XIX beneficiaries were not less than 25 percent of enrolled eligible participants in the calendar month preceding initial application or annual reapplication for Program participation.

*Proprietary title XX center* means any private, for profit center:

(a) Providing nonresidential child care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act, and in which title XX child care beneficiaries constitute no less than 25 percent of enrolled eligible participants or licensed capacity, whichever is less, during the calendar month preceding initial application or annual reapplication for Program participation; or,

(b) Providing nonresidential adult day care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act and in which adult beneficiaries were not less than 25 percent of enrolled eligible participants during the calendar month preceding initial application or annual reapplication for Program participation.

*Reduced-price meal* means a meal served under the Program to a participant from a family which meets the income standards for reduced-price school meals. Any separate charge imposed shall be less than the full price of the meal, but in no case more than 40 cents for a lunch or supper, 30 cents for a breakfast, and 15 cents for a supplement, and for which neither the participant nor any member of his family is required to work in the food service program.

*Reimbursement* means Federal financial assistance paid or payable to institutions for Program costs within the rates assigned by the State agency.

*SSI participant* means an adult participant who receives assistance under title XVI of the Social Security Act, the Supplemental Security Income (SSI) for the Aged, Blind and Disabled Program.

*School year* means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

*Sponsoring organization* means a public or nonprofit private organization which is entirely responsible for the administration of the food program in: (a) One or more day care homes; (b) a child care center, outside-school-hours

care centers, or adult day care center which is a legally distinct entity from the sponsoring organization; (c) two or more child care centers, outside-school-hours care centers, or adult day care centers; or (d) any combination of child care centers, adult day care centers, day care homes, and outside-school-hours care centers. The term ''sponsoring organization'' also includes a for-profit organization which is entirely responsible for administration of the Program in any combination of two or more child care centers, adult day care centers and outside-school-hours care centers which are part of the same legal entity as the sponsoring organization, and which are proprietary title XIX or XX centers, as defined in this section (''Proprietary Title XIX center'', ''Proprietary Title XX center'').

*Start-up payments*'' means financial assistance made available to a sponsoring organization for its administrative expenses associated with developing or expanding a food service program in day care homes and initiating successful Program operations.

*State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

*State agency* means the State educational agency or any other State agency that has been designated by the Governor or other appropriate executive, or by the legislative authority of the State, and has been approved by the Department to administer the Program within the State or in States in which FCS administers the Program, FCSRO. This also may include a State agency other than the existing CACFP State Agency, when such agency is designated by the Governor of the State to administer only the adult day care component of the CACFP.

*Tier I day care home* means (a) a day care home that is operated by a provider whose household meets the income standards for free or reduced-price meals, as determined by the sponsoring organization based on a completed free and reduced price application, and whose income is verified by the sponsoring organization of the home in accordance with § 226.23(h)(6);

(b) A day care home that is located in an area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified eligible to receive free or reduced price meals; or

(c) A day care home that is located in a geographic area, as defined by FCS based on census data, in which at least 50 percent of the children residing in the area are members of households which meet the income standards for free or reduced price meals.

*Tier II day care home* means a day care home that does not meet the criteria for a *Tier I day care home.*

*Title XVI* means Title XVI of the Social Security Act which authorizes the Supplemental Security Income for the Aged, Blind, and Disabled Program—SSI.

*Title XIX* means Title XIX of the Social Security Act which authorizes the Grants to States for Medical Assistance Programs—Medicaid.

*Title XX* means Title XX of the Social Security Act.

*Uniform Federal Assistance Regulations* means the Department's regulations, 7 CFR part 3015, establishing Department-wide policies and standards for administration of grants and cooperative agreements.

*Verification* means a review of the information reported by institutions to the State agency regarding the eligibility of participants for free or reduced-price meals, and, in addition, for a pricing program, confirmation of eligibility for free or reduced-price benefits under the program. Verification for a pricing program shall include confirmation of income eligibility and, at State discretion, any other information required on the application which is defined as documentation in § 226.2. Such verification may be accomplished by examining information (e.g., wage stubs, etc.) provided by the household or other sources of information as specified in § 226.23(h)(2)(iv). However, if a food stamp, FDPIR or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp or FDPIR household or AFDC assistance

unit; or, for an adult participant, if a food stamp or FDPIR case number or SSI or Medicaid assistance identification number is provided, verification for such participant shall include only confirmation that the participant is included in a currently certified food stamp or FDPIR household or is a current SSI or Medicaid participant.

*Yogurt* means commercially coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, (21 CFR 131.200), (21 CFR 131.203), (21 CFR 131.206), respectively.

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 48 FR 21529, May 13, 1983; 48 FR 41142, Sept. 14, 1983; 50 FR 19310, May 8, 1985; 51 FR 31316, Sept. 3, 1986; 52 FR 36906, Oct. 2, 1987; 53 FR 52587, Dec. 28, 1988; 54 FR 27153, June 28, 1989; Amdt. 22, 55 FR 1377, Jan. 14, 1990; 61 FR 25554, May 22, 1996; 62 FR 901, Jan. 7, 1997; 62 FR 23617, May 1, 1997]

### § 226.3 Administration.

(a) Within the Department, FCS shall act on behalf of the Department in the administration of the Program.

(b) Within the States, responsibility for the administration of the Program shall be in the State agency, except that if FCS has continuously administered the Program in any State since October 1, 1980, FCS shall continue to administer the Program in that State. A State in which FCS administers the Program may, upon request to FCS, assume administration of the Program.

(c) Each State agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part. This agreement shall cover the operation of the Program during the period specified therein and may be extended by consent of both parties.

(d) FCSRO shall, in each State in which it administers the Program, have available all funds and assume all responsibilities of a State agency as set forth in this part.

## Subpart B—Assistance to States

### § 226.4 Payments to States and use of funds.

(a) *Availability of funds.* For each fiscal year based on funds provided to the Department, FCS shall make funds available to each State agency to reimburse institutions for their costs in connection with food service operations, including administrative expenses, under this part. Funds shall be made available in an amount no less than the sum of the totals obtained under paragraphs (b), (c), (d), (e) and (h) of this section. However, in any fiscal year, the aggregate amount of assistance provided to a State under this part shall not exceed the sum of the Federal funds provided by the State to participating institutions within the State for that fiscal year and any funds used by the State under paragraphs (h) and (j) of this section.

(b) *Center funds.* For meals served to participants in child care centers, adult day care centers and outside-school-hours care centers, funds shall be made available to each State agency in an amount no less than the sum of the products obtained by multiplying:

(1) The number of breakfasts served in the Program within the State to participants from families that do not satisfy the eligibilty standards for free and reduced-price school meals enrolled in institutions by the national average payment rate for breakfasts for such participants under section 4 of the Child Nutrition Act of 1966;

(2) The number of breakfasts served in the Program within the State to participants from families that satisfy the eligibilty standards for free school meals enrolled in institutions by the national average payment rate for free breakfasts under section 4 of the Child Nutrition Act of 1966;

(3) The number of breakfasts served to participants from families that satisfy the eligibilty standard for reduced-price school meals enrolled in institutions by the national average payment rate for reduced-price school breakfasts under section 4 of the Child Nutrition Act of 1966;

(4) The number of lunches and suppers served in the Program within the State by the national average payment

rate for lunches under section 4 of the National School Lunch Act. (All lunches and suppers served in the State are funded under this provision);

(5) The number of lunches and suppers served in the Program within the State to participants from families that satisfy the eligibilty standard for free school meals enrolled in institutions by the national average payment rate for free lunches under section 11 of the National School Lunch Act;

(6) The number of lunches and suppers served in the Program within the State to participants from families that satisfy the eligibilty standard for reduced-price school meals enrolled in institutions by the national average payment rate for reduced-price lunches under section 11 of the National School Lunch Act;

(7) The number of supplements served in the Program within the State to participants from families that do not satisfy the eligibilty standards for free and reduced-price school meals enrolled in institutions by 2.75 cents;

(8) The number of supplements served in the Program within the State to participants from families that satisfy the eligibilty standard for free school meals enrolled in institutions by 30 cents;

(9) The number of supplements served in the Program within the State to participants from families that satisfy the eligibilty standard for reduced-price school meals enrolled in institutions by 15 cents.

(c) *Day care home funds.* For meals served to children in day care homes, funds shall be made available to each State agency in an amount no less than the sum of products obtained by multiplying:

(1) The number of breakfasts served in the Program within the State to children enrolled in tier I day care homes by the current tier I day care home rate for breakfasts;

(2) The number of breakfasts served in the Program within the State to children enrolled in tier II day care homes that have been determined eligible for free or reduced price meals by the current tier I day care home rate for breakfasts;

(3) The number of breakfasts served in the Program within the State to children enrolled in tier II day care homes that do not satisfy the eligibility standards for free or reduced price meals, or to children from whose households applications were not collected, by the current tier II day care home rate for breakfasts;

(4) The number of lunches and suppers served in the Program within the State to children enrolled in tier I day care homes by the current tier I day care home rate for lunches/suppers;

(5) The number of lunches and suppers served in the Program within the State to children enrolled in tier II day care homes that have been determined eligible for free or reduced price meals by the current tier I day care home rate for lunches/suppers;

(6) The number of lunches and suppers served in the Program within the State to children enrolled in tier II day care homes that do not satisfy the eligibility standards for free or reduced price meals, or to children from whose households applications were not collected, by the current tier II day care home rate for lunches/suppers;

(7) The number of supplements served in the Program within the State to children enrolled in tier I day care homes by the current tier I day care home rate for supplements;

(8) The number of supplements served in the Program within the State to children enrolled in tier II day care homes that have been determined eligible for free or reduced price meals by the current tier I day care home rate for supplements; and

(9) The number of supplements served in the Program within the State to children enrolled in tier II day care homes that do not satisfy the eligibility standards for free or reduced price meals, or to children from whose households applications were not collected, by the current tier II day care home rate for supplements.

(d) *Administrative funds.* For administrative payments to day care home sponsoring organizations, funds shall be made available to each State agency in an amount not less than the product obtained each month by multiplying the number of day care homes participating under each sponsoring organization within the State by the applicable rates specified in § 226.12(a)(3).

(e) *Start-up funds.* For start-up payments to eligible sponsoring organizations, funds shall be made available to each State agency in an amount equal to the total amount of start-up payments made in the most recent period for which reports are available for that State or on the basis of estimates by FCS.

(f) *Funding assurance.* FCS shall ensure that, to the extent funds are appropriated, each State has sufficient Program funds available for providing start-up and advance payments in accordance with this part.

(g) *Rate adjustments.* FCS shall publish a notice in the FEDERAL REGISTER to announce each rate adjustment. FCS shall adjust the following rates on the specified dates:

(1) The rates for meals served in tier I and tier II day care homes shall be adjusted annually, on July 1 (beginning July 1, 1997), on the basis of changes in the series for food at home of the Consumer Price Index for All Urban Consumers published by the Department of Labor. Such adjustments shall be rounded to the nearest lower cent based on changes measured over the most recent twelve-month period for which data are available. The adjustments shall be computed using the unrounded rate in effect for the preceding school year.

(2) The rate for supplements served in child care centers, adult day care centers and outside-school-hours care centers shall be adjusted annually, on July 1, on the basis of changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Department of Labor. Such adjustments shall be made to the nearest $.0025 based on changes measured over the most recent twelve-month period for which data are available.

(3) The rate for administrative payments to day care home sponsoring organizations shall be adjusted annually, on July 1, on the basis of changes in the series for all items of the Consumer Price Index for All Urban Consumers published by the Department of Labor. Such adjustments shall be made to the nearest dollar based on changes measured over the most recent twelve-month period for which data are available.

(h) *Audit funds.* For the expense of conducting audits and reviews under § 226.8, funds shall be made available to each State agency in an amount equal to two percent of the Program reimbursement provided to institutions within the State during the second fiscal year preceding the fiscal year for which these funds are to be made available. The amount of assistance provided to a State under this paragraph in any fiscal year may not exceed the State's expenditures under § 226.8 during such fiscal year.

(i) *Method of funding.* FCS shall authorize funds for State agencies in accordance with the Uniform Federal Assistance Regulations.

(j) *Special developmental projects.* The State agency may use in carrying out special developmental projects an amount not to exceed one percent of Program funds used in the second prior fiscal year. Special developmental projects shall conform to FCS guidance and be approved in writing by FCS.

[47 FR 36527, Aug. 20, 1982, as amended at 52 FR 36906, Oct. 2, 1987; 53 FR 52588, Dec. 28, 1988; 62 FR 902, Jan. 7, 1997]

### § 226.5 Donation of commodities.

(a) USDA foods available under section 6 of this Act, section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) or purchased under section 32 of the Act of August 24, 1935 (7 U.S.C. 1431), section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a–1), or other authority, and donated by the Department shall be made available to each State.

(b) The value of such commodities donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of reimbursable lunches and suppers served in participating institutions in that State during the preceding school year by the rate for commodities established under section 6(e) of the Act for the current school year. Adjustments shall be made at the end of each school year to reflect the difference between the number of reimbursable lunches and suppers served during the preceding year and the number served during the current year, and

subsequent commodity entitlement shall be based on the adjusted meal counts. At the discretion of FCS, current-year adjustments may be made for significant variations in the number of reimbursable meals served. Such current-year adjustments will not be routine and will only be made for unusual problems encountered in a State, such as a disaster that necessitates institutional closures for a prolonged period of time. CACFP State agencies electing to receive cash-in-lieu of commodities will receive payments based on the number of reimbursable meals actually served during the current school year.

[47 FR 36527, Aug. 20, 1982, as amended at 62 FR 23618, May 1, 1997]

## Subpart C—State Agency Provisions

### §226.6 State agency administrative responsibilities.

(a) *State agency personnel.* Each State agency shall provide sufficient consultative, technical and managerial personnel to administer the Program, provide sufficient training and technical assistance to institutions and monitor performance to facilitate expansion and effective operation of the Program.

(b) *Application approval.* Each State agency shall establish an application procedure to determine the eligibility under this part of applicant institutions, and facilities for which applications are submitted by sponsoring organizations. State agencies, by written consent of the State agency and the institutions, shall renew agreements with institutions not less frequently than annually. A State agency may not execute an agreement to be effective during two fiscal years but may nevertheless establish an ongoing renewal process for the purpose of reviewing and approving applications from participating institutions throughout the fiscal year. As a minimum, such application approval process shall include:

(1) Renewal of the Program agreement;

(2) For child care centers, adult day care centers and outside-school-hours care centers, submission of current eligibility information on enrolled participants.

(3) For sponsoring organizations of day care homes, submission of the current total number of children enrolled, and an assurance that day care home providers' children enrolled in the Program are eligible for free or reduced-price meals;

(4) Issuance of a nondiscrimination policy statement and media release;

(5) For sponsoring organizations, submission of a management plan;

(6) Submission of an administrative budget;

(7) Submission of documentation that all child care centers, adult day care centers, outside-school-hours care centers, and day care homes for which application is made are in compliance with Program licensing/approval provisions;

(8) For proprietary title XX child care centers, submission of documentation that they are currently providing nonresidential day care services for which they receive compensation under title XX of the Social Security Act, and certification that not less than 25 percent of enrolled children or 25 percent of licensed capacity, whichever number is less, in each such center during the most recent calendar month were title XX beneficiaries. In the case of title XIX or title XX adult day care centers, submission of documentation that they are currently providing nonresidential day care services for which they receive compensation under title XIX or title XX of the Social Security Act, and certification that not less than 25 percent of enrolled adult participants in each such center during the most recent calendar month were title XIX or title XX beneficiaries;

(9) Statement of institutional preference to receive commodities or cash-in-lieu of commodities;

(10) Institutional choice to receive all, part, or none of advance payment. Any institution applying for participation in the Program shall be notified of approval or disapproval by the State agency in writing within 30 calendar days of filing a complete and correct application. If an institution submits an incomplete application, the State agency shall notify the institution within 15 calendar days of receipt of

the application and shall provide technical assistance, if necessary, to the institution for the purpose of completing its application. Any disapproved applicant shall be notified of its right to appeal under paragraph (j) of this section.

(c) *Denial of applications and termination of institutions.* The State agency shall not enter into an agreement with any applicant institution which the State agency determines to have been seriously deficient at any time in its operation of any Federal child nutrition program. However, the State agency may enter into an agreement with such an institution when with FCS concurrence it determines that the deficiencies have been corrected. The State agency shall terminate the program agreement with any institution which it determines to be seriously deficient. However, the State agency shall afford an institution every reasonable opportunity to correct problems before terminating the institution for being seriously deficient. The State agency shall notify FCS whenever it has denied an application from or terminated the participation of a seriously deficient institution. This notification shall be made within 15 days of the review official's decision upholding the State's action or, if the institution elects not to appeal the decision, within 15 days of the expiration of the appeal right. FCS will maintain a list of these institutions and will notify all other State agencies of these institutions' ineligibility to participate in the program. FCS may determine independently that an institution has been seriously deficient in its operation of any Federal child nutrition program and include such institution on the list of ineligible institutions if appropriate corrective action is not taken. State agencies shall not enter into an agreement with any institution included on this list of ineligible institutions and shall terminate any participating institution included on the list within 30 days of the receipt of notification by FCS of the institution's ineligible status. Once included on this list, an institution shall be ineligible to participate in the program until such time as FCS, in consultation with the appropriate State agency, determines that the serious deficiency which resulted in the ineligible status has been corrected. Any institution which is identifiable with a seriously deficient institution through its corporate organization, officers, employees, or otherwise shall also be considered to be ineligible unless it is demonstrated to the satisfaction of the State agency, with FCS concurrence, that good cause exists for considering the institution distinct from the seriously deficient institution. Denial or termination actions taken on the basis of FCS notification of ineligible status shall not be subject to administrative review as provided in §226.6(k). However, an institution which FCS has determined to be seriously deficient and which has not taken acceptable corrective action may request an administrative review of this determination by an FCS review official in accordance with the appeal procedures set forth in §226.6(k) and will not be included on the list of ineligible institutions unless FCS' determination is upheld by the review official. Serious deficiencies, which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:

(1) Noncompliance with the applicable bid procedures and contract requirements of Federal child nutrition program regulations;

(2) The submission of false information to the State agency;

(3) Failure to return to the State agency any advance payments which exceeded the amount earned for serving eligible meals, or failure to return disallowed start-up payments;

(4) Failure to maintain adequate records;

(5) Failure to adjust meal orders to conform to variations in the number of participants;

(6) The claiming of Program payments for meals not served to participants;

(7) Service of a significant number of meals which did not include required quantities of all meal components;

(8) Continued use of food service management companies that are in violation of health codes;

(9) Failure of a sponsoring organization to disburse payments to its facilities in accordance with its management plan;

(10) A history of administrative or financial mismanagement in any Federal child nutrition program;

(11) The claiming of Program payment for meals served by a proprietary title XX child care center during a calendar month in which less than 25 percent of enrolled children or 25 percent of licensed capacity, whichever number is less, were title XX beneficiaries. In the case of an adult day care center, the claiming of Program payment for meals served by a proprietary title XIX or title XX center during a calendar month in which less than 25 percent of enrolled adult participants were title XIX or title XX beneficiaries.

(d) *Licensing/approval for child care centers, outside-school-hours care centers and day care homes.* This section prescribes State agency responsibilities to ensure that child care centers and day care homes meet the licensing/approval criteria set forth in this part. Sponsoring organizations shall submit to the State agency documentation that facilities under their jurisdiction are in compliance with licensing/approval requirements. Independent centers shall submit such documentation to the State agency on their own behalf.

(1) *General.* Each State agency shall establish procedures to annually review information submitted by institutions to ensure that all participating child care centers, day care homes, and outside-school-hours care centers either:

(i) Are licensed or approved by Federal, State, or local authorities, provided that institutions which are approved for Federal programs on the basis of State or local licensing shall not be eligible for the Program if their licenses lapse or are terminated; or

(ii) Are complying with applicable procedures to renew licensing or approval in situations where the State agency has no information that licensing or approval will be denied; or

(iii) Receive Title XX funds for providing child care, if licensing or approval is not available; or

(iv) Demonstrate compliance with applicable State or local child care standards to the State agency, if licensing is not available and title XX funds are not received; or

(v) Demonstrate compliance with CACFP child care standards to the State agency, if licensing or approval is not available and Title XX funds are not received.

(2) *CACFP child care standards.* (i) When licensing or approval is not available, independent child care centers, and sponsoring organizations on behalf of their child care centers or day care homes, may elect to demonstrate compliance, annually, with the following CACFP child care standards or other standards specified in paragraph (d)(3) of this section:

(A) *Staff/child ratios.* (*1*) Day care homes provide care for no more than 12 children at any one time. One home caregiver is responsible for no more than 6 children ages 3 and above, or no more than 5 children ages 0 and above. No more than 2 children under the age of 3 are in the care of 1 caregiver. The home provider's own children who are in care and under the age of 14 are counted in the maximum ratios of caregivers to children.

(*2*) Child care centers and outside-school-hours care centers do not fall below the following staff/child ratios:

(*i*) For children under 6 weeks of age—1:1

(*ii*) For children ages 6 weeks up to 3 years—1:4

(*iii*) For children ages 3 years up to 6 years—1:6

(*iv*) For children ages 6 years up to 10 years—1:15

(*v*) For children ages 10 and above—1:20

(B) *Nondiscrimination.* Day care services are available without discrimination on the basis of race, color, national origin, sex, age, or handicap.

(C) *Safety and sanitation.* (*1*) A current health/sanitation permit or satisfactory report of an inspection conducted by local authorities within the past 12 months shall be submitted.

(*2*) A current fire/building safety permit or satisfactory report of an inspection conducted by local authorities within the past 12 months shall be submitted.

(*3*) Fire drills are held in accordance with local fire/building safety requirements.

(D) *Suitability of facilities.* (*1*) Ventilation, temperature, and lighting are

adequate for children's safety and comfort.

(*2*) Floors and walls are cleaned and maintained in a condition safe for children.

(*3*) Space and equipment, including rest arrangements for preschool age children, are adequate for the number of age range of participating children.

(E) *Social services.* Independent centers, and sponsoring organizations in coordination with their facilities, have procedures for referring families of children in care to appropriate local health and social service agencies.

(F) *Health services.* (*1*) Each child is observed daily for indications of difficulties in social adjustment, illness, neglect, and abuse, and appropriate action is initiated.

(*2*) A procedure is established to ensure prompt notification of the parent or guardian in the event of a child's illness or injury, and to ensure prompt medical treatment in case of emergency.

(*3*) Health records, including records of medical examinations and immunizations, are maintained for each enrolled child. (Not applicable to day care homes.)

(*4*) At least one full-time staff member is currently qualified in first aid, including artificial respiration techniques. (Not applicable to day care homes.)

(*5*) First aid supplies are available.

(*6*) Staff members undergo initial and periodic health assessments.

(G) *Staff training.* The institution provides for orientation and ongoing training in child care for all caregivers.

(H) *Parental involvement.* Parents are afforded the opportunity to observe their children in day care.

(I) *Self-evaluation.* The institution has established a procedure for periodic self-evaluation on the basis of CACFP child care standards.

(ii) When licensing or approval is not available, independent outside-school-hours care centers, and sponsoring organizations on behalf of their outside-school-hours care centers, may elect to demonstrate compliance with child care standards developed by the State agency which shall include, as a minimum, information on: (A) Fire/safety, (B) sanitation, (C) organized activities, (D) kitchen and restroom facilities, (E) appropriateness of games and materials, (F) availability of emergency medical care, and (G) child-staff ratios as indicated in §226.6(d)(2)(i)(A). For items (A) and (B), of this paragraph, appropriate State or local permits are required.

(3) *Alternate approval procedures.* Each State agency shall establish procedures to review information submitted by institutions for centers or homes for which licensing or approval is not available in order to establish eligibility for the Program. Licensing or approval is not available when (i) no Federal, State, or local licensing/approval standards have been established for child care centers, outside-school-hours care centers, or day care homes; or (ii) no mechanism exists to determine compliance with licensing/approval standards. In these situations, independent centers, and sponsoring organizations on behalf of their facilities, may choose to demonstrate compliance with either CACFP child care standards, applicable State child care standards, or applicable local child care standards. State agencies shall provide information about applicable State child care standards and CACFP child care standards to institutions, but may require institutions electing to demonstrate compliance with applicable local child care standards to identify and submit these standards. The State agency may permit independent centers, and sponsoring organizations on behalf of their facilities, to submit self-certification forms, and may grant approval without first conducting a compliance review at the center or facility. But the State agency shall require submission of health/sanitation and fire/safety permits or certificates for all independent centers and facilities seeking alternate child care standards approval. Compliance with applicable child care standards are subject to review in accordance with §226.6(n).

(e) *Licensing/approval for adult day care centers.* This paragraph prescribes State agency responsibilities to ensure that adult day care centers meet the licensing/approval criteria set forth in this part. Sponsoring organizations

shall submit to the State agency documentation that facilities under their jurisdiction are in compliance with licensing/approval requirements. Independent adult day care centers shall submit such documentation to the State agency on their own behalf. Each State agency shall establish procedures to annually review information submitted by institutions to ensure that all participating adult day care centers either:

(1) Are licensed or approved by Federal, State or local authorities, provided that institutions which are approved for Federal programs on the basis of State or local licensing shall not be eligible for the Program if their licenses lapse or are terminated; or

(2) Are complying with applicable procedures to renew licensing or approval in situations where the State agency has no information that licensing or approval will be denied.

(f) *Annual requirements.* State agencies shall require institutions to comply with applicable provisions of this part. Each State agency shall annually:

(1) Enter into and execute a written Program agreement with each institution, or renew such agreement with the written concurrence of the institution. The Program agreement shall provide that the institution shall accept final financial and administrative responsibility for management of an effective food service, comply with all requirements under this part, and comply with all requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and the Department's regulations concerning nondiscrimination (7 CFR parts 15, 15a and 15b), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person shall, on the grounds of race, color, national origin, sex, age, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program.

(2) Require each sponsoring organization to submit a management plan with its application for review and approval. Such a plan shall include: detailed information on the organizational administrative structure; the staff assigned to Program management and monitoring; administrative budget; procedures which will be used by the sponsoring organization to administer the Program in and disburse payments to the child care facilities under its jurisdiction; and, for sponsoring organizations of day care homes, a description of the system for making tier I day care home determinations, and a description of the system of notifying tier II day care homes of their options for reimbursement. For initial implementation of the two-tiered reimbursement structure for day care homes, by April 1, 1997, each sponsoring organization of day care homes shall submit an amendment to its plan, subject to review and approval by the State agency, describing its systems for making tier I day care home determinations and for notifying tier II day care homes of their options for reimbursement.

(3) Require each institution to submit an administrative budget. Each sponsoring organization shall be required to incorporate this budget into its management plan.

(4) Determine that all meal procurements with food service management companies are in conformance with the bid and contractual requirements of §226.22.

(5) Inquire as to the preference of institutions for commodities or cash-in-lieu of commodities.

(6) Provide institutions with information on foods available in plentiful supply, based on information provided by the Department.

(7) Inform institutions with separate meal charges of their responsibility to ensure that free and reduced-price meals are served to participants unable to pay the full price and provide to all institutions a copy of the income standards to be used by institutions for determining the eligibility of participants for free and reduced-price meals under the Program.

(8) Perform verification of the eligibility of participants for free and reduced-price meals in participating institutions in accordance with the procedures outlined in § 226.23(h). State agencies verifying the information on free and reduced-price applications shall ensure that verification activities are applied without regard to race, color, national origin, sex, age, or handicap.

(9) Coordinate with the State agency which administers the National School Lunch Program to ensure the receipt of a list of elementary schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced price meals. The State agency shall provide the list to sponsoring organizations by April 1, 1997, and by each February 15 thereafter. The State agency also shall provide each sponsoring organization with census data, as provided to the State agency by FCS upon its availability on a decennial basis, showing areas in the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced price meals. In addition, the State agency shall ensure that the most recent available data is used if the determination of a day care home's eligibility as a tier I day care home is made using school or census data. Determinations of a day care home's eligibility as a tier I day care home shall be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data. However, a sponsoring organization, the State agency, or FCS may change the determination if information becomes available indicating that a home is no longer in a qualified area.

(10) Provide all sponsoring organizations of day care homes in the State with a listing of State-funded programs, participation in which by a parent or child will qualify a meal served to a child in a tier II home for the tier I rate of reimbursement.

(11) Require each sponsoring organization of day care homes to submit the total number of tier I and tier II day care homes that it sponsors; a breakdown showing the total number of children enrolled in tier I day care homes; the total number of children enrolled in tier II day care homes; and the number of children in tier II day care homes that have been identified as eligible for free or reduced price meals.

(g) *Program expansion.* Each State agency shall take action to expand the availability of benefits under this Program. At a minimum, the State shall annually notify each nonparticipating child care center, outside-school-hours care center, and day care home within the State that is licensed, approved, registered, or receiving funds under title XX and each nonparticipating adult day care center that is licensed or approved, of the availability of the Program, the requirements for Program participation, and the application procedures to be followed in the Program. The State agency shall make the list of child care centers, adult day care centers, outside-school-hours care centers, and day care homes notified each year available to the public upon request.

(h) *Commodity distribution.* The State shall annually inquire as to the preference of each institution for commodities or cash-in-lieu of commodities. Each institution electing cash-in-lieu of commodities shall receive such payments. Each institution which elects to receive commodities shall have commodities provided to it unless the State agency, after consultation with the State commodity distribution agency, demonstrates to FCS that distribution of commodities to the number of such institutions would be impracticable. The State agency may then, with the concurrence of FCS, provide cash-in-lieu of commodities for all institutions. A State agency request for cash-in-lieu of all commodities shall be submitted to FCS not later than May 1 of the school year preceding the school year for which the request is made. The State agency shall, by June 1 of each year, submit a list of institutions which have elected to receive commodities to the State commodity distribution agency, unless FCS has approved a request for cash-in-lieu of commodities for all institutions. The list shall be accompanied by information on the average daily number of lunches and suppers to be served

to participants by each such institution.

(i) *Standard contract.* Each State agency shall develop a standard contract in accordance with § 226.21 and provide for its use between institutions and food service management companies. The contract shall expressly and without exception stipulate:

(1) The institution shall provide the food service management company with a list of the State agency approved child care centers, day care homes, adult day care centers, and outside-school-hours care centers to be furnished meals by the food service management company, and the number of meals, by type, to be delivered to each location;

(2) The food service management company shall maintain such records (supported by invoices, receipts or other evidence) as the institution will need to meet its responsibilities under this part, and shall promptly submit invoices and delivery reports to the institution no less frequently than monthly;

(3) The food service management company shall have Federal, State or local health certification for the plant in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the State agency may require the food service management company to provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being prepared. These bacteria levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals prepared or served by other establishments in the locality. Results of these inspections shall be submitted to the institution and to the State agency;

(4) The meals served under the contract shall conform to the cycle menus upon which the bid was based, and to menu changes agreed upon by the institution and food service management company;

(5) The books and records of the food service management company pertaining to the institution's food service operation shall be available for inspection and audit by representatives of the State agency, of the Department, and of the U.S. General Accounting Office at any reasonable time and place, for a period of 3 years from the date of receipt of final payment under the contract, or in cases where an audit requested by the State agency or the Department remains unresolved, until such time as the audit is resolved;

(6) The food service management company shall operate in accordance with current Program regulations;

(7) The food service management company shall not be paid for meals which are delivered outside of the agreed upon delivery time, are spoiled or unwholesome at the time of delivery, or do not otherwise meet the meal requirements contained in the contract;

(8) Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;

(9) Increases and decreases in the number of meal orders may be made by the institution, as needed, within a prior notice period mutually agreed upon in the contract;

(10) All meals served under the Program shall meet the requirements of § 226.20;

(11) All breakfasts, lunches, and suppers delivered for service in outside-school-hours care centers shall be unitized, with or without milk, unless the State agency determines that unitization would impair the effectiveness of food service operations. For meals delivered to child care centers and day care homes, the State agency may require unitization, with or without milk, of all breakfasts, lunches, and suppers only if the State agency has evidence which indicates that this requirement is necessary to ensure compliance with § 226.20.

(j) *Procurement provisions.* State agencies shall require institutions to adhere to the procurement provisions set forth in § 226.22.

(k) *Institution appeal procedures.* Except as provided in §226.8(g), each State agency shall establish an appeal procedure to be followed by an institution

requesting a review of a denial of an institution's application for participation, a denial of an application submitted by a sponsoring organization on behalf of a facility, a termination of the participation of an institution or facility, a suspension of an institution's agreement, a denial of an institution's application for start-up payments, a denial of an advance payment, a denial of all or a part of the claim for reimbursement, (except for late submission under § 226.10(e)), a denial by the State agency to forward to FCS an exception request by the institution or sponsoring organization for payment of a late claim or a request for an upward adjustment to a claim, demand for the remittance of an overpayment, and any other action of the State agency affecting the participation of an institution in the Program or the institution's claim for reimbursement. State agencies may use their own State appeal procedures provided the same procedures are applied to all appellants in the State and the procedures meet the following requirements: Appellants are assured of a fair and impartial hearing before an independent official at which they may be represented by legal counsel; decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review; appellants are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person; and adequate notice is given of the place, date and procedures of the hearing. The appeal procedures adopted by the State agency shall be made available in writing each year to all institutions at the time of application for participation in the Program and upon request. If the State has not established its own appeal procedures or the procedures do not meet the above listed criteria, the State agency shall observe the following procedures at a minimum:

(1) The institution shall be advised in writing of the grounds on which the State agency based its action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the institution has the right to appeal the action;

(2) The written request for review shall be filed by the appellant not later than 15 calendar days from the date the appellant received the notice of action, and the State shall acknowledge the receipt of the request for appeal within 10 calendar days;

(3) The appellant may refute the charges contained in the notice of action in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice of action. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant institution's representative to appear at a scheduled hearing shall constitute the appellant institution's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

(4) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

(5) Any information on which the State agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(6) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(7) The review offficial shall make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(8) Within 60 calendar days of the State agency's receipt of the request

for review, the review official shall inform the State agency and the appellant of the determination of the review;

(9) The State agency's action shall remain in effect during the appeal process. However, participating institutions and facilities may continue to operate under the Program during an appeal of termination, unless the action is based on imminent dangers to the health or welfare of participants. If the institution or facility has been terminated for this reason, the State agency shall so specify in its notice of action. Institutions electing to continue operating while appealing terminations shall not be reimbursed for any meals served during the period of the appeal if the State agency's action is upheld; and

(10) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(11) Appeals shall not be allowed on decisions made by FCS on requests for exceptions to the claims submission deadlines stated in §226.10(e) or requests for upward adjustments to claims.

(12) In cases where an appeal results in the dismissal of a claim against an institution which was asserted by the State agency based upon Federal audit findings, FCS may assert a claim against the State agency in accordance with the procedures outlined in §226.14(c).

(l) *Program assistance.* Each State agency shall provide technical and supervisory assistance to institutions and facilities to facilitate effective Program operations, monitor progress toward achieving Program goals, and ensure compliance with the Department's nondiscrimination regulations (part 15 of this title) issued under title VI of the Civil Rights Act of 1964. Documentation of supervisory assistance activities, including reviews conducted, corrective actions prescribed, and follow-up efforts, shall be maintained on file by the State agency. Program reviews shall assess institutional compliance with the provisions of this part and with any applicable instructions of FCS and the Department. Program reviews shall include State agency evaluation of the documentation used by sponsoring organizations to classify their day care homes as tier I day care homes. State agencies shall annually review 33.3 percent of all institutions. State agencies shall also ensure that each institution is reviewed according to the following schedule.

(1) Independent centers, sponsoring organizations of centers, and sponsoring organizations of day care homes with 1 to 200 homes shall be reviewed at least once every four years. Reviews of sponsoring organizations shall include reviews of 15 percent of their child care, adult day care and outside-school-hours care centers and 10 percent of their day care homes.

(2) Sponsoring organizations with more than 200 homes shall be reviewed at least once every two years. Reviews of such sponsoring organizations shall include reviews of 5 percent of the first 1,000 homes and 2.5 percent of all homes in excess of 1,000.

(3) Reviews shall be conducted for newly participating sponsoring organizations with five or more child care facilities or adult day care facilities within the first 90 days of program operations.

(m) *Program irregularities.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. State agencies shall maintain on file evidence of such investigations and actions. FCS and OIG may make investigations at the request of the State agency, or whenever FCS or OIG determines that investigations are appropriate.

(n) *Child care standards compliance.* The State agency shall, when conducting administrative reviews of child care centers, outside-school-hours care centers, and day care homes approved by the State agency under paragraph (d)(3) of this section, determine compliance with the child care standards used to establish eligibility, and the institution shall ensure that all violations are corrected and the State shall ensure that the institution has corrected all violations. If violations are not corrected within 60 calendar days of written notification to the institution, the

State agency shall terminate the Program participation of the violating institution or facility. However, if the health or safety of the children is imminently threatened, the State agency may immediately terminate participation of the institution or facility. If, during an administrative review of a child care center, outside-school-hours care center, or day care home not approved by the State agency under paragraph (d)(3) of this section, the State agency observes violations of applicable health, safety, or staff-child ratio standards, or attendance in excess of licensed capacity, the State agency shall promptly refer such violations to the appropriate authority. The State agency may deny reimbursement for meals served to attending children in excess of authorized capacity.

(o) *Sponsoring organization agreement.* Each State agency shall develop and provide for the use of a standard form of agreement between each day care home sponsoring organization and all day care homes participating in the Program under such organization. However, the State agency may, at the request of the sponsor, approve an agreement developed by the sponsor. State agencies may develop a similar form for use between sponsoring organizations and other types of facilities.

(p) Following its reviews of institutions and facilities under §§ 226.6(l) and 226.23(h) conducted prior to July 1, 1988, the State agency shall report data on key elements of program operations on a form designated by FCS. These key elements include but are not limited to the program areas of meal requirements, determination of eligibility for free and reduced price meals, and the accuracy of reimbursement claims. These forms shall be submitted within 90 days of the completion of the data collection for the institutions except that, if the State has elected to conduct reviews of verification separate from its administrative reviews, the State shall retain data until all key elements have been reviewed and shall report all data for each institution on one form within 90 days of the completion of the data collection for all key elements for that institution. States shall ensure that all key element data for an institution is collected during a 12-month period.

[47 FR 36527, Aug. 20, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 226.6, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

### § 226.7 State agency responsibilities for financial management.

(a) This section prescribes standards of financial management systems in administering Program funds by the State agency and institutions.

(b) Each State agency shall maintain an acceptable financial management system, adhere to financial management standards and otherwise carry out financial management policies as delineated in the Uniform Federal Assistance Regulations, at 7 CFR part 3015. State agencies or FCSRO's, where applicable, shall also have a system in place for monitoring and reviewing the institutions' documentation of their nonprofit status to ensure that all Program reimbursement funds are used: (1) Solely for the conduct of the food service operation; or (2) to improve such food service operations, principally for the benefit of the participants.

(c) *Management evaluations and audits.* State agencies shall provide FCS with full opportunity to conduct management evaluations (including visits to institutions and facilities) of all operations of the State agency under the Program and shall provide OIG with full opportunity to conduct audits (including visits to institutions and facilities) of all operations of the State agency under the Program. Within 60 calendar days of receipt of each management evaluation report, the State agency shall submit to FCSRO a written plan for correcting serious deficiencies, including specific timeframes for accomplishing corrective actions and initiating follow-up efforts. If a State agency makes a showing of good cause, however, FCS may allow more than 60 days in which to submit a plan. Each State agency shall make available its records, including records of the receipt and expenditure of funds, upon request by FCS or OIG. OIG shall also have the right to make audits of the records and operation of any institution.

(d) *Reports.* Each State agency shall submit to FCS the final Report of the Child and Adult Care Food Program (FCS 44) for each month which shall be limited to claims submitted in accordance with § 226.10(e) and which shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FCS grants an exception. Upward adjustments to a State agency's report shall not be made after 90 days from the month covered by the report unless authorized by FCS. Downward adjustments shall always be made, without FCS authorization, regardless of when it is determined that such adjustments are necessary. Adjustments shall be reported to FCS in accordance with procedures established by FCS. Each State agency shall also submit to FCS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. A final Financial Status Report for each fiscal year shall be postmarked and/or submitted to FCS within 120 days after the end of the fiscal year. FCS shall not be responsible for reimbursing unpaid Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred.

(e) *Annual plan.* Each State shall submit to the Secretary for approval by August 15 of each year an annual plan for the use of State administrative expense funds, including a staff formula for State personnel.

(f) *Rate assignment.* Each State agency shall require institutions (other than sponsoring organizations for day care homes) to submit, not less frequently than annually, information necessary to assign rates of reimbursement as outlined in § 226.9.

(g) *Administrative budget approval.* The State agency shall approve institution administrative budgets, and shall limit allowable administrative costs claimed by each sponsoring organization for day care homes to administrative costs approved in its annual budget. The State agency may establish such administrative costs limits for other institutions. Administrative budget levels may be adjusted to reflect changes in Program activities.

(h) *Start-up payments.* Each State agency shall establish procedures for evaluating requests for start-up payments, issuing these payments to eligible sponsoring organizations, and monitoring the use of these payments.

(i) *Advance payments.* Each State agency shall establish procedures for issuing advance payments by the first day of each month and comparing these payments with earned reimbursement on a monthly basis. The State agency shall maintain on file a statement of the State's law and policy governing the use of interest earned on advanced funds by sponsors, institutions, child care facilities and adult day care facilities.

(j) *Recovery of overpayments.* Each State agency shall establish procedures to recover outstanding start-up and advance payments from institutions which, in the opinion of the State agency, will not be able to earn these payments.

(k) *Claims processing.* Each State agency shall establish procedures for institutions to properly submit claims for reimbursement. All valid claims shall be paid within 45 calendar days of receipt. Within 15 calendar days of receipt of any incomplete or incorrect claim which must be revised for payment, the State agency shall notify the institution as to why and how such claim must be revised. If the State agency disallows partial or full payment for a claim for reimbursement, it shall notify the institution which submitted the claim of its right to appeal under § 226.6(k). State agencies may permit disallowances to be appealed separately from claims for reimbursement.

(l) *Participation controls.* The State agency may establish control procedures to ensure that payment is not made for meals served to participants attending in excess of the authorized capacity of each independent center, adult day care facility or child care facility.

(m) *Financial management system.* Each State agency shall establish a financial management system in accordance with the Uniform Federal Assistance Regulations, 7 CFR part 3015, and FCS guidance to identify allowable Program costs and establish standards for institutional recordkeeping and reporting. These standards shall (1) prohibit claiming reimbursement for meals provided by a participant's family, except as authorized by § 226.18(e) and (2) allow the cost of meals served to adults who perform necessary food service labor under the Program, except in day care homes. The State agency shall provide guidance on financial management requirements to each institution.

[47 FR 36527, Aug. 20, 1982, as amended at 48 FR 21530, May 13, 1983; Amdt. 5, 49 FR 18988, May 4, 1984; 50 FR 8580, Mar. 4, 1985; 50 FR 26975, July 1, 1985; 53 FR 52589, Dec. 28, 1988; Amdt. 22, 55 FR 1378, Jan. 14, 1990]

### § 226.8 Audits.

(a) Unless otherwise exempt, audits at the State and institution levels shall be conducted in accordance with the Office of Management and Budget's Circulars A–128 and A–110 and the Department's Uniform Federal Assistance Regulations (7 CFR part 3015). Title XIX and title XX proprietary institutions not subject to organization-wide audits shall be audited by the State agency at least once every two years.

(b) The funds provided to the State agency under § 226.4(h) may be made available to institutions to fund a portion of organization-wide audits, provided that the organization-wide audit includes tests of the CACFP in accordance with section 10.558 of the Compliance Supplement to OMB Circular A–128. The funds provided to an institution for an organization-wide audit shall not exceed the portion of the audit's cost equal to the CACFP's portion of the total Federal grant.

(c) Funds provided under § 226.4(h) may be used by the State agency to conduct program-specific audits of institutions not subject to organization-wide audits, or for which the State agency considers program specific audits to be needed. The State agency may use any funds remaining after all required program-specific audits have been performed to conduct administrative reviews of institutions.

(d) Funds provided under § 226.4(h) may only be obligated during the fiscal year for which those funds are allocated. If funds provided under § 226.4(h) are not sufficient to meet the requirements of this section, the State agency may then use available State administrative expense funds to conduct audits, provided that the State agency is arranging for the audits and has not passed the responsibility down to the institution.

(e) In conducting management evaluations or audits for any fiscal year, FCS or OIG may disregard any overpayment which does not exceed $100. In conducting State agency sponsored audits in State administered programs, the State agency may disregard any overpayment which does not exceed the amount established by State law, regulations or procedures as a minimum for which claims will be made for State losses generally. No overpayment shall be disregarded, however, where there are unpaid claims of the same fiscal year from which the overpayment can be deducted, or where there is evidence of violation of criminal law or civil fraud statutes.

(f) While OIG shall rely to the fullest extent feasible upon State sponsored audits, OIG may, whenever it considers necessary:

(1) Make audits on a statewide basis;

(2) Perform on-site test audits;

(3) Review audit reports and related working papers of audits performed by or for State agencies.

(g) State agencies are not required to provide a hearing to an institution for State actions taken on the basis of a Federal audit determination. If a State agency does not provide a hearing in such situations, FCS will provide a hearing, upon request, in accordance with procedures set forth in § 226.6(j) of this part.

[47 FR 36527, Aug. 20, 1982, as amended at 50 FR 8580, Mar. 4, 1985; 51 FR 4295, Feb. 4, 1986; 52 FR 5526, Feb. 25, 1987; 53 FR 52590, Dec. 28, 1988; Amdt. 22, 55 FR 1378, Jan. 14, 1990]

## Subpart D—Payment Provisions

### §226.9 Assignment of rates of reimbursement for centers.

(a) The State agency shall assign rates of reimbursement, not less frequently than annually, on the basis of family-size and income information reported by each institution. Assigned rates of reimbursement may be changed more frequently than annually if warranted by changes in family-size and income information. Assigned rates of reimbursement shall be adjusted annually to reflect changes in the national average payment rates.

(b) The State agency shall either:

(1) Require that institutions submit each month's figures for meals served daily to participants from families meeting the eligibility standards for free meals, to participants from families meeting the eligibility standards for reduced-price meals, and to participants from families not meeting such guidelines; or

(2) Establish claiming percentages, not less frequently that annually, for each institution on the basis of the number of enrolled participants eligible for free, reduced-price, and paid meals; or

(3) Determine a blended per-meal rate of reimbursement, not less frequently than annually, by adding the products obtained by multiplying the applicable national average payment rate of reimbursement for each category (free, reduced-price, paid) by the claiming percentage for that category.

(c) States have two methods of reimbursing institutions. The method chosen by the State agency must be applied to all institutions participating in the Program in that State. These methods are:

(1) Meals times rates payment, which involves reimbursing an institution for meals served at the assigned rate for each meal. This method entails no comparison to the costs incurred by the institution for the meal service; and,

(2) Meals times rates or actual costs, whichever is the lesser, which involves reimbursing an institution for meals served at the assigned rate for each meal or at the level of the costs actually incurred by the institution for the meal service. This method does entail a comparison of the costs incurred to the meal rates, with the costs being a limiting factor on the level of reimbursement an institution may receive.

(d) In those States where the State agency has chosen the option to implement a meals times rates payment system State-wide, the State agency may elect to pay an institution's final claim for reimbursement for the fiscal year at higher reassigned rates of reimbursement for lunches and suppers; however, the reassigned rates may not exceed the applicable maximum rates of reimbursement established under §210.11(b) of the National School Lunch Program regulations. In those States which use the method of comparing meals times rates or actual costs, whichever is lesser, the total payments made to an institution shall not exceed the total net costs incurred for the fiscal year.

[47 FR 36527, Aug. 20, 1982, as amended at 48 FR 21530, May 13, 1983; 53 FR 52590, Dec. 28, 1988; Amdt. 22, 55 FR 1378, Jan. 14, 1990]

### §226.10 Program payment procedures.

(a) By the first day of each month of operation, the State agency shall provide an advance payment to each institution electing to receive such payments, in accordance with §226.6(b)(10). Advance payments shall equal the full level of claims estimated by the State agency to be submitted in accordance with paragraph (c) of this section, considering prior reimbursement claims and other information such as fluctuations in enrollment. The institution may decline to receive all or any part of the advance.

(b) For each fiscal year, the amount of payment made, including funds advanced to an institution, shall not exceed the amount of valid reimbursement claimed by that institution. To ensure that institutions do not receive excessive advance payments, the State agency shall observe the following procedures:

(1) After three advance payments have been made to an institution, the State agency shall ensure that no subsequent advance is made until the State agency has validated the institution's claim for reimbursement for the

third month prior to the month for which the next advance is to be paid.

(2) If the State agency has audit or monitoring evidence of extensive program deficiencies or other reasons to believe that an institution will not be able to submit a valid claim for reimbursement, advance payments shall be withheld until the claim is received or the deficiencies are corrected.

(3) Each month the State agency shall compare incoming claims against advances to ensure that the level of funds authorized under paragraph (a) of this section does not exceed the claims for reimbursement received from the institution. Whenever this process indicates that excessive advances have been authorized, the State agency shall either demand full repayment or adjust subsequent payments, including advances.

(4) If, as a result of year end reconciliation as required by the Department's Uniform Federal Assistance Regulations (7 CFR part 3015), the State agency determines that reimbursement earned by an institution during a fiscal year is less than the amount paid, including funds advanced to that institution, the State agency shall demand repayment of the outstanding balance or adjust subsequent payments.

(c) Claims for Reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the final Report of the Child and Adult Care Food Program (FCS 44) required under § 226.7(d). In submitting a Claim for Reimbursement, each institution shall certify that the claim is correct and that records are available to support that claim. Independent proprietary title XX child care centers shall submit the number and percentage of the enrolled participants, or the licensed capacity receiving title XX benefits for the month claimed for months in which not less than 25 percent of the enrolled children or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries. Sponsoring organizations of such child care centers shall submit the number and percentage of the enrolled children or licensed capacity, whichever is less, receiving title XX benefits for each center for the claim. Sponsoring organizations of such centers shall not submit claims for child care centers in which less than 25 percent of the enrolled children and licensed capacity were title XX beneficiaries for the month claimed. Independent proprietary title XIX or title XX adult day care centers shall submit the percentages of enrolled adult participants receiving title XIX or title XX benefits for the month claimed for months in which not less than 25 percent of enrolled adult participants were title XIX or title XX beneficiaries. Sponsoring organizations of such adult day care centers shall submit the percentage of enrolled adult participants receiving title XIX or title XX benefits for each center for the claim. Sponsoring organizations of such centers shall not submit claims for adult day care centers in which less than 25 percent of enrolled adult participants were title XIX or title XX beneficiaries for the month claimed.

(d) All records to support the claim shall be retained for a period of three years after the date of submission of the final claim for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the end of the three year period as long as may be required for the resolution of the issues raised by the audit. All accounts and records pertaining to the Program shall be made available, upon request, to representatives of the State agency, of the Department, and of the U.S. General Accounting Office for audit or review, at a reasonable time and place.

(e) Unless otherwise approved by FCS, the Claim for Reimbursement for any month shall cover only Program operations for that month except if the first or last month of Program operations in any fiscal year contains 10 operating days or less, such month may be added to the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years. A final Claim for Reimbursement shall be postmarked and/or submitted to the

State agency not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless FCS determines that an exception should be granted. The State agency shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of the Child and Adult Care Food Programs (FCS–44) for the claim month which is required under 226.7(d). Upward adjustments in Program funds claimed which are not reflected in the final FCS–44 for the claim month shall not be made unless authorized by FCS. Downward adjustments in Program funds claimed shall always be made without FCS authorization regardless of when it is determined that such adjustments are necessary.

(f) If a State agency has reason to believe that an institution or food service management company has engaged in unlawful acts with respect to Program Operations, evidence found in audits, investigations or other reviews shall be a basis for non-payment of claims for reimbursement.

[47 FR 36527, Aug. 20, 1982, as amended by Amdt. 5, 49 FR 18988, May 4, 1984; 50 FR 26975, July 1, 1985; 53 FR 52590, Dec. 28, 1988; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 62 FR 23618, May 1, 1997]

### §226.11 Program payments for child care centers, adult day care centers and outside-school-hours care centers.

(a) Payments shall be made only to institutions operating under an agreement with the State agency for the meal types specified in the agreement served at approved child care centers, adult day care centers and outside-school-hours care centers. A State agency may make payment for meals served in accordance with provisions of the Program in the calendar month preceding the calendar month in which the agreement is executed.

(b) Each child care institution shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements), served to children, except that such reports shall be made for a proprietary title XX center only for calendar months during which not less than 25 percent of enrolled children, or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries. Each adult day care institution shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements), served to adult participants, except that such reports shall be made for a proprietary title XIX or title XX center only for calendar months during which no less than 25 percent of enrolled adult participants were title XIX or title XX beneficiaries.

(c) Each State agency shall base reimbursement to each child care institution on the number of meals, by type, served to children multiplied by the assigned rates of reimbursement, except that reimbursement shall be payable to proprietary title XX child care centers only for calendar months during which not less than 25 percent of enrolled children, or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries. Each State agency shall base reimbursement to each adult day care institution on the number of meals, by type, served to adult participants multiplied by the assigned rates of reimbursement, except that reimbursement shall be payable to proprietary title XIX and title XX adult day care centers only for calendar months during which not less than 25 percent of enrolled adult participants were title XIX or Title XX beneficiaries. In computing reimbursement, the State agency shall either:

(1) Base reimbursement to institutions on actual daily counts of meals served, and multiply the number of meals, by type, served to participants eligible to receive free meals, served to participants eligible to receive reduced-price meals, and served to participants from families not meeting

such standards by the applicable national average payment rate; or

(2) Apply the applicable claiming percentage or percentages to the total number of meals, by type, served to participants and multiply the product or products by the assigned rate of reimbursement for each meal type; or

(3) Multiply the assigned blended per meal rate of reimbursement by the total number of meals, by type, served to participants.

(d) If the State agency elects to reimburse its institutions according to the lesser of rates or actual costs, total Program payments to an institution during any fiscal year, including any cash payments in lieu of commodities, shall not exceed allowable Program operating and administrative costs, less income to the Program. The State agency may limit payments for administrative costs to the amount approved in the annual administrative budget of the institution. The State agency may prohibit an institution from using payments for operating costs to pay for administrative expenses.

(e) Each institution shall maintain records as prescribed by the State agency's financial management system.

[47 FR 36527, Aug. 20, 1982, as amended at 48 FR 21530, May 13, 1983; 52 FR 36907, Oct. 2, 1987; 53 FR 52590, Dec. 28, 1988; 62 FR 23618, May 1, 1997]

### § 226.12 Administrative payments to sponsoring organizations for day care homes.

(a) Sponsoring organizations for day care homes shall receive payments for administrative costs. During any fiscal year, administrative costs payments to a sponsoring organization may not exceed the lesser of (1) actual expenditures for the costs of administering the Program less income to the Program, or (2) the amount of administrative costs approved by the State agency in the sponsoring organization's budget, or (3) the sum of the products obtained by multiplying each month the sponsoring organization's:

(i) Initial 50 day care homes by 42 dollars;

(ii) Next 150 day care homes by 32 dollars;

(iii) Next 800 day care homes by 25 dollars; and

(iv) Additional day care homes by 22 dollars.

During any fiscal year, administrative payments to a sponsoring organization may not exceed 30 percent of the total amount of administrative payments and food service payments for day care home operations.

(b) Prospective sponsoring organizations of day care homes, participating sponsoring organizations of child care centers or outside-school-hours care centers, independent centers, and participating sponsoring organizations of fewer than 50 homes which meet the criteria of this paragraph shall be entitled to receive start-up payments to develop or expand successful Program operations in day care homes. The State agency shall approve start-up payments only once for any eligible sponsoring organization. Sponsoring organizations which apply for start-up payments shall evidence:

(1) Public or nonprofit status in accordance with § 226.15(a), except that sponsoring organizations which are moving toward compliance with the requirements for IRS tax-exempt status must demonstrate current tax-exempt status under the State law and regulations; (2) an organizational history of managing funds and ongoing activities (i.e. administering public or private programs); (3) an acceptable and realistic plan for recruiting day care homes to participate in the Program, which may be based on estimates of the number of day care homes to be recruited and information supporting their existence (e.g., the method of contacting providers); and (4) acceptable preliminary sponsoring organization management plan (e.g., plans for preoperational visits, training).

The State agency shall deny start-up payments to applicant sponsoring organizations which fail to meet any of these criteria or which have demonstrated financial irresponsibility in the operation of other programs funded by Federal, State, or local governments. The State agency shall notify the sponsoring organization of the reasons for denial and allow the sponsoring organization full opportunity to submit evidence on appeal as provided

for in §226.6(k). Any sponsoring organization applying for start-up funds shall be notified of approval or disapproval by the State agency in writing within 30 calendar days of filing a complete and correct application. If a sponsoring organization submits an incomplete application, the State agency shall notify the sponsoring organization within 15 calendar days of receipt of the application and shall provide technical assistance, if necessary, to the sponsoring organization for the purpose of completing its application.

(c) Applicant sponsoring organizations which apply for and meet the criteria for start-up payments shall enter into an agreement with the State agency. The agreement shall specify:

(1) Activities which the sponsoring organization will undertake to initiate or expand Program operations in day care homes;

(2) The amount of start-up payments to be issued to the sponsoring organization, together with a budget detailing the costs which the sponsoring organization shall incur, document, and claim;

(3) The time allotted to the sponsoring organization for the initiation or expansion of Program operations in family day care homes;

(4) The responsibility of the applicant sponsoring organization to repay, upon demand by the State agency, start-up payments not expended in accordance with the agreement.

(d) Upon execution of the agreement, the State agency shall issue a start-up payment to the sponsoring organization in an amount equal to not less than one, but not more than two, month's anticipated administrative reimbursement to the sponsoring organization as determined by the State agency. However, no sponsoring organization may receive start-up payments for more than 50 day care homes, and eligible sponsoring organizations with fewer than 50 homes under their jurisdiction at the time of application for start-up funds shall receive such payments for up to 50 homes, less the number of homes under their jurisdiction. In determining the amount of start-up payments to be made to a sponsoring organization, the State agency shall consider the anticipated level of start-up costs to be incurred by the sponsoring organization and alternate sources of funds available to the sponsoring organization.

(e) Upon expiration of the time allotted to the sponsoring organization for initiating or expanding Program operations in day care homes, the State agency shall obtain and review documentation of activities performed and costs incurred by the sponsoring organization under the terms of the start-up agreement. If the sponsoring organization has not made every reasonable effort to carry out the activities specified in the agreement, the State agency shall demand repayment of all or part of the payment; however, the sponsoring organization may retain start-up payment for all day care homes which initiate Program operations. No sponsoring organization may retain any start-up payments in excess of its actual costs for the expenditures specified in the agreement.

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 53 FR 52590, Dec. 28, 1988]

### §226.13 Food service payments to sponsoring organizations for day care homes.

(a) Payments shall be made only to sponsoring organizations operating under an agreement with the State agency for the meal types specified in the agreement served to enrolled nonresident children and eligible enrolled children of day care home providers, at approved day care homes.

(b) Each sponsoring organization shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements) and by category (tier I and tier II), served to children enrolled in approved day care homes.

(c) Each sponsoring organization shall receive payment for meals served to children enrolled in approved day care homes at the tier I and tier II reimbursement rates, as applicable, and as established by law and adjusted in accordance with §226.4. However, the rates for lunches and suppers shall be reduced by the value of commodities established under §226.5(b) for all sponsoring organizations for day care homes which have elected to receive

commodities. For tier I day care homes, the full amount of food service payments shall be disbursed to each day care home on the basis of the number of meals served, by type, to enrolled children. For tier II day care homes, the full amount of food service payments shall be disbursed to each day care home on the basis of the number of meals served to enrolled children by type, and by category (tier I and tier II) as determined in accordance with paragraphs (d)(2) and (d)(3) of this section. However, the sponsoring organization may withhold from Program payments to each home an amount equal to costs incurred for the provision of Program foodstuffs or meals by the sponsoring organization on behalf of the home and with the home provider's written consent.

(d) As applicable, each sponsoring organization for day care homes shall:

(1) Require that tier I day care homes submit the number of meals served, by type, to enrolled children.

(2) Require that tier II day care homes in which the provider elects not to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals submit the number of meals served, by type, to enrolled children.

(3) Not more frequently than annually, select one of the methods described in paragraphs (d)(3) (i)–(iii) of this section for all tier II day care homes in which the provider elects to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals. In such homes, the sponsoring organization shall either:

(i) Require that such day care homes submit the number and types of meals served each day to each enrolled child by name. The sponsoring organization shall use the information submitted by the homes to produce an actual count, by type and by category (tier I and tier II), of meals served in the homes; or

(ii) Establish claiming percentages, not less frequently than semiannually, for each such day care home on the basis of one month's data concerning the number of enrolled children determined eligible for free or reduced-price meals. The State agency may require a sponsoring organization to recalculate the claiming percentage for any of its day care homes before the required semiannual calculation if the State agency has reason to believe that a home's percentage of income-eligible children has changed significantly or was incorrectly established in the previous calculation. Under this system, day care homes shall be required to submit the number of meals served, by type, to enrolled children; or

(iii) Determine a blended per-meal rate of reimbursement, not less frequently than semiannually, for each such day care home by adding the products obtained by multiplying the applicable rate of reimbursement for each category (tier I and tier II) by the claiming percentage for that category. The State agency may require a sponsoring organization to recalculate the blended rate for any of its day care homes before the required semiannual calculation if the State agency has reason to believe that a home's percentage of income-eligible children has changed significantly or was incorrectly established in the previous calculation. Under this system, day care homes shall be required to submit the number of meals served, by type, to enrolled children.

[47 FR 36527, Aug. 20, 1982, as amended at 62 FR 903, Jan. 7, 1997; 62 FR 5519, Feb. 6, 1997]

### § 226.14 Claims against institutions.

(a) State agencies shall disallow any portion of a claim for reimbursement and recover any payment to an institution not properly payable under this part. State agencies shall assert overclaims against any sponsoring organization of day care homes which misclassifies a day care home as a tier I day care home unless the misclassification is determined to be inadvertent under guidance issued by FCS. However, the State agency shall notify the institution of the reasons for any disallowance or demand for repayment, and allow the institution full opportunity to submit evidence on appeal as provided for in § 226.6(k). Miminum State agency collection procedures for unearned payments shall include:

(1) Written demand to the institution for the return of improper payments; (2) if, after 30 calendar days, the institution fails to remit full payment or

agree to a satisfactory repayment schedule, a second written demand for the return of improper payments sent by certified mail return receipt requested; and (3) if, after 60 calendar days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the institution to appropriate State or Federal authorities for pursuit of legal remedies.

(b) In the event that the State agency finds that an institution which prepares its own meals is failing to meet the meal requirements of §226.20, the State agency need not disallow payment or collect an overpayment arising out of such failure if the institution takes such other action as, in the opinion of the State agency, will have a corrective effect. However, the State agency shall not disregard any overpayments or waive collection action arising from the findings of Federal audits.

(c) If FCS does not concur with the State agency's action in paying an institution or in failing to collect an overpayment, FCS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FCS for failure to collect an overpayment, unless FCS determines that the State agency has conformed with this part in issuing the payment and has exerted reasonable efforts to recover the improper payment.

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 50 FR 8580, Mar. 4, 1985; 53 FR 52590, Dec. 28, 1988; 62 FR 903, Jan. 7, 1997]

## Subpart E—Operational Provisions

### §226.15 Institution provisions.

(a) *Tax-exempt status.* Except for proprietary title XIX and title XX centers, and sponsoring organizations of such centers, institutions shall be public, or have tax-exempt status under the Internal Revenue Code of 1986, or be moving toward compliance with the requirements for tax-exempt status, or be currently operating another Federal program requiring nonprofit status. An institution which has applied to IRS for tax-exempt status may participate in the program while its application is pending review by IRS. It shall, however, be the responsibility of the institution to document that it has complied with all requirements of IRS and has provided all information requested. If IRS denies the application for tax-exempt status, the institution shall immediately notify the State agency of such denial. The State agency shall then terminate the participation of the institution. If IRS certification of tax-exempt status has not been received within 12 months of filing the application with IRS, and IRS indicates that the institution has failed to provide all required information, the State agency shall terminate the participation of the institution until such time as IRS tax-exempt status is obtained.

(b) *Applications.* Each institution shall submit to the State agency all information required for its approval. As a minimum, such information shall include:

(1) Except for proprietary title XIX and title XX centers and sponsoring organizations or proprietary title XIX and title XX centers, evidence of nonprofit status, in accordance with §226.15(a).

(2) An application for participation, or application renewal materials, accompanied by all necessary supporting documentation;

(3) An administrative budget;

(4) If an independent child care center or independent outside-school-hours care center, documentation that it meets the licensing/approval requirements of §226.6(d)(1); or, if an independent adult day care center, the licensing/approval requirements of §226.19a(b)(3).

(5) A nondiscrimination and free and reduced-price policy statement, and information regarding a public release, in accordance with §226.23; and

(6) For each proprietary title XX child care center, documentation that it provides nonresidential day care services for which it receives compensation under title XX of the Social Security Act, and certification that not less than 25 percent of the enrolled children, or 25 percent of the licensed

capacity, whichever is less, during the most recent calendar month were title XX beneficiaries. For each proprietary title XIX or title XX adult day care center, documentation that it provides nonresidential day care services for which it receives compensation under title XIX or title XX of the Social Security Act, and certification that not less than 25 percent of the adult participants enrolled during the most recent calendar month were title XIX or title XX beneficiaries. Sponsoring organizations shall provide documentation and certification for each proprietary title XIX or title XX center under its jurisdiction.

(c) *Responsibility.* Each institution shall accept final administrative and financial responsibility for Program operations. No institution may contract out for management of the Program.

(d) *Staffing.* Each institution shall provide adequate supervisory and operational personnel for management and monitoring of the Program.

(e) *Recordkeeping.* Each institution shall establish procedures to collect and maintain all necessary Program records. Such records shall include:

(1) Copies of all applications and supporting documents submitted to the State agency;

(2) Documentation of the enrollment of each participant at child care centers, adult day care centers and outside-school-hours care centers including information used to determine eligibility for free or reduced price meals in accordance with § 226.23(e)(1).

(3) Documentation of: the enrollment of each child at day care homes; information used to determine the eligibility of enrolled providers' children for free or reduced price meals; information used to classify day care homes as tier I day care homes; and information used to determine the eligibility of enrolled children in tier II day care homes that have been identified as eligible for free or reduced price meals in accordance with § 226.23(e)(1).

(4) Daily records indicating the number of participants in attendance and the number of meals, by type (breakfast, lunch, supper, and supplements), served to participants.

(5) For child care centers and outside-school-hours care centers claiming reimbursement for two meals and two supplements or three meals and one supplement per child per day, either:

(i) Documentation of total time-in-attendance for each child at the center for each day for which the fourth meal service was claimed, including a time-in/time-out form which records time-in-attendance for each child at the center; or, at the discretion of the State agency,

(ii) Documentation which demonstrates that at least eight hours elapse between the end of the first meal service and the beginning of the fourth meal service on any day in which reimbursement is claimed for a fourth meal; service.

(6) Except at day care homes, daily records indicating the number of meals, by type, served to adults performing labor necessary to the food service;

(7) Copies of invoices, receipts, or other records required by the State agency financial management instruction to document:

(i) Administrative costs claimed by the institution;

(ii) Operating costs claimed by the institution except sponsoring organizations of day care homes; and

(iii) Income to the Program.

(8) Copies of all claims for reimbursement submitted to the State agency;

(9) Receipts for all Program payments received from the State agency;

(10) Copies of menus, and any other food service records required by the State agency; and

(11) Information on training session date(s) and location(s), as well as topics presented and names of participants;

(12) Maintain documentation of nonprofit food service to ensure that all Program reimbursement funds are used: (i) Solely for the conduct of the food service operation; or (ii) to improve such food service operations, principally for the benefit of the enrolled participants.

(f) *Day care home classifications.* Each sponsoring organization of day care homes shall determine which of the day care homes under its sponsorship are eligible as tier I day care homes. A

sponsoring organization may use current school or census data provided by the State agency or free and reduced price applications collected from day care home providers in making a determination for each day care home. Determinations of a day care home's eligibility as a tier I day care home shall be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data. However, a sponsoring organization, State agency, or FCS may change the determination if information becomes available indicating that a home is no longer in a qualified area.

(g) *Claims submission.* Each institution shall submit claims for reimbursement to the State agency in accordance with §226.10.

(h) *Program agreement.* Each institution shall enter into a Program agreement with the State agency in accordance with §226.6(f)(1).

(i) *Commodities.* Each institution receiving commodities shall ensure proper commodity utilization.

(j) *Special Milk Program.* No institution may participate in both the Child and Adult Care Food Program and the Special Milk Program at the same time.

(k) *Elderly feeding programs.* Institutions which are school food authorities (as defined in part 210 of this chapter) may use facilities, equipment and personnel supported by funds provided under this part to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

[47 FR 36527, Aug. 20, 1982, as amended at 48 FR 21530, May 13, 1983; 50 FR 8580, Mar. 4, 1985; 52 FR 15298, Apr. 28, 1987; 52 FR 36907, Oct. 2, 1987; 53 FR 52590, Dec. 28, 1988; 54 FR 26724, June 26, 1989; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 56 FR 58174, Nov. 16, 1991; 61 FR 25554, May 22, 1996; 62 FR 903, Jan. 7, 1997; 62 FR 23619, May 1, 1997]

### §226.16 Sponsoring organization provisions.

(a) Each sponsoring organization shall comply with all provisions of §226.15.

(b) Each sponsoring organization shall submit to the State agency all information required for its approval and the approval of all child care and adult day care facilities under its jurisdiction, including:

(1) A sponsoring organization management plan, in accordance with §226.6(f)(2);

(2) An application for participation, or renewal materials, for each child care and adult day care facility accompanied by all necessary supporting documentation; and

(3) Timely information concerning the eligibility status of child care and adult day care facilities (such as licensing/approval actions).

(c) Each sponsoring organization shall accept final administrative and financial responsibility for food service operations in all child care and adult day care facilities under its jurisdiction.

(d) Each sponsoring organization shall provide adequate supervisory and operational personnel for the effective management and monitoring of the program at all child care and adult day care facilities under its jursidiction. At a minimum, such Program assistance shall include:

(1) Pre-approval visits to each child care and adult day care facility for which application is made to discuss Program benefits and verify that the proposed food service does not exceed the capability of the child care facility;

(2) Staff training for all child care and adult day care facilities in Program duties and responsibilities prior to beginning Program operations;

(3) Additional training sessions, to be provided not less frequently than annually; and

(4) Reviews of food service operations to assess compliance with meal pattern, recordkeeping, and other Program requirements. Such reviews shall be made not less frequently than:

(i) Three times each year at each child care center and adult day care center, provided at least one review is made during each child care or adult day care center's first six weeks of Program operations and not more than six months elapse between reviews;

(ii) Three times each year at each day care home, provided at least one review is made during each day care home's first four weeks of Program operations and not more than six months

elapse between reviews. However, based on case-by-case findings by the State agency that improved efficiency and more effective management will result and subject to FCSRO approval, State agencies may allow some or all of their sponsors to conduct reviews an average of three times each year per day care home, provided that each day care home is reviewed at least twice each year, at least one review is made during each day care home's first four weeks of Program operations, and no more than six months elapse between reviews; and

(iii) Six times each year for each outside-school-hours care center, provided at least one review is made during each outside-school-hours care center's first four weeks of Program operations and not more than three months elapse between reviews.

(e) In addition to records required under § 226.15(e), each sponsoring organization shall maintain the following:

(1) Information concerning the dates and amounts of disbursements to each child care or adult day care facility;

(2) Information concerning the location and dates of each child care or adult day care facility review, any problems noted, and the corrective action prescribed and effected.

(f) The State agency may require a sponsoring organization to enter into separate agreements for the administration of separate types of facilities (child care centers, day care homes, adult day care centers, and outside-school-hours care centers).

(g) Each sponsoring organization electing to receive advance payments of program funds for day care homes shall disburse the full amount of such payments within five working days of receipt from the State agency. If the sponsor requests the full operating advance to which it is entitled, the advances to day care homes shall be the full amount which the sponsor expects the home to earn based on the number of meals projected to be served to enrolled children during the period covered by the advance multiplied by the applicable payment rate as specified in § 226.13(c). If a sponsor elects to receive only a part of the operating advance to which it is entitled, or if the full operating advance is insufficient to provide a full advance to each home, the advance shall be disbursed to its homes in a manner and an amount the sponsor deems appropriate. Each sponsor shall disburse any reimbursement payments for food service due to each day care home within five working days of receipt from the State agency. Such payment shall be based on the number of meals served to enrolled children at each day care home, less any payments advanced to such home. However, the sponsoring organization may withhold from Program payments to each home an amount equal to food service operating costs incurred by the sponsoring organization in behalf of the home and with the home provider's written consent. If payments from the State agency are not sufficient to provide all day care homes under the sponsoring organization's jurisdiction with advance payments and reimbursement payments, available monies shall be used to provide all due reimbursement payments before advances are disbursed.

(h) Sponsoring organizations shall make payments of program funds to child care centers, adult day care centers or outside-school-hours care centers within five working days of receipt from the State agency, on the basis of the management plan approved by the State agency, and may not exceed the Program costs documented at each facility during any fiscal year; except in those States where the State agency has chosen the option to implement a meals times rates payment system. In those States which implement this optional method of reimbursement, such disbursements may not exceed the rates times the number of meals documented at each facility during any fiscal year.

(i) Disbursements of advance payments may be withheld from child and adult day care facilities which fail to submit reports required by § 226.15(e).

(j) A for-profit organization shall be eligible to serve as a sponsoring organization for proprietary title XIX or title XX centers which have the same legal identity as the organization, but shall not be eligible to sponsor proprietary title XIX or title XX centers which are legally distinct from the organization,

day care homes, or public or private nonprofit centers.

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 48 FR 21530, May 13, 1983; 50 FR 8580, Mar. 4, 1985; 50 FR 26975, July 1, 1985; 53 FR 52591, Dec. 28, 1988]

### §226.17 Child care center provisions.

(a) Child care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; provided, however, that public and private nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Child care centers participating as independent centers shall comply with the provisions of §226.15.

(b) All child care centers, independent or sponsored, shall meet the following requirements

(1) Child care centers shall have Federal, State, or local licensing or approval to provide day care services to children. Child care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not available, a center may participate if:

(i) It receives title XX funds for child care; or

(ii) It demonstrates compliance with the CACFP child care standards or any applicable State or local child care standards to the State agency.

(2) Except for proprietary title XX centers, child care centers shall be public, or have tax exempt status under the Internal Revenue Code of 1986, or be moving toward compliance with the requirements for tax-exempt status, or be currently operating another Federal program requiring nonprofit status. A child care center which has applied to the Internal Revenue Service (IRS) for tax-exempt status may participate in the Program while its application is pending review by IRS. If IRS denies the application for tax-exempt status, the child care center shall immediately notify the State agency of such denial and the State agency shall terminate the participation of the child care center. If IRS certification of nonprofit status has not been received within 12 months of filing the application with IRS, and IRS indicates that the child care center has failed to provide all required information, the State agency shall terminate the participation of the child care center until such time as IRS tax-exempt status is obtained.

(3) Each child care center participating in the Program shall serve one or more of the following meal types: (i) Breakfast, (ii) lunch, (iii) supper, and (iv) supplemental food. Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each child, except that reimbursement may be claimed for two meals and two supplements or three meals and one supplement served to a child for each day in which that child is maintained in care for eight or more hours.

(4) Each child care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the meal pattern requirements specified in §226.20. Reimbursement may not be claimed for meals served to children who are not enrolled, or for meals served to children at any one time in excess of the child care center's authorized capacity, or for any meal served at a proprietary title XX center during a calendar month when less than 25 percent of enrolled children or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries. Menus and any other nutritional records required by the State agency shall be maintained to document compliance with such requirements.

(5) A child care center with preschool children may also be approved to serve a breakfast, supplement, and supper to school-age children enrolled in an outside-school-hours care program meeting the criteria of §226.19(b) which is distinct from its day care program for preschool-age children. The State agency may authorize the service of lunch to such enrolled children who attend a school which does not offer a lunch program provided the limit of not more than two meals and one supplement per child per day is not exceeded. If the majority of children served by the center are participating

in an outside-school-hours care program, the center shall comply with reporting requirements of § 226.19 and, if it is a facility, shall be monitored by the sponsoring organization at the frequency specified in § 226.16(d)(4)(iii).

(6) A child care center may utilize existing school food service facilities or obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in a written agreement between the child care center and school. The center shall maintain responsibility for all Program requirements set forth in this part.

(7) Child care centers shall collect and maintain documentation of the enrollment of each child, including information used to determine eligibility for free and reduced price meals in accordance with § 226.23(e)(1).

(8) Each child care center shall maintain daily records of the number of meals by type (breakfast, lunch, supper, and supplements) served to enrolled children, and to adults performing labor necessary to the food service.

[47 FR 36527, Aug. 20, 1982, as amended at 52 FR 36907, Oct. 2, 1987; 53 FR 52591, Dec. 28, 1988; 54 FR 26724, June 26, 1989; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 61 FR 25554, May 22, 1996; 62 FR 23619, May 1, 1997]

### § 226.18 Day care home provisions.

(a) Day care homes shall have current Federal, State or local licensing or approval to provide day care services to children. Day care homes which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not available, a day care home may participate in the Program if:

(1) It receives title XX funds for providing child care; or

(2) It demonstrates compliance with CACFP child care standards or applicable State or local child care standards to the State agency.

(b) Day care homes participating in the program shall operate under the auspices of a public or private nonprofit sponsoring organization. Sponsoring organizations shall enter into a written agreement with each sponsored day care home which specifies the rights and responsibilities of both parties. This agreement shall be developed by the State agency, unless the State agency elects, at the request of the sponsor, to approve an agreement developed by the sponsor. At a minimum, the agreement shall embody:

(1) The right of the sponsoring organization, the State agency, and the Department to visit the day care home and review its meal service and records during its hours of child care operations;

(2) The responsibility of the sponsoring organization to train the day care home's staff in program requirements;

(3) The responsibility of the day care home to prepare and serve meals which meet the meal patterns specified in § 226.20;

(4) The responsibility of the day care home to maintain records of menus, and of the number of meals, by type, served to enrolled children;

(5) The responsibility of the day care home to promptly inform the sponsoring organization about any change in the number of children enrolled for care or in its licensing or approval status;

(6) The meal types approved for reimbursement to the day care home by the State agency;

(7) The right of the day care home to receive in a timely manner the full food service rate for each meal served to enrolled children for which the sponsoring organization has received payment from the State agency. However, if, with the home provider's consent, the sponsoring organization will incur costs for the provision of program foodstuffs or meals in behalf of the home, and subtract such costs from Program payments to the home, the particulars of this arrangement shall be specified in the agreement;

(8) The right of the sponsoring organization or the day care home to terminate the agreement for cause or, subject to stipulations by the State agency, convenience; and

(9) A prohibition of any sponsoring organization fee to the day care home for its Program administrative services.

(10) If the State agency has approved a time limit for submission of meal records by day care homes, that time limit shall be stated in the agreement.

(11) The responsibility of the sponsoring organization to inform tier II day care homes of all of their options for receiving reimbursement for meals served to enrolled children.

(12) The responsibility of the sponsoring organization, upon the request of a tier II day care home, to collect applications and determine the eligibility of enrolled children for free or reduced price meals.

(c) Each day care home shall serve one or more of the following meal types:

(1) Breakfast,

(2) Lunch,

(3) Supper and

(4) Supplemental food.

Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each child.

(d) Each day care home participating in the program shall serve the meal types specified in its approved application in accordance with the meal pattern requirements specified in §226.20. Menu records shall be maintained to document compliance with these requirements. Meals shall be served at no separate charge to enrolled children;

(e) Each day care home shall maintain daily records of the number of children in attendance and the number of meals, by type, served to enrolled children. Each tier II day care home in which the provider elects to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals, and in which the sponsoring organization employs a meal counting and claiming system in accordance with §226.13(d)(3)(i), shall maintain and submit each month to the sponsoring organization daily records of the number and types of meals served to each enrolled child by name. Payment may be made for meals served to the provider's own children only when (1) such children are enrolled and participating in the child care program during the time of the meal service, (2) enrolled nonresident children are present and participating in the child care program and (3) providers' children are eligible to receive free or reduced-price meals. Reimbursement may not be claimed for meals served to children who are not enrolled, or for meals served at any one time to children in excess of the home's authorized capacity or for meals served to providers' children who are not eligible for free or reduced-price meals.

(f) The State agency may not require a day care home or sponsoring organization to maintain documentation of home operating costs.

[47 FR 36527, Aug. 20, 1982, as amended by Amdt. 5, 49 FR 18989, May 4, 1984; 50 FR 8580, Mar. 4, 1985; 52 FR 36907, Oct. 2, 1987; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 61 FR 25554, May 22, 1996; 62 FR 903, Jan. 7, 1997]

### §226.19 Outside-school-hours care center provisions.

(a) Outside-school-hours care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; *Provided, however,* That public and private nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Outside-school-hours care centers participating as independent centers shall comply with the provisions of §226.15.

(b) All outside-school-hours care centers, independent or sponsored, shall meet the following requirements:

(1) Outside-school-hours care centers shall have current Federal, State or local licensing or approval to provide organized child care services to enrolled school-age children outside of school hours. The main purpose of the Program shall be the care and supervision of children. Outside-school-hours care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates the renewal will be denied. If licensing or approval is not available, an outside-school-hours care center may participate in the Program if:

(i) It receives title XX funds for providing child care; or

(ii) It demonstrates compliance with CACFP child care standards or any applicable State or local child care standards to the State agency.

(2) Except for proprietary title XX centers, outside-school-hours care centers shall be public, or have tax-exempt status under the Internal Revenue Code of 1986, or be moving toward compliance with the requirements for tax-exempt status, or be currently participating in another Federal program requiring nonprofit status. Centers which have applied to IRS for tax-exempt status may participate in the Program while their application is pending review by IRS. If IRS denies the application, the center shall immediately notify the State agency of such denial and the State agency shall terminate the participation of the center. If IRS certification of nonprofit status has not been received within 12 months of filing the application with IRS and IRS indicates that the center has failed to provide all required information, the State agency shall terminate the participation of the center in the Program until such time as IRS certification is obtained.

(3) Nonresidential public or private nonprofit schools which provide organized child care programs for school children may participate in the Program as outside-school-hours care centers if:

(i) Children are enrolled in a regularly scheduled child care program which meets the criteria of paragraph (b)(1) of this section. The program is organized for the purpose of providing child care services and is distinct from any extracurricular programs organized primarily for scholastic, cultural, and athletic purposes; and

(ii) Separate Program records are maintained.

(4) Outside-school-hours care centers shall be eligible to serve one or more of the following meal types: breakfasts, supplements and suppers. In addition, outside-school-hours care centers shall be eligible to serve lunches to enrolled children during periods of school vacation, including weekends and holidays, and to enrolled children attending schools which do not offer a lunch program. Notwithstanding the eligibility of outside-school-hours care centers to serve Program meals to children on school vacation, including holidays and weekends, such centers shall not operate under the Program on weekends only.

(5) Each outside-school-hours care center participating in the Program shall claim only the meal types specified in its approved application and served in compliance with the meal pattern requirements of § 226.20. Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each child, except that reimbursement may be claimed for two meals and two supplements or three meals and one supplement served to a child for each day in which that child is maintained in care for eight or more hours. In addition, reimbursement shall not be claimed for meals served to children who are not enrolled, for meals served to children at any one time in excess of authorized capacity, or for any meal served at a proprietary title XX center during a calendar month when less than 25 percent of enrolled children or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries.

(6) Three hours shall elapse between the beginning of one meal service and the beginning of another, except that 4 hours shall elapse between the service of a lunch and supper when no supplement is served between lunch and supper. The service of a supper shall begin no later than 7 p.m. and end no later than 8 p.m. The duration of the meal service shall be limited to 2 hours for lunches and supper and 1 hour for other meals.

(7) Each outside-school-hours care center shall ensure that each meal service is supervised by an adequate number of operational personnel trained in Program requirements. Operational personnel shall ensure that:

(i) Meals are served only to children enrolled for care and adults who perform necessary food service labor; (ii) meals served to children meet the meal pattern requirements specified in § 226.20; (iii) each meal service is consistent with the meal time requirements of paragraph (b)(7) of this section; (iv) meals served are consumed on

the premises of the centers; (v) accurate records are maintained; and (vi) the number of meals prepared or ordered is promptly adjusted on the basis of participation trends.

(8) Each outside-school-hours care center shall accurately maintain the following records:

(i) Documentation of enrollment for all children, including information used to determine eligibility for free or reduced price meals in accordance with §226.23(e)(1);

(ii) Number of meals prepared or delivered for each meal service;

(iii) Daily menu records for each meal service;

(iv) Number of meals served to enrolled children at each meal service;

(v) Number of enrolled children in attendance during each meal service;

(vi) Number of meals served to adults performing necessary food service labor for each meal service; and

(vii) All other records required by the State agency financial management system.

(9) An outside-school-hours care center may utilize existing school food service facilities or obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in a written agreement between the outside-school-hours care center and the school. The center shall maintain responsibility for all Program requirements set forth in this part.

[47 FR 36527, Aug. 20, 1982, as amended at 52 FR 36907, Oct. 2, 1987; 54 FR 26724, June 26, 1989; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 56 FR 58175, Nov. 16, 1991; 61 FR 25554, May 22, 1996; 62 FR 23619, May 1, 1997]

### §226.19a Adult day care center provisions.

(a) Adult day care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; provided, however, that public and private nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Adult day care centers participating as independent centers shall comply with the provisions of §226.15.

(b) All adult day care centers, independent or sponsored, shall meet the following requirements:

(1) Adult day care centers shall provide a community-based group program designed to meet the needs of functionally impaired adults through an individual plan of care. Such a program shall be a structured, comprehensive program that provides a variety of health, social and related support services to enrolled adult participants.

(2) Adult day care centers shall provide care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services.

(3) Adult day care centers shall have Federal, State or local licensing or approval to provide day care services to functionally impaired adults (as defined in §226.2) or individuals 60 years of age or older in a group setting outside their home or a group living arrangement on a less than 24-hour basis. Adult day care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied.

(4) Except for proprietary title XIX or title XX centers, adult day care centers shall be public, or have tax-exempt status under the Internal Revenue Code of 1986, or be moving toward compliance with the requirements for tax-exempt status, or be currently operating another Federal program requiring nonprofit status. An adult day care center which has applied to the Internal Revenue Service (IRS) for tax-exempt status may participate in the Program while its application is pending review by IRS. If IRS denies the application for tax-exempt status, the adult day care center shall immediately notify the State agency of such denial and the State agency shall terminate the participation of the center. If IRS certification of nonprofit status has not been received within 12 months of filing the application with IRS, and IRS indicates that the adult day care center has failed to provide all required information, the State agency shall

terminate the participation of the adult day care center until such time as IRS tax-exempt status is obtained.

(5) Each adult day care center participating in the Program shall serve one or more of the following meal types:

(i) Breakfast,

(ii) Lunch,

(iii) Supper, and

(iv) Supplemental food.

Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each adult participant.

(6) Each adult day care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the meal pattern requirements specified in § 226.20. Participating centers may not claim CACFP reimbursement for meals claimed under part C of title III of the Older Americans Act of 1965. Reimbursement may not be claimed for meals served to persons who are not enrolled, or for meals served to participants at any one time in excess of the center's authorized capacity, or for any meal served at a proprietary title XIX or title XX center during a calendar month when less than 25 percent of enrolled participants were title XIX or title XX beneficiaries. Menus and any other nutritional records required by the State agency shall be maintained to document compliance with such requirements.

(7) An adult day care center may obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in a written agreement between the center and school. The center shall maintain responsibility for all Program requirements set forth in this part.

(8) Adult day care centers shall collect and maintain documentation of the enrollment of each adult participant including information used to determine eligibility for free and reduced price meals in accordance with § 226.23(e)(1).

(9) Each adult day care center shall maintain daily records of the number of meals by type (breakfast, lunch, supper, and supplements) served to enrolled participants, and to adults performing labor necessary to the food service.

(10) Each adult day care center shall maintain records on the age of each enrolled person. In addition, each adult day care center shall maintain records which demonstrate that each enrolled person under the age of 60 meets the functional impairment eligibility requirements established under the definition of ''functionally impaired adult'' contained in this part. Finally, each adult day care center shall maintain records which document that qualified adult day care participants reside in their own homes (whether alone or with spouses, children or guardians) or in group living arrangements as defined in § 226.2.

[53 FR 52591, Dec. 28, 1988, as amended by Amdt. 22, 55 FR 1378, Jan. 14, 1990; 61 FR 25554, May 22, 1996; 62 FR 23619, May 1, 1997]

### § 226.20 Requirements for meals.

(a) Except as otherwise provided in this section, each meal served in the Program shall contain, as a minimum, the indicated food components:

(1) A breakfast shall contain: (i) Fluid milk as a beverage or on cereal, or used in part for each purpose;

(ii) Vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or any combination of these foods;

(iii) Whole-grain or enriched bread; or cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or whole-grain or enriched or fortified cereal; or cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or any combination of these foods.

(2) Lunch shall contain: (i) Fluid milk as a beverage;

(ii)(A) Lean meat, poultry or fish; or cheese; or an egg; or cooked dry beans or peas; or peanut butter; or any combination of these foods. These foods must be served in a main dish, or in a main dish and one other menu item, to meet this requirement. Cooked dry beans or dry peas may be used as the meat alternate or as part of the vegetable/fruit component but not as both food components in the same meal;

(B) Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall *not* be used as meat alternates due to their low protein content. Nut or seed meals or flours may be used as an ingredient in a bread/bread alternate, but shall *not* be used as a meat alternate except as defined in this part under Appendix A: Alternate Foods for Meals, and in program guidance materials. As noted in paragraph (c)(2) of this section, nuts or seeds may be used to meet no more than one-half of the meat/meat alternate requirements. Therefore, nuts or seeds must be combined with another meat/meat alternate to fulfill the requirement;

(C) Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt served may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products shall not be credited. Four ounces (weight) or ½ cup (volume) of yogurt fulfills the equivalent of one ounce of the meat/meat alternate requirement in the meal pattern.

(iii) Two or more vegetables or fruits, or a combination of both. Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement;

(iv) Whole-grain or enriched bread; or cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or any combination of these foods.

(3) Supper shall contain the food components and servings listed for lunch in § 226.20(a)(2), except that, for adult participants in adult day care centers, it does not require a serving of fluid milk.

(4) Supplemental food shall contain two of the following four components:

(i) Fluid milk as a beverage, or on cereal, or used in part for each purpose;

(ii) Meat or meat alternate. Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts are excluded and shall *not* be used as meat alternates due to their low protein content. Nut or seed meals or flours shall *not* be used as a meat alternate except as defined in this part under Appendix A: Alternate Foods for Meals;

(iii) Vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or any combination of these foods. For children, juice may not be served when milk is served as the only other component;

(iv) Whole-grain or enriched bread; or cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgar, or corn grits; or any combination of these foods.

(b) *Infant meal pattern.* When infants from birth through 11 months of age participate in the Program, an infant meal shall be offered. Foods within the infant meal pattern shall be of texture and consistency appropriate for the particular age group being served, and shall be served during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only if the infant is developmentally ready. Whenever possible the child care facility should consult with the infant's parent in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food authorized in the meal patterns set forth below must be provided in order to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. However, meals containing only breast milk do not qualify

for reimbursement. Meals containing breast milk served to infants 4 months of age or older may be claimed for reimbursement when the other meal component or components are supplied by the child care facility. Although it is recommended that either breast milk or iron-fortified infant formula be served for the entire first year, whole milk may be served beginning at 8 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to ensure adequate sources of iron and vitaman C. Juice should not be offered to infants until they are ready to drink from a cup, in order to develop behaviors that may prevent baby bottle tooth decay. The infant meal pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(1) Birth through 3 months. (i) Breakfast—4 to 6 fluid ounces of iron-fortified infant formula;

(ii) Lunch or supper—4 to 6 fluid ounces of iron-fortified infant formula;

(iii) Supplemental food—4 to 6 fluid ounces of iron-fortified infant formula.

(2) 4 through 7 months. (i) Breakfast—4 to 8 fluid ounces of iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal (optional);

(ii) Lunch or supper—4 to 8 fluid ounces of iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal (optional); and 0 to 3 tablespoons of fruit or vegetable of appropriate consistency or a combination of both (optional);

(iii) Supplemental food—4 to 6 fluid ounces of iron-fortified infant formula.

(3) 8 through 11 months. (i) Breakfast—6 to 8 fluid ounces of iron-fortified infant formula or 6 to 8 fluid ounces whole milk; 2 to 4 tablespoons of iron-fortified dry infant cereal; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both;

(ii) Lunch or supper—6 to 8 fluid ounces of iron-fortified infant formula or 6 to 8 fluid ounces whole milk; 2 to 4 tablespoons of iron-fortified dry infant cereal and/or 1 to 4 tablespoons of meat, fish, poultry, egg yolk, or cooked dry beans or peas, or ½ to 2 ounces (weight) of cheese or 1 to 4 ounces (weight or volume) of cottage cheese or cheese food or cheese spread of appropriate consistency; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both;

(iii) Supplemental food—2 to 4 fluid ounces of iron-fortified infant formula, whole milk, or full strength fruit juice and 0 to ½ slice of crusty bread (optional) or 0 to 2 cracker type products (optional) made from whole-grain or enriched meal or flour and which are suitable for an infant for use as a finger food.

(4) The minimum amount of food components to be served as breakfast, lunch, supper or supplement as set forth in paragraphs (b), (1), (2), and (3) of this section are as follows:

CHILD CARE INFANT MEAL PATTERN

| | Birth through 3 months | 4 through 7 months | 8 through 11 months |
|---|---|---|---|
| Breakfast | 4–6 fl.oz. formula [1] | 4–8 fl.oz. formula [1] or breast milk.<br>0–3 Tbsp. infant cereal [2] (optional). | 6–8 fl.oz. formula [1] breast milk, or whole milk.<br>2–4 Tbsp. infant cereal [2].<br>1–4 Tbsp. fruit and/or vegetable. |
| Lunch or supper | 4–6 fl.oz. formula [1] | 4–8 fl.oz. formula [1] or breast milk.<br>0–3 Tbsp. infant cereal [2] (optional).<br>0–3 Tbsp. fruit and/or vegetable (optional). | 6–8 fl.oz. formula [1] breast milk, or whole milk.<br>2–4 Tbsp. infant cereal [2] and/or<br>1–4 Tbsp. meat, fish, poultry, egg yolk, or cooked dry beans or peas, or<br>1/2–2 oz. cheese or<br>1–4 oz. cottage cheese, cheese food, or cheese spread<br>1–4 Tbsp. fruit and/or vegetable. |

CHILD CARE INFANT MEAL PATTERN—Continued

| | Birth through 3 months | 4 through 7 months | 8 through 11 months |
|---|---|---|---|
| Supplement | 4–6 fl.oz. formula [1] | 4–6 fl.oz. formula [1] | 2–4 fl.oz. formula,[1] breast milk, whole milk, or fruit juice [3].<br>0–½ bread or<br>0–2 crackers (optional). |

[1] Shall be iron-fortified infant formula.
[2] Shall be iron-fortified dry infant cereal.
[3] Shall be full-strength fruit juice.
[4] Shall be from whole-grain or enriched meal or flour.

(c) *Meal patterns for children age one through 12 and adult participants.* When individuals over age one participate in the Program, the total amount of food authorized in the meal patterns set forth below shall be provided in order to qualify for reimbursement.

BREAKFAST

(1) The minimum amount of food components to be served as breakfast as set forth in paragraph (a)(1) of this section are as follows:

| Food components | Age 1 and 2 | Age 3 through 5 | Age 6 through 12 [1] | Adult participants |
|---|---|---|---|---|
| Milk | | | | |
| Milk, fluid | ½ cup [2] | ¾ cup | 1 cup | 1 cup.[2] |
| Vegetables and Fruits | | | | |
| Vegetable(s) and/or Fruit(s) | ¼ cup | ½ cup | ½ cup | ½ cup. |
| or | | | | |
| Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice. | ¼ cup | ½ cup | ½ cup | ½ cup. |
| Bread and Bread Alternates [3] | | | | |
| Bread | ½ slice | ½ slice | 1 slice | 2 slices (servings). |
| or | | | | |
| Cornbread, biscuits, rolls, muffins, etc.[4] | ½ serving | ½ serving | 1 serving | 2 servings. |
| or | | | | |
| Cold dry cereal [5] | ¼ cup or ⅓ oz | ⅓ cup or ½ oz | ¾ cup or 1 oz | 1½ cups or 2 oz. |
| or | | | | |
| Cooked cereal | ¼ cup | ¼ cup | ½ cup | 1 cup. |
| or | | | | |
| Cooked pasta or noodle products | ¼ cup | ¼ cup | ½ cup | 1 cup. |
| or | | | | |
| Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate. | ¼ cup | ¼ cup | ½ cup | 1 cup. |

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[3] Bread, pasta or noodle products, and cereal grains, shall be wholegrain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with wholegrain or enriched meal or flour; cereal shall be wholegrain or enriched or fortified.
[4] Serving sizes and equivalents to be published in guidance materials by FCS.
[5] Either volume (cup) or weight (oz.) whichever is less.

LUNCH

(2) The minimum amounts of food components to be served as lunch as set forth in paragraph (a)(2) of this section are as follows:

| Food components | Age 1 and 2 | Age 3 through 5 | Age 6 through 12 [1] | Adult participants |
|---|---|---|---|---|
| Milk | | | | |
| Milk, fluid | ½ cup [2] | ¾ cup | 1 cup | 1 cup.[2] |
| Vegetables and Fruits [3] | | | | |
| Vegetable(s) and/or fruit(s) | ¼ cup total | ½ cup total | ¾ cup total | 1 cup total. |
| Bread and Bread Alternates [4] | | | | |
| Bread | ½ slice | ½ slice | 1 slice | 2 slices (servings). |

| Food components | Age 1 and 2 | Age 3 through 5 | Age 6 through 12[1] | Adult participants |
|---|---|---|---|---|
| or | | | | |
| Cornbread, biscuits, roll, muffins, etc.[5] | ½ serving | ½ serving | 1 serving | 2 servings. |
| or | | | | |
| Cooked pasta or noodle products | ¼ cup | ¼ cup | ½ cup | 1 cup. |
| or | | | | |
| Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate. | ¼ cup | ¼ cup | ½ cup | 1 cup. |
| Meat and Meat Alternates | | | | |
| Lean meat or poultry or fish[6] | 1 oz | 1½ oz | 2 oz | 2 oz. |
| or | | | | |
| Cheese | 1 oz | 1½ oz | 2 oz | 2 oz. |
| or | | | | |
| Eggs | 1 egg | 1 egg | 1 egg | 1 egg. |
| or | | | | |
| Cooked dry beans or peas | ¼cup | ⅜ cup | ½ cup | ½ cup. |
| or | | | | |
| Peanut butter or soynut butter or other nut or seed butters. | 2 tbsp | 3 tbsp | 4 tbsp | 4 tbsp. |
| or | | | | |
| Peanuts or soynuts or tree nuts or seeds.[7]. | ½ oz[8] = 50% | ¾ oz[8] = 50% | 1 oz[8] = 50% | 1 oz=50 percent. |
| or | | | | |
| Yogurt, plain or flavored, unsweetened or sweetened. | 4 oz. or ½ cup | 6 oz. or ¾ cup | 8 oz. or 1 cup | 8 oz. or 1 cup. |
| An equivalent quantity of any combination of the above meat/meat alternates. | | | | |

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[3] Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
[4] Bread, pasta or noodle products, and cereal grains shall be wholegrain or enriched, cornbread, biscuits, rolls, muffins, etc., shall be made with wholegrain or enriched meal or flour.
[5] Serving sizes equivalents to be published in guidance materials by FCS.
[6] Edible portion as served.
[7] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.
[8] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purpose of determining combinations, 1 oz. of nuts or seeds is equal to 1 oz. of cooked lean meat, poultry or fish.

(3) The minimum amounts of food components to be served as supper as set forth in paragraph (a)(3) of this section are as follows:

SUPPER

| Food components | Children ages 1 and 2 | Children ages 3 through 5 | Children ages 6 through 12[1] | Adult participants |
|---|---|---|---|---|
| MILK | | | | |
| Milk, fluid | ½ cup[2] | ¾ cup | 1 cup | None. |
| VEGETABLES AND FRUITS[3] | | | | |
| Vegetable(s) and/or fruit(s) | ¼ cup total | ½ cup total | ¾ cup total | 1 cup total. |
| BREAD AND BREAD ALTERNATES[4] | | | | |
| Bread | ½ slice | ½ slice | 1 slice | 2 slices (servings). |
| or | | | | |
| Cornbread, biscuits, rolls, muffins, etc[5] | ½ serving | ½ serving | 1 serving | 2 servings. |
| or | | | | |
| Cooked cereal or grains or an equivalent quantity of any combination of bread/bread alternates. | ¼ cup | ¼ cup | ½ cup | 1 cup. |
| MEAT AND MEAT ALTERNATES | | | | |
| Lean meat or poultry or fish[6] | 1 oz | 1½ oz | 2 oz | 2 oz. |
| or | | | | |
| Cheese | 1 oz | 1½ oz | 2 oz | 2 oz. |
| or | | | | |
| Eggs | 1 egg | 1 egg | 1 egg | 1 egg. |
| or | | | | |
| Cooked dry beans or peas | ¼ cup | ⅜ cup | ½ cup | ½ cup. |

SUPPER—Continued

| Food components | Children ages 1 and 2 | Children ages 3 through 5 | Children ages 6 through 12 [1] | Adult participants |
|---|---|---|---|---|
| or | | | | |
| Peanut butter or soynut butter or other nut or seed butters. | 2 tbsp | 3 tbsp | 4 tbsp | 4 tbsp. |
| or | | | | |
| Peanuts or soynuts or tree nuts or seeds [7] | ½ oz=50 percent.[8]. | ¾ oz=50 percent.[8]. | 1 oz=50 percent.[8] | 1 oz=50 percent.[8] |
| or | | | | |
| Yogurt, plain or flavored, unsweetened or sweetened. | 4 oz. or ½ cup | 6 oz. or ¾ cup | 8 oz. or 1 cup | 8 oz. or 1 cup. |
| An equivalent quantity of any combination of the above meat/meat alternates. | | | | |

SUPPLEMENTAL FOOD

(4) The minimum amounts of food components to be served as supplemental food as set forth in paragraph (a)(4) of this section are as follows. Select two of the following four components. (For children, juice may not be served when milk is served as the only other component.)

| Food components | Age 1 and 2 | Age 3 through 5 | Age 6 through 12 [1] | Adult participate |
|---|---|---|---|---|
| Milk | | | | |
| Milk, fluid | ½ cup [2] | ½ cup | 1 cup | 1 cup.[2] |
| Vegetables and Fruits | | | | |
| Vegetable(s) and/or fruit(s) | ½ cup | ½ cup | ¾ cup | ½ cup. |
| or | | | | |
| Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice. | ½ cup | ½ cup | ¾ cup | ½ cup. |
| Bread and Bread Alternates [3] | | | | |
| Bread | ½ slice | ½ slice | 1 slice | 1 slice (serving). |
| or | | | | |
| Cornbread, biscuits, rolls, muffins, etc [4] | ½ serving | ½ serving | 1 serving | 1 serving. |
| of | | | | |
| Cold dry cereal [5] | ¼ cup or ⅓ oz | ⅓ cup or ½ oz | ¾ cup or 1 oz | ¾ cup or 1 oz. |
| or | | | | |
| Cooked cereal | ¼ cup | ¼ cup | ½ cup | ½ cup. |
| or | | | | |
| Cooked pasta or noodle products | ¼ cup | ¼ cup | ½ cup | ½ cup. |
| or | | | | |
| Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate. | ¼ cup | ¼ cup | ½ cup | ½ cup. |
| Meat and Meat Alternates | | | | |
| Lean meat or poultry or fish [6] | ½ oz | ½ oz | 1 oz | 1 oz. |
| or | | | | |
| Cheese | ½ oz | ½ oz | 1 oz | 1 oz. |
| or | | | | |
| Eggs | ½ egg | ½ egg | 1 egg | 1 egg. |
| or | | | | |
| Cooked dry beans or peas | ⅛ cup | ⅛ cup | ¼ cup | ¼ cup. |
| or | | | | |
| Peanut butter or soynut butter or other nut or seed butters. | 1 tbsp | 1 tbsp | 2 tbsp | 2 tbsp. |
| or | | | | |
| Peanuts or soynuts or tree nuts or seeds [7]. | ½ oz | ½ oz | 1 oz | 1 oz. |
| or | | | | |
| Yogurt, plain, or sweetened and flavored | 2 oz or ¼ cup | 2 oz or ¼ cup | 4 oz or ½ cup | 4 oz or ½ cup. |
| or | | | | |
| An equivalent quantity of any combination of the meat/meat alternates. | | | | |

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[2] For purposes of the requirements outlined in this paragraph, a cup means a standard measuring cup.
[3] Bread, pasta or noodle products, and cereal grains shall be wholegrain or enriched, cornbread, biscuits, rolls, muffins, etc., shall be made with wholegrain or enriched meal or flour; cereal shall be wholegrain or enriched or fortified.
[4] Serving size and equivalents to be published in guidance materials by FCS.

[5] Either volume (cup) or weight (oz.), whichever is less.
[6] Edible portion as served.
[7] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

(d) *Additional food.* To improve the nutrition of participating children over 1 year of age additional foods may be served with each meal as follows:

(1) *Breakfast.* Include as often as practical an egg; or a 1-ounce serving (edible portion as served) of meat, poultry or fish; or 1-ounce of cheese; or 2 tablespoons of peanut butter; or 4 oz. of yogurt; or an equivalent quantity of any combination of these foods. Additional foods may be served as desired.

(2) *Lunch, supper or supplemental food.* Additional foods may be served as desired.

(e) *Temporary unavailability of milk.* If emergency conditions prevent an institution normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfasts, lunches, or suppers without milk during the emergency period.

(f) *Continuing unavailability of milk.* The inability of an institution to obtain a supply of milk on a continuing basis shall not bar it from participation in the Program. In such cases, the State agency may approve service of meals without milk, provided that an equivalent amount of canned, whole dry or nonfat dry milk is used in the preparation of the components of the meal set forth in paragraphs (a)(1), (2) and (3) of this section.

(g) *Statewide substitutions.* In American Samoa, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands the following variations from the meal requirements are authorized: A serving of a starchy vegetable, such as yams, plantains, or sweet potatoes may be substituted for the bread requirements.

(h) *Individual substitutions.* Substitutions may be made in food listed in paragraphs (b) and (c) of this section if individual participants are unable, because of medical or other special dietary needs, to consume such foods. Substitutions because of medical needs shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods.

(i) *Special variations.* FCS may approve variations in the food components of the meals on an experimental or a continuing basis in any institution where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(j) *Meal planning.* Institutions shall plan for and order meals on the basis of current participation trends, with the objective of providing only one meal per participant at each meal service. Records of participation and of ordering or preparing meals shall be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, any excess meals that are ordered may be served to participants and may be claimed for reimbursement, unless the State agency determines that the institution has failed to plan and prepare or order meals with the objective of providing only one meal per participant at each meal service.

(k) *Sanitation.* Institutions shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Institutions shall ensure that adequate facilities are available to store food or hold meals.

(l) *Donated commodities.* Institutions shall efficiently use in the Program any foods donated by the Department and accepted by the institution.

(m) *Plentiful foods.* Institutions shall, insofar as practical, purchase and efficiently use in the Program foods designated as plentiful by the Department.

(n) *Additional provision.* The State agency may allow institutions which serve meals prepared in schools participating in the National School Lunch and School Breakfast Programs to substitute the meal pattern requirements

of the regulations governing those Programs (7 CFR part 210 and 7 CFR part 220, respectively) for the meal pattern requirements contained in this section.

(o) *Family-style meal service.* Meals may be served in a family-style setting.

(p) *Offer versus serve.* (1) Each adult day care center shall *offer* its adult participants all of the required food servings as set forth in paragraph (c)(1), (c)(2) and (c)(3) of this section. However, at the discretion of the adult day care center, adult participants may be permitted to *decline:*

(i) *One of the four* food items (one serving of milk, one serving of vegetable and/or fruit, and two servings of bread or bread alternate) required at breakfast;

(ii) *Two of the six* food items (one serving of milk, two servings of vegetable and/or fruit, two servings of bread or bread alternate, and one serving of meat or meat alternate) required at lunch;

(iii) *Two of the five* food items (two servings of vegetables and/or fruit, two servings of bread or bread alternate, and one serving of meat or meat alternate) required at supper.

(2) The price of a reimbursable meal shall not be affected if an adult participant declines a food item.

[47 FR 36527, Aug. 20, 1982; 48 FR 40197, Sept. 16, 1983, as amended at 50 FR 8581, Mar. 4, 1985; 51 FR 16811, May 7, 1986; 51 FR 23515, June 30, 1986; 53 FR 25308, July 6, 1988; 53 48632, Dec. 2, 1988; 53 FR 52592, Dec. 28, 1988; 54 FR 27153, June 28, 1989; 58 FR 37850, July 14, 1993; 62 FR 10191, Mar. 6, 1997]

### §226.21 Food service management companies.

(a) Any institution may contract with a food service management company. An institution which contracts with a food service management company shall remain responsible for ensuring that the food service operation conforms to its agreement with the State agency. All procurements of meals from food service management companies shall adhere to the procurement standards set forth in §226.22. Public institutions shall follow applicable State or local laws governing bid procedures. In the absence of any applicable State or local laws, and in addition to the procurement provisions set forth in §226.22, the State agency may mandate that each institution with Program meal contracts of an aggregate value in excess of $10,000 formally advertise such contracts and comply with the following procedures intended to prevent fraud, waste, and Program abuse:

(1) All proposed contracts shall be publicly announced at least once 14 calendar days prior to the opening of bids. The announcement shall include the time and place of the bid opening;

(2) The institution shall notify the State agency at least 14 calendar days prior to the opening of the bids of the time and place of the bid opening;

(3) The invitation to bid shall not provide for loans or any other monetary benefit or terms or conditions to be made to institutions by food service management companies;

(4) Nonfood items shall be excluded from the invitation to bid, except where such items are essential to the conduct of the food service;

(5) The invitation to bid shall not specify special meal requirements to meet ethnic or religious needs unless special requirements are necessary to meet the needs of the participants to be served;

(6) The bid shall be publicly opened;

(7) All bids totaling $50,000 or more shall be submitted to the State agency for approval before acceptance. All bids shall be submitted to the State agency for approval before accepting a bid which exceeds the lowest bid. State agencies shall respond to any request for approval within 10 working days of receipt;

(8) The institutions shall inform the State agency of the reason for selecting the food service management company chosen. State agencies may require institutions to submit copies of all bids submitted under this section.

(b) The institution and the food service management company shall enter into a standard contract as required by §226.6(i). However, public institutions may, with the approval of the State agency, use their customary form of contract if it incorporates the provisions of §226.6(i).

(c) A copy of the contract between each institution and food service management company shall be submitted to the State agency prior to the beginning of Program operations under the subject contract.

(d) Each proposed additional provision to the standard form of contract shall be submitted to the State agency for approval.

(e) A food service management company may not subcontract for the total meal, with or without milk, or for the assembly of the meal.

[47 FR 36527, Aug. 20, 1982, as amended at 53 FR 52594, Dec. 28, 1988]

### § 226.22 Procurement standards.

(a) This section establishes standards and guidelines for the procurement of foods, supplies, equipment, and other goods and services. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and Executive orders.

(b) These standards shall not relieve the institution of any contractual responsibilities under its contracts. The institution is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into in support of the Program. These include, but are not limited to: source evaluation, protests of award, disputes, and claims. Violations of the law shall be referred to the local, State, or Federal authority having proper jurisdiction.

(c) Institutions may use their own procurement procedures which reflect applicable State or local laws and regulations, provided that procurements made with Program payments conform to the standards set forth in this section and in Attachment O of Office of Management and Budget Circulars A–102 and A–110, as well as to procurement requirements which may be established by the State agency, with the approval of FCS to prevent fraud, waste, and Program abuse.

(d) Institutions shall maintain a written code of standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Program payments. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(1) The employee, officer or agent;

(2) Any member of his immediate family;

(3) His or her partner; or

(4) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The institution's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Institutions may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the institution's officers, employees, or agents, or by contractors or their agents.

(e) The institution shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by institution officials to avoid the purchase of unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical.

(f) Affirmative steps shall be taken to assure that small and minority businesses are utilized when possible. Affirmative steps shall include the following:

(1) Including qualified small and minority businesses on solicitation lists;

(2) Assuring that small and minority businesses are solicited whenever they are potential sources;

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit

maximum small and minority business participation;

(4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority businesses;

(5) Using the services and assistance of the Small Business Administration and the Minority Business Enterprise of the Department of Commerce as required;

(6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in paragraphs (b)(1) through (5) of this section; and

(7) Taking similar appropriate affirmative action in support of women's business enterprises.

(g) All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with this section. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to (1) placing unreasonable requirements on firms in order for them to qualify to do business, (2) noncompetitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience and bonding requirements.

(h) The institution shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation, shall:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) Program procurements shall be made by one of the following methods:

(1) Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for the procurement of services, supplies or other property, costing in the aggregate not more than $10,000. Institutions shall comply with State or local small purchase dollar limits under $10,000. If small purchase procedures are used for a procurement under the Program, price or rate quotation shall be obtained from an adequate number of qualified sources; or

(2) In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(i) In order for formal advertising to be feasible, appropriate conditions must be present, including as a minimum, the following:

(A) A complete, adequate and realistic specification or purchase description is available.

(B) Two or more responsible suppliers are willing and able to compete effectively for the institution's business.

(C) The procurement lends itself to a firm-fixed price contract, and selection

of the successful bidder can appropriately be made principally on the basis of price.

(ii) If formal advertising is used for a procurement under the Program, the following requirements shall apply:

(A) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(B) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(C) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(D) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.

(E) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the Program.

(3) In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable:

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance;

(iii) The institution shall provide mechanisms for technical evaluation of the proposal received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award; and

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

(4) Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising), or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(i) The item is available only from a single source;

(ii) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;

(iii) FCS authorizes noncompetitive negotiation; or

(iv) After solicitation of a number of sources, competition is determined inadequate.

(j) The cost plus a percentage of cost method of contracting shall not be used. Instructions shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts under the Program shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

(k) Institutions shall maintain records sufficient to detail the significant history of a procurement. These

records shall include, but are not necessarily limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

(l) In addition to provisions defining a sound and complete procurement contract, institutions shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal Law or FCS:

(1) Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the institution including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor;

(3) All contracts awarded in excess of $10,000 by institutions and their contractors shall contain a provision requiring compliance with Executive Order 11246, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR part 60);

(4) Where applicable, all contracts awarded by institutions in excess of $2,500 which involve the employment of mechanics or laborers shall include a provision for compliance with section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 330) as supplemented by Department of Labor regulations (29 CFR part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence;

(5) The contract shall include notice of USDA requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of USDA requirements and regulations pertaining to copyrights and rights in data. These requirements are in § 3015.175 of the USDA Uniform Federal Assistance Regulations 7 CFR part 3015. All negotiated contracts (except those awarded by small purchases procedures) awarded by institutions shall include a provision to the effect that the institution, FCS, the Comptroller General of the United States or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. Institutions shall require contractors to maintain all required records for three years after institutions make final payment and all other pending matters are closed;

(6) Contracts and subcontracts of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1837(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA

List of Violating Facilities. The provision shall require reporting of violations to FCS and to the U.S. EPA Assistant Administrator for Enforcement (EN–329); and

(7) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy efficiency conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

(m) Institutions shall maintain a contract administration system insuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

### § 226.23 Free and reduced-price meals.

(a) The State agency shall require each institution to submit, at the time the institution applies for Program participation, a written policy statement concerning free and reduced-price meals to be used uniformly in all child care and adult day care facilities under its jurisdiction as required in this section. Institutions shall not be approved for participation nor agreements renewed unless the free and reduced-price policy statement has been approved. Pending approval of a revision of a policy statement, the existing policy shall remain in effect.

(b) Sponsoring organizations of day care homes (which may not serve meals at a separate charge to children) and other institutions which elect to serve meals at no separate charge, shall develop a policy statement consisting of an assurance to the State agency that all participants are served the same meals at no separate charge, regardless of race, color, national origin, sex, age, or handicap and that there is no discrimination in the course of the food service. This statement shall also contain an assurance that there will be no identification of children in day care homes in which meals are reimbursed at both the tier I and tier II reimbursement rates, and that the sponsoring organization will not make any free and reduced price eligibility information concerning individual households available to day care homes and will otherwise limit the use of such information to persons directly connected with the administration and enforcement of the Program.

(c) Independent centers and sponsoring organizations of centers which charge separately for meals shall develop a policy statement for determining eligibility for free and reduced-price meals which shall include the following:

(1) The specific criteria to be used in determining eligibility for free and reduced-price meals. The institution's standards of eligibility shall conform to the Secretary's income standards;

(2) A description of the method or methods to be used in accepting applications from families for free and reduced-price meals. Such methods will ensure that applications are accepted from households on behalf of children who are members of AFDC assistance units or food stamp or FDPIR households or, for adult participants, who are members of a food stamp or FDPIR household or SSI or Medicaid participants;

(3) A description of the method or methods to be used to collect payments from those participants paying the full or reduced price of the meal which will protect the anonymity of the participants receiving a free or reduced-price meal;

(4) An assurance which provides that the institution will establish a hearing procedure for use when benefits are denied or terminated as a result of verification:

(i) A simple, publicly announced method for a family to make an oral or written request for a hearing;

(ii) An opportunity for the family to be assisted or represented by an attorney or other person in presenting its appeal;

(iii) An opportunity to examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;

(iv) That the hearing shall be held with reasonable promptness and convenience to the family and that adequate notice shall be given to the family as to the time and place of the hearing;

(v) An opportunity for the family to present oral or documentary evidence and arguments supporting its position;

(vi) An opportunity for the family to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(vii) That the hearing shall be conducted and the determination made by a hearing official who did not participate in making the initial decision;

(viii) The determination of the hearing official shall be based on the oral and documentary evidence presented at the hearing and made a part of that hearing record;

(ix) That the family and any designated representatives shall be notified in writing of the decision of the hearing official;

(x) That a written record shall be prepared with respect to each hearing, which shall include the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefor, and a copy of the notification to the family of the decision of the hearing official; and

(xi) That such written record of each hearing shall be preserved for a period of three years and shall be available for examination by the family or its representatives at any reasonable time and place during such period;

(5) An assurance that there will be no overt identification of free and reduced-price meal recipients and no discrimination against any participant on the basis of race, color, national origin, sex, age, or handicap;

(6) An assurance that the charges for a reduced-price lunch or supper will not exceed 40 cents, that the charge for a reduced-price breakfast will not exceed 30 cents, and that the charge for a reduced-price supplement will not exceed 15 cents.

(d) Each institution shall annually provide the information media serving the area from which the institution draws its attendance with a public release. All media releases issued by institutions other than sponsoring organizations of day care homes, shall include the Secretary's Income Eligibility Guidelines for Free and Reduced-Price Meals. The release issued by all sponsoring organizations of day care homes, and by other institutions which elect not to charge separately for meals, shall announce the availability of meals at no separate charge. The release issued by child care institutions which charge separately for meals shall announce the availability of free and reduced-price meals to children meeting the approved eligibility criteria. The release issued by child care institutions shall also announce that children who are members of AFDC assistance units or food stamp or FDPIR households are automatically eligible to receive free meal benefits. The release issued by adult day care centers which charge separately for meals shall announce the availability of free and reduced-price meals to participants meeting the approved eligibility criteria. The release issued by adult day care centers shall also announce that adult participants who are members of food stamp or FDPIR households or who are SSI or Medicaid participants are automatically eligible to receive free meal benefits. All releases shall state that meals are available to all participants without regard to race, color, national origin, sex, age or handicap.

(e)(1) *Application for free and reduced-price meals.* (i) For the purpose of determining eligibility for free and reduced price meals, institutions shall distribute applications for free and reduced price meals to the families of participants enrolled in the institution. Sponsoring organizations of day care homes shall distribute applications for free and reduced price meals to day care home providers who wish to enroll their own eligible children in the Program. At the request of a provider in a tier II day care home, sponsoring organizations of day care homes shall distribute applications for free and reduced price meals to households of all children enrolled in the home, or, if the provider in a tier II day care home so elects, shall distribute such applications only to households identified as being categorically eligible for tier I meals. These applications, and any other descriptive material distributed to such persons, shall contain only the family-size income levels for reduced price meal eligibility with an explanation that households with incomes less than or equal to these levels are eligible for free or reduced price meals.

Such forms and descriptive materials may not contain the income standards for free meals. However, such forms and materials distributed by child care institutions other than sponsoring organizations of day care homes shall state that, if a child is a member of a food stamp or FDPIR household or AFDC assistance unit, the child is automatically eligible to receive free Program meal benefits, subject to the completion of the application as described in paragraph (e)(1)(ii) of this section; such forms and materials distributed by sponsoring organizations of day care homes shall state that, if a child or a child's parent is participating in or subsidized under a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free or reduced price meals, meals served to the child are automatically eligible for tier I reimbursement, subject to the completion of the application as described in paragraph (e)(1)(ii) of this section, and shall list any programs identified by the State agency as meeting this standard; such forms and materials distributed by adult day care centers shall state that, if an adult participant is a member of a food stamp or FDPIR household or is a SSI or Medicaid participant, the adult participant is automatically eligible to receive free Program meal benefits, subject to the completion of the application as described in paragraph (e)(1)(iii) of this section. Sponsoring organizations of day care homes shall not make free and reduced price eligibility information concerning individual households available to day care homes and shall otherwise limit the use of such information to persons directly connected with the administration and enforcement of the Program. However, sponsoring organizations may inform tier II day care homes of the number of identified income-eligible enrolled children.

(ii) Except as provided in paragraph (e)(1)(iv) of this section, the application for children shall contain a request for the following information:

(A) The names of all children for whom application is made;

(B) The names of all other household members;

(C) The social security number of the adult household member who signs the application, or an indication that he/she does not possess a social security number;

(D) The income received by each household member identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income received or withdrawn from any other source, including savings, investments, trust accounts, and other resources);

(E) A statement to the effect that ''In certain cases, foster children are eligible for free and reduced-price meals regardless of household income. If such children are living with you and you wish to apply for such meals, please contact us.'';

(F) A statement which includes substantially the following information: ''Section 9 of the National School Lunch Act requires that, unless a food stamp, FDPIR or AFDC case number is provided for your child, you must include a social security number on the application. This must be the social security number of the adult household member signing the application. If the adult household member signing the application does not possess a social security number, he/she must indicate so on the application. Provision of a social security number is not mandatory, but if a social security number is not provided or an indication is not made that the adult household member signing the application does not have one, the application cannot be approved. This notice must be brought to the attention of the household member whose social security number is disclosed. The social security number may be used to identify the household member in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp, Indian tribal organization or welfare office to determine current certification for receipt of food

stamps, FDPIR or AFDC benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss or reduction of benefits, administrative claims or legal action if incorrect information is reported.'' State agencies and institutions shall ensure that the notice complies with section 7 of Pub. L. 93–579. If a State or local agency plans to use the social security numbers for Program verification purposes in a manner not described by this notice, the notice shall be altered to include a description of those uses; and

(G) The signature of an adult member of the household which appears immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that Program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution under applicable State and Federal criminal statutes.

(iii) Except as provided in paragraph (e)(1)(v) of this section, the application for adults shall contain a request for the following information:

(A) The names of all adults for whom application is made;

(B) The names of all other household members;

(C) The social security number of the adult household member who signs the application, or an indication that he/she does not possess a social security number;

(D) The income received by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income received or withdrawn from any other source, including savings, investments, trust accounts and other resources);

(E) A statement which includes substantially the following information: ''Section 9 of the National School Lunch Act requires that, unless a food stamp, or FDPIR case number or SSI or Medicaid assistance identification number is provided for the adult for whom benefits are sought, you must include a social security number on the application. This must be the social security number of the adult household member signing the application. If the adult household member signing the application does not possess a social security number, he/she must indicate so on the application. Provision of a social security number is not mandatory, but if a social security number is not provided or an indication is not made that the adult household member signing the application does not have one, the application cannot be approved. This notice must be brought to the attention of the household member whose social security number is disclosed. The social security number may be used to identify the household member in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits and investigations and may include contacting employers to determine income, contacting a food stamp, Indian tribal organization or welfare office to determine current certification for receipt of food stamps or FDPIR benefits, contacting the issuing office of SSI or Medicaid benefits to determine current certification for receipt of these benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to provide the amount of income received. These efforts may result in loss or reduction of benefits, administrative claims or legal action if incorrect information is reported.'' State agencies and institutions shall ensure that the notice complies with section 7 of Pub. L. 93–579. If a State or local agency plans to use the social security numbers for CCFP verification purposes in a manner not described by this notice, the notice shall be altered to include a description of those uses; and

(F) The signature of an adult member of the household which appears immediately below a statement that the person signing the application certifies

that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that Program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution under applicable State and Federal criminal statutes.

(iv) If they so desire, households applying on behalf of children who are members of food stamp households or AFDC assistance units may apply for free meal benefits under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. In addition, households of children enrolled in tier II day care homes who are participating in a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free and reduced price meals may apply under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. Households applying on behalf of children who are members of food stamp households, AFDC assistance units, or, for children enrolled in tier II day care homes, other qualifying Federal or State programs, shall be required to provide:

(A) The names and food stamp, AFDC, or for tier II homes, other case number of the child(ren) for whom automatic free meal eligibility is claimed; and

(B) the signature of an adult member of the household as provided for in paragraph (e)(1)(ii)(G) of this section. In accordance with paragraph (e)(1)(ii)(F) of this section, if a case number is provided, it may be used to verify the current certification for the child(ren) for whom free meal benefits are claimed. Whenever households apply for benefits for children not receiving food stamp, AFDC, or for tier II homes, other qualifying Federal or State program benefits, they must apply in accordance with the requirements set forth in paragraph (e)(1)(ii) of this section.

(v) If they so desire, households applying on behalf of adults who are members of food stamp or FDPIR households or SSI or Medicaid participants may apply for free meal benefits under this paragraph rather than under the procedures described in paragraph (e)(1)(iii) of this section. Households applying on behalf of adults who are members of food stamp or FDPIR households or SSI or Medicaid participants shall be required to provide:

(A) The names and food stamp or FDPIR case numbers or SSI or Medicaid assistance identification numbers of the adults for whom automatic free meal eligibility is claimed; and

(B) The signature of an adult member of the household as provided in paragraph (e)(1)(iii)(F) of this section. In accordance with paragraph (e)(1)(iii)(G) of this section, if a food stamp or FDPIR case number or SSI or Medicaid assistance identification number is provided, it may be used to verify the current food stamp, FDPIR, SSI, or Medicaid certification for the adult(s) for whom free meal benefits are being claimed. Whenever households apply for benefits for adults not receiving food stamp, FDPIR, SSI, or Medicaid benefits, they must apply in accordance with the requirements set forth in paragraph (e)(1)(iii) of this section.

(2) *Letter to households.* Institutions shall distribute a letter to households or guardians of enrolled participants in order to inform them of the procedures regarding eligibility for free and reduced-price meals. The letter shall accompany the application required under paragraph (e)(1) of this section and shall contain:

(i) The income standards for reduced-price meals, with an explanation that households with incomes less than or equal to the reduced-price standards would be eligible for free or reduced-price meals (the income standards for free meals shall *not* be included in letters or notices to such applicants);

(ii) How a participant's household may make application for free or reduced-price meals;

(iii) An explanation that an application for free or reduced price benefits cannot be approved unless it contains complete ''documentation'' as defined in § 226.2.

(iv) The statement: ''In the operation of child feeding programs, no person will be discriminated against because

of race, color, national origin, sex, age, or handicap'';

(v) A statement to the effect that participants having family members who become unemployed are eligible for free or reduced-price meals during the period of unemployment, provided that the loss of income causes the family income during the period of unemployment to be within the eligibility standards for those meals;

(vi) Except in the case of adult participants, a statement to the effect that in certain cases foster children are eligible for free or reduced-price meals regardless of the income of such household with whom they reside and that households wishing to apply for such benefits for foster children should contact the institution; and

(vii) An explanation that households receiving free and reduced-price meals must notify appropriate institution officials during the year of any decreases in household size or increases in income of over $50 per month or $600 per year or—

(A) In the case of households of enrolled children that provide a food stamp, FDPIR or AFDC case number to establish a child's eligibility for free meals, any termination in the child's certification to participate in the Food Stamp, FDPIR or AFDC Programs, or

(B) In the case of households of adult participants that provide a food stamp or FDPIR case number or an SSI or Medicaid assistance identification number to establish an adult's eligibility for free meals, any termination in the adult's certification to participate in the Food Stamp, FDPIR, SSI or Medicaid Programs.

(3) In addition to the information listed in paragraph (e)(2) of this section pricing institutions must include in their letter to household an explanation that indicates that: (i) The information in the application may be verified at any time during the year; and (ii) how a family may appeal a decision of the institution to deny, reduce, or terminate benefits as described under the hearing procedure set forth in paragraph (c)(4) of this section.

(4) *Determination of eligibility.* The institution shall take the income information provided by the household on the application and calculate the household's total current income. When a completed application furnished by a family indicates that the family meets the eligibility criteria for free or reduced-price meals, the participants from that family shall be determined eligible for free or reduced-price meals. Institutions that are pricing programs shall promptly provide written notice to each family informing them of the results of the eligibility determinations. When the information furnished by the family is not complete or does not meet the eligibility criteria for free or reduced-price meals, institution officials must consider the participants from that family as not eligible for free or reduced-price meals, and must consider the participants as eligible for ''paid'' meals. When information furnished by the family of participants enrolled in a pricing program does not meet the eligibility criteria for free or reduced-price meals, pricing program officials shall provide written notice to each family denied free or reduced-price benefits. At a minimum, this notice shall include:

(i) The reason for the denial of benefits, e.g., income in excess of allowable limits or incomplete application;

(ii) Notification of the right to appeal;

(iii) Instructions on how to appeal; and

(iv) A statement reminding the household that they may reapply for free or reduced-price benefits at any time during the year,

The reasons for ineligibility shall be properly documented and retained on file at the institution.

(5) *Appeals of denied benefits.* A family that wishes to appeal the denial of an application in a pricing program shall do so under the hearing procedures established under paragraph (c)(4) of this section. However, prior to initiating the hearing procedures, the household may request a conference to provide all affected parties the opportunity to discuss the situation, present information and obtain an explanation of the data submitted on the application or the decision rendered. The request for a conference shall not in any way prejudice or diminish the right to a fair hearing.

The institution shall promptly schedule a fair hearing, if requested.

(f) Free, reduced-price and paid meal eligibility figures must be reported by institutions to State agencies at least once each year and shall be based on current family-size and income information of enrolled participants. Such information shall be no more than 12 months old.

(g) Sponsoring organizations for family day care homes shall ensure that no separate charge for food service is imposed on families of children enrolled in participating family day care homes.

(h) *Verification of eligibility.* State agencies shall conduct verification of eligibility for free and reduced-price meals on an annual basis, in accordance with the verification procedures outlined in paragraphs (h) (1) and (2) of this section. Verification may be conducted in accordance with Program assistance requirements of § 226.6(l); however, the performance of verification for individual institutions shall occur no less frequently than once every four years. Any State may, with the written approval of FCSRO, use alternative approaches in the conduct of verification, provided that the results achieved meet the requirements of this part. If the verification process discloses deficiencies with the determination of eligibility and/or application procedures which exceed maximum levels established by FCS, State agencies shall conduct follow-up reviews for the purpose of determining that corrective action has been taken by the institution. These reviews shall be conducted within one year of the date the verification process was completed. The verification effort shall be applied without regard to race, color, national origin, sex, age, or handicap. State agencies shall maintain on file for review a description of the annual verification to be accomplished in order to demonstrate compliance with paragraphs (h) (1) and (2) of this section.

(1) *Verification procedures for nonpricing programs.* State agency verification procedures for nonpricing programs shall consist of a review of all approved free and reduced-price applications on file to ensure that: (i) The application has been correctly and completely executed by the household; (ii) the institution has correctly determined and classified the eligibility of enrolled participants for free or reduced-price meals based on the information included on the application submitted by the household; (iii) the institution has accurately reported to the State agency the number of enrolled participants meeting the criteria for free or reduced-price meal eligibility and the number of enrolled participants that do not meet the eligibility criteria for those meals; and (iv) in addition, the State agency may conduct further verification of the information provided by the household on the approved application for program meal eligibility. If this effort is undertaken, the State agency shall conduct this further verification for nonpricing programs in accordance with the procedures described in paragraph (h)(2) of this section.

(2) *Verification procedures for pricing programs.* (i) For pricing programs, in addition to the verification procedures described in paragraph (h)(1) of this section, State agencies shall also conduct verification of the income information provided on the approved application for free and reduced price meals and, at State agency discretion, verification may also include confirmation of other information required on the application. However,

(A) If a food stamp, FDPIR or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp or FDPIR household or AFDC assistance unit; or

(B) If a food stamp or FDPIR case number or SSI or Medicaid assistance identification number is provided for an adult, verification for such adult shall include only confirmation that the adult is included in a currently certified food stamp or FDPIR household or is currently certified to receive SSI or Medicaid benefits.

(ii) State agencies shall perform verification on a random sample of no less than 3 percent of the approved free and reduced price applications in an institution which is a pricing program.

(iii) Households shall be informed in writing that they have been selected

for verification and they are required to submit the requested verification information to confirm their eligibility for free or reduced-price benefits by such date as determined by the State agency. Those households shall be informed of the type or types of information and/or documents acceptable to the State agency and the name and phone number of an official who can answer questions and assist the household in the verification effort. This information must include a social security number for each adult household member or an indication that he/she does not have one. State agencies shall inform selected households that:

(A) Section 9 of the National School Lunch Act requires that, unless households provide the child's food stamp, FDPIR or AFDC case number, or the adult participant's food stamp or FDPIR case number or SSI or Medicaid assistance identification number, those selected for verification must provide the social security number of each adult household member;

(B) In lieu of providing a social security number, an adult household member may indicate that he/she does not possess one;

(C) Provision of a social security number is not mandatory, but if a social security number is not provided for each adult household member or an indication is not made that he/she does not possess one, benefits will be terminated;

(D) The social security number may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application and continued eligibility for the program. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting Federal, State or local agencies to determine current certification for receipt of food stamps or FDPIR, AFDC, SSI or Medicaid benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss or reduction of benefits, administrative claims or legal actions if incorrect information was reported; and

(E) This information must be provided to the attention of each adult household member disclosing his/her social security number. State agencies shall ensure that the notice complies with section 7 of Pub. L. 93–579 (Privacy Act of 1974). These households shall be provided with the name and phone number of an official who can assist in the verification effort.

(iv) Households of enrolled children selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp, FDPIR, or AFDC Program they may submit proof of that certification in lieu of income information. In those cases, such proof shall consist of a current ''Notice of Eligibility'' for Food Stamp, FDPIR, or AFDC Program benefits or equivalent official documentation issued by a food stamp, Indian Tribal Organization, or welfare office which shows that the children are members of households or assistance units currently certified to participate in the Food Stamp, FDPIR, or AFDC Programs. An identification card for any of these programs is not acceptable as verification unless it contains an expiration date. Households of enrolled adults selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp Program or FDPIR or SSI or Medicaid Programs, they may submit proof of that certification in lieu of income information. In those cases, such proof shall consist of:

(A) A current ''Notice of Eligibility'' for Food Stamp or FDPIR benefits or equivalent official documentation issued by a food stamp, Indian Tribal Organization, or welfare office which shows that the adult participant is a member of a household currently certified to participate in the Food Stamp Program or FDPIR. An identification card is not acceptable as verification unless it contains an expiration date; or

(B) Official documentation issued by an appropriate SSI or Medicaid office which shows that the adult participant currently receives SSI or Medicaid assistance. An identification card is not acceptable as verification unless it

contains an expiration date. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in a termination of benefits.

(v) Sources of information for verification may include written evidence, collateral contacts, and/or systems of records.

(A) *Written evidence* shall be used as the primary source of information for verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, letters from employers, and, for enrolled children, current certification to participate in the Food Stamp, FDPIR or AFDC Programs, or, for adult participants, current certification to participate in the Food Stamp, FDPIR, SSI or Medicaid Programs. Whenever written evidence is insufficient to confirm eligibility, the State agency may use collateral contacts.

(B) *Collateral contact* is a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made in person or by phone and shall be authorized by the household. The verifying official may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the verifying official. If the verifying official designates a collateral contact, the contact shall not be made without providing written or oral notice to the household. At the time of this notice, the household shall be informed that it may consent to the contact or provide acceptable verification in another form. The household shall be informed that its eligibility for free or reduced price meals shall be terminated if it refuses to choose one of these options. Termination shall be made in accordance with paragraph (h)(2)(vii) of this section. Collateral contacts could include employers, social service agencies, and migrant agencies.

(C) *Systems of records* to which the State agency may have routine access are not considered collateral contacts. Information concerning income, family size, or food stamp/FDPIR/AFDC certification for enrolled children, or food stamp/FDPIR/SSI/Medicaidcertification for enrolled adults, which is maintained by other government agencies and to which a State agency can legally gain access may be used to confirm a household's eligibility for Program meal benefits. One possible source could be wage and benefit information maintained by the State unemployment agency, if that information is available. The use of any information derived from other agencies must be used with applicable safeguards concerning disclosure.

(vi) Verification by State agencies of receipt of food stamps, FDPIR, AFDC, SSI or Medicaid benefits shall be limited to a review to determine that the period of eligibility is current. If the benefit period is found to have expired, or if the household's certification has been terminated, the household shall be required to document their income eligibility.

(vii) The State agency may work with the institution to verify the documentation submitted by the household on the application; however, the responsibility to complete the verification process may not be delegated to the institution.

(viii) If a household refuses to cooperate with efforts to verify, or the verification of income indicates that the household is ineligible to receive benefits or is eligible to receive reduced benefits, the State agency shall require the pricing program institution to terminate or adjust eligibility in accordance with the following procedures. Institution officials shall immediately notify families of the denial of benefits in accordance with paragraphs (e)(4) and (e)(5) of this section. Advance notification shall be provided to families which receive a reduction or termination of benefits 10 calendar days prior to the actual reduction or termination. The 10-day period shall begin the day the notice is transmitted to the family. The notice shall advise the household of: (A) The change; (B) the reasons for the change; (C) notification of the right to appeal the action and the date by which the appeal must be requested in order to avoid a reduction or termination of benefits; (D) instructions on how to appeal; and (E) the right to reapply at any time during the year. The reasons for ineligibility shall

be properly documented and retained on file at the institution.

(ix) When a household disagrees with an adverse action which affects its benefits and requests a fair hearing, benefits shall be continued as follows while the household awaits the hearing:

(A) Households which have been approved for benefits and which are subject to a reduction or termination of benefits later in the same year shall receive continued benefits if they appeal the adverse action within the 10-day advance notice period; and

(B) Households which are denied benefits upon application shall not received benefits.

(3) State agencies shall inform institution officials of the results of the verification effort and the action which will be taken in response to the verification findings. This notification shall be made in accordance with the procedures outlined in §226.14(a).

(4) If the verification results disclose that an institution has inaccurately classified or reported the number of participants eligible for free, reduced-price or paid meals, the State agency shall adjust institution rates of reimbursement retroactive to the month in which the incorrect eligibility figures were reported by the institution to the State agency.

(5) If the verification results disclose that a household has not reported accurate documentation on the application which would support continued eligibility for free or reduced-price meals, the State agency shall immediately adjust institution rates of reimbursement. However, this rate adjustment shall not become effective until the affected households have been notified in accordance with the procedures of paragraph (h)(2)(vi) of this section and any ensuing appeals have been heard as specified in paragraph (h)(2)(viii) of this section.

(6) *Verification procedures for sponsoring organizations of day care homes.* Prior to approving an application for a day care home that qualifies as tier I day care home on the basis of the provider's household income, sponsoring organizations of day care homes shall conduct verification of such income in accordance with the procedures contained in paragraph (h)(2)(i) of this section.

[47 FR 36527, Aug. 20, 1982, as amended at 49 FR 14078, Apr. 10, 1984; 50 FR 19310, May 8, 1985; 50 FR 20197, May 15, 1985; 52 FR 36907, Oct. 2, 1987; 53 FR 52594, Dec. 28, 1988; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 61 FR 25555, May 22, 1996; 62 FR 904, Jan. 7, 1997; 62 FR 5519, Feb. 6, 1997; 62 FR 23619, May 1, 1997]

## Subpart F—Food Service Equipment Provisions

### §226.24 Property management requirements.

Institutions and administering agencies shall follow the policies and procedures governing title, use, and disposition of equipment obtained by purchase, whose cost was acquired in whole or part with food service equipment assistance funds in accordance with the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

[48 FR 41142, Sept. 14, 1983]

## Subpart G—Other Provisions

### §226.25 Other provisions.

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall be in accordance with the Uniform Federal Assistance Regulations.

(b) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional requirements for participation in the Program which are not inconsistent with the provisions of this part; however, any additional requirements shall be approved by FCSRO and may not deny the Program to an eligible institution.

(c) *Value of assistance.* The value of assistance to participants under the Program shall not be considered to be income or resources for any purposes under any Federal or State laws, including, but not limited to laws relating to taxation, welfare, and public assistance programs.

(d) *Maintenance of effort.* Expenditure of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under the Act.

(e) *Fraud penalty*. Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this part, whether received directly or indirectly from the Department or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(f) *Claims adjustment authority*. The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of title 28, U.S. Code, to conduct litigation on behalf of the United States.

(g) *Special retroactivity provisions*. Notwithstanding any other provisions contained in this part, the following shall apply:

(1) State agencies shall provide reimbursement for meals served by any adult day care center between October 1, 1987 and the date of the initial Program agreement between the State agency and the center under the following conditions, provided that:

(i) The center can document that, for any meals claimed:

(A) Meals served met all requirements including items and quantities served;

(B) Free and reduced-price applications were on file if reimbursement for free or reduced-price meals is sought;

(C) Meal counts by category (free, reduced-price and paid) and type served (breakfast, lunch, supper and supplement) are available;

(D) Appropriate food service revenue and expenditure records are available;

(E) Reimbursement has not been received under title III of the Older Americans Act for the claimed meals and CCFP reimbursement does not duplicate other funding for the claimed meals; and

(ii) The application for Program participation is postmarked or submitted to the State agency no later than April 17, 1989, and the claims for reimbursement for the meals served between October 1, 1987 and the date of the initial agreement between the State agency and the center are postmarked or submitted to the State agency no later than April 17, 1989 or the date set by § 226.10(e), whichever is later.

(2) Alternative documentation for free meal eligibility for adult participants shall be based on the following:

(i) Beginning with October 1, 1987, documentation of membership in a food stamp household;

(ii) For the period October 1, 1987 through September 30, 1988, documentation of membership in an AFDC assistance unit; and

(iii) Beginning October 1, 1988, documentation of receipt of assistance under Medicaid or SSI.

(3) For the period October 1, 1987 through September 30, 1988, the family of an adult participant applying for free or reduced-price meals shall include a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit. However, beginning October 1, 1988, the family of an adult participant applying for free or reduced-price meals shall include only the adult participant and any spouse or dependent(s) residing with the adult participant.

[47 FR 36527, Aug. 20, 1982, as amended at 53 FR 52597, Dec. 28, 1988; 54 FR 13049, Mar. 30, 1989]

### § 226.26 Program information.

Persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FCS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FCS, U.S.

Department of Agriculture, 10 Causeway Street, Room 501, Boston, MA 02222–1065.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FCS, U.S. Department of Agriculture, Mercer Corporate Park, Corporate Boulevard, CN 02150, Trenton, NJ 08650.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FCS, U.S. Department of Agriculture, 1100 Spring Street, N.W., Atlanta, GA 30367.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FCS, U.S. Department of Agriculture, 50 E. Washington Street, Chicago, IL 60602.

(e) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Mountain Plains Regional Office, FCS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, CO 80204.

(f) In the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas: Southwest Regional Office, FCS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, TX 75242.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, and Washington: Western Regional Office, FCS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, CA 94108.

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 48 FR 40197, Sept. 6, 1983; 53 FR 52598, Dec. 28, 1988]

### § 226.27 Information collection/recordkeeping—OMB assigned control numbers.

| 7 CFR section where requirements are described | Current OMB control number |
|---|---|
| 226.3–226.4 | 0584–0055 |
| 226.6–226.10 | 0584–0055 |
| 226.14–226.16 | 0584–0055 |
| 226.23–226.24 | 0584–0055 |

[50 FR 53258, Dec. 31, 1985]

## APPENDIX A TO PART 226—ALTERNATE FOODS FOR MEALS

### VEGETABLE PROTEIN PRODUCTS

1. Schools, institutions, and service institutions may use a vegetable protein product, defined in paragraph 2, as a food component meeting the meal requirements specified in § 210.10, § 225.10 or § 226.21 under the following terms and conditions:

(a) The vegetable protein product must be prepared in combination with raw or cooked meat, poultry or seafood and shall resemble as well as substitute, in part, for one of these major protein foods. Substitute, refers to a vegetable protein product whose presence in another food results in the presence of a smaller amount of meat, poultry or seafood than is customarily expected or than appears to be present in that food. Examples of items in which a vegetable protein product may be used include, but are not limited to, beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

(b) Vegetable protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form in combination with meat, poultry or seafood. The moisture content of the fully hydrated vegetable protein product shall be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

(c) The quantity, by weight, of the fully hydrated vegetable protein product must not exceed 30 parts to 70 parts meat, poultry or seafood on an uncooked basis. The quantity by weight of the dry or partially hydrated vegetable protein product must not exceed a level equivalent to the amount (dry weight) used in the fully hydrated product at the 30 percent level of substitution. The dry or partially hydrated product's replacement of meat, poultry or seafood will be based on the level of substitution it would provide if it were fully hydrated.

(d) A vegetable protein product may be used to satisfy the meat/meat alternate requirement when combined with meat, poultry or seafood and when it meets the other requirements of this section. The combination of the vegetable protein product and meat, poultry or seafood may meet all or part of the meat/meat alternate requirement specified in § 210.10, § 225.10 or § 226.21.

(e) The contribution vegetable protein products make toward the meat/meat alternate requirement specified in §§ 210.10, 225.10, and 226.21 shall be determined on the basis of the preparation yield of the meat, poultry or seafood with which it is combined. When

computing the preparation yield of a product containing meat, poultry or seafood and vegetable protein product, the vegetable protein product shall be evaluated as having the same preparation yield that is applied to the meat, poultry or seafood it replaces.

(f) When vegetable protein products are served in a meal with other alternate foods authorized in appendix A, each individual alternate food shall be used as specifically directed.

2. A vegetable protein product to be used to resemble and substitute, in part, for meat, poultry or seafood, as specified in paragraph 1 must meet the following criteria:

(a) The vegetable protein product (substitute food) shall contain one or more vegetable protein products which are defined as follows:

(1) Vegetable (plant) protein products are foods which are processed so that some portion of the nonprotein constituents of the vegetable is removed. These vegetable protein products are safe and suitable edible products produced from vegetable (plant) sources including, but not limited to, soybeans, peanuts, wheat, and corn.

(b) The types of vegetable protein products described in paragraph 2.(a)(1) of this appendix shall include flour, concentrate, and isolate as defined below:

(1) When a product contains less than 65 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances it is a flour, the blank is to be filled with the name of the source of the protein, e.g., ''soy'' or ''peanut''.

(2) When a product contains 65 percent or more but less than 90 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances, it is a '' protein concentrate'', the blank to be filled with the name of the source of the protein, e.g., ''soy'' or ''peanut''.

(3) When a product contains 90 percent or more protein by weight calculated on a moisture-free basis excluding added flavors, colors or other added substances, it is a '' protein isolate'' or '' isolated protein,'' the blank to be filled in with the name of the source of the protein, e.g., ''soy'' or ''peanut.''

(c) Compliance with the moisture and protein provisions of paragraph 2.(b) (1), (2) and (3) of this appendix shall be determined by the appropriate methods described in ''Official Methods of Analysis of the Association of Official Analytical Chemists'' (latest edition).

(d) Vegetable protein products which are used to resemble and substitute, in part, for meat, poultry or seafood shall be labeled in conformance with applicable sections of § 102.76, tentative final regulations published by the Food and Drug Administration in the FEDERAL REGISTER of July 14, 1978 (43 FR 30472). Adopted for the purpose of this regulation are the following:

(1) The common or usual names for a vegetable protein product used to resemble and substitute, in part, for meat, poultry or seafood shall include the term ''vegetable protein product'' and may include the term ''textured'' or ''texturized'' and/or a term e.g., ''granules,'' when such term is appropriate. The term ''plant'' may be used in the name in lieu of the term ''vegetable.''

(2) The vegetable protein products used as ingredients in the substitute food shall be listed by source (e.g., soy or peanut) and product type (i.e., flour, concentrate, isolate) in the ingredient statement of the label. Product type(s) listed shall comply with the appropriate definition(s) set forth in paragraph 2.(b) (1), (2) and (3), may include a term which accurately describes the physical form of the product, e.g., ''granules'' when such term is appropriate.

(e) Vegetable protein products which are used to resemble and substitute, in part, for meat, poultry or seafood shall meet the following nutritional specifications adopted from § 102.76 (f)(1)(ii)(*a*)(*b*) tentative final regulations, published by the Food and Drug Administration in the FEDERAL REGISTER of July 14, 1978 (43 FR 30472).

(1) The biological quality of the protein in the vegetable protein product shall be at least 80 percent that of casein, determined by performing a Protein Efficiency Ratio (PER) assay or unless FCS grants an exception by approving an alternate test.

(2) The vegetable protein product shall contain at least 18 percent protein by weight when hydrated or formulated to be used in combination with meat, poultry or seafood. (''When hydrated or formulated'' refers to a dry vegetable protein product and the amount of water, fat or oil, colors, flavors or any other substances which have been added in order to make the resultant mixture resemble that meat, poultry or seafood).

(3) The vegetable protein product must contain the following levels of nutrients per gram of protein:

| Nutrient | Amount |
|---|---|
| Vitamin A (IU) | 13 |
| Thiamine (milligrams) | 0.02 |
| Riboflavin (milligrams) | .01 |
| Niacin (milligrams) | .3 |
| Pantothenic acid (milligrams) | .04 |
| Vitamin $B_6$ (milligrams) | .02 |
| Vitamin $B_{12}$ (micrograms) | .1 |
| Iron (milligrams) | .15 |
| Magnesium (milligrams) | 1.15 |
| Zinc (milligrams) | .5 |
| Copper (micrograms) | 24 |
| Potassium (milligrams) | 17 |

(4) Compliance with the nutrient provisions set forth in paragraph 2.(e) (1), (2) and (3) of this appendix shall be determined by

the appropriate methods described in ''Official Methods of Analysis of the Association of Official Analytical Chemists'' (latest edition).

(f) Vegetable protein products to be used in the child nutrition programs to resemble and substitute, in part, for meat, poultry or seafood that comply with the labeling and nutritional specifications set forth in paragraph 2.(d) (1) and (2) and paragraph 2.(e) (1), (2) and (3) shall bear a label containing the following statement: ''This product meets USDA–FCS requirements for use in meeting a portion of the meat/meat alternate requirement of the child nutrition programs.'' This statement shall appear on the principal display panel area of the package.

(g) It is recommended that for vegetable protein products to be used to resemble and substitute, in part, for meat, poultry or seafood and labeled as specified in paragraph 2.(f) of this appendix, manufacturers provide information on the percent protein contained in the dry vegetable protein product (on an as is basis).

(h) It is recommended that for a vegetable protein product mix, manufacturers provide information on (1) the amount by weight of dry vegetable protein product in the package, (2) hydration instructions, and (3) instructions on how to combine the mix with meat, poultry or seafood. A vegetable protein product mix is defined as a dry product containing vegetable protein products that comply with the labeling and nutritional specifications set forth in paragraphs 2.(d) (1) and (2) and paragraph 2.(e) (1), (2) and (3) along with substantial levels (more than 5 percent) of seasonings, bread crumbs, flavorings, etc.

3. Schools, institutions, and service institutions may use a commercially prepared meat, poultry or seafood product combined with vegetable protein products to meet all or part of the meat/meat alternate requirement specified in §210.10, §225.10 or §226.21 if the product bears a label containing the statement: ''This item contains vegetable protein product(s) which is authorized as an alternate food in the child nutrition programs.'' (outlined in paragraph 2. of this appendix). This would designate that the vegetable protein product used in the formulation of the meat, poultry or seafood item complies with the naming and nutritional specifications set forth in paragraph 2. of this appendix. The presence of this label does not insure the proper level of hydration, ratio of substitution nor the contribution that the product makes toward meal pattern requirements for the child nutrition programs.

[48 FR 781, Jan. 7, 1983; 48 FR 2115, Jan. 18, 1983]

## APPENDIX B TO PART 226 [RESERVED]

## APPENDIX C TO PART 226—CHILD NUTRITION (CN) LABELING PROGRAM

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Consumer Service (FCS) in conjunction with the Food Safety and Inspection Service (FSIS), and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA), and National Marine Fisheries Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. This program essentially involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this rule.

2. Products eligible for CN labels are as follows:

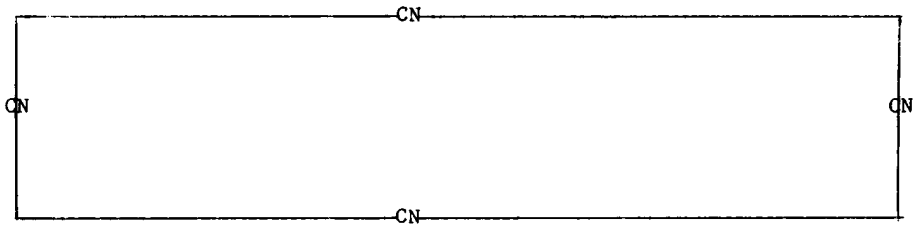
(a) Commercially prepared food products that contribute significantly to the meat/meat alternate component of meal pattern requirements of 7 CFR 210.10, 225.21, and 226.20 and are served in the main dish.

(b) Juice drinks and juice drink products that contain a minimum of 50 percent full-strength juice by volume.

3. For the purpose of this appendix the following definitions apply:

(a) *CN label* is a food product label that contains a CN label statement and CN logo as defined in paragraph 3 (b) and (c) below.

(b) The *CN logo* (as shown below) is a distinct border which is used around the edges of a ''CN label statement'' as defined in paragraph 3(c).




(c) The *CN label statement* includes the following:

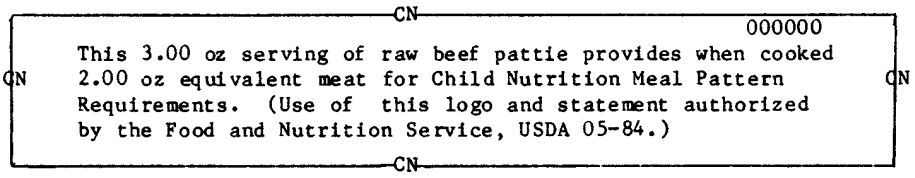
(1) The product identification number (assigned by FCS),

(2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10, 220.8, 225.21, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, bread/bread alternate, and/or vegetable/fruit component of the meal pattern requirements. For juice drinks and juice drink products the statement shall identify their contribution toward the vegetable/fruit component of the meal pattern requirements,

(3) Statement specifying that the use of the CN logo and CN statement was authorized by FCS, and

(4) The approval date.

For example:




(d) *Federal inspection* means inspection of food products by FSIS, AMS or USDC.

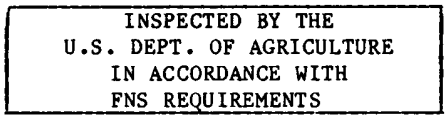
4. Food processors or manufacturers may use the CN label statement and CN logo as defined in paragraph 3 (b) and (c) under the following terms and conditions:

(a) The CN label must be reviewed and approved at the national level by the Food and Consumer Service and appropriate USDA or USDC Federal agency responsible for the inspection of the product.

(b) The CN labeled product must be produced under Federal inspection by USDA or USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal inspection service.

(c) The CN label statement must be printed as an integral part of the product label along with the product name, ingredient listing, the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate, and the manufacturer's or distributor's name and address.

(1) The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products with the exception of juice drinks and juice drink products is established as follows:




(d) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the *Food Buying Guide for Child Nutrition Programs* (Program Aid Number 1331).

5. In the event a company uses the CN logo and CN label statement inappropriately, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

6. Products that bear a CN label statement as set forth in paragraph 3(c) carry a warranty. This means that if a food service authority participating in the child nutrition programs purchases a CN labeled product and uses it in accordance with the manufacturer's directions, the school or institution will not have an audit claim filed against it

for the CN labeled product for noncompliance with the meal pattern requirements of 7 CFR 210.10, 220.8, 225.21, and 226.20. If a State or Federal auditor finds that a product that is CN labeled does not actually meet the meal pattern requirements claimed on the label, the auditor will report this finding to FCS. FCS will prepare a report of the findings and send it to the appropriate divisions of FSIS and AMS of the USDA, National Marine Fisheries Services of the USDC, Food and Drug Administration, or the Department of Justice for action against the company.

Any or all of the following courses of action may be taken:

(a) The company's CN label may be revoked for a specific period of time;

(b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product;

(c) The company's name will be circulated to regional FCS offices;

(d) FCS will require the food service program involved to notify the State agency of the labeling violation.

7. FCS is authorized to issue operational policies, procedures, and instructions for the CN Labeling Program.

To apply for a CN label and to obtain additional information on CN label application procedures write to: CN Labels, U.S. Department of Agriculture, Food and Consumer Service, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia 22302.

[49 FR 18457, May 1, 1984; 49 FR 45109, Nov. 15, 1984]

# PART 227—NUTRITION EDUCATION AND TRAINING PROGRAM

### Subpart A—General

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APPENDIX TO PART 227—APPORTIONMENT OF FUNDS FOR NUTRITION EDUCATION AND TRAINING

AUTHORITY: Sec. 15, Pub. L. 95–166, 91 Stat. 1340 (42 U.S.C. 1788), unless otherwise noted.

SOURCE: 44 FR 28282, May 15, 1979, unless otherwise noted.

## Subpart A—General

### §227.1 General purpose and scope.

The purpose of these regulations is to implement section 19 of the Child Nutrition Act (added by Pub. L. 95–166, effective November 10, 1977) which authorizes the Secretary to formulate and carry out a nutrition information and education program through a system of grants to State agencies to provide for (a) the nutritional training of educational and foodservice personnel, (b) the foodservice management training of school foodservice personnel, and (c) the conduct of nutrition education activities in schools and child care institutions. To the maximum extent possible, the Program shall fully utilize the child nutrition programs as a learning experience.

### §227.2 Definitions.

(a) *Administrative costs* means costs allowable under Federal Management Circular 74–4, other than program costs, incurred by a State agency for overall administrative and supervisory purposes, including, but not limited to, costs of financial management, data processing, recordkeeping and reporting, personnel management, and supervising the State Coordinator.

(b) *Child Care Food Program* means the program authorized by section 17 of the National School Lunch Act, as amended.

(c) *Child Nutrition Programs* means any or all of the following: National School Lunch Program, School Breakfast Program, Child Care Food Program.

(d) *Commodity only school* means a school which has entered into an agreement under § 210.15a(b) of this subchapter to receive commodities donated under part 250 of this chapter for a nonprofit lunch program.

(e) *Department* means the U.S. Department of Agriculture.

(f) *Federal fiscal year* means a period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

(g) *FCS* means the Food and Consumer Service of the Department.

(h) *FCSRO* means the appropriate Regional Office of the Food and Consumer Service of the Department.

(i) *Institution* means any licensed, nonschool, public or private nonprofit organization providing day care services where children are not maintained in permanent residence, including but not limited to day care centers, settlement houses, after school recreation centers, neighborhood centers, Head Start centers, and organizations providing day care services for handicapped children and includes a sponsoring organization under the Child Care Food Program regulations.

(j) *National School Lunch Program* means the lunch program authorized by the National School Lunch Act.

(k) *Needs assessment* means a systematic process for delineating the scope, extent (quantity), reach and success of any current nutrition education activities, including those relating to:

(1) Methods and materials available inside and outside the classroom; (2) training of teachers in the principles of nutrition and in nutrition education strategies, methods, and techniques; (3) training of school foodservice personnel in the principles and practices of foodservice management; and (4) compilation of existing data concerning factors impacting on nutrition education and training such as statistics on child health and competency levels achieved by foodservice personnel.

(l) *Program costs* means costs, other than administrative costs, incurred in connection with any or all of the following:

(1) The State Coordinator's salary, and related support personnel costs, including fringe benefits and travel expenses; (2) applying for assessment and planning funds; (3) the conduct of the needs assessment; (4) the development of the State Plan; and (5) the implementation of the approved State Plan, including related support services.

(m) *Program* means the Nutrition Education and Training Program authorized by section 19 of the Child Nutrition Act of 1966, as amended.

(n) *School* means: (1) An educational unit of high school grade or under operating under public or nonprofit private ownership in a single building or complex of buildings. The term ''high school grade or under'' includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade.

(2) With the exception of residential summer camps which participate in the Summer Food Service Program for Children and private foster homes, any distinct part of a public or nonprofit private institution or any public or nonprofit private child care institution, which (i) maintains children in residence, (ii) operates principally for the care of children and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term ''child care institution'' includes, but is not limited to: Homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long term care facilities of chronically ill children; and juvenile detention centers.

(3) With respect to the Commonwealth of Puerto Rico, non-profit child care centers certified as such by the Governor of Puerto Rico.

(o) *School Breakfast Program* means the program authorized by section 4 of the Child Nutrition Act of 1966, as amended.

(p) *Foodservice personnel* means those individuals responsible for planning,

preparing, serving and otherwise operating foodservice programs funded by USDA grants as provided for in the National School Lunch Act and the Child Nutrition Act of 1966.

(q) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(r) *State agency* means the State educational agency.

(s) *State educational agency* means, as the State legislature may determine:

(1) The Chief State School Officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State Department of Education.

### §227.3 Administration.

(a) Within the Department, FCS shall act on behalf of the Department in the administration of the Program.

(b) Within the States, responsibility for administration of the Program shall be in the State agency, except that FCSRO shall administer the Program with respect to nonprofit private schools or institutions in any State where the State agency is prohibited by law from administering the Program in nonprofit private schools or institutions.

### §227.4 Application and agreement.

After the initial fiscal year of participation each State agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in accordance with the provisions of this part. The State agency shall execute Form FCS–74, which shall constitute the written agreement.

(Approved by the Office of Management and Budget under control number 0584–0062)

(44 U.S.C. 3506)

[44 FR 28282, May 15, 1979, as amended at 47 FR 746, Jan. 2, 1982]

### §227.5 Program funding.

(a) *Total grant.* The total grant to each State agency for each fiscal year for program costs and administrative costs shall consist of an amount equal to 50 cents per child enrolled in schools and institutions within the State during such year, but in no event shall such grant be less than $50,000: *Provided, however,* That a State's total grant shall be reduced proportionately if the State does not administer the program in nonprofit private schools and institutions. If funds appropriated for a fiscal year are insufficient to pay the amount to which each State is entitled, the amount of such grant shall be ratably reduced to the extent necessary so that the total of the amounts paid to each State does not exceed the amount of appropriated funds. Each State agency which receives funds based on all children enrolled in public and nonprofit private schools and institutions shall make the Program available to those schools and institutions. Enrollment figures shall be the latest available as certified by the Department of Education.

(b) *First fiscal year participation*—(1) *Assessment and planning grant.* A portion of the total grant shall be made available to each State agency during its first fiscal year of participation as an assessment and planning grant for:

(i) Employing a State Coordinator, as provided for in §227.30, and related support personnel costs including fringe benefits and travel expenses, (ii) undertaking a needs assessment in the State, (iii) developing a State Plan for nutrition education and training within the State, and (iv) applying for the State assessment and planning grant.

(2) *Advances for the assessment and planning grant.* FCS shall make advances to any State desiring to participate in the Program, to enable the State to carry out the responsibilities set forth in paragraph (b)(1) of this section. Advances shall be made in two phases, in accordance with the following procedures:

(i) Initially, State agencies may receive an advance up to $35,000 for the purpose of hiring a State coordinator, as provided for in §227.30. Application for such an advance shall be made on Form AD–623 when the State agency applies for participation in the Program. The information required for this advance shall be set out in Part III, Budget Information, Section B, Budget Categories. The State agency

shall there indicate the funds required for the salary, travel, and fringe benefits of the State Coordinator, and related personnel costs necessary to carry out the duties and responsibilities of the State Coordinator.

(ii) After appointment of the State Coordinator, the State agency may receive an additional advance of up to 50 percent of the total grant to which the State agency is entitled for the first year of participation, after deduction of the advance made for the State Coordinator under § 227.5(b)(2), but not to exceed $100,000, for the purpose of undertaking a needs assessment in the State, developing a State Plan for nutrition education and training, and applying for the assessment and planning grant. Application for such advance shall be made by amending Part III, Budget Information, of Form AD–623.

(3) *Funds for implementing State plan.* (i) States receiving advances. Each State agency shall receive the remaining portion of its total grant in order to implement its State plan, which has been approved by FCS, if the State agency has carried out the responsibilities for which advances were received. With the submission of the State plan each State agency may apply for the funds remaining of its total grant.

(ii) States previously participating. Those States which previously participated may apply for their total grant upon submission of the State Plan.

(c) *Administrative costs.* Each State agency may use up to 15 percent of its total grant for up to 50 percent of its cash expenditures for administrative costs.

(d) *Payment to State agencies.* Approval of the State plan by FCS is a prerequisite to the payment of funds to the State agency. All funds made available for the Program shall be provided through a letter of credit or check, as determined by FCS.

(e) *Unobligated funds.* The State agency will release to FCS any Federal funds made available to it under the Program which are unobligated by September 30 of each fiscal year.

(f) *Funds for existing programs.* State agencies shall maintain their present level of funding for existing nutrition education and training programs. FCS funds for the Program shall augment current nutrition education and training programs and projects. Funds made available by FCS for this Program shall not replace such funds.

[44 FR 28282, May 15, 1979, as amended at 52 FR 8223, Mar. 17, 1987]

## Subpart B—State Agency Provisions

### § 227.30 Responsibilities of State agencies.

(a) *General.* Except to the extent that it would be inconsistent with this part, the Program shall be administered in accordance with the applicable provisions of the Departmental regulations 7 CFR part 3015.

(b) *Application.* For the initial fiscal year of participation States shall make application for administration of the Program on Form and are responsible for amending Form AD–623 to request advance funding. In the initial application, in connection with the request for advance funding for the State Coordinator, part IV, Program Narrative, of Form AD–623 shall indicate the State agency's procedures for hiring a State Coordinator and contain a justification for the dollar value of salary requested. The narrative shall also indicate the time frame for hiring the State Coordinator. In amending Form AD–623 in connection with the request for advance funding for the remaining portion of the assessment and planning grant, part IV, Program Narrative, shall set forth the details for areas of the assessment and planning grant, other than employment of the State Coordinator.

(b–1) If any State does not apply for participation in the Program, by April 1 of a fiscal year by submitting Form AD 623 as required in § 227.30(b) and § 227.5(b)(2)(i), the State's share of the funds shall be provided to the remaining States, so long as this does not take the remaining States' grants above 50 cents per child enrolled in schools or institutions, except in those States which receive a minimum grant of $75,000 for a fiscal year.

(c) *State Coordinator.* After execution of the agreement the State agency shall appoint a nutrition education

specialist to serve as a State Coordinator for the Program who may be employed on a full-time or part-time basis. The State Coordinator may be a State employee who reports directly or indirectly to the Chief State School Officer or an individual under contract with the State agency to serve as the State Coordinator. A State agency shall not contract with an organization to provide for the services of a State Coordinator. The State Coordinator, at a minimum, shall meet both of the following requirements:

(1) The State Coordinator shall have a Masters degree or equivalent experience. Equivalent experience is experience related to the position being filled or as defined by State civil service or personnel policies. If the Masters degree is not in foods and nutrition or dietetics, the Bachelors degree shall include academic preparations in foods and nutrition or dietetics.

(2) In addition, the State Coordinator shall have recognized and demonstrated skills in management and education through at least three years experience in one or more of these areas: Elementary or secondary education, but not limited to classroom teaching; foodservice management and training for adults; community nutrition or public health programs; foodservice operations for children; or community action or assistance programs.

(d) *Needs assessment.* Each State agency shall conduct an ongoing needs assessment in accordance with §227.36 The needs assessment shall be the data base utilized in formulating the State plan for each fiscal year. For the first year of participation a State agency may apply for funds in order to carry out the needs assessment in accordance with §227.5.

(e) *Developing and submitting the State plan.* Each State agency shall submit to the Secretary a State plan for Nutrition Education and Training in accordance with §227.37 prior to the beginning of each fiscal year. The date of submission for the State plan shall be designated by the Secretary. The Secretary shall act on the submitted State plan within 60 days after it is received. For the first year of participation the State agency shall submit to the Secretary, within nine months after the award of the planning and assessment grant, a State plan for nutrition education and training in accordance with §227.37.

(f) *Records and reports.* (1) Each State agency shall maintain full and complete records concerning Program operations and shall retain such records in accordance with OMB Circular A–102 Attachment C.

(2) Each State agency shall submit to FCS a quarterly Financial Status Report, Form SF–269, as required by OMB Circular A–102, Attachment H.

(3) Each State agency shall submit an annual performance report (Form FCS–42) to FCS within 30 days after the close of the Fiscal Year.

(4) Each State agency shall maintain a financial management system in accordance with Federal Management Circular 74–4 and OMB Circular A–102, Attachment G.

(5) Each State agency shall comply with the requirements of OMB Circular A–102, Attachments N and O, and Federal Management Circular 74–4, for property management and the procurement of supplies, equipment and other services with these Program funds.

(6) Any income accruing to a State or local agency because of the Program shall be used in accordance with OMB Circular A–102, Attachment E.

(g) *Nondiscrimination.* Each State agency shall ensure that Program operations are in compliance with the Department's nondiscrimination regulations (part 15 of this title) issued under title VI of the Civil Rights Act of 1964.

(Approved by the Office of Management and Budget under control number 0584–0062)

(44 U.S.C. 3506; E.O. 12372, July 14, 1982, 47 FR 30959, sec. 401(b) of the Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506(c))

[44 FR 28282, May 15, 1979, as amended at 45 FR 14842, Mar. 7, 1980; 47 FR 746, Jan. 7, 1982; 47 FR 22072, May 21, 1982; 48 FR 29123, June 24, 1983; 48 FR 39213, Aug. 30, 1983]

### §227.31 Audits, management reviews, and evaluations.

(a) *Audits.* (1) Examinations by the State agencies in the form of audits or internal audits shall be performed in accord with OMB Circular A–102, Attachment G.

(b) *Management reviews.* The State agency is responsible for meeting the following requirements:

(1) The State agency shall establish management evaluation and review procedures to monitor compliance with the State plan for local educational agencies and land grant colleges, other institutions of higher education and public or private nonprofit educational or research agencies, institutions, or organizations.

(2) The State agency shall require participating agencies to establish program review procedures to be used in reviewing the Agencies operations and those of subsidiaries or contractors.

(c) *Evaluations.* The State agency shall conduct formal evaluations of program activities at least annually. These evaluations shall be aimed at assessing the effectiveness of the various activities undertaken by the State and local agencies. State officials shall analyze why some activities have proved effective while others have not and shall initiate appropriate improvements. The results of the evaluations shall be used to make adjustments in ongoing activities and to plan activities and programs for the next year's State plan. The State agency shall submit a plan for evaluation of Program activities as part of the State plan in accordance with § 227.37(b)(14).

(Approved by the Office of Management and Budget under control number 0584–0062)

(44 U.S.C. 3506; E.O. 12372 (July 14, 1982, 47 FR 30959); sec. 401(b) Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506(c))

[44 FR 28282, May 15, 1979, as amended at 47 FR 746, Jan. 7, 1982; 48 FR 29123, June 24, 1983]

## Subpart C—State Coordinator Provisions

### § 227.35 Responsibilities of State coordinator.

At a minimum, the State Coordinator shall be responsible for: (a) Preparation of a budget, (b) the conduct of the needs assessment, (c) development of a State plan, (d) implementation of the approved State Plan, (e) evaluation of the progress and implementation of the State Plan, (f) coordination of the Program with the Child Nutrition Programs at the State and local levels, (g) coordination of the Program with other nutrition education and training programs conducted with Federal or State funds, (h) communication of needs and accomplishments of State nutrition education and training programs to parents and the communty at large, (i) use of Program funds in compliance with all regulations, instructions, or other guidance material provided by FCS, (j) coordinating the submission and preparation of the Program financial status report (SF–269), and (k) annual evaluation of the effectiveness of the State Plan.

### § 227.36 Requirements of needs assessment.

(a) The needs assessment is an ongoing process which identifies the discrepancies between ''what should be'' and ''what is'' and shall be applied to each category listed below to enable State agencies to determine their nutrition education and training needs for each year. The needs assessment shall identify the following as a minimum:

(1) Children, teachers, and food service personnel in need of nutrition education and training; (2) existing State or federally funded nutrition education and training programs including their: (i) Goals and objectives; (ii) source and level of funding; (iii) any available documentation of their relative success or failure; and (iv) factors contributing to their success or failure; (3) offices or agencies at the State and local level designated to be responsible for nutrition education and training of teachers and school food service personnel; (4) any relevant State nutrition education mandates; (5) funding levels at the State and local level for preservice and inservice nutrition education and training of food service personnel and teachers; (6) State and local individuals, and groups conducting nutrition education and training; (7) materials which are currently available for nutrition education and training programs, and determine for each: (i) Subject area and content covered; (ii) grade level; (iii) how utilized; (iv) acceptability by user; (v) currency of materials; (8) any major child nutrition related health problems in each State; (9)

existing sources of primary and secondary data, including any data that has been collected for documenting the State's nutrition education and training needs; (10) available documentation of the competencies of teachers in the area of nutrition education; (11) available documentation of the competencies of food service personnel; (12) problems encountered by schools and institutions in procuring nutritious food economically and in preparing nutritious appetizing meals and areas where training can assist in alleviating these problems; (13) problems teachers encounter in conducting effective nutrition education activities and areas where inservice training or materials can assist in alleviating these problems; (14) problems in dietary habits of children and areas where nutrition education may assist in positive changes; (15) problems encountered in coordinating the nutrition education by teachers with the meal preparation and activities of the food service facility and areas where training might alleviate these problems.

(b) The needs assessment should be an ongoing process and provide not only data on current activities but also a description of the problems and needs in each category and whether training or materials would help alleviate the identified problems.

**§227.37 State plan for nutrition education and training.**

(a) *General.* Each fiscal year the State agency shall submit a State plan for Nutrition Education and Training for approval to FCS. The State plan shall be based on the needs identified from the ongoing needs assessment and evaluation of the State plans from previous years. The State plan shall be submitted in accordance with §227.30(e). Guidance for the preparation and submission of the State plan shall be provided by FCS.

(b) *Requirements for the State plan.* The State plan shall provide the following:

(1) Description of the ongoing needs assessment conducted within the State;

(2) The findings of the needs assessment within the State used to determine the goals and objectives of the State plan and results of the evaluation of the previous years' State plans for:

(i) Inservice training of food service personnel, (ii) nutrition education of children, (iii) inservice training in nutrition education for teachers;

(3) Goals and objectives of the State plan;

(4) Identification of the priority populations to be reached during the fiscal year;

(5) Provisions for coordinating the nutrition education and training programs carried out with funds made available under this part with any related publicly supported programs being carried out within the State to include:

(i) Identification of existing programs that may be utilized, (ii) description of how representatives of such groups are to be involved in the planning and implementation of the State program; (iii) criteria and procedure for selection of such representatives;

(6) Plans to solicit advice and recommendations of the National Advisory Council on Child Nutrition, State educational or other appropriate agencies; the U.S. Department of Education; the U.S. Department of Health and Human Services; and other interested groups and individuals concerned with improvement of child nutrition.

(7) Plans, including a timetable, for reaching all children in the State with instruction in the nutritional value of foods and the relationship among food, nutrition and health, for inservice training of food service personnel in the principles and skills of food service management and nutrition and for inservice instruction for teachers in sound principles of nutrition education;

(8) Any plans for using, on a priority basis, the resources of the land-grant colleges eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503; 7 U.S.C. 301 through 305, 307, and 308) or the Act of August 30, 1890 (26 Stat. 417, as amended; 7 U.S.C. 312 through 326 and 328), including the Tuskegee Institute;

(9) A brief description of the program or activities to be contracted with land-grant colleges, described above,

and other institutions of higher education, and other public or private nonprofit educational or research agencies, institutions or organizations for carrying out nutrition education and training activities;

(10) A brief description of pilot projects, including objectives, subject matter and expected outcomes, to be contracted with the land-grant colleges described above, other institutions of higher education, public and nonprofit educational or research agencies, institutions, or organizations for but not limited to projects for development, demonstration, testing and evaluation of curricula for use in early childhood, elementary, and secondary education programs;

(11) Identification of schools, school districts, and sponsoring agencies which may agree to participate in the nutrition education and training program;

(12) A brief description of (i) State agency sponsored pilot projects including objectives, subject matter and anticipated outcomes and (ii) nutrition education and training programs to be conducted by schools, school districts, and sponsoring agencies receiving funds under this provision including objectives, subject matter and expected outcomes;

(13) Time frame and milestones for implementation of State plans;

(14) Plans to evaluate program activities including an evaluation component for each objective of the State plan;

(15) Description of staff available to perform State agency responsibilities of the State nutrition education and training program which includes:

(i) Definition of duties and responsibilities, (ii) minimum professional qualifications, (iii) number and classification of personnel;

(16) A description of the procedures used to comply with the requirements of Title VI of the Civil Rights Act of 1964, including racial and ethnic participation data collection, public notification procedures and the annual civil rights compliance review process;

(17) Plans for the conduct of audits in accordance with § 227.31;

(18) A budget detailing the use of program funds;

(19) Description of the financial management system in accordance with § 227.30(e);

(20) Description of the management evaluation and review procedures established in accordance with § 227.31(b); and

(21) Other components that the States determine necessary.

(c) States eligible to receive additional funds pursuant to § 227.30(b–1) shall submit an amendment to the State plan to the Food and Consumer Service Regional Office for prior approval.

[44 FR 28282, May 15, 1979, as amended at 45 FR 14842, Mar. 7, 1980; 48 FR 39213, Aug. 30, 1983]

## Subpart D—Miscellaneous

### § 227.40 Program information.

Persons desiring information concerning the program may write to the appropriate State agency or Regional Office of FCS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: New England Regional Office, FCS, U.S. Department of Agriculture, 33 North Avenue, Burlington, Mass. 01803.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FCS, U.S. Department of Agriculture, One Vahlsing Center, Robbinsville, N.J. 08691.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FCS, U.S. Department of Agriculture, 1100 Spring Street NW., Atlanta, Ga. 30309.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FCS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, Ill. 60605.

(e) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FCS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430D, Denver, Colo. 80211.

(f) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FCS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, Tex. 75242.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, and Washington: Western Regional Office, FCS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, Calif. 94108.

### § 227.41 Recovery of funds.

(a) FCS may recover funds from a State agency under any of the following conditions:

(1) If FCS determines, through a review of the State agency's reports, program, or financial analysis, monitoring, audit or otherwise, that the State agency's performance is inadequate or that the State agency has failed to comply with this part or FCS instructions and guidelines.

(2) If FCS determines that the State agency is not expending funds at a rate commensurate with the amount of funds distributed or provided for expenditure under the program.

(3) If FCS determines that a State agency is not providing full and timely reports.

(b) FCS shall effect such recoveries of funds through adjustments in the amount of funds provided under the program.

### § 227.42 Grant closeout procedures.

The requirements of OMB Circular A–102, Attachment L, are applicable in the termination of any grant under this part.

### § 227.43 Participation of adults.

Nothing in this part shall prohibit a State or local educational agency from making available or distributing to adults education materials, resources, activities or programs authorized by this part.

### § 227.44 Management evaluations and reviews.

FCS shall establish evaluation procedures to determine whether State agencies carry out the purpose and provisions of this part, the State agency plan and FCS guidelines and instructions. To the maximum extent possible the State's performance shall be reviewed and evaluated by FCS on a regular basis including the use of public hearings.

## APPENDIX TO PART 227—APPORTIONMENT OF FUNDS FOR NUTRITION EDUCATION AND TRAINING

Pursuant to sections 19(j) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1788), funds available for the fiscal year ending September 30, 1980, are apportioned among the States as follows:

[See footnotes at the end of Table.]

| State | Public schools [1] | Private schools [2] | Residential child care institutions [3] | Nonresidential child care institutions [4] | Total [5] |
|---|---|---|---|---|---|
| Connecticut | 231,069 | 38,488 | 1,260 | 2,866 | 273,683 |
| Maine | 93,406 | 6,538 | 387 | 808 | 101,139 |
| Massachusetts | 420,866 | 68,337 | 2,697 | 5,352 | 497,252 |
| New Hampshire | 67,087 | 7,978 | 331 | 1,160 | 76,556 |
| Rhode Island | 62,521 | 12,570 | 304 | 767 | 76,162 |
| Vermont | 39,419 | 3,814 | 247 | 579 | 75,000 |
| | 914,368 | 137,725 | 5,226 | 11,532 | 1,099,792 |
| Delaware | 43,210 | 7,277 | 107 | 1,339 | 75,000 |
| District of Columbia | 44,309 | 7,511 | 447 | 2,458 | 75,000 |
| Maryland | 315,196 | 51,992 | 1,292 | 5,234 | 373,714 |
| New Jersey | 520,438 | 117,060 | 3,930 | 8,588 | 650,016 |
| New York | 1,204,026 | 274,593 | 14,068 | 19,756 | 1,512,443 |
| Pennsylvania | 796,518 | 182,089 | 9,026 | 7,312 | 994,945 |
| Puerto Rico | 280,750 | 36,776 | 0 | 0 | 317,526 |
| Virginia | 410,660 | 34,947 | 6,239 | 6,068 | 457,914 |
| Virgin Islands | 9,783 | 2,452 | 11 | 0 | 75,000 |
| West Virginia | 154,000 | 4,942 | 770 | 854 | 160,566 |

| State | Public schools [1] | Private schools [2] | Residential child care institutions [3] | Nonresidential child care institutions [4] | Total [5] |
|---|---|---|---|---|---|
| | 3,778,890 | 719,639 | 35,890 | 51,609 | 4,692,124 |
| Alabama | 296,412 | 21,949 | 892 | 10,607 | 329,860 |
| Florida | 589,122 | 57,440 | 2,116 | 19,074 | 667,752 |
| Georgia [5] | 424,042 | 27,708 | 2,783 | 14,806 | 469,339 |
| Kentucky | 269,690 | 27,786 | 3,685 | 3,652 | 304,813 |
| Mississippi | 192,134 | 25,802 | 541 | 12,175 | 230,652 |
| North Carolina | 452,523 | 22,104 | 3,052 | 19,722 | 497,401 |
| South Carolina [5] | 243,200 | 19,225 | 1,255 | 6,559 | 270,239 |
| Tennessee | 339,753 | 17,396 | 1,448 | 7,847 | 366,444 |
| | 2,806,876 | 219,410 | 15,772 | 94,442 | 3,136,500 |
| Illinois | 793,671 | 160,491 | 5,343 | 15,971 | 975,476 |
| Indiana | 433,267 | 39,967 | 2,814 | 5,279 | 481,327 |
| Michigan | 747,374 | 85,655 | 3,069 | 7,817 | 843,915 |
| Minnesota | 314,333 | 38,994 | 1,245 | 3,135 | 357,707 |
| Ohio | 818,192 | 110,561 | 5,836 | 10,767 | 945,356 |
| Wisconsin | 344,962 | 73,707 | 1,922 | 3,579 | 424,170 |
| | 3,451,799 | 509,375 | 20,229 | 46,548 | 4,027,951 |
| Arkansas | 177,730 | 8,095 | 385 | 4,453 | 190,663 |
| Louisiana | 317,817 | 64,562 | 1,551 | 6,307 | 390,237 |
| New Mexico | 108,673 | 5,448 | 235 | 2,619 | 116,975 |
| Oklahoma | 229,166 | 3,969 | 1,916 | 8,639 | 243,690 |
| Texas | 1,115,829 | 52,654 | 4,163 | 38,934 | 1,211,580 |
| | 1,949,215 | 134,728 | 8,250 | 60,952 | 2,153,145 |
| Colorado [5] | 217,264 | 15,800 | 937 | 4,399 | 238,400 |
| Iowa | 221,255 | 25,957 | 3,204 | 2,631 | 253,047 |
| Kansas | 168,720 | 12,765 | 330 | 1,062 | 182,877 |
| Missouri | 350,248 | 54,950 | 1,271 | 6,629 | 413,098 |
| Montana | 63,950 | 3,425 | 75 | 677 | 75,000 |
| Nebraska | 115,891 | 17,629 | 376 | 1,694 | 135,590 |
| North Dakota [5] | 47,486 | 4,826 | 309 | 383 | 75,000 |
| South Dakota | 53,792 | 5,760 | 267 | 390 | 75,000 |
| Utah | 126,488 | 1,518 | 541 | 1,325 | 129,872 |
| Wyoming | 36,709 | 1,206 | 74 | 497 | 75,000 |
| | 1,401,803 | 143,836 | 7,384 | 19,687 | 1,652,884 |
| Alaska | 35,308 | 739 | 310 | 392 | 75,000 |
| Samoa | 3,616 | 778 | 0 | 0 | 75,000 |
| Arizona | 198,407 | 21,871 | 661 | 4,712 | 225,651 |
| California | 1,629,801 | 170,376 | 28,777 | 44,277 | 1,873,231 |
| Guam | 11,118 | 1,985 | 0 | 0 | 75,000 |
| Hawaii | 66,454 | 13,348 | 1,854 | 3,352 | 85,008 |
| Idaho | 79,009 | 1,868 | 119 | 860 | 81,856 |
| Nevada | 56,927 | 2,179 | 473 | 1,643 | 75,000 |
| Oregon | 183,441 | 9,379 | 859 | 3,703 | 197,382 |
| Trust Territory | 11,590 | 0 | 0 | 0 | 75,000 |
| Washington | 299,362 | 17,318 | 2,140 | 5,656 | 324,476 |
| N Marianas | 1,945 | 0 | 0 | 0 | 75,000 |
| | 2,576,978 | 239,841 | 35,193 | 64,595 | 3,237,604 |
| | 16,879,929 | 2,104,554 | 127,944 | 349,365 | 20,000,000 |

[1] Sources: (1) U.S. Department of Health, Education, and Welfare, Education Division, NCES, *Statistics of Public Schools, Fall 1977,* prepublication data, Table 5 for States and areas, except (2) Northern Marianas and Trust Territory, 1975–76 data from Department of Interior, adjust to include pre-school; Puerto Rico and Guam, Fall 1976 data.

[2] U.S. Department of Health, Education, and Welfare, Education Division, (NCES). Digest of Education Statistics, 1976, Table 46, p. 47, Northern Marianas and Trust Territory 1975–76 data from Department of Interior, adjust to include pre-school.

[3] U.S. Department of Agriculture, Food and Nutrition Service, Annual Report of Meal Service in Schools (Form FNS–47), October 1978.

[4] U.S. Department of Health, Education, and Welfare, *Day Care Centers In the U.S.; A National Profile 1976–77,* Volume 3 of the Final Report of the National Day Care Study, Table 63.

[5] A portion of these funds will be withheld from the States' allocations for use by FCS in administering the Program in nonprofit private schools or institutions.

[44 FR 70451, Dec. 7, 1979]

# PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

Sec.

235.1 General purpose and scope.
235.2 Definitions.
235.3 Administration.
235.4 Allocation of funds to States.
235.5 Payments to States.
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235.7 Records and reports.

235.8 Management evaluations and audits.
235.9 Procurement and property management standards.
235.10 [Reserved]
235.11 Other provisions.
235.12 Information collection/recordkeeping—OMB assigned control numbers.

AUTHORITY: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

SOURCE: 41 FR 32405, Aug. 3, 1976, unless otherwise noted.

### §235.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out the provisions of section 7 of the Child Nutrition Act of 1966, as amended. It prescribes the methods for making payments of funds to State agencies for use for administrative expenses incurred in supervising and giving technical assistance in connection with activities undertaken by them under the National School Lunch Program (7 CFR part 210), the Special Milk Program (7 CFR part 215), the School Breakfast Program (7 CFR part 220), the Child and Adult Care Food Program (7 CFR part 226) and the Food Distribution Program (7 CFR part 250).

(Sec. 7, Pub. L. 95–627, 92 Stat. 3621 (42 U.S.C. 1776))

[44 FR 51185, Aug. 31, 1979, as amended by Amdt. 17, 55 FR 1378, Jan. 16, 1990; 60 FR 15461, Mar. 24, 1995]

### §235.2 Definitions.

For the purpose of this part, the term:

(a) *Act* means the Child Nutrition Act of 1966, as amended.

(b) *CND* means the Child Nutrition Division of the Food and Consumer Service of the U.S. Department of Agriculture.

(c) *Department* means the U.S. Department of Agriculture.

(d) *Distributing agency* means a State agency which enters into an agreement with the Department for the distribution of donated foods pursuant to part 250 of this title.

(e) [Reserved]

(f) *FCS* means the Food and Consumer Service of the U.S. Department of Agriculture.

(g) *FCSRO* means the appropriate Food and Consumer Service Regional Office of the Food and Consumer Service of the U.S. Department of Agriculture.

(h) *Fiscal year* means a period of 12 calendar months beginning October 1, 1976, and October 1 of each calendar year thereafter and ending with September 30 of the following calendar year.

(i) *Institution* means a child or adult care center or a sponsoring organization as defined in part 226 of this chapter.

(j)–(k) [Reserved]

(l) *OIG* means the Office of the Inspector General of the Department.

(m) [Reserved]

(n) *SAE* means federally provided State administrative expense funds for State agencies under this part.

(o) *School* means: (1) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (2) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; (3) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term ''residential child care institutions'' includes, but is not limited to: Homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more; or (4) with respect to the Commonwealth of Puerto Rico,

nonprofit child care centers certified as such by the Governor of Puerto Rico.

(p) *School Food Authority* means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a breakfast or a lunch program therein. The term ''School Food Authority'' also includes a nonprofit agency or organization to which such governing body has delegated authority to operate the lunch or breakfast program in schools under its jurisdiction, provided the governing body retains the responsibility to comply with breakfast or lunch program regulations.

(q) *Secretary* means the Secretary of Agriculture.

(q–1) *7 CFR part 3015* means the Uniform Federal Assistance Regulations published by the Department to implement Office of Management and Budget Circulars A–21, A–87, A–102, A–110, A–122, and A–128; the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*); and Executive Order 12372.

NOTE: OMB Circulars, referred to in this definition, are available from the EOP Publications, New Executive Office Building, 726 Jackson Place NW., Room 2200, Washington, DC 20503.

(r) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or the Republic of Palau.

(s) *State agency* means (1) the State educational agency or (2) such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer programs under part 210, 215, 220, 226 or 250 of this title. Unless otherwise indicated, ''State agency'' shall also mean ''distributing agency'', as defined in § 235.2(d), when such agency is receiving funds directly from FCS under this part.

(t) *State educational agency* means, as the State legislature may determine: (1) The chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State department of education.

(Sec. 7, Pub. L. 95–627, 92 Stat. 3621 (42 U.S.C. 1776); sec. 205, Pub. L. 96–499, The Omnibus Reconciliation Act of 1980, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1772, 1784, 1760); 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)

[41 FR 32405, Aug. 3, 1976, as amended at 44 FR 48957, Aug. 21, 1979; 44 FR 51185, Aug. 31, 1979; Amdt. 9, 48 FR 19355, Apr. 29, 1983; Amdt. 14, 51 FR 27151, July 30, 1986; 54 FR 2991, Jan. 23, 1989; Amdt. 17, 55 FR 1378, Jan. 16, 1990; 60 FR 15461, Mar. 24, 1995]

### § 235.3 Administration.

(a) Within the Department, FCS shall act on behalf of the Department in the administration of the program for payment to States of State administrative expense funds covered by this part. Within FCS, CND shall be responsible for administration of the program.

(b) Each State agency desiring to receive payments under this part shall enter into a written agreement with the Department. Each agreement shall cover the operation of the Program during the period specified therein and may be extended at the option of the Department.

(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))

[41 FR 32405, Aug. 3, 1976, as amended at 44 FR 48957, Aug. 21, 1979; Amdt. 14, 51 FR 27151, July 30, 1986]

### § 235.4 Allocation of funds to States.

(a) *Nondiscretionary SAE Funds.* For each fiscal year, FCS shall allocate the following:

(1) To each State which administers the National School Lunch, School Breakfast or Special Milk Programs an amount equal to one (1) percent of the funds expended by such State during the second preceding fiscal year under sections 4 and 11 of the National School Lunch Act, as amended, and sections 3, 4 and 17A of the Child Nutrition Act of 1966, as amended. However, the total amount allocated to any State under this paragraph shall not be less than $100,000 or the amount allocated to the State in the fiscal year ending September 30, 1981, whichever is greater.

(2) To each State which administers the Child and Adult Care Food Program an amount equal to the sum of:

Twenty percent of the first $50,000; ten percent of the next $100,000; five percent of the next $250,000; and two and one-half percent of any remaining funds expended within the State under section 17 of the National School Lunch Act, as amended, during the second preceding fiscal year. FCS may adjust the amount of any such allocation in accordance with changes in the size of the Child and Adult Care Food Program in a State.

(b) *Discretionary SAE Funds.* For each fiscal year, FCS shall provide the following additional allocations:

(1) Allocate $30,000 to each State which administers the Child and Adult Care Food Program (7 CFR part 226).

(2) $30,000 to each State which administers the Food Distribution Program (part 250 of this chapter) in schools and/or institutions which participate in programs under parts 210, 220, 226 of this chapter.

(3) Amounts derived by application of the following four-part formula to each State agency which is allocated funds under paragraph (a) of this section:

(i) One equal share of forty (40) percent of the funds designated by FCS for the reviews conducted under § 210.18 or § 210.18a of this title.

(ii) The ratio of the number of School Food Authorities participating in the National School Lunch or Commodity School Programs under the jurisdiction of the State agency to such School Food Authorities in all States times twenty (20) percent of the funds designated by FCS for reviews conducted under § 210.18 or § 210.18a of this title.

(iii) The ratio of the number of free and reduced price meals served in School Food Authorities under the jurisdiction of the State agency during the second preceding fiscal year to the number of free and reduced price meals served in all States in the second preceding fiscal year times twenty (20) percent of the funds designated by FCS for reviews conducted under § 210.18 or § 210.18a of this title.

(iv) Equal shares of twenty (20) percent of the funds designated by FCS for reviews conducted under § 210.18 or § 210.18a of this title for each School Food Authority under the jurisdiction of the State agency participating in the National School Lunch or Commodity School Programs which has an enrollment of 40,000 or more; *Provided, however,* That for State agencies with fewer than two School Food Authorities with enrollments of 40,000 or more, an equal share shall be provided to the State agency, for either, or both, of the two largest School Food Authorities which have enrollments of more than 2,000; and *Provided, further,* That State agencies with only one School Food Authority, regardless of size, shall be provided with one equal share. For each fiscal year, the amount of State Administrative Expense Funds designated by FCS for reviews conducted under § 210.18 or § 210.18a of this title and subject to allocation under this paragraph shall be equal to or greater than the amount designated by FCS for program management improvements for the fiscal year ending September 30, 1980.

(4) Funds which remain after the allocations required in paragraphs (a)(1), (a)(2), (b)(1), (b)(2) and (b)(3) of this section, and after any payments provided for under paragraph (c) of this section, as determined by the Secretary, to those States which administer the Food Distribution Program (part 250 of this chapter) in schools and/or institutions which participate in programs under parts 210, 220, or 226 of this chapter and to those States which administer part 226 of this chapter. The amount of funds to be allocated to each State for the Food Distribution Program for any fiscal year shall bear the same ratio to the total amount of funds made available for allocation to the State for the Food Distribution Program under this paragraph as the value of USDA donated foods delivered to the State for schools and institutions participating in programs under parts 210, 220 and 226 of this chapter during the second preceding fiscal year bears to the value of USDA donated foods delivered to all the States for such schools and institutions during the second preceding fiscal year. The amount of funds to be allocated to each State which administers the Child and Adult Care Food Program for any fiscal year shall bear the same ratio to the total amount of funds made available for allocation to all such States under this paragraph as the amount of funds

allocated to each State under paragraph (a)(2) of this section bears to the amount allocated to all States under that paragraph.

(c) *SAE Funds for the Child and Adult Care Food Program.* If a State elects to have a separate State agency administer the adult care component of the Child and Adult Care Food Program, such separate State agency shall receive a pro rata share of the SAE funds allocated to the State under paragraphs (a)(2), (b)(1), and (b)(4) of this section which is equal to the ratio of funds expended by the State for the adult care component of the Child and Adult Care Food Program during the second preceding fiscal year to the funds expended by the State for the entire Child and Adult Care Food Program during the second preceding fiscal year. The remaining funds shall be allocated to the State agency administering the child care component of the Child and Adult Care Food Program.

(d) *SAE Start-up Cost Assistance for State Administration of Former ROAPs.* For any State agency which agrees to assume responsibility for the administration of food service programs in nonprofit private schools or child and adult care institutions that were previously administered by FCS, an appropriate adjustment in the administrative funds paid under this part to the State shall be made by FCS not later than the succeeding fiscal year. Such an adjustment shall consist of an amount of start-up cost assistance, negotiated with the State agency, of no less than $10,000 and not exceeding $100,000, per State.

(e) *SAE Funding Reduction Upon State Agency Termination of a Food Service Program.* For any State agency which terminates its administration of any food service program for which State administrative expense funds are provided under this part, a reduction in the amount of such funds, negotiated with the State agency, shall be made by FCS.

(f) *SAE Funds for ROAPs.* FCS shall have available to it the applicable amounts provided for in paragraphs (a)(1), (a)(2), and (b)(1) of this section, and part 225 of this title, when it is responsible for the administration of a program or programs within a State.

(g) *Reallocation.* Funds allotted to State agencies under this section shall be subject to the reallocation provisions of § 235.5(d).

(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); sec. 7(a), Pub. L. 95–627, 92 Stat. 3622 (42 U.S.C. 1751); Pub. L. 96–499, secs. 201 and 204, 94 Stat. 2599; secs. 805, 812, 814 and 819, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1754, 1759a, 1774 and 1776); E.O. 12372 (July 14, 1982, 47 FR 30959); sec. 401(b) Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506(c))

[44 FR 48957, Aug. 21, 1979, as amended at 44 FR 51185, Aug. 31, 1979; 44 FR 53489, Sept. 14, 1979; 45 FR 3566, Jan. 18, 1980; Amdt. 11, 48 FR 27892, June 17, 1983; Amdt. 14, 51 FR 27151, July 30, 1986; Amdt. 15, 51 FR 33862, Sept. 24, 1986; Amdt. 17, 55 FR 1378, Jan. 16, 1990; 56 FR 32949, July 17, 1991; 58 FR 42489, Aug. 10, 1993; 60 FR 15462, Mar. 24, 1995]

### § 235.5 Payments to States.

(a) *Method of payment.* FCS will specify the terms and conditions of the State agency's annual grant of SAE funds in conjunction with the grant award document and will make funds available for payment by means of a Letter of Credit issued in favor of the State agency. The total amount of a State agency's grant shall be equal to the sum of the amounts allocated to such agency under § 235.4 plus or minus any adjustments resulting from the reallocation provisions under paragraph (d) of this section plus any transfers under § 235.6(a) and/or § 235.6(c) of this part. The amount of SAE funds made available for payment to a State agency in any fiscal year shall be determined by FCS upon approval of the State agency's administrative plan for the fiscal year under paragraph (b) of this section and any amendments to such plan under paragraph (c) of this section. Funds shall not be made available before the State agency's plan or amendment to such plan, as applicable, has been approved by FCS. However, if the plan has not been approved by October 1 of the fiscal year, FCS may advance SAE funds to the State agency, in amounts determined appropriate by FCS, pending approval of the plan.

(b) *Administrative plan.* (1) Based on guidance provided by FCS, each State

agency shall submit to FCS, by August 15 of each year, a plan for meeting its administrative responsibilities under the National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program, and Food Distribution Program in schools and child and adult care institutions as applicable, for the upcoming fiscal year. If FCS determines that a State agency is unable to comply with a due date under this subparagraph, it may grant an extension to the State agency.

(2) The State agency's plan shall include its staffing pattern for State level personnel; a budget for the forthcoming fiscal year showing projected amounts (combined SAE and State funds) by cost category; the total amount of budgeted funds to be provided from State sources; the total amount of budgeted funds to be provided under this part; the State agency's estimate of the total SAE carryover from the current fiscal year; the State agency's estimate of the total amount of budgeted funds (combined SAE and State funds) attributable to administration of the School Nutrition Programs (National School Lunch, School Breakfast and Special Milk Programs), Child and Adult Care Food Program, and/or Food Distribution Program in schools and child and adult care institutions and to each of the major activity areas of the State agency; and the State agency's estimate of the total Child and Adult Care Food Program two percent audit funds to be used for the forthcoming fiscal year. These activity areas shall be defined and described by the State agency in accordance with guidance issued by FCS and may include such activities as program monitoring, technical assistance, Federal reporting/claims processing, policy implementation, and allocation of foods to recipient agencies.

(3) The basic guidance issued by FCS for preparation of the plan shall provide flexibility in reporting with a minimal amount of reporting burden for State agencies. Such guidance, however, may be expanded for individual State agencies in order to address specific administrative deficiencies which affect compliance with program requirements and which have been identified by FCS through management evaluations, audits or other means. Except in specific instances where determined necessary by FCS, State agencies shall not be required to maintain expenditure records by activity area or program. State agencies shall refer to Office of Management and Budget Circular A–87, Attachment B to establish cost categories. In accordance with Office of Management and Budget Circular A–102, Attachment F, State agency plans for the forthcoming fiscal year shall include not only the projected expenditures of State funds by the State agency (as required above), but also all projected expenditures of State funds by other divisions of the State that will be applied to the State funding requirement under § 235.11(a) of this part.

(4) FCS shall approve a State agency's plan, or any amendment to such plan under paragraph (c) of this section, if it determines that the plan or amendment is consistent with program administrative needs and SAE requirements under this part. In approving a State agency's administrative plan or amendment thereto, FCS shall determine the amount of SAE funds to be made available for payment to the State agency. For any fiscal year, this amount shall be based on the amount of SAE funds justified in the administrative plan as amended, but shall not exceed the total of the following: SAE funds allocated to the State agency under § 235.4 of this part for the fiscal year, any SAE funds carried over from the prior fiscal year grant, any SAE funds transferred to the State agency by another State agency within the State under § 235.6(a) and/or § 235.6(c) of this part and any SAE funds reallocated to the State agency under paragraph (d) of this section.

(5) To the extent practicable, State agencies shall implement their approved plans (as amended). FCS shall monitor State agency implementation of the plans through management evaluations, State agency reports submitted under this part, and through other available means.

(c) *Amendments to the administrative plan.* A State agency may amend its administrative plan at any time during the fiscal year to justify the need for additional SAE funds up to the limit

specified in paragraph (b) of this section. Any such amendment shall provide information in a format consistent with that provided in the State agency's plan under paragraph (b) of this section and must be approved by FCS before additional SAE funds are made available for payment to the State agency. In accordance with guidance provided by FCS, a State agency shall also amend its administrative plan to reflect other changes in funding or funding needs. An amendment of this type shall also provide information in a format consistent with that provided in the State agency's plan, but shall only require FCS approval if it results in a significant reduction in funding level or level of planned activity.

(d) *Reallocation of funds.* Annually, between March 1 and May 1 on a date specified by FCS, of each year, each State agency shall submit to FCS a State Administrative Expense Funds Reallocation Report (FCS–525) on the use of SAE funds. At such time, a State agency may release to FCS any funds that have been allocated, reallocated or transferred to it under this part or may request additional funds in excess of its current grant level. Based on this information or on other available information, FCS shall reallocate, as it determines appropriate, any funds allocated to State agencies in the current fiscal year which will not be expended in the following fiscal year and any funds carried over from the prior fiscal year which will not be expended in the current fiscal year. Reallocated funds shall be made available for payment to a State agency upon approval by FCS of the State agency's plan under this section and an amendment to such plan which covers the reallocated funds. Notwithstanding any other provision of this part, a State agency may, at any time, release to FCS for reallocation any funds that have been allocated, reallocated or transferred to it under this part and are not needed to implement its approved plan under this section.

(e) *Return of funds.* (1) In Fiscal Year 1991, up to 25 per cent of the SAE funds allocated to each State agency under § 235.4 may remain available for obligation and expenditure in the second fiscal year of the grant. In subsequent fiscal years, up to 20 percent may remain available for obligation and expenditure in the second fiscal year. The maximum amount to remain available will be calculated at the time of the formula allocation by multiplying the appropriate percentage by each State agency's formula allocation as provided under § 235.4(a) through (c). At the end of the first fiscal year, the amount subject to the retention limit is determined by subtracting the amount reported by the State agency as Total Federal share of outlays and unliquidated obligations on the fourth quarter Standard Form (SF) 269, Financial Status Report, from the total amount of SAE funds made available for that fiscal year (i.e., the formula allocation adjusted for any transfers or reallocations). However, funds provided under § 235.4(d) are not subject to the retention limit. Any funds in excess of the amount that remains available to each State agency shall be returned to FCS.

(2) At the end of the fiscal year following the fiscal year for which funds were allocated, each State agency shall return any funds made available which are unexpended.

(3) Return of funds by the State agency shall be made as soon as practicable, but in any event, not later than 30 days following demand by FCS.

[Amdt. 14, 51 FR 27151, July 30, 1986, as amended by Amdt. 17, 55 FR 1378, Jan. 16, 1990; 60 FR 15462, Mar. 24, 1995]

### § 235.6 Use of funds.

(a) Funds allocated under this part and 7 CFR part 225 shall be used for State agency administrative costs incurred in connection with the programs governed by 7 CFR parts 210, 215, 220, 225, 226, and 250 of this title. Except as provided under § 235.6(c), funds allocated under § 235.4, paragraphs (a) and (b) and 7 CFR part 225 shall be used for the program(s) for which allocated, except that the State agency may transfer up to ten percent of the funds allocated for any such program(s) to other such program(s). Subject to the provisions of this paragraph, a State agency may also transfer SAE funds that are not needed to implement its approved plan § 235.5(b) to another State agency within the State that is eligible to receive SAE funds under this part. Up to

25 per cent of funds allocated under § 235.4(a) through (c) for Fiscal Year 1991 and up to 20 per cent of funds allocated in subsequent fiscal years to a State agency may, subject to the provisions of § 235.5 of this part, remain available for obligation and expenditure by such State agency during the following fiscal year.

(a–1) State administrative expense funds paid to any State may be used by State agencies to pay salaries, including employee benefits and travel expenses for administrative and supervisory personnel, for support services, for office equipment, and for staff development, particularly for monitoring and training of food service personnel at the local level in areas such as food purchasing and merchandizing. Such funds shall be used to employ additional personnel, as approved in the applicable State plan to supervise, improve management, and give technical assistance to school food authorities and to institutions in their initiation, expansion, and conduct of any programs for which the funds are made available. State agencies may also use these funds for their general administrative expenses in connection with any such programs, including travel and related expenses. Additional personnel or part-time personnel hired are expected to meet professional qualifications and to be paid at salary scales of positions of comparable difficulty and responsibility under the State agency. Personnel may be used on a staff year equivalent basis, thus permitting new personnel and existing staff to be cross-utilized for most effective and economical operation under existing and new programs.

(a–2) State Administrative Expense Funds paid to any State agency under § 235.4(b)(3) shall be available for reviews conducted under § 210.18 or § 210.18a of this title activities associated with carrying out actions to ensure adherence to the program performance standards.

(b) State administrative expense funds shall be used consistent with the cost principles and constraints on allowable and unallowable costs and indirect cost rates as prescribed in Office of Management and Budget Circular A–87.

(c) In addition to State Administrative Expense funds made available specifically for food distribution purposes under § 235.4 (b)(2) and (b)(4), State Administrative Expense funds allocated under § 235.4 (a)(1), (a)(2), (b)(1), (b)(3), and (d), and under (b)(4) for the Child and Adult Care Food Program may be used to assist in the administration of the Food Distribution Program (7 CFR part 250) in schools and institutions which participate in programs governed by parts 210, 220, and 226 of this title when such Food Distribution Program is administered within the State agency and may also be used to pay administrative expenses of a distributing agency, when such agency is other than the State agency and is responsible for administering all or part of such Food Distribution Program.

(d) FCS shall allocate, for the purpose of providing grants on an annual basis to public entities and private nonprofit organizations participating in projects under section 18(c) of the National School Lunch Act, not more than $4,000,000 in each of Fiscal Years 1993 and 1994. Subject to the maximum allocation for such projects for each fiscal year, at the beginning of each of Fiscal Years 1993 and 1994, FCS shall allocate, from funds available under § 235.5(d) that have not otherwise been allocated to States, an amount equal to the estimates by FCS of the funds to be returned under paragraph (a) of this section, but not less than $1,000,000 in each fiscal year. To the extent that amounts returned to FCS are less than estimated or are insufficient to meet the needs of the projects, FCS may allocate amounts to meet the needs of the projects from funds available under this section that have not been otherwise allocated to States. FCS shall reallocate any of the excess funds above the minimum level in accordance with § 235.5(d).

(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 $10,000 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.

(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]

### § 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 FCS, 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 FCS 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 FCS 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 FCS 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 FCS, 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 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) Each State agency shall provide for audits of State agency operations under this part to be made with reasonable frequency, but beginning in fiscal year 1978 once every two years. The audits shall determine the fiscal integrity of financial transactions and reports, and the compliance with applicable laws and regulations and with the administrative requirements set forth in 7 CFR part 3015. Audits may be made by State Auditors General, by State Controllers, or other comparable State audit groups, or by Certified Public Accountants or State licensed public accountants.

(b) Each State agency shall develop a plan for the conduct of such audits which shall (1) provide a description of the State agency in adequate detail to demonstrate the independence of the audit organization, and (2) provide a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(c) While OA 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.

(d) Use of audit guides available from OA is encouraged. When these guides are utilized, OA will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(e) Each State agency shall provide FCS with full opportunity to conduct management evaluations of all operations of the State agency under this part and shall provide OA 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 FCS, OA, 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]

### §235.9 Procurement and property management standards.

(a) *Requirements.* State agencies shall comply with the requirements of the Office of Management and Budget (OMB) Circular A–102 and the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015, subpart S (46 FR 55658) concerning the procurement of supplies, equipment and other services with State Administrative Expense Funds. These requirements are adopted by FCS to ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in OMB Circular A–102 and 7 CFR part 3015 do not relieve the State agency of any contractual responsibilities under its contract. The State agency is the responsible authority, without recourse to FCS, 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 and local laws and regulations, provided that procurements made with Program funds adhere to the standards set forth in OMB Circular A–102 and 7 CFR part 3015.

(d) *Property acquired with State administrative expense funds.* State Agencies shall comply with the requirements of OMB Circular A–102 and 7 CFR part 3015, subpart R (46 FR 55654) in their utilization and 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]

### § 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, as applicable, the provisions of Office of Management and Budget Circular A–102, Attachments F and G and 7 CFR part 3015, subparts G and H in identifying and documenting expenditures of funds from State revenues to meet the State funding requirement of this paragraph.

(b) *Sanctions imposed.* (1) FCS 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 FCS 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, FCS may, for any fiscal year, recover, withhold or cancel payment of up to thirty-three and one-third (33⅓) 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 FCS determines that a State agency is deficient in one or more of the following:

(i) Implementing the requirements in § 210.18 or § 210.18a of this title;

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

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

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

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

(3) Furthermore, FCS may for any fiscal year, recover, withhold or cancel payment of up to thirty-three and one-third (33⅓) 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 FCS determines that a State agency is deficient in meeting the reporting deadlines prescribed for the forms (FCS–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, FCS 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 (33⅓) 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) FCS 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 FCS 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) FCS shall review the corrective action plan. If it is acceptable, FCS 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, FCS shall assess such action and, if necessary, shall perform a follow-up review to determine if the noted deficiencies have been corrected. FCS 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, FCS may impose a sanction by assessing a claim against the State agency or taking action in accordance with 7 CFR part 3015, subpart L. FCS shall notify the Chief State School Officer or equivalent of any such action.

(vi) If, subsequent to the imposition of any sanction, FCS 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, FCS 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, FCS 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.* FCS 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. FCS 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, FCS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015 subpart N 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 FCS 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 FCS Administrative Review Officer of the record including any additional written submissions prepared by the State agency.

(1) FCS 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 Consumer Service, 3101 Park Center Drive, Alexandria, Va. 22302 for a review of the record. Such request must be postmarked 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, FCS shall promptly provide the State agency with a written acknowledgment of the request. The acknowledgment shall include the name and address of the FCS 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 FCS 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 FCS Administrative Review Officer will be the Department's final decision in the case and will not be subject to reconsideration.

(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, as amended at 44 FR 48958, Aug. 21, 1979; Amdt. 6, 47 FR 14135, Apr. 2, 1982; 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. 15, 51 FR 33862, Sept. 24, 1986; Amdt. 17, 55 FR 1378, Jan. 16, 1990; 56 FR 32950, July 17, 1991; 60 FR 15463, Mar. 24, 1995]

### § 235.12 Information collection/recordkeeping—OMB assigned control numbers.

| 7 CFR section where requirements are described | Current OMB control number |
|---|---|
| 235.3(b) | 0584–0327 |
| 235.4 (d), (e) | 0584–0319 |
| 235.7(a) | 0584–0319 |
| 235.7(b) | 0584–0341 |
| 235.7(c) | 0584–0319 |
| 235.8 (a), (b) | 0584–0319 |
| 235.9 (c), (d) | 0584–0319 |
| 235.11(b)(2) | 0584–0006<br>0584–0002<br>0584–0341 |
| 235.11(b)(5)(ii) | 0584–0319 |
| 235.11(f) | 0584–0319 |

[50 FR 53258, Dec. 31, 1985]

## PART 240—CASH IN LIEU OF DONATED FOODS

Sec.

240.1 General purpose and scope.
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240.3 Cash in lieu of donated foods for program schools.
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240.10 Unobligated funds.
240.11 Records and reports.

AUTHORITY: 42 U.S.C. 612c note, 1751, 1755, 1762a, 1765, 1766, 1779.

SOURCE: 47 FR 15982, Apr. 13, 1982, unless otherwise noted.

### §240.1 General purpose and scope.

(a) Each school year the Department programs agricultural commodities and other foods to States for delivery to program and commodity schools, nonresidential child care institutions, and service institutions pursuant to the regulations governing the donation of foods for use in the United States, its territories and possessions and areas under its jurisdiction (7 CFR part 250).

(b) Section 6(b) of the Act requires that not later than June 1 of each school year, the Secretary shall make an estimate of the value of the agricultural commodities and other foods that will be delivered during that school year for use in lunch programs by schools participating in the National School Lunch Program (7 CFR part 210). If this estimate is less than the total level of assistance authorized under section 6(e) of the Act the Secretary shall pay to the State administering agency not later than July 1 of that school year, an amount of funds equal to the difference between the value of donated foods as then programmed for that school year and the total level of assistance authorized under such section.

(c) Section 6(e)(1) of the Act requires:

(1) That for each school year, the total commodity assistance, or cash in lieu thereof, available to each State for the National School Lunch Program shall be the amount obtained by multiplying the national average value of donated foods, described in paragraph (c)(2) of this section, by the number of lunches served in that State in the preceding school year; and

(2) That the national average value of foods donated to schools participating in the National School Lunch Program, or cash payments made in lieu thereof, shall be 11 cents, adjusted on July 1, 1982, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions. Section 6(e)(1) further requires that not less than 75 percent of the assistance under that section shall be in the form of donated foods for the National School Lunch Program. After the end of each school year, FCS shall reconcile the number of lunches served by schools in each State with the number served in the preceding school year and, based on such reconciliation, shall increase or reduce subsequent commodity assistance or cash in lieu thereof provided to each State.

(d) Section 12(g) of the Act provides that whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966, whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(e) Section 14(f) of the Act provides that the value of foods donated to States for use in commodity schools for any school year shall be the sum of the national average value of donated foods established under section 6(e) of the Act and the national average payment established under section 4 of the Act. Section 14(f) also provides that such schools shall be eligible to receive up to five cents of such value in cash for processing and handling expenses related to the use of the donated foods.

(f) Sections 17(h)(1) (B) and (C) of the Act provide that the value of commodities, or cash in lieu thereof, donated to States for use in nonresidential child or adult care institutions participating in the Child and Adult Care Food Program (7 CFR part 226) for any school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served during the preceding school year by the

rate established for lunches for that school year under section 6(e) of the Act. At the end of each school year, FCS shall reconcile the number of lunches and suppers served in participating institutions in each State during such school year with the number of lunches and suppers served in the preceding school year and, based on such reconciliation, shall increase or reduce subsequent commodity assistance or cash in lieu of commodities provided to each State.

(g) Section 16 of the Act provides that a State which has phased out its food distribution facilities prior to June 30, 1974, may elect to receive cash payments in lieu of donated foods for the purposes of the applicable child nutrition programs—i.e., the National School Lunch Program, the Summer Food Service Program for Children (7 CFR part 225) and the Child Care Food Program.

(h) These regulations prescribe the methods for determination of the amount of payments, the manner of disbursement and the requirements for accountability for funds when these respective statutory authorities require the Department to make cash payments in lieu of donating agricultural commodities and other foods.

[47 FR 15982, Apr. 13, 1982, as amended at 52 FR 7267, Mar. 10, 1987; 58 FR 39120, July 22, 1993]

### § 240.2 Definitions.

For the purpose of this part the term:

*Act* means the National School Lunch Act, as amended.

*Child Care Food Program* means the Program authorized by section 17 of the Act.

*Commodity school* means a school that does not participate in the National School Lunch Program under part 210 of this chapter but which operates a nonprofit lunch program under agreement with the State educational agency or FCSRO and receives donated foods, or donated foods and cash or services of a value of up to 5 cents per lunch in lieu of donated foods under this part for processing and handling the foods.

*Department* means the U.S. Department of Agriculture.

*Distributing agencies* means State, Federal or private agencies which enter into agreements with the Department for the distribution of donated foods to program schools, commodity schools, and nonresidential child care institutions.

*Donated-food processing and handling expenses* means any expenses incurred by or on behalf of a commodity school for processing or other aspects of the preparation, delivery, and storage of donated foods for use in its lunch program.

*Donated foods* means foods donated, or available for donation, by the Department under any of the legislation referred to in part 250 of this chapter.

*Fiscal year* means the period of 12 months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

*FCS* means the Food and Consumer Service of the Department.

*FCSRO* means the appropriate Food and Consumer Service Regional Office.

*National School Lunch Program* means the Program authorized by sections 4 and 11 of the Act.

*Nonprofit* means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; or in the Commonwealth of Puerto Rico, certified as nonprofit by its Governor.

*Nonresidential child care institution* means any child care center, day care home, or sponsoring organization (as those terms are defined in part 226 of this chapter) which participates in the Child Care Food Program.

*Program school* means a school which participates in the National School Lunch Program.

*School* means (1) an educational unit of high school grade or under except for a private school with an average yearly tuition exceeding $1,500 per child, operating under public or nonprofit private ownership in a single building or complex of buildings. The term ''high school grade or under'' includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes

are conducted in a school having classes of primary or higher grade; (2) with the exception of residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes, any public or nonprofit private child care institution, or distinct part of such institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term ''child care institutions'' includes, but is not limited to: homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers; and (3) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

*School food authority* means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a nonprofit lunch program therein.

*School year* means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.

*Secretary* means the Secretary of Agriculture.

*Service institutions* means camps or sponsors (as those terms are defined in part 225 of this chapter) which participate in the Summer Food Service Program for Children.

*Special needs children* means children who are emotionally, mentally or physically handicapped.

*State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American-Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

*State agency* means the State educational agency or such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer, in the State, the National School Lunch Program, the Child Care Food Program, the Summer Food Service Program for Children, or nonprofit lunch programs in commodity schools.

*State educational agency* means, as the State legislature may determine, (1) the chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State Department of Education.

*Summer Food Service Program for Children* means the Program authorized by section 13 of the Act.

*Tuition* means any educational expense required by the school as part of the students' educational program; not including transportation fees for commuting to and from school, and the cost of room and board. The following monies shall not be included when calculating a school's average yearly tuition per child:

(1) Academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and (2) state, county or local funds provided to schools operating principally for the purpose of educating handicapped or other special needs children for whose education the State, county or local government is primarily or solely responsible. In a school which varies tuition, the average yearly tuition shall be calculated by dividing the total tuition receipts for the current school year by the total number of students enrolled for purposes of determining if the average yearly tuition exceeds $1,500 per child.

### §240.3 Cash in lieu of donated foods for program schools.

(a) Not later than June 1 of each school year, FCS shall make an estimate of the value of agricultural commodities and other foods that will be delivered to States during the school

year under the food distribution regulations (7 CFR part 250) for use in program schools. If the estimated value is less than the total value of assistance authorized under section 6(e) of the Act for the National School Lunch Program, FCS shall determine the difference between the value of the foods then programmed for each State for the school year and the required value and shall pay the difference to each State agency not later than July 1 of that school year.

(b) Notwithstanding any other provision of this section, in any State in which FCS administers the National School Lunch Program in any of the schools of the State, FCS shall withhold from the funds payable to that State under this section an amount equal to the ratio of the number of lunches served in schools in which the program is administered by FCS to the total number of lunches served in all program schools in the State.

[47 FR 15982, Apr. 13, 1982, as amended at 52 FR 7267, Mar. 10, 1987; 58 FR 39120, July 22, 1993]

### § 240.4 Cash in lieu of donated foods for nonresidential child and adult care institutions.

(a) For each school year any State agency may, upon application to FCS prior to the beginning of the school year, elect to receive cash in lieu of donated foods for use in nonresidential child care or adult care institutions participating in the Child and Adult Care Food Program. FCS shall pay each State agency making such election, at a minimum, an amount calculated by multiplying the number of lunches and suppers served in the State's nonresidential child and adult care institutions which meet the meal pattern requirements prescribed in the regulations for the Child and Adult Care Food Program under part 226 of this chapter by the national average value of donated food prescribed in section 6(e)(1) of the Act. However, if a State agency has elected to receive a combination of donated foods and cash, the required amount shall be reduced based upon the number of such lunches and suppers served for which the State receives donated foods.

(b) Notwithstanding any other provision of this section in any State in which FCS administers the Child Care Food Program in any nonresidential child care institution, FCS shall withhold from the funds payable to such State under this section an amount equal to the ratio of the number of lunches and suppers served in such institutions in which the program is administered by the FCS and for which cash payments are provided to the total number of lunches and suppers served in that program and for which cash in lieu of payments are received, in all nonresidential child care institutions in the State.

[47 FR 15982, Apr. 13, 1982, as amended at 58 FR 39120, July 22, 1993]

### § 240.5 Cash in lieu of donated foods for commodity schools.

(a) The school food authority of a commodity school may elect (1) to receive cash payments in lieu of up to five cents per lunch of the value specified in § 250.4(b)(2)(ii) of this chapter to be used for donated-food processing and handling expenses, or (2) to have such payments retained for use on its behalf by the State agency. The school food authority shall consult with commodity schools before making the election.

(b) When a school food authority makes an election regarding receipt of cash payments and the amount of any payments to be received under this paragraph, such election shall be binding on the school food authority for the school year to which the election applies.

(c) The State agency shall (1) no later than May 14, 1982 for the school year ending June 30, 1982, and no later than August 15 of each subsequent school year, contact all school food authorities of commodity schools to learn their election regarding cash payments under this section and the amount of any such payments, and (2) forward this information to the distributing agency and FCSRO, in accordance with § 210.14(d)(2) of this chapter.

### § 240.6 Funds for States which have phased out facilities.

Notwithstanding any other provision of this part, any State which phased out its food distribution facilities prior

to June 30, 1974, may, for purposes of the National School Lunch Program, the Summer Food Service Program for Children, and the Child Care Food Program, elect to receive cash payments in lieu of donated foods. Where such an election is made, FCS shall make cash payments to such State in an amount equivalent in value to the donated foods (or cash in lieu thereof) to which the State would otherwise have been entitled under section 6(e) of the Act, if it had retained its food distribution facilities, except that the amount may be based on the number of meals served in the current school year, rather than on the number of meals served in the preceding school year with a subsequent reconciliation.

[47 FR 15982, Apr. 13, 1982, as amended at 58 FR 39120, July 22, 1993]

### §240.7 Payments to States.

(a) Funds to be paid to any State agency under §240.3 of this part for disbursement to program schools shall be made available by means of United States Treasury Department checks. The State agency shall use the funds received without delay for the purpose for which issued.

(b) Funds to be paid to any State agency under §240.4(a) for disbursement to nonresidential child care institutions and funds to be paid to any State agency under §240.6 for disbursement to program schools, service institutions, or nonresidential child care institutions shall be made available by means of Letters of Credit issued by FCS in favor of the State agency. The State agency shall:

(1) Obtain funds needed to pay school food authorities, nonresidential child care institutions, and service institutions, as applicable through presentation by designated State Officials of a Payment Voucher on Letter of Credit (Treasury Form GFO 7578) in accordance with procedures prescribed by FCS and approved by the United States Treasury Department;

(2) Submit requests for funds on a monthly basis in such amounts as necessary to make payments with respect to meals served the previous month;

(3) Use the funds received without delay for the purpose for which drawn.

(c) FCS shall make any cash payments elected under §240.5 of this part by increasing the amount of the Letter of Credit or, where applicable, of the Federal Treasury check, in accordance with the information provided under §240.5(c) of this part.

(d) Funds received by State agencies pursuant to this part for disbursement to program schools and to commodity schools shall not be subject to the matching provisions of §210.6 of part 210 of this chapter.

### §240.8 Payments to program schools, service institutions, nonresidential child care institutions and commodity schools.

(a) Each State agency shall promptly and equitably disburse any cash received in lieu of donated foods under this part to eligible program schools, service institutions and nonresidential child care institutions, as applicable. Funds withheld from States under §240.3 and §240.4 shall be disbursed to eligible program schools, service institutions, and nonresidential child care institutions by FCSRO's in the same manner.

(b) Unless the school food authority of a commodity school elects to have cash payments for donated-food processing and handling expenses retained for use on its behalf by the State agency, the State agency shall make such payments to the school food authority of such a school on a monthly basis in an amount equal to the number of lunches served (as reported in accordance with §210.13(a) of this chapter) times the value per lunch elected by the school food authority in accordance with §240.5 of this part. For the period November 11, 1981, through the close of the month in which this part is published in the FEDERAL REGISTER, a retroactive payment shall be made, where applicable, to the school food authority of a commodity school based on the number of lunches served during that period which meet the nutritional requirements specified in §210.10 of this chapter.

### §240.9 Use of funds.

(a) Funds made available to school food authorities (for program schools), service institutions and nonresidential

child care institutions under this part shall be used only to purchase United States agricultural commodities and other foods for use in their food service under the National School Lunch Program, Child Care Food Program, or Summer Food Service Program for Children, as applicable. Such foods shall be limited to those necessary to meet the requirements set forth in §210.10 of part 210 of this chapter, §225.10 of part 225 of this chapter and §226.10 of part 226 of this chapter, respectively. On or before disbursing funds to school food authorities (for program schools), service institutions and nonresidential child care institutions, State agencies and FCSRO's shall notify them of the reason for special disbursement, the purpose for which these funds may be used, and, if possible, the amount of funds they will receive.

(b) Cash payments received under §240.5 of this part shall be used only to pay donated-food processing and handling expenses of commodity schools.

(c) Funds provided under this part shall be subject to the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

### §240.10 Unobligated funds.

State agencies shall release to FCS any funds paid to them under this part which are unobligated at the end of each fiscal year. Release of funds by any State agency shall be made as soon as practicable, but in any event, not later than 30 days following demand by FCS. Release of funds shall be reflected by a related adjustment in the State agency's Letter of Credit where appropriate or payment by State check where the funds have been paid by United States Treasury Department check.

### §240.11 Records and reports.

(a) State agencies and distributing agencies shall maintain records and reports on the receipt and disbursement of funds made available under this part, and shall retain such records and reports for a period of three years after the end of the fiscal year to which they pertain, except that, 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.

(b) State agencies shall establish controls and procedures which will assure that the funds made available under this part are not included in determining the State's matching requirements under §210.6 of part 210 of this chapter.

## PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

Sec.

245.1 General purpose and scope.
245.2 Definitions.
245.3 Eligibility standards and criteria.
245.4 Exceptions for Puerto Rico and the Virgin Islands.
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245.6 Application for free and reduced price meals and free milk.
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245.9 Special assistance certification and reimbursement alternatives.
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245.12 Fraud penalties.
245.13 Special responsibilities of State agencies.
245.14 Information collection/recordkeeping—OMB assigned control numbers.

AUTHORITY: Secs. 3, 4, and 10 of the Child Nutrition Act of 1966, 80 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); secs. 2–12, 60 Stat. 230, as amended (42 U.S.C. 1751–60).

### §245.1 General purpose and scope.

(a) This part established the responsibilities of State agencies, Food and Consumer Service Regional Offices (where applicable), and School Food Authorities in providing free and reduced price meals and free milk in the National School Lunch Program (7 CFR part 210), the School Breakfast Program (7 CFR part 220), the Special Milk Program for Children (7 CFR part 215), and commodity schools. Section 9 of the National School Lunch Act, as amended, and sections 3 and 4 of the

Child Nutrition Act of 1966, as amended, require schools participating in any of the programs and commodity schools to make available, as applicable, free and reduced price lunches, breakfasts, and at the option of the School Food Authority for schools participating only in the Special Milk Program free milk to eligible children.

(b) This part sets forth the responsibilities under these Acts of State agencies, the Food and Consumer Service Regional Offices, and School Food Authorities with respect to the establishment of income guidelines, determination of eligibility of children for free and reduced price meals, and for free milk and assurance that there is no physical segregation of, or other discrimination against, or overt identification of children unable to pay the full price for meals or milk.

(Sec. 803, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758))

[Amdt. 6, 39 FR 30337, Aug. 22, 1974, as amended by Amdt. 10, 41 FR 28783, July 13, 1976; 47 FR 31852, July 23, 1982]

**§245.2 Definitions.**

(a) *Adult* means any individual 21 years of age or older.

(a–1) *AFDC Assistance Unit* means any individual or group of individuals which is currently certified to receive assistance under the Aid to Families with Dependent Children Program in a State where the standard of eligibility for AFDC benefits does not exceed the income eligibility guidelines for free meals or free milk under this part.

(a–2) *Commodity school* means a school which does not participate in the National School Lunch Program under part 210 of this chapter, but which enters into an agreement as provided in §210.15a(b) to receive commodities donated under part 250 of this chapter for a nonprofit lunch program.

(a–3) *Current income* means income, as defined in §245.6(a), received during the month prior to application. If such income does not accurately reflect the household's annual rate of income, income shall be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual rate of income.

(a–4) *Documentation* means the completion of the following information on a free and reduced price application:

(1) Names of all household members;

(2) Income received by each household member, identified by source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security and other cash income);

(3) The signature of an adult household member; and

(4) The social security number of the adult household member who signs the application or an indication that he/she does not possess a social security number.

Alternatively, ''documentation'' for a child who is a member of a food stamp household or an AFDC assistance unit means completion of only the following information on a free and reduced price application: the name and appropriate food stamp or AFDC case number for the child and the name and signature of an adult member of the household.

(b) *Family* means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.

(b–1) *Food Stamp Household* means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

(c) *FCSRO where applicable* means the appropriate Food and Consumer Service Regional Office when that agency administers the National School Lunch Program, School Breakfast Program or Special Milk Program with respect to nonprofit private schools.

(d) *Free meal* means a meal for which neither the child nor any member of his family pays or is required to work in the school or in the school's food service.

(d–1) *Free milk* means milk served under the regulations governing the Special Milk Program and for which neither the child nor any member of his family pays or is required to work in the school or in the school's food service.

(d–2) *Household* means ''family'' as defined in §245.2(b).

(e) *Income eligibility guidelines* means the family-size income levels prescribed annually by the Secretary for use by States in establishing eligibility for free and reduced price meals and for free milk.

(f) *Meal* means a lunch or meal supplement or a breakfast which meets the applicable requirements prescribed in §§210.10, 210.15a, and 220.8 of this chapter.

(f–1) *Milk* means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk except that, in the meal pattern for infants (0 to 1 year of age) milk means unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meet such standards. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, ''milk'' shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk.

(g) *Reduced price meal* means a meal which meets all of the following criteria: (1) The price shall be less than the full price of the meal; (2) the price shall not exceed 40 cents for a lunch and 30 cents for a breakfast; and (3) neither the child nor any member of his family shall be required to supply an equivalent value in work for the school or the school's food service.

(h) *Service institution* shall have the meaning ascribed to it in part 225 of this chapter.

(i) *School, school food authority*, and other terms and abbreviations used in this part shall have the meanings ascribed to them in part 210 of this chapter.

(j) *Special Assistance Certification and Reimbursement Alternatives* means the two optional alternatives for free and reduced price meal application and claiming procedures in the National School Lunch Program and School Breakfast Program which are available to those School Food Authorities with schools in which at least 80 percent of the enrolled children are eligible for free or reduced price meals, or schools which are currently, or who will be serving all children free meals.

(k) *Verification* means confirmation of eligibility for free or reduced price benefits under the National School Lunch Program or School Breakfast Program. Verification shall include confirmation of income eligibility and, at State or local discretion, may also include confirmation of any other information required in the application which is defined as documentation in §245.2(a–4). Such verification may be accomplished by examining information provided by the household such as wage stubs, or by other means as specified in §245.6a(b). However, if a food stamp or AFDC case number is provided for a child, verification for such child shall only include confirmation that the child is included in a currently certified food stamp household or AFDC assistance unit.

(Secs. 801, 803, 812; Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1753, 1759(a), 1773, 1758))

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §245.2, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

### § 245.3 Eligibility standards and criteria.

(a) Each State agency, or FCSRO where applicable, shall by July 1 of each year announce family-size income standards to be used by School Food Authorities of schools under the jurisdiction of such State agency, or FCSRO where applicable, in making eligibility determinations for free or reduced price meals and for free milk. Such family size income standards for free and reduced price meals and for free milk shall be in accordance with Income Eligibility Guidelines published by the Department by notice in the FEDERAL REGISTER.

(b) Each School Food Authority shall establish eligibility criteria for free and reduced price meals and for free milk in conformity with the family-size income standards prescribed by the State agency, or FCSRO where applicable, under paragraph (a) of this section. Such criteria shall:

(1) For all schools under the jurisdiction of the School Food Authority, specify the uniform family-size income criteria to be used for determining eligibility for free and reduced price meals in schools participating in the National School Lunch or School Breakfast Programs and in commodity-only schools, and for determining eligibility for free milk when the School Food Authority has chosen to serve free milk in its schools participating in the Special Milk Program; and

(2) Provide that all children from a family meeting family-size income criteria and attending any school under the jurisdiction of the School Food Authority which participates under the National School Lunch Program, School Breakfast Program, Special Milk Program, or is a commodity only school shall be provided the same benefits. The School Food Authority's eligibility criteria shall be a part of the policy statement required under §245.10 and shall be publicly announced in accordance with the provisions of §245.5.

(c) Each School Food Authority shall serve free and reduced price meals or free milk in the respective programs to children eligible under its eligibility criteria. When a child is not a member of a family as defined in §245.2(b), the child shall be considered a family of one. In any school which participates in more than one of the child nutrition programs, eligibility shall be applied uniformly so that eligible children receive the same benefits in each program. If a child transfers from one school to another school under the jurisdiction of the same School Food Authority, his eligibility for free or reduced price meals or for free milk, if previously established, shall be transferred to, and honored by, the receiving school if it participates in the National School Lunch Program, School Breakfast Program, Special Milk Program and the School Food Authority has elected to provide free milk, or is a commodity-only school.

(Sec. 8, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1758); sec. 5, Pub. L. 95–627, 92 Stat. 3619 (42 U.S.C. 1772); 42 U.S.C. 1785, 1766, 1772, 1773(e), sec. 203, Pub. L. 96–499, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97–35, 95 Stat. 521–535, 42 U.S.C. 1772, 1784, 1760; sec. 803, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758))

[Amdt. 8, 40 FR 57207, Dec. 8, 1975; 40 FR 58281, Dec. 16, 1975, as amended by Amdt. 10, 41 FR 28783, July 13, 1976; Amdt. 13, 44 FR 33049, June 8, 1979; 47 FR 31852, July 23, 1982]

### §245.4 Exceptions for Puerto Rico and the Virgin Islands.

Because the State agencies of Puerto Rico and the Virgin Islands provide free meals or milk to all children in schools under their jurisdiction, regardless of the economic need of the child's family, they are not required to make individual eligibility determinations or publicly announce eligibility criteria. Instead, such State agencies may use a statistical survey to determine the number of children eligible for free or reduced price meals and milk on which a percentage factor for the withdrawal of special cash assistance funds will be developed subject to the following conditions:

(a) State agencies shall conduct a statistical survey once every three years in accordance with the standards provided by FCS;

(b) State agencies shall submit the survey design to FCS for approval before proceeding with the survey;

(c) State agencies shall conduct the survey and develop the factor for withdrawal between July 1 and December 31 of the first school year of the three-year period;

(d) State agencies shall submit the results of the survey and the factor for fund withdrawal to FCS for approval before any reimbursement may be received under that factor;

(e) State agencies shall keep all material relating to the conduct of the survey and determination of the factor for fund withdrawal in accordance with the record retention requirements in §210.8(e)(14) of this chapter;

(f) Until the results of the triennial statistical survey are available, the factor for fund withdrawal will be based on the most recently established percentages. The Department shall make retroactive adjustments to the States' Letter of Credit, if appropriate, for the year of the survey;

(g) If any school in these States wishes to charge a student for meals, the State agency, School Food Authority

and school shall comply with all the applicable provisions of this part and parts 210, 215 and 220 of this chapter.

(Sec. 9, Pub. L. 95–166, 91 Stat 1336 (42 U.S.C. 1759a); secs. 807 and 808, Pub. L. 97–35, 95 Stat. 521–535, 42 U.S.C. 1772, 1784, 1760; 44 U.S.C. 3506)

[Amdt. 18, 45 FR 52771, Aug. 8, 1980, as amended at 46 FR 51366, Oct. 20, 1981; 47 FR 746, Jan. 7, 1982]

### § 245.5 Public announcement of the eligibility criteria.

(a) After the State agency, or FCSRO where applicable, notifies the School Food Authority that its criteria for determining the eligibility of children for free and reduced price meals and for free milk have been approved, the School Food Authority shall publicly announce such criteria: *Provided however,* That no such public announcement shall be required for boarding schools, schools as defined in § 210.2(o)(2) of part 210 of this chapter, or a school which includes food service fees in its tuition, where all attending children are provided the same meals or milk. Such announcements shall be made at the beginning of each school year or, if notice of approval is given thereafter, within 10 days after the notice is received. The public announcement of such criteria, as a minimum, shall include the following:

(1) A letter or notice distributed on or about the beginning of each school year, to the parents of children in attendance at school. The letter or notice shall contain the following information:

(i) In schools participating in a meal service program, the eligibility criteria for *reduced price* benefits with an explanation that households with incomes less than or equal to the reduced price criteria would be eligible for either free or reduced price meals, or in schools participating in the free milk option, the eligibility criteria for *free* milk benefits;

(ii) How a household may make application for free or reduced price meals or for free milk for its children;

(iii) An explanation that an application for free or reduced price benefits cannot be approved unless it contains complete ''documentation'' as defined in § 245.2(a–4);

(iv) An explanation that households with children who are members of currently certified food stamp households or AFDC assistance units may submit applications for such children with the abbreviated information described in § 245.2(a–4);

(v) An explanation that the information on the application may be verified at any time during the school year;

(vi) An explanation that households receiving free or reduced price benefits must notify school officials during the school year of any decreases in household size and any increases in income of over $50 per month or $600 per year (or a lesser amount if established by the State) or, in the case of households that provided a food stamp or AFDC case number to establish eligibility for free meals or milk for a child, of any termination of certification for receipt of benefits for such children under the Food Stamp or AFDC Programs;

(vii) How a household may apply for benefits at any time during the school year as circumstances change;

(viii) A statement to the effect that children having parents or guardians who become unemployed are eligible for free or reduced price meals or for free milk during the period of unemployment, *Provided,* that the loss of income causes the household income during the period of unemployment to be within the eligibility criteria;

(ix) A statement to the effect that in certain cases foster children are eligible for free or reduced price meals or free milk regardless of the income of the household with whom they reside and that households wishing to apply for such benefits for foster children should contact the School Food Authority;

(x) The statement: ''In the operation of child feeding programs, no child will be discriminated against because of race, sex, color, national origin, age or handicap;'' and

(xi) How a household may appeal the decision of the School Food Authority with respect to the application under the hearing procedure set forth in § 245.7. The letter or notice shall be accompanied by a copy of the application form required under § 245.6.

(2) On or about the beginning of each school year, a public release, containing the same information supplied to parents, and including both free and reduced price eligibility criteria shall be provided to the informational media, the local unemployment office, and to any major employers contemplating large layoffs in the area from which the school draws its attendance.

(b) Copies of the public release shall be made available upon request to any interested persons. Any subsequent changes in a school's eligibility criteria during the school year shall be publicly announced in the same manner as the original criteria were announced.

(Sec. 803, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758); Pub. L. 79–396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89–642, 80 Stat. 885–880 (42 U.S.C. 1773); Pub. L. 91–248, 84 Stat. 207 (42 U.S.C. 1759))

[Amdt. 8, 40 FR 57207, Dec. 8, 1975, as amended by Amdt. 10, 41 FR 28783, July 13, 1976; 47 FR 31852, 31853, July 23, 1982; Amdt. 24, 48 FR 19355, Apr. 29, 1983; 49 FR 26034, June 26, 1984; 52 FR 19275, May 22, 1987]

### §245.6 Application for free and reduced price meals and free milk.

(a) Each School Food Authority of a school participating in the National School Lunch Program, School Breakfast Program or Special Milk Program or of a commodity only school shall provide supplies of a form for use by families in making application for free or reduced price meals or free milk for their children. The application shall be clear and simple in design and the information requested thereon shall be limited to that required to demonstrate that the family does, or does not, meet the eligibility criteria for free or reduced price meals, respectively, or for free milk, issued by the School Food Authority. The information requested on the application with respect to the current income of the household shall be limited to the income received by each member identified by the household member who received the income, and the source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income). Other cash income includes cash amounts received or withdrawn from any source, including savings, investments, trust accounts, and other resources which are available for payment of the price of a child's meals or milk. Additionally, the application shall require applicants to provide the names of all household members and the social security number of the adult household member who signs the application. In lieu of a social security number, the household may indicate the adult household member who signs the application does not possess a social security number. However, if application is being made for a child who is a member of a food stamp household or an AFDC assistance unit, the application shall enable the household to provide the appropriate food stamp or AFDC case number in lieu of names of all household members, household income information and social security number. The application shall also contain substantially the following statements:

(1) Section 9 of the National School Lunch Act requires that, unless your child's food stamp or AFDC case number is provided, you must include the social security number of the adult household member signing the application or indicate that the household member signing the application does not have social security number. Provision of a social security number is not mandatory, but if a social security number is not given or an indication is not made that the signer does not have such a number, the application cannot be approved. The social security number may be used to identify the household member in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in a loss or reduction of benefits, administrative claims

or legal actions if incorrect information is reported.'' State agencies and School Food Authorities shall ensure that the notice complies with section 7 of Pub. L. 93–579 (Privacy Act of 1974); and

(2) ''In certain cases foster children are eligible for free or reduced price meals or free milk regardless of your household income. If you have such children living with you and wish to apply for such meals or milk for them, please contact us.'' The application shall also include a statement, immediately above the space for signature, that the person signing the application certifies that all information furnished in the application is true and correct, that the application is being made in connection with the receipt of Federal funds, that school officials may verify the information on the application, and that deliberate misrepresentation of the information may subject the applicant to prosecution under applicable State and Federal criminal statutes. The application shall be signed by an adult member of the family. The application shall contain clear instructions with respect to the submission of the completed application to the official or officials designated by the School Food Authority to make eligibility determinations on its behalf. A family shall be permitted to file an application at any time during the school year.

(b) *Determination of eligibility*. Prior to the processing of applications for the current school year, children from households with approved applications on file from the preceding year may be served reimbursable free and reduced price meals or free milk. However, applications from the preceding year may be used to determine eligibility only during the 30 operating days following the first operating day at the beginning of the school year, or during a timeframe established by the State agency, provided that any State agency timeframe does not exceed the 30 operating day limit. School officials shall take the income information provided by the household on the application and calculate the household's total current income. When a completed application furnished by a family indicates that the family meets the eligibility criteria for free and reduced price meals or free milk, the family shall be promptly notified and the children from that family shall be provided the benefits to which they are entitled.

(1) *Notice of denial.* When the application furnished by the family is not fully documented or does not meet the eligibility criteria for free or reduced price benefits, school officials shall promptly provide written notice to each family denied benefits. As a minimum, this notice shall include:

(i) The reason for the denial of benefits, e.g. income in excess of allowable limits or incomplete application; (ii) notification of the right to appeal; (iii) instructions on how to appeal; and (iv) a statement reminding parents that they may reapply for free and reduced price benefits at any time during the school year. The reasons for ineligibility shall be properly documented and retained on file at the School Food Authority.

(2) *Appeals of denied benefits.* A family who wishes to appeal a denied application by the School Food Authority may do so as specified in § 245.7. However, prior to initiating the hearing procedure, the parent may request a conference to provide the opportunity for the parent and school officials to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference shall not in any way prejudice or diminish the right to a fair hearing. The School Food Authority shall promptly schedule a fair hearing, if requested.

(c) After the letter to parents and the applications have been disseminated, the School Food Authority may determine, based on information available to it, that a child for whom an application has not been submitted meets the School Food Authority's eligibility criteria for free and reduced price meals or for free milk. In such a situation, the School Food Authority shall complete and file an application for such child setting forth the basis of determining the child's eligibility. When a School Food Authority has obtained a determination of individual family income and family-size data from other sources, it need not require the submission of an application for any child

from a family whose income would qualify for free or reduced price meals or for free milk under the School Food Authority's established criteria. In such event, the School Food Authority shall notify the family that its children are eligible for free or reduced price meals or for free milk. Nothing in this paragraph shall be deemed to provide authority for the School Food Authority to make eligibility determinations or certifications by categories or groups of children.

(Sec. 803, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14957, June 7, 1973; Amdt. 6, 39 FR 30338, Aug. 22, 1974; Amdt. 9, 41 FR 26192, June 25, 1976; Amdt. 19, 45 FR 67287, Oct. 10, 1980; 47 FR 31853, July 23, 1982; 49 FR 26034, June 26, 1984; 52 FR 19275, May 22, 1987; 55 FR 19240, May 9, 1990; 56 FR 32950, July 17, 1991; 56 FR 33860, July 24, 1991]

### §245.6a Verification requirements.

(a) *Verification requirement.* School officials may seek verification of the information on the application. State agencies shall ensure that by December 15 of each School Year, School Food Authorities have selected and verified a sample of their approved free and reduced price applications in accordance with the conditions and procedures described in this section. Verification activity may begin at the start of the school year but the final required sample size shall be based on the number of approved applications on file as of October 31. Any extensions to these deadlines must be approved in writing by FCS. School Food Authorities are required to satisfy the verification requirement by using either random sampling or focused sampling as described below. *Random* sampling consists of verifying a minimum of the lesser of 3 percent or 3,000 applications which are selected by the School Food Authority. *Focused* sampling consists of selecting and verifying a minimum of: the lesser of 1 percent or 1,000 of total applications selected from non-food stamp households claiming monthly income within $100 or yearly income within $1200 of the income eligibility limit for free or reduced price meals; plus the lesser of one half of 1 percent (.5%) or 500 applications of food stamp households that provided food stamp case numbers in lieu of income information. A State may require all School Food Authorities to perform either random or focused sampling. School Food Authorities may choose to verify up to 100 percent of all applications to improve program integrity. Any State may, with the written approval of FCS, assume responsibility for complying with the verification requirements of this part within any of its School Food Authorities. When assuming such responsibility, States may utilize alternate approaches to verification provided that such verification meets the requirements of this part.

(1) *Confirmation of income information.* Verification efforts shall not delay the approval of applications. An application must be approved if it contains the essential information specified in §245.2(a–4) and, if applicable, the household meets the income eligibility criteria for free or reduced price benefits. When written evidence or collateral contacts are the primary sources of information, the School Food Authority shall require the submission of income information for the most recent full month that is available. However, when using a system of records, the School Food Authority may choose a recent month to verify and the entire sample may be verified for the same month. Households which dispute the validity of income information acquired through systems of records shall be given the opportunity to produce more recent income information.

(2) *Notification of selection.* Households selected to provide verification shall be provided written notice that their applications have been selected for verification and that they are required, by such date as determined by the school food authority, to submit the requested verification information to confirm eligibility for free or reduced price meals. These households shall be advised of the type or types of information and/or documents acceptable to the school. This information must include a social security number for each adult household member or an indication that such member does not have one. School food authorities shall inform selected households that:

(i) Section 9 of the National School Lunch Act requires that unless the child's food stamp or AFDC case number is provided, households selected for verification must provide the social security number of each adult household member;

(ii) In lieu of providing a social security number, an adult household member may indicate that he/she does not possess one;

(iii) Provision of a social security number is not mandatory but if a social security number is not provided for each adult household member or an indication is not made that he/she does not possess one, benefits will be terminated;

(iv) The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application and continued eligibility for the program. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in a loss or reduction of benefits, administrative claims or legal actions if incorrect information was reported; and

(v) This information must be provided to the attention of each adult household member disclosing his/her social security number. State agencies and school food authorities shall ensure that the notice complies with section 7 of Pub. L. 93–579 (Privacy Act of 1974). These households shall be provided with the name and phone number of a school official who can assist in the verification effort. Selected households shall also be informed that, in lieu of any information that would otherwise be required, they can submit proof of current food stamp or AFDC Program certification as described in paragraph (a)(3) of this section to verify the free meal eligibility of a child who is a member of a food stamp household or AFDC assistance unit. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in the termination of benefits.

(3) *Food stamp of AFDC recipients.* On applications where households have furnished food stamp or AFDC case numbers, verification shall be accomplished either by confirming with the local food stamp or welfare office that each child, for whom application was made and a number provided, is a member of a currently certified food stamp household or AFDC assistance unit; or by obtaining from the household a copy of a current ''Notice of Eligibility'' for Food Stamp or AFDC Program benefits or equivalent official documentation issued by the food stamp or welfare office which confirms that the child is a member of a currently certified food stamp household or AFDC assistance unit. An identification card for either program is *not* acceptable as verification unless it contains an expiration date. If it is not established that the child is a member of a currently certified food stamp household or AFDC assistance unit, the procedures for adverse action specified at § 245.6a(e) shall be followed. The notification of forthcoming termination of benefits provided to such households shall include a request for household income information and for written evidence which confirms household income to assist those households in establishing continued eligibility for free meal benefits.

(4) *Household cooperation.* If a household refuses to cooperate with efforts to verify, eligibility for free or reduced price benefits shall be terminated in accordance with § 245.6a(e). Households which refuse to complete the verification process and which are consequently determined ineligible for such benefits shall be counted toward meeting the School Food Authority's required sample of verified households.

(5) *Exceptions from verification.* Verification efforts are not required in residential child care institutions; schools in which FCS has approved special cash assistance claims based on economic statistics regarding per capita income; or schools in which all children are

served with no separate charge for food service and no special cash assistance is claimed. School Food Authorities in which all schools participate in the Special Assistance Certification and Reimbursement Alternatives specified in § 245.9 shall meet the verification requirement only in those years in which applications are taken for all children in attendance.

(b) *Sources of information.* Sources of information for verification may include written evidence, collateral contacts, and systems of records.

(1) *Written evidence.* Written evidence shall be used as the primary source of information for verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, and letters from employers. Whenever written evidence is insufficient to confirm income information on the application or current eligibility, the school may require collateral contacts.

(2) *Collateral contact.* Collateral contact is a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made by person or by phone. The verifying official may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the verifying official. If the verifying official designates a collateral contact, the contact shall not be made without providing written or oral notice to the household. At the time of this notice, the household shall be informed that it may consent to the contact or provide acceptable verification in another form. If the household refuses to choose one of these options, its eligibility shall be terminated in accordance with the normal procedures for failure to cooperate with verification efforts. Collateral contacts could include employers, social service agencies, and migrant agencies.

(3) *Agency records.* Agency records to which the State agency or School Food Authority may have access are not considered collateral contacts. Information concerning income, household size or food stamp/AFDC eligibility maintained by other government agencies to which the State agency, School Food Authority, or school can legally gain access may be used to confirm a household's income, size or receipt of benefits. One possible source could be wage and benefit information maintained by the State employment agency, if that information is available. The use of any information derived from other agencies must be used with the applicable safeguards concerning disclosure.

(c) *Verification recordkeeping.* School Food Authorities verifying applications shall maintain on file for review a description of the verification to be accomplished beginning School Year 1983–84. The description shall include:

(1) A summary of the verification efforts including the techniques to be used;

(2) the total number of applications on file by October 31;

(3) the percentage or number of applications verified;

(4) all verified applications must be readily retrievable by school and include all documents submitted by the household in an effort to confirm eligibility, reproductions of those documents, or annotations made by the determining official which indicate which documents were submitted by the household and the date of submission;

(5) documentation of any changes in eligibility and the reasons for the changes; and

(6) all relevant correspondences between the household selected for verification and the school food authority/school.

(d) *Nondiscrimination.* The verification efforts shall be applied without regard to race, sex, color, national origin, age, or handicap.

(e) *Adverse action.* If verification activities fail to confirm eligibility for free or reduced price benefits or should the household fail to cooperate with verification efforts, the school or School Food Authority shall reduce or terminate benefits, as applicable, as follows: Ten days advance notification shall be provided to households that are to receive a reduction or termination of benefits, prior to the actual reduction or termination. The first day of the 10 day advance notice period shall be the day the notice is sent. The notice shall advise the household of:

(1) The change; (2) the reasons for the change; (3) notification of the right to appeal and when the appeal must be filed to ensure continued benefits while awaiting a hearing and decision; (4) instructions on how to appeal; and (5) the right to reapply at any time during the school year. The reasons for ineligibility shall be properly documented and retained on file at the School Food Authority.

(Sec. 803, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758))

[48 FR 12510, Mar. 25, 1983, as amended at 49 FR 26034, June 26, 1984; 52 FR 19275, May 22, 1987; 55 FR 19240, May 9, 1990; 56 FR 32950, July 17, 1991; 56 FR 33861, July 24, 1991]

### § 245.7 Hearing procedure for families and School Food Authorities.

(a) Each School Food Authority of a school participating in the National School Lunch Program, School Breakfast Program or the Special Milk Program or of a commodity only school shall establish a hearing procedure under which:

(1) A family can appeal from a decision made by the School Food Authority with respect to an application the family has made for free or reduced price meals or for free milk, and (2) the School Food Authority can challenge the continued eligibility of any child for a free or reduced price meal or for free milk. The hearing procedure shall provide for both the family and the School Food Authority:

(i) A simple, publicly announced method to make an oral or written request for a hearing;

(ii) An opportunity to be assisted or represented by an attorney or other person;

(iii) An opportunity to examine, prior to and during the hearing, any documents and records presented to support the decision under appeal;

(iv) That the hearing shall be held with reasonable promptness and convenience, and that adequate notice shall be given as to the time and place of the hearing;

(v) An opportunity to present oral or documentary evidence and arguments supporting a position without undue interference;

(vi) An opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(vii) That the hearing shall be conducted and the decision made by a hearing official who did not participate in making the decision under appeal or in any previously held conference;

(viii) That the decision of the hearing official shall be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record;

(ix) That the parties concerned and any designated representative shall be notified in writing of the decision of the hearing official;

(x) That a written record shall be prepared with respect to each hearing, which shall include the challenge or the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefor, and a copy of the notification to the parties concerned of the decision of the hearing official; and

(xi) That the written record of each hearing shall be preserved for a period of 3 years and shall be available for examination by the parties concerned or their representatives at any reasonable time and place during that period.

(b) *Continuation of benefits.* When a household disagrees with an adverse action which affects its benefits and requests a fair hearing, benefits shall be continued as follows while the household awaits the hearing and decision:

(1) Households that have been approved for benefits and that are subject to a reduction or termination of benefits later in the same school year shall receive continued benefits if they appeal the adverse action within the 10 day advance notice period; and

(2) Households that are denied benefits upon application shall not receive benefits.

(44 U.S.C. 3506; sec. 803, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758))

[Amdt. 6, 39 FR 30339, Aug. 22, 1974, as amended at 47 FR 746, Jan. 7, 1982; 48 FR 12511, Mar. 25, 1983]

### §245.8 Nondiscrimination practices for children eligible to receive free and reduced price meals and free milk.

School Food Authorities of schools participating in the National School Lunch Program, School Breakfast Program or Special Milk Program or of commodity only schools shall take all actions that are necessary to insure compliance with the following nondiscrimination practices for children eligible to receive free and reduced price meals or free milk:

(a) The names of the children shall not be published, posted or announced in any manner;

(b) There shall be no overt identification of any of the children by the use of special tokens or tickets or by any other means;

(c) The children shall not be required to work for their meals or milk;

(d) The children shall not be required to use a separate dining area, go through a separate serving line, enter the dining area through a separate entrance or consume their meals or milk at a different time;

(e) When more than one lunch or breakfast or type of milk is offered which meets the requirements prescribed in §210.10, §210.15a, §220.8 or §215.2(1) of this chapter, the children shall have the same choice of meals or milk that is available to those children who pay the full price for their meal or milk.

[Amdt. 6, 39 FR 30339, Aug. 22, 1974]

### §245.9 Special assistance certification and reimbursement alternatives.

(a) A School Food Authority of a school having at least 80 percent of its enrolled children determined eligible for free or reduced price meals may, at its option, authorize the school to reduce annual certification and public notification for those children eligible for *free meals* to once every two consecutive school years. This alternative shall be known as provision 1 and the following requirements shall apply:

(1) A School Food Authority of a school operating under provision 1 requirements shall publicly notify in accordance with §245.5, parents of enrolled children who are receiving free meals once every two consecutive school years, and shall publicly notify in accordance with §245.5, parents of all other enrolled children on an annual basis.

(2) The 80 percent enrollment eligibility for this alternative shall be based on the school's March enrollment data of the previous school year, or on other comparable data.

(3) A School Food Authority of a school operating under provision 1, shall count the number of free, reduced price and paid meals served to children in that school as the basis for monthly reimbursement claims.

(b) A School Food Authority of a school which serves all enrolled children in that school free meals may publicly notify and certify children in accordance with §245.5 for free and reduced price meals for up to three consecutive school years; provided that eligibility determinations shall be in accordance with §245.3, during the first school year. This alternative shall be known as provision 2 and the following requirements shall apply:

(1) Except for assistance properly made available under parts 210, 220, 240, and 250 and by other legislation, a School Food Authority of a school operating under provision 2 requirements agrees to pay with funds from other than Federal sources for:

(i) Meals served to children not eligible, as determined by §245.3, for free or reduced price meals, and

(ii) The differential between the per meal cost and Federal reimbursement received for each free or reduced price meal, respectively, served to children eligible to receive such meals under applicable program regulations.

(2) For the purpose of calculating reimbursement claims in the second and third consecutive school years the monthly meal counts of the actual number of meals served by type—free, reduced price, and paid—shall be converted each month to percentages for each meal type. These percentages shall be derived by dividing the monthly total number of meals served of one meal type (e.g. free meals) by the total number of meals served in the same month for all meal types (free, reduced price and paid meals). The percentages for the reduced price meal and paid meal types shall be calculated exactly

as the above example for free meals. These three percentages calculated at the end of each month of the first school year, shall be multiplied by the corresponding monthly meal count total of all meal types served in the second and third consecutive school years in order to calculate reimbursement claims for free, reduced price and paid meals each month.

(c) A School Food Authority shall submit a list of all schools participating in either provision 1 or provision 2 and the intitial year of implementation in their Free and Reduced Price Meal Policy Statement. This Statement shall include certification of meeting the eligibility requirements as set forth in paragraph (a) or (b) of this section.

(d) The School Food Authority upon request shall make documentation including enrollment data, participation data or other data available for monitoring purposes.

(e) A School Food Authority may return to standard notification and application procedures in the following school year if standard procedures better suit the school's program needs.

(f) Puerto Rico and the Virgin Islands, where a statistical survey procedure is permitted in lieu of eligibility determinations for each child, may either maintain their standard procedures in accordance with § 245.4, or may opt for these provisions provided the eligibility requirements as set forth in paragraphs (a) and (b) of this section are met.

(g) Schools currently operating under provision 1 or provision 2 of the Special Assistance interim rule published May 18, 1979 (44 FR 29027), may complete their second or third consecutive school year under the interim requirements, after which, § 245.9 shall be in effect. For all other schools, the final rule shall be effective upon publication.

(Sec. 9, Pub. L. 95–166, 91 Stat. 1336 (42 U.S.C. 1759a); secs. 805, and 819, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1773))

[Amdt. 19, 45 FR 67287, Oct. 10, 1980, as amended by Amdt. 23, 47 FR 14135, Apr. 2, 1982]

**§ 245.10 Action by School Food Authorities.**

(a) Each School Food Authority of a school desiring to participate in the National School Lunch Program, School Breakfast Program, or to provide free milk under the Special Milk Program, or to become a commodity-only school shall submit for approval to the State agency a free and reduced price policy statement. Such policy statement, as a minimum, shall contain the following:

(1) The official or officials designated by the school food authority to make eligibility determinations on its behalf for free and reduced price meals or for free milk;

(2) The family-size income guidelines to be used by schools under their jurisdiction in determining the eligibility of children for free and reduced price meals or for free milk in accordance with the provisions of § 245.3.

(3) The specific procedures the school food authority will use in accepting applications from families for free and reduced price meals or for free milk.

(4) A description of the method or methods to be used to collect payments from those children paying the full price of the meal or milk, or a reduced price of a meal, which will prevent the overt identification of the children receiving a free meal or free milk or a reduced price meal, and

(5) An assurance that the school will abide by the hearing procedure set forth in § 245.7 and the nondiscrimination practices set forth in § 245.8.

(b) The policy statement submitted by each school food authority shall be accompanied by a copy of the application form to be used by the school and of the proposed letter or notice to parents.

(c) Each year, if a School Food Authority does not have its policy statement approved by the State agency, or FCSRO where applicable, by October 15, reimbursement shall be suspended for any meals or milk served until such time as the School Food Authority's free and reduced price policy statement has been approved by the State agency, or FCSRO where applicable. Furthermore, no commodities donated by the Department shall be used in any school after October 15, until such time as the

School Food Authority's free and reduced price policy statement has been approved by the State agency, or FCSRO where applicable. Once the School Food Authority's free and reduced price policy statement has been approved, reimbursement may be allowed, at the discretion of the State agency, or FCSRO where applicable, for eligible meals and milk served during the period of suspension.

(d) If any free and reduced price policy statement submitted for approval by any School Food Authority to the State agency, or FCSRO where applicable, is determined to be not in compliance with the provisions of this part, the School Food Authority shall submit a policy statement that does meet the provisions within 30 days after notification by the State agency, or FCSO where applicable.

(e) When revision of a School Food Authority's approved free and reduced price policy statement is necessitated because of a change in the family-size income standards of the State agency, or FCSRO where applicable, or because of other program changes, the School Food Authority shall have 60 days from the date the State agency announces the change in which to have its revised policy statement approved by the State agency, or FCSRO where applicable. In the event that a School Food Authority's proposed revised free and reduced price policy statement has not been submitted to, and approved by, the State agency, or FCSRO where applicable, within 60 days following the public announcement by the State agency, reimbursement shall be suspended for any meals or milk served after the end of the 60-day period. No commodities donated by the Department shall be used in any school after the end of the 60-day period, until such time as the School Food Authority's free and reduced price policy statement has been approved by the State agency, or FCSRO where applicable. Reimbursement may be allowed at the discretion of the State agency, or FCSRO where applicable, for eligible meals and milk served during the period of suspension once the School Food Authority's free and reduced price policy statement has been approved by the State agency, or FCSRO where applicable. Pending approval of a revision of a policy statement, the existing statement shall remain in effect.

(Sec. 8, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1758); sec. 5, Pub. L. 95–627, 92 Stat. 3619 (42 U.S.C. 1772); 44 U.S.C. 3506; sec. 803, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14958, June 7, 1973; Amdt. 6, 39 FR 30339, Aug. 22, 1974; Amdt. 8, 40 FR 57208, Dec. 8, 1975; Admt. 13, 44 FR 33049, June 8, 1979; 47 FR 746, Jan. 7, 1982; 48 FR 12511, Mar. 25, 1983]

### §245.11 Action by State agencies and FCSROs.

(a) Each State agency, or FCSRO where applicable, shall, for schools under its jurisdiction:

(1) Issue an annual prototype free and reduced price policy statement and any other instructions necessary to assure that School Food Authorities are fully informed of the provisions of this part. If the State elects to establish for all schools a maximum price for reduced price lunches that is less than 40 cents, the State shall establish such price in its prototype policy. Such State shall then receive the adjusted national average factor provided for in §210.4(b); (2) prescribe and publicly announce by July 1 of each fiscal year, in accordance with §245.3(a), family-size income standards. Any standards prescribed by FCSRO with respect to nonprofit private schools shall be developed by FCSRO after consultation with the State agency.

(a–1) When a revision of the family-size income standards of the State agency, or FCSRO where applicable, is necessitated because of a change in the Secretary's income poverty guidelines or because of other program changes, the State agency shall publicly announce its revised family-size income standards no later than 30 days after the Secretary has announced such change.

(b) State agencies, and FCSRO where applicable, shall review the policy statements submitted by school-food authorities for compliance with the provisions of this part and inform the school-food authorities of any necessary changes or amendments required in any policy statement to bring such statement into compliance. They shall notify school-food authorities in

writing of approval of their policy statements and shall direct them to distribute promptly the public announcements required under the provisions of § 245.5.

(c) Each State agency, or FCSRO where applicable, shall instruct School Food Authorities under their jurisdiction that they may not alter or amend the eligibility criteria set forth in an approved policy statement without advance approval of the State agency, or FCSRO where applicable.

(d) Not later than 10 days after the State agency, or FCSRO where applicable, announces its family-size income standards, it shall notify School Food Authorities in writing of any amendment to their free and reduced price policy statements necessary to bring the family-sized income criteria into conformance with the State agency's or FCSRO's family-size income standards.

(e) Except as provided in § 245.10, the State agency, or FCSRO where applicable, shall neither disburse any funds, nor authorize the distribution of commodities donated by the Department to any school unless the school food authority has an approved free and reduced price policy statement on file with the State Agency, or FCSRO where applicable.

(f) Each State agency, or FCSRO where applicable, shall, in the course of its supervisory assistance, review and evaluate the performance of School Food Authorities and of schools in fulfilling the requirements of this part, and shall advise School Food Authorities of any deficiencies found and any corrective action required to be taken.

(Secs. 801, 803, 812; Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1753, 1758, 1759(a), 1773, 1778))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14958, June 7, 1973; Amdt. 8, 40 FR 57208, Dec. 8, 1975; 44 FR 1364, Jan. 5, 1979; 46 FR 51368, Oct. 20, 1981; 48 FR 12511, Mar. 25, 1983; 52 FR 19276, May 22, 1987]

### § 245.12 Fraud penalties.

(a) 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 $10,000 or imprisoned not more than five years of 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.

(b) 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 (a) of this section.

(Sec. 10(a), Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 14, Pub. L. 95–627, 92 Stat. 3625–3626)

[Amdt. 14, 44 FR 37901, June 29, 1979]

### § 245.13 Special responsibilities of State agencies.

(a) State agencies shall require School Food Authorities of schools selected for participation in the Department of Health, Education, and Welfare Public School Civil Rights Survey to gather information on the race and ethnic background of children for whom applications for free and reduced price meals are filed.

(b) To comply with the provisions of § 245.13(a) of this part, State agencies at their discretion may permit such School Food Authorities the option of requesting parents on application forms to voluntarily identify the race or ethnic background of their child for whom application is being made. Parents' provision of this information is purely voluntary and failure to provide this information will not affect the eligibility for benefits of the child for whom application is made. School Food Authorities shall develop alternative means of providing racial and ethnic data for applicants when such information is not voluntarily provided by parents on the application.

(c) School Food Authorities for such survey schools which are granted the option by the State agency and wish to request that the parents voluntarily identify the race or ethnic background of their children on the application

form shall include the following statement on the letter to parents: ''A survey is being conducted in your child's school to collect racial and ethnic data on applicants. This information is voluntary and will not affect your child's eligibility. This information is being collected to be sure everyone receives school meals on a fair basis, without regard to race, color, or national origin.'' Such schools shall also include the following statement on the application: ''Please check in the space provided the racial or ethnic identity of your child(ren). This information is voluntary and will not affect your child's eligibility. This information is being collected only to be sure that everyone receives school meals on a fair basis, without regard to race, color, or national origin.'' Schools which provide for racial and ethnic identification data collection of applicants by means other than parental self-identification need not include the above statements on the application or parental letter.

(d) Participation in the survey shall not affect reimbursement or individual eligibility for program participation or benefits. The data collected shall be confidential and shall be used solely to determine the equitable distribution of benefits without regard to race, color, or national origin.

(Sec. 602, Pub. L. 88–352, 78 Stat. 252 (42 U.S.C. 2000d–1))

[45 FR 1000, Jan. 4, 1980]

### § 245.14 Information collection/recordkeeping—OMB assigned control numbers.

| 7 CFR section where requirements are described | Current OMB control number |
|---|---|
| 245.3 (a), (b) | 0584–0026 |
| 245.4 | 0584–0026 |
| 245.5 (a), (b) | 0584–0026 |
| 245.6 (a), (b), (c), (e) | 0584–0026 |
| 245.7(a) | 0584–0026 |
| 245.9 (a), (b), (c) | 0584–0026 |
| 245.10 (a), (d), (e) | 0584–0026 |
| 245.11 (a), (a–1), (b), (c), (d), (f) | 0584–0026 |
| 245.13(a)–(c) | 0584–0026 |

[50 FR 53258, Dec. 31, 1985]

# PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

## Subpart A—General

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246.28 OMB control numbers.

AUTHORITY: 42 U.S.C. 1786.

SOURCE: 50 FR 6121, Feb. 13, 1985, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to part 246 see 59 FR 11498, Mar. 11, 1994.

## Subpart A—General

### § 246.1 General purpose and scope.

This part announces regulations under which the Secretary of Agriculture shall carry out the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program). Section 17 of the Child Nutrition Act of 1966, as amended, states in part that the Congress finds that substantial numbers of pregnant, postpartum and breastfeeding women, infants and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. The purpose of the Program is to provide supplemental foods and nutrition education through payment of cash grants to State agencies which administer the Program through local agencies at no cost to eligible persons. The Program shall serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other harmful substance abuse, and to improve the health status of these persons. The program shall be supplementary to the Food Stamp Program; any program under which foods are distributed to needy families in lieu of food stamps; and receipt of food or meals from soup kitchens, or shelters, or other forms of emergency food assistance.

[50 FR 6121, Feb. 13, 1985, as amended at 54 FR 51294, Dec. 14, 1989; 58 FR 11506, Feb. 26, 1993]

### § 246.2 Definitions.

For the purpose of this part and all contracts, guidelines, instructions, forms and other documents related hereto, the term:

*Affirmative Action Plan* means that portion of the State Plan which describes how the Program will be initiated and expanded within the State's jurisdiction in accordance with § 246.4(a).

*A–130* means Office of Management and Budget Circular A–130, which provides guidance for the coordinated development and operation of information systems.

*Breastfeeding* means the practice of feeding a mother's breastmilk to her infant(s) on the average of at least once a day.

*Breastfeeding women* means women up to one year postpartum who are breastfeeding their infants.

*Categorical eligibility* means persons who meet the definitions of pregnant women, breastfeeding women, postpartum women, or infants or children.

*Certification* means the implementation of criteria and procedures to assess and document each applicant's eligibility for the Program.

*Children* means persons who have had their first birthday but have not yet attained their fifth birthday.

*Clinic* means a facility where applicants are certified.

*Competent professional authority* means an individual on the staff of the local agency authorized to determine nutritional risk and prescribe supplemental foods. The following persons are the only persons the State agency may authorize to serve as a competent professional authority: Physicians, nutritionists (bachelor's or master's degree in Nutritional Sciences, Community Nutrition, Clinical Nutrition, Dietetics, Public Health Nutrition or Home Economics with emphasis in Nutrition), dieticians, registered nurses, physician's assistants (certified by the National Committee on Certification of Physician's Assistants or certified by the State medical certifying authority), or State or local medically trained health officials. This definition also applies to an individual who is not on the staff of the local agency but who is qualified to provide data upon which nutritional risk determinations are made by a competent professional authority on the staff of the local agency.

*Competitive bidding* means a procurement process under which FCS or the State agency selects a single source (such as a single infant formula manufacturer offering the lowest price), as determined by the submission of sealed

bids, for a product for which bids are sought for use in the Program.

*Cost containment measure* means a competitive bidding, rebate, direct distribution, or home delivery system implemented by a State agency as described in its approved State Plan of operation and administration.

*CSFP* means the Commodity Supplemental Food Program administered by the Department, authorized by section 5 of the Agriculture and Consumer Protection Act of 1973, as amended, and governed by part 247 of this title.

*Days* means calendar days.

*Department* means the U.S. Department of Agriculture.

*Discount* means, with respect to a State agency that provides Program foods to participants without the use of retail grocery stores (such as a State agency that provides for the home delivery or direct distribution of supplemental food), the amount of the price reduction or other price concession provided to any State agency by the manufacturer or supplier of the particular food product as the result of the purchase of Program food by each such State agency, or its representative, from the manufacturer or supplier.

*Disqualification* means the act of ending the Program participation of a participant, authorized food vendor, or authorized State or local agency, whether as a punitive sanction or for administrative reasons.

*Drug* means:

(a) A beverage containing alcohol;

(b) A controlled substance (having the meaning given it in section 102(6) of the Controlled Substance Act (21 U.S.C. 802(6)); or

(c) A controlled substance analogue (having the meaning given it in section 102(32) of the Controlled Substance Act (21 U.S.C. 802(32)).

*Dual participation* means simultaneous participation in the Program in one or more than one WIC clinic, or participation in the Program and in the CSFP during the same period of time.

*Family* means a group of related or nonrelated individuals who are living together as one economic unit, except that residents of a homeless facility or an institution shall not all be considered as members of a single family.

*Fiscal year* means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

*FCS* means the Food and Consumer Service of the U.S. Department of Agriculture.

*Food costs* means the costs of supplemental foods, determined in accordance with § 246.14(b).

*Food delivery system* means the method used by State and local agencies to provide supplemental foods to participants.

*Food instrument* means a voucher, check, coupon or other document which is used by a participant to obtain supplemental foods.

*Health services* means ongoing, routine pediatric and obstetric care (such as infant and child care and prenatal and postpartum examinations) or referral for treatment.

*Homeless facility* means the following types of facilities which provide meal service. A supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations; a facility that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or normally used as, a regular sleeping accommodation for human beings.

*Homeless individual* means a woman, infant or child who lacks a fixed and regular nighttime residence; or whose primary nighttime residence is: A supervised publicly or privately operated shelter (including a welfare hotel, a congregate shelter, or a shelter for victims of domestic violence) designated to provide temporary living accommodation; an institution that provides a temporary residence for individuals intended to be institutionalized; a temporary accommodation in the residence of another individual; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

*IHS* means the Indian Health Service of the U.S. Department of Health and Human Services.

*Institution* means any residential accommodation which provides meal

service, except private residences and homeless facilities.

*Infants* means persons under one year of age.

*Local agency* means: (a) A public or private, nonprofit health or human service agency which provides health services, either directly or through contract, in accordance with § 246.5; (b) an IHS service unit; (c) an Indian tribe, band or group recognized by the Department of the Interior which operates a health clinic or is provided health services by an IHS service unit; or (d) an intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior, which operates a health clinic or is provided health services by an IHS service unit.

*Members of populations* means persons with a common special need who do not necessarily reside in a specific geographic area, such as off-reservation Indians or migrant farmworkers and their families.

*Migrant farmworker* means an individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last 24 months, and who establishes, for the purposes of such employment, a temporary abode.

*Net price* means the difference between the manufacturer's wholesale price for infant formula and the rebate level offered or provided by the manufacturer under an infant formula cost containment contract entered into with the pertinent State agency.

*Nonprofit agency* means a private agency which is exempt from income tax under the Internal Revenue Code of 1954, as amended.

*Nutrition education* means individual or group education sessions and the provision of information and educational materials designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

*Nutrition Services and Administration (NSA) Costs* means those direct and indirect costs, exclusive of food costs, as defined in § 246.14(c), which State and local agencies determine to be necessary to support Program operations. Costs include, but are not limited to, the costs of Program administration, start-up, monitoring, auditing, the development of and accountability for food delivery systems, nutrition education and breastfeeding promotion and support, outreach, certification, and developing and printing food instruments.

*Nutritional risk* means: (a) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements; (b) other documented nutritionally related medical conditions; (c) dietary deficiencies that impair or endanger health; or (d) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

*OIG* means the Department's Office of the Inspector General.

*Other harmful substances* means other substances such as tobacco, prescription drugs and over-the-counter medications that can be harmful to the health of the WIC population, especially the pregnant woman and her fetus.

*Participants* means pregnant women, breastfeeding women, postpartum women, infants and children who are receiving supplemental foods or food instruments under the Program, and the breastfed infants of participant breastfeeding women.

*Participation* means the sum of the number of persons who have received supplemental foods or food instruments during the reporting period and the number of infants breastfed by participant breastfeeding women (and receiving no supplemental foods or food instruments) during the reporting period.

*Postpartum women* means women up to six months after termination of pregnancy.

*Poverty income guidelines* means the poverty income guidelines prescribed by the Department of Health and Human Services. These guidelines are adjusted annually by the Department of Health and Human Services, with each annual adjustment effective July 1 of each year. The poverty income guidelines prescribed by the Department of Health and Human Services shall be used for all States, as defined

in this section, except for Alaska and Hawaii. Separate poverty income guidelines are prescribed for Alaska and Hawaii.

*Pregnant women* means women determined to have one or more embryos or fetuses in utero.

*Program* means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by section 17 of the Child Nutrition Act of 1966, as amended.

*Rebate* means the amount of money refunded under cost containment procedures to any State agency from the manufacturer of the particular food product as the result of the purchase of the supplemental food with a voucher or other purchase instrument by a participant in each State agency's program. Such rebates shall be payments made subsequent to the exchange of a food instrument for food.

*Residual funds* means funds remaining available for allocation to State agencies after every State agency has received the amount allocable to it as stability funds in accordance with §§246.16(c)(2)(i) and 246.16(c)(3)(i).

*Secretary* means the Secretary of Agriculture.

*SFPD* means the Supplemental Food Programs Division of the Food and Consumer Service of the U.S. Department of Agriculture.

*7 CFR part 3016* means the Department's Uniform Federal Assistance Regulations. Part 3016 implements the policies established by the Office of Management and Budget (OMB) in Circulars A–21, A–87, A–102, A–110, and A–122, as well as OMB Guidance on Implementation of the Federal Grant and Cooperative Agreement Act of 1977.

*7 CFR part 3017* means the Department's Common Rule regarding Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace. Part 3017 implements the requirements established by Executive Order 12549 (February 18, 1986) and sections 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690).

*7 CFR part 3018* means the Department's Common Rule regarding Governmentwide New Restrictions on Lobbying. Part 3018 implements the requirements established by section 319 of the 1990 Appropriations Act for the Department of Interior and Related Agencies (Pub. L. 101–121).

*Stability funds* means funds allocated to any State agency for the purpose of maintaining its preceding year Program operating level, in accordance with §§246.16(c)(2)(i) and 246.16(c)(3)(i).

*State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and the Trust Territory of the Pacific Islands.

*State agency* means the health department or comparable agency of each State; an Indian tribe, band or group recognized by the Department of the Interior; an intertribal council or group which is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior and which has an ongoing relationship with such tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the IHS.

*State Plan* means a plan of Program operation and administration that describes the manner in which the State agency intends to implement and operate all aspects of Program administration within its jurisdiction in accordance with §246.4.

*Supplemental foods* means those foods containing nutrients determined to be beneficial for pregnant, breastfeeding, and postpartum women, infants and children, as prescribed by the Secretary in §246.10.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985, as amended at 52 FR 25189, July 2, 1987; 54 FR 51294, Dec. 14, 1989; 55 FR 9717, Mar. 15, 1990; 58 FR 11506, Feb. 26, 1993; 58 FR 47022, Sept. 7, 1993; 59 FR 11498, Mar. 11, 1994]

### §246.3 Administration.

(a) *Delegation to FCS.* Within the Department, FCS shall act on behalf of the Department in the administration of the Program. Within FCS, SFPD and the Regional Offices are responsible for Program administration. FCS shall provide assistance to State and local agencies and evaluate all levels of Program operations to ensure that the goals of the Program are achieved in

the most effective and efficient manner possible.

(b) *Delegation to State agency*. The State agency is responsible for the effective and efficient administration of the Program in accordance with the requirements of this part; the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a and 15b); governing administration of grants (7 CFR part 3016); governing nonprocurement debarment/suspension and drug-free workplace (7 CFR part 3017); and governing restrictions on lobbying (7 CFR part 3018); FCS guidelines; and, instructions issued under the FCS Directives Management System. The State agency shall provide guidance to local agencies on all aspects of Program operations.

(c) *Agreement and State Plan*. (1) Each State agency desiring to administer the Program shall annually submit a State Plan and enter into a written agreement with the Department for administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this part.

(2) The written agreement shall include a certification/assurance regarding drug-free workplace as required by 7 CFR part 3017, and, if applicable, a certification regarding lobbying and a disclosure of lobbying activities as required by 7 CFR part 3018.

(d) *State agency eligibility*. A State agency shall be ineligible to participate in the WIC Program if State or local sales tax is collected on WIC food purchases in the area in which it administers the program, except that, if sales tax is collected on WIC food purchases by sovereign Indian entities which are not State agencies, the State agency shall remain eligible if any vendors collecting such tax are disqualified.

(e) *State staffing standards*. Each State agency shall ensure that sufficient staff is available to administer an efficient and effective Program including, but not limited to, the functions of nutrition education, certification, food delivery, fiscal reporting, monitoring, and training. Based on the June participation of the previous fiscal year, each State agency, as a minimum, shall employ the following staff:

(1) A full-time or equivalent administrator when the monthly participation level exceeds 1,500, or a half-time or equivalent administrator when the monthly participation exceeds 500.

(2) At least one full-time or equivalent Program specialist for each 10,000 participants above 1,500, but the State agency need not employ more than eight Program specialists unless the State agency considers it necessary. Program specialists should be utilized for providing fiscal management and technical assistance, monitoring vendors, reviewing local agencies, training, and nutritional services, or other Program duties as assigned by the State agency.

(3) For nutrition-related services, one full-time or equivalent nutritionist when the monthly participation is above 1,500, or a half-time or equivalent nutritionist when the monthly participation exceeds 500. The nutritionist shall be named State WIC Nutrition Coordinator and shall meet State personnel standards and qualifications in paragraphs (e)(3) (i), (ii), (iii), (iv), or (v) of this section and have the qualifications in paragraph (e)(3)(vi) of this section. Upon request, an exception to these qualifications may be granted by FCS. The State WIC Nutrition Coordinator shall—

(i) Hold a Master's degree with emphasis in food and nutrition, community nutrition, public health nutrition, nutrition education, human nutrition, nutrition science or equivalent and have at least two years responsible experience as a nutritionist in education, social service, maternal and child health, public health, nutrition, or dietetics; or

(ii) Be registered or eligible for registration with the American Dietetic Association and have at least two years experience; or

(iii) Have at least a Bachelor of Science or Bachelor of Arts degree, from an accredited four-year institution, with emphasis in food and nutrition, community nutrition, public health nutrition, nutrition education, human nutrition, nutrition science or equivalent and have at least three years of responsible experience as a nutritionist in education, social service,

maternal and child health, public health nutrition, or dietetics; or

(iv) Be qualified as a Senior Public Health Nutritionist under the Department of Health and Human Services guidelines; or

(v) Meet the IHS standards for a Public Health Nutritionist; and

(vi) Have at least one of the following: Program development skills, education background and experience in the development of educational and training resource materials, community action experience, counseling skills or experience in participant advocacy.

(4) A designated breastfeeding promotion coordinator, to coordinate breastfeeding promotion efforts identified in the State plan in accordance with the requirement of §246.4(a)(9) of this part. The person to whom the State agency assigns this responsibility may perform other duties as well.

(5) The State agency shall enforce hiring practices which comply with the nondiscrimination criteria set forth in §246.8. The hiring of minority staff is encouraged.

(f) *Delegation to local agency*. The local agency shall provide Program benefits to participants in the most effective and efficient manner, and shall comply with this part, the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a, 15b), the Department's regulations governing the administration of grants (7 CFR part 3016), Office of Management and Budget Circular A–130, and State agency and FCS guidelines and instructions.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985, as amended at 52 FR 21236, June 4, 1987; 59 FR 11499, Mar. 11, 1994]

## Subpart B—State and Local Agency Eligibility

### §246.4 State Plan.

(a) *Requirements*. By August 15 of each year, each State agency shall submit to FCS for approval a State Plan for the following fiscal year as a prerequisite to receiving funds under this section. The State agency may submit the State Plan in the format provided by FCS guidance. Alternatively, the State agency may submit the Plan in combination with other federally required planning documents or develop its own format, provided that the information required below is included. FCS requests advance notification that a State agency intends to use an alternative format. The State Plan shall be signed by the State designated official responsible for ensuring that the Program is operated in accordance with the State Plan. FCS will provide written approval or denial of a completed State Plan or amendment within 30 days of receipt. Within 15 days after FCS receives an incomplete Plan, FCS will notify the State agency that additional information is needed to complete the Plan. Any disapproval will be accompanied by a statement of the reasons for the disapproval. Portions of the State Plan which do not change annually need not be resubmitted. However, the State agency shall provide the title of the sections that remain unchanged, as well as the year of the last Plan in which the sections were submitted. The Plan shall include:

(1) An outline of the State agency's goals and objectives for improving Program operations.

(2) A budget for nutrition services and administration funds, and an estimate of food expenditures.

(3) An estimate of Statewide participation for the coming fiscal year by category of women, infants and children.

(4) The State agency staffing pattern.

(5) An Affirmative Action Plan which includes—

(i) A list of all areas and special populations, in priority order based on relative need, within the jurisdiction of the State agency, the State agency's plans to initiate or expand operations under the Program in areas most in need of supplemental foods, including plans to inform nonparticipating local agencies of the availability and benefits of the Program and the availability of technical assistance in implementing the Program, and a description of how the State agency will take all reasonable actions to identify potential local agencies and encourage agencies to implement or expand operations under the Program within the following year in the neediest one-third of all areas unserved or partially served;

(ii) An estimate of the number of potentially eligible persons in each area and a list of the areas in the Affirmative Action Plan which are currently operating the Program and their current participation, which participant priority levels as specified in § 246.7 are being reached in each of these areas, and which areas in the Affirmative Action Plan are currently operating CSFP and their current participation; and

(iii) A list of the names and addresses of all local agencies.

(6) Plans to provide program benefits to eligible migrant farmworkers and their families, to Indians, and to homeless individuals.

(7) The State agency's plans, to be conducted in cooperation with local agencies, for informing eligible persons of the availability of Program benefits, including the eligibility criteria for participation, the location of local agencies operating the Program, and the institutional conditions of § 246.7(n)(1)(i) of this part, with emphasis on reaching and enrolling eligible women in the early months of pregnancy and migrants. Such information shall be publicly announced by the State agency and by local agencies at least annually. Such information shall also be distributed to offices and organizations that deal with significant numbers of potentially eligible persons, including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, organizations and agencies serving homeless individuals, and religious and community organizations in low-income areas.

(8) A description of how the State agency plans to coordinate program operations with special counseling services and other programs, including, but not limited to, the Expanded Food and Nutrition Education Program (7 U.S.C. 343(d) and 3175), the Food Stamp Program (7 U.S.C. 2011 *et seq.*), the Early and Periodic Screening, Diagnosis, and Treatment Program (Title XIX of the Social Security Act), the Aid to Families with Dependent Children (AFDC) Program (42 U.S.C. 601–615), the Maternal and Child Health (MCH) Program (42 U.S.C. 701–709), the Medicaid Program (42 U.S.C. 1396 *et seq.*), family planning, immunization, prenatal care, well-child care, drug and other harmful substance abuse counseling, treatment and education programs, child abuse counseling, and local programs for breastfeeding promotion.

(9) The State agency's nutrition education goals and action plans, including a description of the methods that will be used to provide drug and other harmful substance abuse information, promote breastfeeding, and to meet the special nutrition education needs of migrant farmworkers and their families, Indians, and homeless persons.

(10) For Indian State or local agencies that wish to apply for the alternate income determination procedure in accordance with § 246.7(d)(2)(vii), documentation that the majority of Indian household members have incomes below eligibility criteria.

(11) A copy of the procedure manual developed by the State agency for guidance to local agencies in operating the Program. The manual shall include—

(i) Certification procedures, including a list of the specific nutritional risk criteria by priority level which cites conditions and indices to be used to determine a person's nutritional risk, the State agency's income guidelines for Program eligibility, and any adjustments to the participant priority system made pursuant to § 246.7(e)(4) to accommodate high-risk postpartum women or the addition of Priority VII;

(ii) Methods for providing nutrition education, including drug and other harmful substance abuse information, to participants, including homeless individuals;

(iii) Instructions concerning all food delivery operations performed at the local level;

(iv) Instructions for providing all records and reports which the State agency requires local agencies to maintain and submit; and

(v) Instructions on coordinating operations under the program with drug and other harmful substance abuse counseling and treatment services.

(12) A description of the State agency's financial management system.

(13) A description of how the State agency will distribute nutrition services and administration funds, including start-up funds, to local agencies operating under the Program.

(14) A description of the food delivery system as it operates at the State agency level, including—

(i) All food delivery systems in use within the State agency's jurisdiction;

(ii) Vendor selection criteria;

(iii) A sample form for the written agreement between the food vendor and the State or local agency;

(iv) The system for monitoring food vendors to ensure compliance and prevent fraud, waste and abuse, and the State agency's plans for improvement in the coming year;

(v) Where food instruments are used, a facsimile of the food instrument, and the system for control and reconciliation of the food instruments;

(vi) The procedures used to pay food vendors;

(vii) The names of companies, excluding authorized food vendors, with whom the State agency has contracted to participate in the operation of the food delivery system;

(viii) For State agencies applying for authority to covert food funds to nutrition services and administration funds under § 246.16(g) of this part, a full description of their proposed food-cost-cutting system or system modification, including an estimate of the increased participation which will result from their system or modification, together with an explanation of how the estimate was developed; and

(ix) If the State agency plans to adapt its food delivery system to accommodate the needs of homeless individuals, a description of such adaptations.

(x) Except for State agencies with an FCS-approved feasibility study demonstrating the infeasibility of implementing a cost containment system, a description of its cost containment systems. In addition, a State agency which is: Planning to implement a cost containment system for the first time; planning to change or modify its current system; seeking approval of a system instead of a competitive bidding system (in accordance with § 246.16(m)(2)(iii) of this part); or requesting a waiver under § 246.16(n) of this part shall, at least 90 days before the proposed effective date of its system change, submit a State Plan or Plan amendment, describing its proposed cost containment system, any cost comparison analyses conducted under § 246.16(m), and for waivers based on interference with efficient or effective program operations, documentation of that claim. If FCS disputes the calculations or documentation supporting a cost comparison analysis or waiver request, it shall deem the plan amendment containing that information incomplete under § 246.4(a), and shall provide the State agency with a written statement outlining disputed issues within 15 days of receipt of the State Plan amendment. In the case of such disputes, the State agency may not enter into any infant formula cost containment contract without FCS consent until the disputed issues are resolved. If necessary, FCS may grant a postponement under § 246.16(o)(5) of this rule. If disputed issues remain unresolved at the end of the postponement period, the State agency must proceed with the cost containment system judged by FCS to comply with the provisions of this rule, or the State agency will be subject to the penalties set forth in § 246.16(p) of this part.

(15) Plans to prevent and detect dual participation. In States where the Program and the CSFP operate in the same area, or where an Indian State agency operates a Program in the same area as a geographic State agency, a copy of the written agreement between the State agencies for the detection and prevention of dual participation shall be submitted.

(16) A description of the procedures the State will use to comply with the civil rights requirements described in § 246.8, including the processing of discrimination complaints.

(17) A copy of the State agency's fair hearing procedures for participants and the administrative appeal procedures for local agencies and food vendors.

(18) The State agency's plan to provide program benefits to eligible persons most in need of benefits and to enroll eligible women in the early months of pregnancy, to the maximum extent practicable.

(19) The State agency's plan to establish, to the extent practicable, that homeless facilities, and institutions if it chooses to make the Program available to them, meet the conditions established in § 246.7(n)(1)(i) of this part, if residents of such accommodations are to be eligible to receive WIC Program benefits.

(20) A plan to provide program benefits to unserved infants and children under the care of foster parents, protective services, or child welfare authorities, including infants exposed to drugs perinatally.

(21) A plan to improve access to the program for participants and prospective applicants who are employed or who reside in rural areas, by addressing their special needs through the adoption or revision of procedures and practices to minimize the time participants and applicants must spend away from work and the distances participants and applicants must travel. This shall include at least one of the following procedures: Appointment scheduling, adjustment of clinic hours and/or locations, or the mailing of food instruments, provided, however, that all State agencies shall include appointment scheduling for employed adult individuals applying or reapplying for themselves or on behalf of others if such appointments are not currently provided. The State agency shall also describe any plans for issuance of food instruments to employed or rural participants, or to any other segment of the participant population, through means other than direct participant pick-up, pursuant to § 246.12(r)(8). Such description shall also include measures to ensure the integrity of program services and fiscal accountability.

(22) Assurance that each local agency and any subgrantees of the State agency and/or local agencies are in compliance with the requirements of 7 CFR part 3017 regarding nonprocurement debarment/suspension.

(23) A description of the State agency's plans to provide and maintain a drug-free workplace.

(b) *Public comment.* The State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.

(c) *Amendments.* At any time after approval, the State agency may amend the State Plan to reflect changes. The State agency shall submit the amendments to FCS for approval. The amendments shall be signed by the State designated official responsible for ensuring that the Program is operated in accordance with the State Plan.

(d) *Retention of copy.* A copy of the approved State Plan or the WIC portion of the State's composite plan of operations shall be kept on file at the State agency for public inspection.

[50 FR 6121, Feb. 13, 1985, as amended at 52 FR 21236, June 4, 1987; 53 FR 25314, July 6, 1988; 54 FR 51294, Dec. 14, 1989; 55 FR 9717, Mar. 15, 1990; 57 FR 34506, Aug. 5, 1992; 58 FR 11506, Feb. 26, 1993; 59 FR 11499, Mar. 11, 1994]

### § 246.5 Selection of local agencies.

(a) *General.* This section sets forth the procedures the State agency shall perform in the selection of local agencies and the expansion, reduction, and disqualification of local agencies already in operation. In making decisions to intitiate, continue, and discontinue the participation of local agencies, the State agency shall give consideration to the need for Program benefits as delineated in the Affirmative Action Plan.

(b) *Application of local agencies.* The State agency shall require each agency, including subdivisions of the State agency, which desires approval as a local agency, to submit a written local agency application. Within 15 days after receipt of an incomplete application, the State agency shall provide written notification to the applicant agency of the additional information needed. Within 30 days after receipt of a complete application, the State agency shall notify the applicant agency in writing of the approval or disapproval of its application. When an application is disapproved, the State agency shall advise the applicant agency of the reasons for disapproval and of the right to appeal as set forth in § 246.18. When an agency submits an application and there are no funds to serve the area, the applicant agency shall be notified within 30 days of receipt of the application that there are currently no funds

available for Program initiation or expansion. The applicant agency shall be notified by the State agency when funds become available.

(c) *Program initiation and expansion.* The State agency shall meet the following requirements concerning Program initiation and expansion:

(1) The State agency shall fund local agencies serving those areas or special populations most in need first, in accordance with their order of priority as listed in the Affirmative Action Plan described in § 246.4(a)(5). The selection criteria cited in paragraph (d)(1) of this section shall be applied to each area or special population before eliminating that area from consideration and serving the next area of special population. The State agency shall consider the number of participants in each priority level being served by existing local agencies in determining when it is appropriate to move into additional areas in the Affirmative Action Plan or to expand existing operations in an area. Additionally, the State agency shall consider the total number of people potentially eligible in each area compared to the number being served. Expansion of existing operations shall be in accordance with the Affirmative Action Plan and may be based on the percentage of need being met in each participant priority level.

(2) The State agency shall provide a written justification to FCS for not funding an agency to serve the highest priority area or special population. Such justification may include its inability to administer the Program, lack of interest expressed for operating the Program, or for those areas or special populations which are under consideration for expansion of an existing operation, a determination by the State agency that there is a greater need for funding an agency serving an area or special population not operating the Program. The State agency shall use the participant priority system in § 246.7 as a measurement of greater need in such determination.

(3) The State agency may fund more than one local agency to serve the same area or special population as long as more than one local agency is necessary to serve the full extent of need in that area or special population.

(d) *Local agency priority system.* The State agency shall establish standards for the selection of new local agencies. Such standards shall include the following considerations:

(1) The State agency shall consider the following priority system, which is based on the relative availability of health and administrative services, in the selection of local agencies:

(i) First consideration shall be given to a public or a private nonprofit health agency that will provide ongoing, routine pediatric and obstetric care and administrative services.

(ii) Second consideration shall be given to a public or a private nonprofit health or human service agency that will enter into a written agreement with another agency for either ongoing, routine pediatric and obstetric care or administrative services.

(iii) Third consideration shall be given to a public or private nonprofit health agency that will enter into a written agreement with private physicians, licensed by the State, in order to provide ongoing, routine pediatric and obstetric care to a specific category of participants (women, infants or children).

(iv) Fourth consideration shall be given to a public or private nonprofit human service agency that will enter into a written agreement with private physicians, licensed by the State, to provide ongoing, routine pediatric and obstetric care.

(v) Fifth consideration shall be given to a public or private nonprofit health or human service agency that will provide ongoing, routine pediatric and obstetric care through referral to a health provider.

(2) When seeking new local agencies, the State agency shall publish a notice in the media of the area next in line according to the Affirmative Action Plan, unless the State agency has received an application from a public or nonprofit private health agency in that area which can provide adequate health and administrative services. The notice shall include a brief explanation of the Program, a description of the local agency priority system cited in this paragraph and a request that potential local agencies notify the State agency of their interest. In addition, the State

agency shall contact all potential local agencies in the area to ensure that they are aware of the opportunity to apply for participation under the Program. If no agency submits an application within 30 days, the State agency may then proceed with the selection of a local agency in the area next in line according to the Affirmative Action Plan. If sufficient funds are available, a State agency shall give notice and consider applications in more than one area at the same time but shall fund new local agencies in conformance with the sequential ranking of the Affirmative Action Plan.

(e) *Disqualification of local agencies.* (1) The State agency may disqualify a local agency—

(i) When the State agency determines noncompliance with Program regulations;

(ii) When the State's Program funds are insufficient to support the continued operation of all its existing local agencies at their current participation level; or

(iii) When the State agency determines, following a review of local agency credentials in accordance with paragraph (f) of this section, that another local agency can operate the Program more effectively and efficiently.

(2) The State agency may establish its own criteria for disqualification of local agencies. The State agency shall notify the local agency of any State-established criteria. In addition to any State established criteria, the State agency shall consider, at a minimum—

(i) The availability of other community resources to participants and the cost efficiency and cost effectiveness of the local agency in terms of both food and nutrition services and administration costs;

(ii) The percentages of participants in each priority level being served by the local agency and the percentage of need being met in each participant category;

(iii) The relative position of the area or special population served by the local agency in the Affirmative Action Plan;

(iv) The local agency's place in the priority system in paragraph (d)(1) of this section; and

(v) The capability of another local agency or agencies to accept the local agency's participants.

(3) When disqualifying a local agency under the Program, the State agency shall—

(i) Make every effort to transfer affected participants to another local agency without disruption of benefits;

(ii) Provide the affected local agency with written notice not less than 60 days in advance of the pending action which includes an explanation of the reasons for disqualification, the date of disqualification, and, except in cases of the expiration of a local agency's agreement, the local agency's right to appeal as set forth in § 246.18; and

(iii) Ensure that the action is not in conflict with any existing written agreements between the State and the local agency.

(f) *Periodic review of local agency qualifications.* The State agency may conduct periodic reviews of the qualifications of authorized local agencies under its jurisdiction. Based upon the results of such reviews the State agency may make appropriate adjustments among the participating local agencies, including the disqualification of a local agency when the State agency determines that another local agency can operate the Program more effectively and efficiently. In conducting such reviews, the State agency shall consider the factors listed in paragraph (e)(2) of this section in addition to whatever criteria it may develop. The State agency shall implement the procedures established in paragraph (e)(3) of this section when disqualifying a local agency.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985]

### § 246.6 Agreements with local agencies.

(a) *Signed written agreements.* The State agency shall enter into a signed written agreement with each local agency, including subdivisions of the State agency, which sets forth the local agency's responsibilities for Program operations as prescribed in this part. Copies of the agreement shall be kept on file at both the State and local agencies for purposes of review and audit in accordance with §§ 246.19 and

246.20. Neither the State agency nor the local agency has an obligation to renew the agreement. The expiration of an agreement is not subject to appeal. The State agency shall provide local agencies with advance written notice of the expiration of an agreement as required under §§ 246.5(e)(3)(ii) and 246.18(b)(1).

(b) *Provisions of agreement.* The agreement between the State agency and each local agency shall ensure that the local agency—

(1) Complies with all the fiscal and operational requirements prescribed by the State agency pursuant to this part, 7 CFR part 3016, the debarment and suspension requirements of 7 CFR part 3017, if applicable, the lobbying restrictions of 7 CFR part 3018, and FCS guidelines and instructions, and provides on a timely basis to the State agency all required information regarding fiscal and Program information;

(2) Has a competent professional authority on the staff of the local agency and the capabilities necessary to perform the certification procedures;

(3) Makes available appropriate health services to participants and informs applicants of the health services which are available;

(4) Has a plan for continued efforts to make health services available to participants at the clinic or through written agreements with health care providers when health services are provided through referral;

(5) Provides nutrition education services to participants, in compliance with § 246.11 and FCS guidelines and instructions;

(6) Implements a food delivery system prescribed by the State agency pursuant to § 246.12 and approved by FCS;

(7) Maintains complete, accurate, documented and current accounting of all Program funds received and expended;

(8) Maintains on file and has available for review, audit, and evaluation all criteria used for certification, including information on the area served, income standards used, and specific criteria used to determine nutritional risk; and

(9) Does not discriminate against persons on the grounds of race, color, national origin, age, sex or handicap; and compiles data, maintains records and submits reports as required to permit effective enforcement of the nondiscrimination laws.

(c) *Indian agencies.* Each Indian State agency shall ensure that all local agencies under its jurisdiction serve primarily Indian populations.

(d) *Health and human service agencies.* When a health agency and a human service agency comprise the local agency, both agencies shall together meet all the requirements of this part and shall enter into a written agreement which outlines all Program responsibilities of each agency. The agreement shall be approved by the State agency during the application process and shall be on file at both the State and local agency. No Program funds shall be used to reimburse the health agency for the health services provided. However, costs of certification borne by the health agency may be reimbursed.

(e) *Health or human service agencies and private physicians.* When a health or human service agency and private physician(s) comprise the local agency, all parties shall together meet all of the requirements of this part and shall enter into a written agreement which outlines the inter-related Program responsibilities between the physician(s) and the local agency. The agreement shall be approved by the State agency during the application process and shall be on file at both agencies. The local agency shall advise the State agency on its application of the name(s) and address(es) of the private physician(s) participating and obtain State agency approval of the written agreement. A competent professional authority on the staff of the health or human service agency shall be responsible for the certification of participants. No Program funds shall be used to reimburse the private physician(s) for the health services provided. However, costs of certification data provided by the physician(s) may be reimbursed.

(f) *Outreach/Certification In Hospitals.* The State agency shall ensure that each local agency operating the program within a hospital and/or that has a cooperative arrangement with a hospital:

(1) Advises potentially eligible individuals that receive inpatient or outpatient prenatal, maternity, or postpartum services, or that accompany a child under the age of 5 who receives well-child services, of the availability of program services; and

(2) To the extent feasible, provides an opportunity for individuals who may be eligible to be certified within the hospital for participation in the WIC Program.

[50 FR 6121, Feb. 13, 1985, as amended at 59 FR 11500, Mar. 11, 1994]

## Subpart C—Participant Eligibility

### § 246.7 Certification of participants.

(a) *Integration with health services.* To lend administrative efficiency and participant convenience to the certification process, whenever possible, Program intake procedures shall be combined with intake procedures for other health programs or services administered by the State and local agencies. Such merging may include verification procedures, certification interviews, and income computations. Local agencies shall maintain and make available for distribution to all pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children applying for and participating in the Program a list of local resources for drug and other harmful substance abuse counseling and treatment.

(b) *Program referral and access.* State and local agencies shall provide WIC Program applicants and participants or their designated proxies with information on other health-related and public assistance programs, and when appropriate, shall refer applicants and participants to such programs.

(1) The State agency shall ensure that written information concerning the Food Stamp Program, the program for Aid to Families with Dependent Children under Title IV–A of the Social Security Act (AFDC), and the Child Support Enforcement Program under Title IV–D of the Social Security Act, is provided on at least one occasion to adult participants and adult individuals applying for the WIC Program for themselves or on behalf of others.

(2) The State agency shall provide each local WIC agency with materials showing the maximum income limits, according to family size, applicable to pregnant women, infants, and children up to age 5 under the medical assistance program established under Title XIX of the Social Security Act (in this section, referred to as the ''Medicaid Program''). The local agency shall, in turn, provide to adult individuals applying or reapplying for the WIC Program for themselves or on behalf of others, written information about the Medicaid Program. If such individuals are not currently participating in Medicaid but appear to have family income below the applicable maximum income limits for the program, the local agency shall also refer these individuals to Medicaid, including the referral of infants and children to the appropriate entity in the area authorized to determine eligibility for early and periodic screening, diagnostic, and treatment (EPSDT) services, and, the referral of pregnant women to the appropriate entity in the area authorized to determine presumptive eligibility for the Medicaid Program, if such determinations are being offered by the State.

(3) Local agencies shall provide information about other potential sources of food assistance in the local area to adult individuals applying or reapplying in person for the WIC Program for themselves or on behalf of others, when such applicants cannot be served because the Program is operating at capacity in the local area.

(4) Each local agency that does not routinely schedule appointments shall schedule appointments for employed adult individuals seeking to apply or reapply for participation in the WIC Program for themselves or on behalf of others so as to minimize the time such individuals are absent from the workplace due to such application.

(5) Each local agency shall attempt to contact each pregnant woman who misses her first appointment to apply for participation in the Program in order to reschedule the appointment. At the time of initial contact, the local agency shall request an address and telephone number where the pregnant woman can be reached.

(c) *Eligibility criteria.* To be certified as eligible for the Program, infants,

children, and pregnant, postpartum, and breastfeeding women shall:

(1) In all State agencies except for Indian State agencies, meet the requirement that the applicant reside within the jurisdiction of the State. Indian State agencies may establish the requirement that applicants reside within their jurisdiction. All State agencies may determine a service area for any local agency, and may require that an applicant reside within the service area. However, the State agency may not use length of residency as an eligibility requirement.

(2) Meet the income criteria specified in paragraph (d) of this section.

(3) Meet the nutritional risk criteria specified in paragraph (e) of this section.

(d) *Income criteria and income eligibility determinations.* The State agency shall establish, and provide local agencies with, income guidelines, definitions, and procedures to be used in determining an applicant's income eligibility for the Program.

(1) *Income eligibility guidelines.* The State agency may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming Program income guidelines to health care guidelines, the State agency shall not establish Program guidelines which exceed the guidelines for reduced-price school meals or are less than 100 percent of the revised poverty income guidelines issued annually by the Department of Health and Human Services. Program applicants who meet the requirements established by paragraph (d)(2)(vi)(A) of this section shall not be subject to the income limits established by State agencies under this paragraph.

(i) *Local agency income eligibility guidelines.* Different guidelines may be prescribed for different local agencies within the State provided that the guidelines are the ones used by the local agencies for determining eligibility for free or reduced-price health care.

(ii) *Annual adjustments in the income guidelines.* On or before June 1 each year, FCS will announce adjustments in the income guidelines for reduced-price meals under section 9 of the National School Lunch Act, based on annual adjustments in the revised poverty income guidelines issued by the Department of Health and Human Services.

(iii) *Implementation of the income guidelines.* On or before July 1 each year, each State agency shall announce and transmit to each local agency the State agency's family size income guidelines unless changes in the poverty income guidelines issued by the Department of Health and Human Services do not necessitate changes in the State or local agency's income guidelines. The State agency shall ensure that conforming adjustments are made, if necessary, in local agency income guidelines. The local agency shall implement (revised) guidelines effective July 1 of each year for which such guidelines are issued by the State.

(2) *Income eligibility determinations.* The State agency shall ensure that local agencies determine income through the use of a clear and simple application form provided or approved by the State agency.

(i) *Timeframes for determining income.* In determining the income eligibility of an applicant, the State agency may instruct local agencies to consider the income of the family during the past 12 months and the family's current rate of income to determine which indicator more accurately reflects the family's status. However, persons from families with adult members who are unemployed shall be eligible based on income during the period of unemployment if the loss of income causes the current rate of income to be less than the State or local agency's income guidelines for Program eligibility.

(ii) *Definition of ''Income''.* If the State agency uses the National School Lunch reduced-priced meal income guidelines, as specified in paragraph (d)(1) of this section, it shall use the following definition of income: Income for the purposes of this part means gross cash income before deductions for income taxes, employees' social security taxes, insurance premiums, bonds, etc. Income includes the following—

(A) Monetary compensation for services, including wages, salary, commissions, or fees;

(B) Net income from farm and nonfarm self-employment;

(C) Social Security benefits;

(D) Dividends or interest on savings or bonds, income from estates or trusts, or net rental income;

(E) Public assistance or welfare payments;

(F) Unemployment compensation;

(G) Government civilian employee or military retirement or pensions or veterans' payments;

(H) Private pensions or annuities;

(I) Alimony or child support payments;

(J) Regular contributions from persons not living in the household;

(K) Net royalties; and

(L) Other cash income. Other cash income includes, but is not limited to, cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which are readily available to the family.

(iii) *Use of a State or local health care definition of ''Income''.* If the State agency uses State or local free or reduced-price health care income guidelines, as it is authorized to do in paragraph (d)(1) of this section, it may use the State or local definition or definitions of income used for the health care eligibility determinations. The State agency shall ensure, however, that the State or local agency's definition of income does not count the value of in-kind housing and other in-kind benefits and payments or benefits listed in paragraph (d)(2)(iv) of this section as income for Program purposes, and that families with gross income, as defined in paragraph (d)(2)(ii) of this section, in excess of 185 percent of the Federal guidelines specified under paragraph (d)(1) of this section are not rendered eligible for Program benefits, except that persons who meet the requirements of paragraph (d)(2)(vi) of this section shall not be subject to limitations established under this paragraph.

(iv) *Income exclusions.* (A) In determining income eligibility, the State agency may exclude from consideration as income any basic allowance for quarters received by military services personnel residing off military installations. State agencies which choose to exercise this option shall implement it uniformly with respect to all Program applicants from military families.

(B) The value of inkind housing and other inkind benefits, shall be excluded from consideration as income in determining an applicant's eligibility for the program.

(C) Payments or benefits provided under certain Federal programs or acts are excluded from consideration as income by legislative prohibition. The payments or benefits which must be excluded from consideration as income include, but are not limited to:

(*1*) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, sec. 216, 42 U.S.C. 4636);

(*2*) Any payment to volunteers under Title I (VISTA and others) and Title II (RSVP, foster grandparents, and others) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93–113, sec. 404(g), 42 U.S.C. 5044(g)) to the extent excluded by that Act;

(*3*) Payment to volunteers under section 8(b)(1)(B) of the Small Business Act (SCORE and ACE) (Pub. L. 95–510, sec. 101, 15 U.S.C. 637(b)(1)(D));

(*4*) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94–114, sec. 6, 25 U.S.C. 459e);

(*5*) Payments received under the Job Training Partnership Act (Pub. L. 97–300, sec. 142(b), 29 U.S.C. 1552(b));

(*6*) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540, sec. 6);

(*7*) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 100–241, sec. 15, 43 U.S.C. sec. 1626(c));

(*8*) The value of assistance to children or their families under the National School Lunch Act, as amended (Pub. L. 94–105, sec. 9(d), 42 U.S.C. sec. 1760(e)), the Child Nutrition Act of 1966 (Pub. L. 89–642, sec. 11(b), 42 U.S.C. sec. 1780(b)), and the Food Stamp Act of

1977 (Pub. L. 95–113, sec. 1301, 7 U.S.C. sec. 2017(b));

(*9*) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95–433, sec. 2, 25 U.S.C. 609c–1);

(*10*) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, sec. 6, 9(c), 25 U.S.C. 1725(i), 1728(c));

(*11*) Payments under the Low-income Home Energy Assistance Act, as amended (Pub. L. 99–125, sec. 504(c), 42 U.S.C. sec. 8624(f));

(*12*) Student financial assistance received from any program funded in whole or part under Title IV of the Higher Education Act of 1965, including the Pell Grant, Supplemental Educational Opportunity Grant, State Student Incentive Grants, National Direct Student Loan, PLUS, College Work Study, and Byrd Honor Scholarship programs, which is used for costs described in section 472 (1) and (2) of that Act (Pub. L. 99–498, section 479B, 20 U.S.C. 1087uu). The specified costs set forth in section 472 (1) and (2) of the Higher Education Act are tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including the costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution. The specified costs set forth in section 472 (1) and (2) of the Act are those costs which are related to the costs of attendance at the educational institution and do not include room and board and dependent care expenses;

(*13*) Payments under the Disaster Relief Act of 1974, as amended by the Disaster Relief and Emergency Assistance Amendments of 1989 (Pub. L. 100–707, sec. 105(i), 42 U.S.C. sec. 5155(d));

(*14*) Effective July 1, 1991, payments received under the Carl D. Perkins Vocational Education Act, as amended by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Pub. L. 101–392, sec. 501, 20 U.S.C. sec. 2466d);

(*15*) Payments pursuant to the Agent Orange Compensation Exclusion Act (Pub. L. 101–201, sec. 1);

(*16*) Payments received for Wartime Relocation of Civilians under the Civil Liberties Act of 1988 (Pub. L. 100–383, sec. 105(f)(2), 50 App. U.S.C. sec. 1989b–4(f)(2));

(*17*) Value of any child care payments made under section 402(g)(1)(E) of the Social Security Act, as amended by the Family Support Act (Pub. L. 100–485, sec. 301, 42 U.S.C. sec. 602 (g)(1)(E));

(*18*) Value of any ''at-risk'' block grant child care payments made under section 5081 of Pub. L. 101–508, which amended section 402(i) of the Social Security Act;

(*19*) Value of any child care provided or paid for under the Child Care and Development Block Grant Act, as amended (Pub. L. 102–586, Sec. 8(b)), 42 U.S.C. 9858q);

(*20*) Mandatory salary reduction amount for military service personnel which is used to fund the Veteran's Educational Assistance Act of 1984 (GI Bill), as amended (Pub. L. 99–576, sec. 303(a)(1), 38 U.S.C. sec. 1411 (b));

(*21*) Payments received under the Old Age Assistance Claims Settlement Act, except for per capita shares in excess of $2,000 (Pub. L. 98–500, sec. 8, 25 U.S.C. sec. 2307);

(*22*) Payments received under the Cranston-Gonzales National Affordable Housing Act, unless the income of the family equals or exceeds 80 percent of the median income of the area (Pub. L. 101–625, sec. 522(i)(4), 42 U.S.C. sec. 1437f nt);

(*23*) Payments received under the Housing and Community Development Act of 1987, unless the income of the family increases at any time to not less than 50 percent of the median income of the area (Pub. L. 100–242, sec. 126(c)(5)(A), 25 U.S.C. sec. 2307);

(*24*) Payments received under the Sac and Fox Indian claims agreement (Pub. L. 94–189, sec. 6);

(*25*) Payments received under the Judgment Award Authorization Act, as amended (Pub. L. 97–458, sec. 4, 25

U.S.C. sec. 1407 and Pub. L. 98–64, sec. 2(b), 25 U.S.C. sec. 117b(b));

(*26*) Payments for the relocation assistance of members of Navajo and Hopi Tribes (Pub. L. 93–531, sec. 22, 22 U.S.C. sec. 640d-21);

(*27*) Payments to the Turtle Mountain Band of Chippewas, Arizona (Pub. L. 97–403, sec. 9);

(*28*) Payments to the Blackfeet, Grosventre, and Assiniboine tribes (Montana) and the Papago (Arizona) (Pub. L. 97–408, sec. 8(d));

(*29*) Payments to the Assiniboine Tribe of the Fort Belknap Indian community and the Assiniboine Tribe of the Fort Peck Indian Reservation (Montana) (Pub. L. 98–124, sec. 5);

(*30*) Payments to the Red Lake Band of Chippewas (Pub. L. 98–123, sec. 3);

(*31*) Payments received under the Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act (Pub. L. 99–346, sec. 6(b)(2)); and

(*32*) Payments to the Chippewas of Mississippi (Pub. L. 99–377, sec. 4(b)).

(v) *Verification of information*. A State or local agency may require verification of information which it determines necessary to confirm income eligibility for Program benefits.

(vi) *Adjunct or automatic income eligibility*. (A) The State agency shall accept as income-eligible for the Program any applicant who documents that he/she is:

(*1*) Certified as fully eligible to receive food stamps under the Food Stamp Act of 1977, or certified as fully eligible, or presumptively eligible pending completion of the eligibility determination process, to receive Aid to Families with Dependent Children (AFDC) under Part A of Title IV of the Social Security Act or Medical Assistance (i.e., Medicaid) under Title XIX of the Social Security Act; or

(*2*) A member of a family that is certified eligible to receive assistance under AFDC, or a member of a family in which a pregnant woman or an infant is certified eligible to receive assistance under Medicaid.

(B) The State agency may accept, as evidence of income within Program guidelines, documentation of the applicant's participation in State-administered programs not specified in this paragraph that routinely require documentation of income, provided that those programs have income eligibility guidelines at or below the State agency's Program income guidelines.

(C) Persons who are adjunctively income eligible, as set forth in paragraphs (d)(2)(vi)(A) of this section, shall not be subject to the income limits established under paragraph (d)(1) of this section.

(vii) *Income eligibility of Indian applicants.* If an Indian State agency (or a non-Indian State agency which acts on behalf of a local agency operated by an Indian organization or the Indian Health Service) submits census data or other reliable documentation demonstrating to FCS that the majority of the Indian households in a local agency's service area have incomes at or below the State agency's income eligibility guidelines, FCS may authorize the State agency to approve the use of an income certification system under which the local Indian agency shall inform each Indian applicant household of the maximum family income allowed for that applicant's family size. The local agency shall ensure that the applicant, or the applicant's parent or caretaker, signs a statement that the applicant's family income does not exceed the maximum. The local agency may verify the income eligibility of any Indian applicant.

(viii) *Income eligibility of instream migrant farmworkers and their family members.* Instream migrant farmworkers and their family members with expired Verification of Certification cards shall be declared to satisfy the State agency's income standard; Provided, however, that the income of that instream migrant farmworker family is determined at least once every 12 months. Any determination that members of an instream migrant farmworker family have met the income standard, either in the migrant's home base area before the migrant has entered the stream for a particular agricultural season, or in an instream area during the agricultural season, shall satisfy the income criteria in any State for any subsequent certification while the migrant is instream during the 12-month period following the determination.

(e) *Nutritional risk.* To be certified as eligible for the Program, applicants who meet the Program's eligibility standards specified in paragraph (c) of this section must be determined to be at nutritional risk. A competent professional authority on the staff of the local agency shall determine if a person is a nutritional risk through a medical and/or nutritional assessment. This determination may be based on referral data submitted by a competent professional authority not on the staff of the local agency.

(1) *Determination of nutritional risk.* At a minimum, height or length and weight shall be measured, and a hematological test for anemia such as a hemoglobin, hematocrit, or free erythrocyte protoporphyrin test shall be performed. However, such hematological tests are not required for infants under six months of age and, at the State or local agency's discretion, the blood test is not required for children who were determined to be within the normal range at their last certification. However, the blood test shall be performed on such children at least once every 12 months. Height or length and weight measurements and, with the exceptions specified in this paragraph, blood tests, shall be obtained for all participants, including those who are determined at nutritional risk based solely on the established nutritional risk status of another person, as provided in paragraphs (e)(1)(i) and (e)(1)(ii) of this section. Weight and height or length shall be measured, and a blood test shall be conducted, not more than 60 days prior to certification for program participation, provided that such data for persons certified as pregnant women shall be collected during their pregnancy, and such data for persons certified as postpartum and breastfeeding women shall be collected after the termination of their pregnancy.

(i) A breastfeeding woman may be determined to be a nutritional risk if her breastfed infant has been determined to be a nutritional risk. A breastfed infant can be certified based on the mother's medical and/or nutritional assessment. A breastfeeding mother and her infant shall be placed in the highest priority level for which either is qualified.

(ii) An infant under six months of age may be determined to be at nutritional risk if the infant's mother was a Program participant during pregnancy or of medical records document that the woman was at nutritional risk during pregnancy because of detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements or other documented nutritionally related medical conditions.

(iii) A participant who has previously been certified eligible for the Program may be considered to be at nutritional risk in the next certification period if the competent professional authority determines there is a possibility of regression in nutritional status without the supplemental foods. The State agency may limit the number of times and circumstances under which a participant may be certified due to the possibility of regression.

(2) *Nutritional risk criteria.* The following are examples of nutritional risk conditions which may be used as a basis for certification. These examples include—

(i) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements, such as anemia, underweight, overweight, abnormal patterns of weight gain in a pregnant woman, low birth weight in an infant, or stunting in an infant or child;

(ii) Other documented nutritionally related medical conditions, such as clinical signs of nutritional deficiencies, metabolic disorders, pre-eclampsia in pregnant women, failure to thrive in an infant, chronic infections in any person, alcohol or drug abuse or mental retardation in women, lead poisoning, history of high risk pregnancies or factors associated with high risk pregnancies (such as smoking; conception before 16 months postpartum; history of low birth weight, premature births, or neonatal loss; adolescent pregnancy; or current multiple pregnancy) in pregnant women, or congenital malformations in infants or children, or infants born of women with alcohol or drug abuse histories or mental retardation.

(iii) Dietary deficiencies that impair or endanger health, such as inadequate dietary patterns assessed by a 24-hour dietary recall, dietary history, or food frequency checklist; and

(iv) Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, such as homelessness or migrancy.

(3) *Nutritional risk priorities.* In determining nutritional risk, the State agency shall develop and include in its State Plan, specific risk conditions by priority level with indices for identifying these conditions. The criteria shall be used statewide and in accordance with the priority system as set forth in paragraph (e)(4) of this section.

(4) *Nutritional risk priority system.* The competent professional authority shall fill vacancies which occur after a local agency has reached its maximum participation level by applying the following participant priority system to persons on the local agency's waiting list. Priorities I through VI shall be utilized in all States. The State agency may, at its discretion, expand the priority system to include Priority VII. The State agency may set income or other subpriority levels within any of these seven priority levels. The State agency may expand Priority III, IV, or V to include high-risk postpartum women. The State agency may place pregnant or breastfeeding women and infants who are at nutritional risk solely because of homelessness or migrancy in Priority IV; children who are at nutritional risk solely because of homelessness or migrancy in Priority V; and postpartum women who are at nutritional risk solely because of homelessness or migrancy in Priority VI, *OR,* the State agency may place pregnant, breastfeeding or postpartum women, infants, and children who are at nutritional risk solely because of homelessness or migrancy in Priority VII.

(i) *Priority I.* Pregnant women, breastfeeding women and infants at nutritional risk as demonstrated by hematological or anthropometric measurements, or other documented nutritionally related medical conditions which demonstrate the need for supplemental foods.

(ii) *Priority II.* Except those infants who qualify for Priority I, infant up to six months of age of Program participants who participated during pregnancy, and infants up to six months of age born of women who were not Program participants during pregnancy but whose medical records document that they were at nutritional risk during pregnancy due to nutritional conditions detectable by biochemical or anthropometric measurements or other documented nutritionally related medical conditions which demonstrated the person's need for supplemental foods.

(iii) *Priority III.* Children at nutritional risk as demonstrated by hematological or anthropometric measurements or other documented medical conditions which demonstrate the child's need for supplemental foods.

(iv) *Priority IV.* Pregnant women, breastfeeding women, and infants at nutritional risk because of an inadequate dietary pattern.

(v) *Priority V.* Children at nutritional risk because of an inadequate dietary pattern.

(vi) *Priority VI.* Postpartum women at nutritional risk.

(vii) *Priority VII.* Individuals certified for WIC solely due to homelessness or migrancy and, at State agency option, and in accordance with the provisions of paragraph (e)(1)(iii) of this section, previously certified participants who might regress in nutritional status without continued provision of supplemental foods.

(f) *Processing standards.* The local agencies shall process applicants within the following timeframes:

(1) *Waiting lists.* When the local agency is serving its maximum caseload, the local agency shall maintain a waiting list of individuals who visit the local agency to express interest in receiving Program benefits and who are likely to be served. However, in no case shall an applicant who requests placement on the waiting list be denied inclusion. State agencies may establish a policy which permits or requires local agencies to accept telephone requests for placement on the waiting list. The waiting list shall include the person's name, address or phone number, status (e.g., pregnant, breastfeeding, age of applicant), and the date he or she was

placed on the waiting list. Individuals shall be notified of their placement on a waiting list within 20 days after they visit the local agency during clinic office hours to request Program benefits. For those State agencies establishing procedures to accept telephone requests for placement on a waiting list, individuals shall be notified of their placement on a waiting list within 20 days after contacting the local agency by phone. The competent professional authority shall apply the participant priority system as specified in paragraph (e)(4) of this section to the waiting list to ensure that the highest priority persons become Program participants first when caseload slots become available.

(2) *Timeframes for processing applicants.* (i) When the local agency is not serving its maximum caseload, the local agency shall accept applications, make eligibility determinations, notify the applicants of the decisions made and, if the applicants are to be enrolled, issue food or food instruments. All of these actions shall be accomplished within the timeframes set forth below.

(ii) The processing timeframes shall begin when the individual visits the local agency during clinic office hours to make an oral or written request for Program benefits. To ensure that accurate records are kept of the date of such requests, the local agency shall, at the time of each request, record the applicant's name, address and the date. The remainder of the information necessary to determine eligibility shall be obtained by the time of certification. Medical data taken prior to certification may be used as provided in paragraph (g)(4) of this section.

(iii) The local agency shall act on applications within the following timeframes:

(A) Special nutritional risk applicants shall be notified of their eligibility or ineligibility within 10 days of the date of the first request for Program benefits; except that State agencies may provide an extension of the notification period to a maximum of 15 days for those local agencies which make written request, including a justification of the need for an extension. The State agency shall establish criteria for identifying categories of persons at special nutritional risk who require expedited services. At a minimum, however, these categories shall include pregnant women eligible as Priority I participants, and migrant farmworkers and their family members who soon plan to leave the jurisdiction of the local agency.

(B) All other applicants shall be notified of their eligibility or ineligibility within 20 days of the date of the first request for Program benefits.

(iv) Each local agency using a retail purchase system shall issue a food instrument(s) to the participant at the same time as notification of certification. Such food instrument(s) shall provide benefits for the current month or the remaining portion thereof and shall be redeemable immediately upon receipt by the participant. Local agencies may mail the initial food instrument(s) with the notification of certification to those participants who meet the criteria for the receipt of food instruments through the mail, as provided in § 246.12(r)(8).

(v) Each local agency with a direct distribution or home delivery system shall issue the supplemental foods to the participant within 10 days of issuing the notification of certification.

(g) *Certification periods.* (1) Program benefits shall be based upon certifications established in accordance with the following timeframes:

(i) Pregnant women shall be certified for the duration of their pregnancy and for up to six weeks postpartum.

(ii) Postpartum women shall be certified for up to six months postpartum.

(iii) Breastfeeding women shall be certified at intervals of approximately six months and ending with the breastfed infant's first birthday.

(iv) Infants shall be certified at intervals of approximately six months, except that the State agency may permit local agencies under its jurisdiction to certify infants under six months of age for a period extending up to the first birthday provided the quality and accessibility of health care services are not diminished.

(v) Children shall be certified at intervals of approximately six months and ending with the end of the month

in which a child reaches the fifth birthday.

(2) The State agency may authorize local agencies under its jurisdiction to establish shorter certification periods than outlined in paragraph (g)(1) of this section on a case-by-case basis. If the State agency exercises this option, it shall issue guidance for use by local agencies in establishing the shorter periods.

(3) In cases where there is difficulty in appointment scheduling for persons referenced in paragraphs (g)(1) (iii), (iv) and (v) of this section, the certification period may be shortened or extended by a period not to exceed 30 days.

(h) *Actions affecting participation in mid-certification.* (1) The State agency shall ensure that local agencies disqualify an individual during a certification period if, on the basis of a reassessment of Program eligibility status, the individual is determined ineligible; provided, however, that an individual determined adjunctively income eligible under paragraph (d)(2)(vi)(A) (*1*) or (*2*) of this section or income eligible under paragraph (d)(2)(vi)(B) of this section is not disqualified solely on the basis of a determination they no longer participate in AFDC, Medicaid, Food Stamps, or another qualified State-administered program or are no longer a member of a family which contains an AFDC recipient or a pregnant woman or an infant receiving Medicaid. The State agency shall ensure that local agencies disqualify such an individual during a certification period, if on the basis of a reassessment of Program eligibility, the individual is no longer deemed income eligible under paragraph (d)(2)(vi) (A) or (B) of this section and does not meet the income eligibility requirements of paragraph (d)(1) of this section. The State agency may authorize local agencies to disqualify an individual during the certification period for the following reasons:

(i) Participant abuse, including, but not limited to the infractions listed in § 246.12(k)(2); or

(ii) Failure to obtain food instruments or supplemental foods for a number of consecutive months, as specified by the State agency, evidenced by indicators such as failure to pick up supplemental foods or food instruments, nonreceipt of food instruments as evidenced by return of mailed instruments, or failure to have an electronic benefit transfer card revalidated to authorize the purchase of supplemental foods.

(2) If a State agency experiences funding shortages, it may be necessary to discontinue Program benefits to a number of certified participants. Such action may be taken only after the State agency has explored alternative actions. If taken, the action should affect the least possible number of participants and should affect participants whose nutritional and health status would be least impaired by withdrawal of Program benefits. The State may discontinue benefits by—

(i) Disqualifying a group of participants; and/or

(ii) Withholding benefits of a group with the expectation of providing benefits again when funds are available.

(3) When a State agency elects to discontinue benefits to a number of certified participants due to insufficient funds for a period of time, it shall not enroll new participants during that period.

(i) *Certification forms.* All certification data for each person certified shall be recorded on a form (or forms) which are provided by the State agency. The information on the forms shall include—

(1) Name and address;

(2) Date of initial visit to apply for participation;

(3) Information regarding income eligibility for the Program as specified in paragraph (d) of this section;

(4) The date of certification and the date nutritional risk data were taken if different from the date of certification;

(5) Height or length, weight, and hematological test results;

(6) The specific nutritional risk conditions which established eligibility for the supplemental foods. Documentation should include health history when appropriate to the nutritional risk condition, with the applicant's or applicant's parent's or caretaker's consent;

(7) The signature and title of the competent professional authority making the nutritional risk determination, and, if different, the signature and title

of the administrative person responsible for determining income eligibility under the Program; and

(8) The following statement with a space for the signature of the applicant, parent, or caretake to sign after reading or being read the following statement:

> I have been advised of my rights and obligations under the Program. I certify that the information I have provided for my eligibility determination is correct, to the best of my knowledge. This certification form is being submitted in connection with the receipt of Federal assistance. Program officials may verify information on this form. I understand that intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts may result in paying the State agency, in cash, the value of the food benefits improperly issued to me and may subject me to civil or criminal prosecution under State and Federal law.

(9) In States exercising the authority to disclose information pursuant to § 246.26(d)(2), a statement, to be added to the statement required under paragraph (i)(8) of this section, acknowledging that the chief State health officer (or in the case of Indian State agencies, the governing authority) may authorize disclosure of information provided by the applicant or participant to representatives of public organizations, designated by such chief State officer or governing authority, which administer health or welfare programs that serve persons categorically eligible for the WIC Program. This statement shall also indicate that such information can be used by the recipient organizations only to determine the eligibility of WIC applicants and participants for programs administered by such organizations, and to conduct outreach for such programs.

(j) *Notification of participant rights and responsibilities.* In order to inform applicants and participants or their parents or caretakers of Program rights and responsibilities, the following information shall be provided. Where a significant number or proportion of the population eligible to be served needs the information in a language other than English, reasonable steps shall be taken to provide the information in appropriate languages to such persons, considering the scope of the Program and the size and concentration of such population.

(1) During the certification procedure, every Program applicant, parent or caretaker shall be informed of the illegality of dual participation.

(2) At the time of certification, each Program participant, parent or caretaker shall read, or have read to him or her, the statement provided in paragraph (i)(8) of this section and the following sentences:

(i) ''Standards for eligibility and participation in the WIC Program are the same for everyone, regardless of race, color, national origin, age, handicap, or sex.''

(ii) ''You may appeal any decision made by the local agency regarding your eligibility for the Program.''

(iii) ''The local agency will make health services and nutrition education available to you, and you are encouraged to participate in these services.''

(3) If the State agency implements the policy of disqualifying a participant for not picking up supplemental foods or food instruments in accordance with paragraph (h)(1)(ii) of this section, it shall provide notice of this policy and of the importance of regularly picking up food instruments or supplemental foods to each participant, parent or caretaker at the time of each certification.

(4) At least during the initial certification visit, each participant, parent or caretaker shall receive an explanation of how the local food delivery system operates and shall be advised of the types of health services available, where they are located, how they may be obtained and why they may be useful.

(5) Persons found ineligible for the Program during a certification visit shall be advised in writing of the ineligibility, of the reasons for the ineligibility, and of the right to a fair hearing. The reasons for ineligibility shall be properly documented and shall be retained on file at the local agency.

(6) A person who is about to be suspended or disqualified from program participation at any time during the certification period shall be advised in writing not less than 15 days before the suspension or disqualification. Such notification shall include the reasons

for this action, and the participant's right to a fair hearing. Further, such notification need not be provided to persons who will be disqualified for not picking up supplemental foods or food instruments in accordance with paragraph (h)(1)(ii) of this section.

(7) When a State or local agency pursues collection of a claim pursuant to § 246.23(c) against an individual who has been improperly issued benefits, the person shall be advised in writing of the reason(s) for the claim, the value of the improperly issued benefits which must be repaid, and of the right to a fair hearing.

(8) Each participant, parent or caretaker shall be notified not less than 15 days before the expiration of each certification period that certification for the Program is about to expire.

(9) If a State agency must suspend or terminate benefits to any participant during the participant's certification period due to a shortage of funds for the Program, it shall issue a notice to such participant in advance, as stipulated in paragraph (j)(6) of this section. Such notice shall also include the categories of participants whose benefits are being suspended or terminated due to such shortage.

(k) *Transfer of certification.* (1) Each State agency shall ensure issuance of a Verification of Certification card to every participant who is a member of a family in which there is a migrant farmworker or any other participant who is likely to be relocating during the certification period. Certifying local agencies shall ensure that Verification of Certification cards are fully completed.

(2) The State agency shall require the receiving local agency to accept Verification of Certification cards from participants, including participants who are migrant farmworkers or members of their families, who have been participating in the Program in another local agency within or outside of the jurisdiction of the State agency. A person with a valid Verification of Certification card shall not be denied participation in the receiving State because the person does not meet that State's particular eligibility criteria.

(3) The Verification of Certification card is valid until the certification period expires, and shall be accepted as proof of eligibility for Program benefits. If the receiving local agency has waiting lists for participation, the transferring participant shall be placed on the list ahead of all waiting applicants.

(4) The Verification of Certification card shall include the name of the participant, the date the certification was performed, the date income eligibility was last determined, the nutritional risk condition of the participant, the date the certification period expires, the signature and printed or typed name of the certifying local agency official, the name and address of the certifying local agency and an identification number or some other means of accountability. The Verification of Certification card shall be uniform throughout the jurisdiction of the State agency.

(l) *Dual participation.* (1) The State agency shall be responsible for the following:

(i) In conjunction with the local agency, the prevention and detection of dual participation within each local agency and between local agencies.

(ii) In areas where local agency serves the same population as an Indian State agency or a CSFP agency, entering into an agreement with the CSFP or Indian State agency for the detection and prevention of dual participation. The agreement must be made prior to operation within the same area and must be in writing.

(iii) Immediate disqualification from one of the programs or clinics for participants found in violation due to dual participation. Where deliberate misrepresentation is involved, the participant may be disqualifed from participation in both programs or clinics as specified in § 246.12(k)(2).

(2) At certification, and when issuing food or food instruments, the local agency shall check the identification of each participant. For an infant or child participant, an immunization record, birth certificate, or other records that local agency personnel consider adequate to establish identity, shall be acceptable.

(m) *Certification without charge.* The certification procedure shall be performed at no cost to the applicant.

(n) *Certification of persons in homeless facilities and institutions.* (1) Pregnant, breastfeeding, and postpartum women, infants or children who meet the requirements of paragraph (c) of this section, and who reside in a homeless facility, shall be considered eligible for the Program and shall be treated equally with all other eligible applicants at the local agency where they apply for WIC benefits, Provided that: the State or local agency has taken reasonable steps to:

(i) Establish, to the extent practicable, that the homeless facility meets the following conditions with respect to resident WIC participants:

(A) The homeless facility does not accrue financial or in-kind benefit from a person's participation in the Program, e.g., by reducing its expenditures for food service because its residents are receiving WIC foods;

(B) Foods provided by the WIC Program are not subsumed into a communal food service, but are available exclusively to the WIC participant for whom they were issued;

(C) The homeless facility places no constraints on the ability of the participant to partake of the supplemental foods and nutrition education available under the Program;

(ii) Contact the homeless facility periodically to ensure continued compliance with these conditions; and

(iii) Request the homeless facility to notify the State or local agency if it ceases to meet any of these conditions.

(2) The State agency may authorize or require local agencies to make the Program available to applicants who meet the requirements of paragraph (c) of this section, but who reside in institutions which meet the conditions of paragraphs (n)(1)(i)(A)–(C) of this section with respect to resident WIC participants.

(3) The State or local agency shall attempt to establish to the best of its ability,whether a homeless facility or institution complies with the conditions of paragraphs (n)(1)(i) (A)–(C) of this section with respect to WIC participants. If caseload slots are available, full certification periods shall be provided to the following:

(i) Participants who are residents of a homeless facility or institution which has been found to be in compliance with the conditions of paragraph (n)(1)(i)(A)–(C) of this section;

(ii) Participants who are residents of a homeless facility or institution whose compliance with the conditions of paragraphs (n)(1)(i)(A)–(C) of this section has not yet been established; and

(iii) Participants for whom no other shelter alternative is available in the local agency's service delivery area.

(4) If a homeless facility or institution has been determined to be noncompliant during the course of a participant's initial certification period, participants applying for continued benefits may be certified again, but the State agency shall discontinue issuance of WIC foods, except infant formula, to the participant in such accommodation until the accommodation's compliance is achieved or alternative shelter arrangements are made. If certified, such participants shall continue to be eligible to receive all other WIC benefits, such as nutrition education and health care referral services.

(5) The State agency shall continue to the end of their certification periods the participation of residents of a homeless facility or institution which ceases to comply with the conditions of paragraphs (n)(1)(i)(A)–(C) of this section.

(6) As soon as the State or local agency determines that a homeless facility/institution does not meet the conditions of paragraphs (n)(1)(i) (A)–(C) of this section, it shall refer all participants using such accommodation to any other accommodations in the area which meet these conditions.

(o) *Drug and other harmful substance abuse screening.* When a State agency determines that screening is necessary to fulfill the referral requirements in this part, the State agency must require screening for the use of drugs and other harmful substances. When such screening is required, it shall:

(1) Be limited to the extent the State agency deems necessary to fulfill the referral requirement of § 246.4(a)(8) of this part and the drug and other harmful substance abuse information requirement of § 246.11(a)(3) of this part; and

(2) Be integrated into certification process as part of the medical or nutritional assessment.

[50 FR 6121, Feb. 13, 1985, as amended at 52 FR 21236, June 4, 1987; 53 FR 35301, Sep. 13, 1988; 54 FR 51295, Dec. 14, 1989; 55 FR 3387, Feb. 1, 1990; 57 FR 34506, Aug. 5, 1992; 58 FR 11506, Feb. 26, 1993; 59 FR 11500, Mar. 11, 1994; 60 FR 19490, Apr. 19, 1995]

### § 246.8 Nondiscrimination.

(a) *Civil rights requirements.* The State agency shall comply with the requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a and 15b), and FCS instructions to ensure that no person shall, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under the Program. Compliance with title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and regulations and instructions issued thereunder shall include, but not be limited to:

(1) Notification to the public of the nondiscrimination policy and complaint rights of participants and potentially eligible persons;

(2) Review and monitoring activity to ensure Program compliance with the nondiscrimination laws and regulations;

(3) Collection and reporting of racial and ethnic participation data as required by title VI of the Civil Rights Act of 1964, which prohibits discrimination in federally assisted programs on the basis of race, color, or national origin; and

(4) Establishment of grievance procedures for handling complaints based on sex and handicap.

(b) *Complaints.* Persons seeking to file discrimination complaints may file them either with the Secretary of Agriculture, or the Director, Office of Equal Opportunity, USDA, Washington, DC 20250 or with the Office established by the State agency to handle discrimination grievances or complaints. All complaints received by State or local agencies which allege discrimination based on race, color, national origin, or age shall be referred to the Secretary of Agriculture or Director, Office of Equal Opportunity. A State or local agency may process complaints which allege discrimination based on sex or handicap if grievance procedures are in place.

(c) *Non-English materials.* Where a significant number or proportion of the population eligible to be served needs service or information in a language other than English in order effectively to be informed of or to participate in the Program, the State agency shall take reasonable steps considering the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to required Program information except certification forms which are used only by local agency staff. The State agency shall also ensure that all rights and responsibilities listed on the certification form are read to these applicants in the appropriate language.

### § 246.9 Fair hearing procedures for participants.

(a) *Availability of hearings.* The State agency shall provide a hearing procedure through which any individual may appeal a State or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the Program.

(b) *Hearing system.* The State agency shall provide for either a hearing at the State level or a hearing at the local level which permits the individual to appeal a local agency decision to the State agency. The State agency may adopt local level hearings in some areas, such as those with large caseloads, and maintain only State level hearings in other areas.

(c) *Notification of appeal rights.* At the time of a claim against an individual for improperly issued benefits or at the time of participation denial or of disqualification from the Program, the State or local agency shall inform each

individual in writing of the right to a fair hearing, of the method by which a hearing may be requested, and that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel or other spokesperson. Such notification is not required at the expiration of a certification period.

(d) *Request for hearing.* A request for a hearing is defined as any clear expression by the individual, the individual's parent, caretaker, or other representative, that he or she desires an opportunity to present his or her case to a higher authority. The State or local agency shall not limit or interfere with the individual's freedom to request a hearing.

(e) *Time limit for request.* The State or local agency shall provide individuals a reasonable period of time to request fair hearings; provided that, such time limit is not less than 60 days from the date the agency mails or gives the applicant or participant the notice of adverse action.

(f) *Denial or dismissal of request.* The State and local agencies shall not deny or dismiss a request for a hearing unless—

(1) The request is not received within the time limit set by the State agency in accordance with paragraph (e) of this section;

(2) The request is withdrawn in writing by the appellant or a representative of the appellant;

(3) The appellant or representative fails, without good cause, to appear at the scheduled hearing; or

(4) The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to Program eligibility have changed in such a way as to justify a hearing.

(g) *Continuation of benefits.* Except for participants whose certification period has expired, participants who appeal the termination of benefits within the 15 days advance adverse notice period provided by § 246.7(j)(6) shall continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. Applicants who are denied benefits at initial certification or because of the expiration of their certification may appeal the denial, but shall not receive benefits while awaiting the hearing.

(h) *Rules of procedure.* State and local agencies shall process each request for a hearing under uniform rules of procedure and shall makes these rules of procedure available for public inspection and copying. At a minimum, such rules shall include: The time limits for requesting and conducting a hearing; all advance notice requirements; the rules of conduct at the hearing; and the rights and responsibilities of the appellant. The procedures shall not be unduly complex or legalistic.

(i) *Hearing official.* Hearings shall be conducted by an impartial official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested. The hearing official shall—

(1) Administer oaths or affirmations if required by the State;

(2) Ensure that all relevant issues are considered;

(3) Request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised;

(4) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;

(5) Order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the State agency; and

(6) Render a hearing decision which will resolve the dispute.

(j) *Conduct of the hearing.* The State or lcoal agency shall ensure that the hearing is accessible to the appellant and is held within three weeks from the date the State or local agency received the request for a hearing. The State or local agency shall provide the appellant with a minimum of 10 days advance written notice of the time and place of the hearing and shall enclose an explanation of the hearing procedure with the notice. The State or local agency shall also provide the appellant or representative an opportunity to—

(1) Examine, prior to and during the hearing, the documents and records

presented to support the decision under appeal;

(2) Be assisted or represented by an attorney or other persons;

(3) Bring witnesses;

(4) Advance arguments without undue interference;

(5) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and

(6) Submit evidence to establish all pertinent facts and circumstances in the case.

(k) *Fair hearing decisions.* (1) Decisions of the hearing official shall be based upon the application of appropriate Federal law, regulations and policy as related to the facts of the case as established in the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, constitute the exclusive record for a final decision by hearing official. The State or local agency shall retain the hearing record in accordance with § 246.25 and make these records available, for copying and inspection, to the appellant or representative at any reasonable time.

(2) The decision by the hearing official shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy. The decision shall become a part of the record.

(3) Within 45 days of the receipt of the request for the hearing, the State or local agency shall notify the appellant or representative in writing of the decision and the reasons for the decision in accordance with paragraph (k)(2) of this section. If the decision is in favor of the appellant and benefits were denied or discontinued, benefits shall begin immediately. If the decision concerns disqualification and is in favor of the agency, as soon as administratively feasible, the local agency shall terminate any continued benefits, as decided by the hearing official. If the decision regarding repayment of benefits by the appellant is in favor of the agency, the State or local agency shall resume its efforts to collect the claim, even during pendency of an appeal of a local-level fair hearing decision to the State agency. The appellant may appeal a local hearing decision to the State agency, provided that the request for appeal is made within 15 days of the mailing date of the hearing decision notice. If the decision being appealed concerns disqualification from the Program, the appellant shall not continue to receive benefits while an appeal to the State agency of a decision rendered on appeal at the local level is pending. The decision of a hearing official at the local level is binding on the local agency and the State agency unless it is appealed to the State level and overturned by the State hearing official.

(4) The State and local agency shall make all hearing records and decisions available for public inspection and copying; however, the names and addresses of participants and other members of the public shall be kept confidential.

(l) *Judicial review.* If a State level decision upholds the agency action and the appellant expresses an interest in pursuing a higher review of the decision, the State agency shall explain any further State level review of the decision and any State level rehearing process. If these are either unavailable or have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

[50 FR 6121, Feb. 13, 1985, as amended at 52 FR 21236, June 4, 1987; 59 FR 11503, Mar. 11, 1994]

## Subpart D—Participant Benefits

### § 246.10 Supplemental foods.

(a) *General.* This section prescribes the requirements for providing supplemental foods to participants.

(b) *State agency responsibilities.* State agencies shall—

(1) Identify foods which are acceptable for use under the Program in accordance with the requirements of this section and provide to local agencies a list of acceptable foods and their maximum monthly quantities as specified in paragraph (c) of this section; and

(2) Ensure that local agencies—

(i) Make available at least one food from each group in each food package

listed in paragraph (c) of this section. However, this does not mean that the local agency must provide each participant with a food from each food group;

(ii) Make available to participants the supplemental foods, as authorized in paragraph (c) of this section; and

(iii) Designate a competent professional authority to prescribe types of supplemental foods in quantities appropriate for each participant, taking into consideration the participant's age and dietary needs. The amounts of supplemental foods shall not exceed the maximum quantities specified in this section.

(c) *Food packages.* There are seven food packages available under the Program which may be provided to participants. The authorized supplemental foods shall be prescribed from food packages according to the category and nutritional need of the participant. The food packages are as follows:

NOTE: The metric units given are mathematical conversions. If packaging practices change, the authorized food quantities will be revised accordingly.

(1) *Food Package I—Infants 0 Through 3 Months.* (i) Iron-fortified infant formula, which is a complete formula not requiring the addition of any ingredients other than water prior to being served in a liquid state, and which contains at least 10 milligrams of iron per liter of formula at standard dilution which supplies 67 kilocalories per milliliters; i.e., approximately 20 kilocalories per fluid ounce of formula at standard dilution. Formulas which do not meet these requirements are authorized when a physician determines that the infant has a medical condition which contraindicates the use of infant formula as described above including, but not limited to, medical conditions which contraindicate the use of iron-fortified formula, metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndromes, and allergies. Low-calorie formulas are not authorized solely for the purpose of managing body weight of infants. Documentation of the physician's determination of the need for a formula which does not meet the requirements described above the specific formula prescribed shall be included in the participant's certification file. Concentrated liquid or powdered formula shall be provided, except that, ready-to-feed formula may be authorized when the competent professional authority determines and documents that there is an unsanitary or restricted water supply, that there is poor refrigeration or that the person who is caring for an infant may have difficulty in correctly diluting concentrated liquid or powdered formula.

(ii) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

| Food | Quantity |
|---|---|
| Formula: | |
| Concentrated liquid formula. | 403 fluid oz. (11.9 L). |
| or | |
| Powdered formula | May be substituted at the rate of 8 lbs. (3.6 kg) per 403 fluid oz. (11.9 L) of concentrated liquid formula. |
| or | |
| Ready-to-feed formula. | May be substituted at the rate of 26 fluid oz. (.8 L) per 13 fluid oz. (.4 L) of concentrated liquid formula. |

(2) *Food Package II—Infants 4 through 12 Months.* (i) Formula as specified in paragraph (c)(1)(i) of this section.

(ii) Infant cereal which contains a minimum of 45 milligrams of iron per 100 grams of dry cereal.

(iii) Single strength fruit juice which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit juice which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice; or infant juice which contains a minimum of 30 milligrams of vitamin C per 100 milliliters. Issuance prior to the time when the infant can drink from a cup is discouraged. The competent professional authority shall instruct the participant's parent or guardian to feed the juice to the participant from a cup to prevent ''bottle caries.''

(iv) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

| Food | Quantity |
|---|---|
| Formula: | |
| Concentrated liquid formula. | 403 fluid oz. (11.9 L). |
| or | |
| Powdered formula | May be substituted at the rate of 8 lb. (3.6 kg) per 403 fluid oz. (11.9 L) of concentrated liquid formula. |
| or | |
| Ready-to-feed formula. | May be substituted at the rate of 26 fluid oz. (.8 L) per 13 fluid oz. (.4 L) of concentrated liquid formula. |
| Infant cereal ..... | 24 oz. dry (.7 kg). |
| Juice: [1] | |
| Single strength adult juice. | 92 fluid oz. (2.7 L). |
| or | |
| Frozen concentrated juice. | 96 fluid oz. reconstituted (2.8 L). |
| or | |
| Infant juice ..... | May be substituted at the rate of 63 fluid oz. (1.9 L) of infant juice per 92 fluid oz. (2.7 L) of single strength adult juice. |

[1] Combinations of single strength or frozen concentrated juice may be issued as long as the total volume of juice does not exceed the amount specified for single strength juice.

(3) *Food Package III—Children/Women with Special Dietary Needs.* Children and women with special dietary needs may receive the following supplemental foods if the physician determines that the participant has a medical condition which precludes or restricts the use of conventional foods and necessitates the use of a formula including, but not limited to, metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndrome and allergies. The supplemental foods described below are not authorized solely for the purpose of enhancing nutrient intake or managing body weight of children and women participants. Documentation of the physician's determination of the need for a formula and the specific formula prescribed shall be included in the participant's certification file.

(i) Formula intended for use as an oral feeding and prescribed by a physician.

(ii) Cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitiamin C per 100 milliliters of reconstituted juice.

(iv) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and special dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

| Food | Quantity |
|---|---|
| Formula: | |
| Concentrated liquid formula. | 403 fluid oz. (11.9 L). |
| Addition [1] ..... | 52 fluid oz. (1.5 L). |
| or | |
| Powdered formula | May be substituted at a rate of 8 lb. (3.6 kg) per 403 fluid oz. (11.9 L) of concentrated liquid formula. |
| Addition [1] ..... | 1 lb. (.4 kg). |
| or | |
| Ready-to-feed formula. | May be substituted at the rate of 26 fluid oz. (.8 L) per 13 fluid oz. (.4 L) of concentrated liquid formula. |
| Addition [1] ..... | 104 fluid oz. (3.1 L). |
| Cereal (hot or cold) ... | 36 oz. dry (1 kg). |
| Juice: [2] | |
| Single strength juice. | 138 fluid oz. (4.1 L). |
| or | |
| Frozen concentrated juice. | 144 fluid oz. reconstituted (4.3 L). |

[1] Additional formula may be issued on an individual basis provided the need is demonstrated and documented in the individual's certification file by the competent professional authority.

[2] Combinations of single strength and frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.

(4) *Food Package IV—Children 1 to 5 Years.* (i) Pasteurized fluid whole milk which is flavored or unflavored and which contains 400 International Units of vitamin D per quart (.9 liter); or pasteurized fluid skim or lowfat milk which is flavored or unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skimmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry

milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

(ii) Adult cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(iv) Eggs or dried egg mix.

(v) Peanut butter or mature dry beans or peas, including but not limited to, lentils, black, navy, kidney, garbanzo, soy, pinto, and mung beans, crowder, cow, split and black-eyed peas.

(vi) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

| Food | Quantity |
|---|---|
| Milk: | |
| Fluid whole milk ..... | 24 qt. (22.7 L). |
| or | |
| Fluid skim or low fat milk. | May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis. |
| or | |
| Cultured buttermilk | May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis. |
| or | |
| Evaporated whole milk. | May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk. |
| or | |
| Evaporated skimmed milk. | May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk. |
| or | |
| Dry whole milk ..... | May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. |
| or | |
| Nonfat or lowfat dry milk. | May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 L) of fluid whole milk. |
| or | |
| Cheese ..... | May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. 4 lbs. (1.8 kg) is the maximum amount which may be substituted.[1] |
| Eggs: | |
| Eggs ..... | 2 doz. or 2½ doz. |
| or | |
| Dried egg mix ..... | May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs or 2 lb. (.9 kg) egg mix per 2½ doz. fresh eggs. |
| Cereals (hot or cold) | 36 oz. dry (1 kg). |
| Juice:[2] | |
| Single strength juice. | 276 fluid oz. (8.2 L). |
| or | |
| Frozen concentrated juice. | 288 fluid oz. reconstituted (8.5 L). |
| Legumes: | |
| Dry beans or peas | 1 lb. (.4 kg). |
| or | |
| Peanut butter ..... | 18 oz. (.5 kg). |

[1] Additional cheese may be issued on an individual basis in cases of lactose intolerance, provided the need is documented in the participant's file by the competent professional authority.

[2] Combinations of single strength and frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.

(5) *Food Package V—Pregnant and Breastfeeding Women (Basic).* (i) Pasteurized fluid whole milk which is flavored or unflavored and which contains 400 International Units of Vitamin D per quart (.9 liter) or pasteurized fluid skim or lowfat milk which is flavored or unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skimmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster,

Provolone, Mozzarella Part-Skim or Whole).

(ii) Adult cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(iv) Eggs or dried egg mix.

(v) Peanut butter or mature dry beans or peas, including but not limited to lentils, black, navy, kidney, garbanzo, soy, pinto and mung beans, crowder, cow, split and black-eyed peas.

(vi) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

| Food | Quantity |
|---|---|
| Milk: | |
| Fluid whole milk ..... | 28 qt. (26.5 L). |
| or | |
| Fluid skim or lowfat milk. | May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis. |
| or | |
| Cultured buttermilk | May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis. |
| or | |
| Evaporated whole milk. | May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk. |
| or | |
| Evaporated skimmed milk. | May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk. |
| or | |
| Dry whole milk ..... | May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. |
| or | |
| Nonfat or lowfat dry milk. | May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 L) of fluid whole milk. |
| or | |
| Cheese ..... | May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. 4 lbs. (1.8 kg) is the maximum amount which may be substituted.[1] |
| Eggs: | |
| Eggs ..... | 2 doz. or 2½ doz. |
| or | |
| Dried egg mix ..... | May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs, or 2 lb. (.9 kg) egg mix per 2½ doz. fresh eggs. |
| Cereals (hot or cold) | 36 oz. dry (1 kg). |
| Juice:[2] | |
| Single strength juice. | 276 fluid oz. (8.2 L). |
| or | |
| Frozen, concentrated juice. | 288 fluid oz. reconstituted (8.5 L). |
| Legumes: | |
| Dry beans or peas | 1 lb. (.4 kg). |
| or | |
| Peanut butter ..... | 18 oz. (.5 kg). |

[1] Additional cheese may be issued on an individual basis in cases of lactose intolerance, provided the need is documented in the participant's file by the competent professional authority.

[2] Combinations of single strength or frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.

(6) *Food Package VI—Nonbreastfeeding Postpartum Women.* (i) Pasteurized fluid whole milk which is flavored or unflavored and which contains 400 International Units of vitamin D per quart (.9 liter); or pasteurized fluid skim or lowfat milk which is flavored or unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skimmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of Vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

(ii) Cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.1 grams of sucrose and

other sugars per 100 grams of dry cereal (6 grams per 1 ounce).

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(iv) Eggs or dried egg mix.

(v) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

| Food | Quantity |
|---|---|
| Milk: | |
| Fluid whole milk ..... | 24 qt. (22.7 L). |
| or | |
| Fluid skim or lowfat milk. | May be substituted for fluid whole milk on a quart-for-quart (.9 L ) basis. |
| or | |
| Cultured buttermilk | May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis. |
| or | |
| Evaporated whole milk. | May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk. |
| or | |
| Evaporated skimmed milk. | May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk. |
| or | |
| Dry whole milk ..... | May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. |
| or | |
| Nonfat or lowfat dry milk. | May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 L) of fluid whole milk. |
| or | |
| Cheese ..... | May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. 4 lbs. (1.8 kg) is the maximum amount which may be substituted.[1] |
| Eggs: | |
| Eggs ..... | 2 doz. or 2½ doz. |
| or | |
| Dried egg mix ..... | May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs of 2 lb. (.9 kg) egg mix per 2½ doz. fresh eggs. |
| Cereal (hot or cold) ... | 36 oz. dry (1 kg). |
| Juice.[2] | |
| Single strength juice. | 184 fluid oz. (5.4 L). |
| or | |
| Frozen concentrated juice. | 192 fluid oz. reconstituted (5.7 L). |

[1] Additional cheese may be issued on an individual basis in cases of lactose intolerance, provided the need is documented in the participant's file by the competent professional authority.

[2] Combinations of single strength or frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.

(7) *Food Package VII—Breastfeeding Women (Enhanced).* (i) Pasteurized fluid whole milk which is flavored or unflavored and which contains 400 International Units of Vitamin D per quart (.9 liter) or pasteurized fluid skim or lowfat milk which is flavored or unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skim milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

(ii) Domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

(iii) Adult cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

(iv) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(v) Eggs or dried egg mix.

(vi) Peanut butter.

(vii) Mature dry beans or peas, including but not limited to lentils,

black, navy, kidney, garbanzo, soy, pinto and mung beans, crowder, cow, split and black-eyed peas.

(viii) Tuna: Canned white, light, dark or blended tuna packed in water or oil, including solid and solid pack; chunk, chunks and chunk style; flake and flakes; and grated.

(ix) Carrots: Raw, canned or frozen. Mature raw; canned and frozen carrots containing only the mature root of the carrot plant packed in water.

(x) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

| Food | Quantity |
|---|---|
| Milk: | |
| Fluid whole milk or | 28 qt. (26.5 L). |
| Cheese or | May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. 4 lbs. (1.8 kg) is the maximum amount which may be substituted. Additional cheese may be issued on an individual basis in cases of lactose intolerance, provided the need is documented in the participant's file by the competent professional authority. |
| Fluid skim or lowfat milk or | May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis. |
| Cultured buttermilk or | May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis. |
| Evaporated whole milk or | May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk. |
| Evaporated skimmed milk or | May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk. |
| Dry whole milk or | May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. |
| Nonfat or lowfat dry milk | May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 L) of fluid whole milk. |
| Cheese: | |
| Cheese | 1 lb. (.4 kg). |
| Eggs: | |
| Eggs or | 2 doz. or 2½ doz. |
| Dried egg mix | May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs, or 2 lb. (.9 kg) egg mix per 2½ doz. fresh eggs. |
| Cereals: | |
| Cereals (hot or cold) | 36 oz. dry (1 kg). |
| Juice: | |
| Single strength juice or | 322 fluid oz. (9.6 L). |
| Frozen concentrated juice | 336 fluid oz. reconstituted (10.0 L). Combinations of single strength or frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice. |
| Legumes: | |
| Dry beans or peas and | 1 lb. (.4 kg). May be substituted for peanut butter at the rate of 1 lb. of dry beans or peas per 18 oz. of peanut butter. |
| Peanut butter | 18 oz. (.5 kg). Peanut butter may not be substituted for mature dry beans or peas at any rate. |
| Fish: | |
| Tuna | 26 oz. (.8 kg). |
| Vegetable: | |
| Raw carrots or | 2 lb. (.9 kg). |
| Frozen carrots or | May be substituted for fresh at the rate of 1 lb. frozen per 1 lb. fresh. |
| Canned carrots | May be substituted for fresh at the rate of 1 16–20 ounce can of carrots per 1 lb. fresh. |

(d) *Use of commodity foods.* (1) At the request of a State agency, the Department will purchase commodity foods for the State agency using funds allocated to the State agency. The commodity foods purchased and made available to the State agency shall be equivalent to the foods specified in paragraph (c) of this section.

(2) The State agency shall—

(i) Distribute the commodity foods to the local agency or participant;

(ii) Ensure satisfactory storage conditions for the commodity foods, including documentation of proper insurance; and

(iii) Ensure that there are proper storage facilities for commodity foods.

(e) *Plans for substitutions or eliminations.* (1) The State agency may submit to FCS a plan for substitution of food(s) acceptable for use in the Program to allow for different cultural eating patterns and substitution or elimination of a category of foods to accommodate the special needs of homeless persons, and/or residents of institutions if the State agency chooses to serve such persons under §246.7(m)(2) of this part. The plan shall provide the State agency's justification, including a specific explanation of the cultural eating pattern or the homeless situation which requires the proposed alteration and other information necessary for FCS to evaluate the plan as specified in paragraph (e)(2) of this section for cultural substitutions and in paragraph (e)(3) of this section for homeless substitutions or eliminations.

(2) FCS will evaluate a State agency's plan for substitution of foods for different cultural eating patterns based on the following criteria:

(i) Any proposed substitute food must be nutritionally equivalent or superior to the food it is intended to replace.

(ii) The proposed substitute must be widely available to participants in the areas where the substitute is intended to be used.

(iii) The cost of the substitute must be equivalent to or less than the cost of the food it is intended to replace.

(3) FCS will evaluate a State agency's plan for substitution or elimination of a food category to accommodate the special needs of a specific group of homeless persons based on the justification presented by the State agency documenting the need. Documentation shall illustrate that all alternatives from within existing food packages have been explored and shall include a specific description of the circumstances of the homeless persons to be served that necessitate the proposed food package alteration.

(4) FCS will make a determination on the proposed plan based on the evaluation criteria specified in paragraph (e)(2) or (e)(3) of this section, as appropriate. The State agency shall substitute or eliminate foods only after receiving the written approval of FCS.

(f) *Infant formula manufacturer registration.* Infant formula manufacturers supplying formula to the WIC Program shall register with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.*). Such manufacturers wishing to bid for a State contract to supply infant formula to the program shall first certify with the State health department that their formulas comply with the Federal Food, Drug, and Cosmetic Act and regulations issued pursuant to the Act.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985, as amended at 51 FR 13208, Apr. 18, 1986; 51 FR 16155, May 1, 1986; 53 FR 25314, July 6, 1988; 54 FR 51295, Dec. 14, 1989; 57 FR 34506, Aug. 5, 1992; 57 FR 56240, Nov. 27, 1992]

### §246.11 Nutrition education.

(a) *General.* (1) Nutrition education shall be considered a benefit of the Program, and shall be made available at no cost to the participant. Nutrition education shall be designed to be easily understood by participants, and it shall bear a practical relationship to participant nutritional needs, household situations, and cultural preferences including information on how to select food for themselves and their families. Nutrition education shall be thoroughly integrated into participant health care plans, the delivery of supplemental foods, and other Program operations.

(2) The State agency shall ensure that nutrition education is made available to all participants. Nutrition education may be provided through the local agencies directly, or through arrangements made with other agencies. At the time of certification, the local agency shall stress the positive, long-term benefits of nutrition education and encourage the participant to attend and participate in nutrition education activities. However, individual participants shall not be denied supplemental foods for failure to attend or participate in nutrition education activities.

(3) As an integral part of nutrition education, the State agency shall ensure that local agencies provide drug and other harmful substance abuse information to all pregnant, postpartum,

and breastfeeding women and to parents or caretakers of infants and children participating in the program. Drug and other harmful substance abuse information may also be provided to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other than the Program.

(b) *Goals.* Nutrition education shall be designed to achieve the following two broad goals:

(1) Stress the relationship between proper nutrition and good health with special emphasis on the nutritional needs of pregnant, postpartum, and breastfeeding women, infants and children under five years of age, and raise awareness about the dangers of using drugs and other harmful substances during pregnancy and while breastfeeding.

(2) Assist the individual who is at nutritional risk in achieving a positive change in food habits, resulting in improved nutritional status and in the prevention of nutrition-related problems through optimal use of the supplemental foods and other nutritious foods. This is to be taught in the context of the ethnic, cultural and geographic preferences of the participants and with consideration for educational and environmental limitations experienced by the participants.

(c) *State agency responsibilities.* The State agency shall perform the following activities in carrying out nutrition education responsibilities:

(1) Develop and coordinate the nutrition education component of Program operations with consideration of local agency plans, needs and available nutrition education resources.

(2) Provide in-service training and technical assistance for professional and para-professional personnel involved in providing nutrition education to participants at local agencies. The State agency shall also provide training on the promotion and management of breastfeeding to staff at local agencies who will provide information and assistance on this subject to participants.

(3) Identify or develop resources and educational materials for use in local agencies, including breastfeeding promotion and instruction materials, taking reasonable steps to include materials in languages other than English in areas where a significant number or proportion of the population needs the information in a language other than English, considering the size and concentration of such population and, where possible, the reading level of participants.

(4) Develop and implement procedures to ensure that nutrition education is offered to all adult participants and to parents and guardians of infant or child participants, as well as child participants, whenever possible.

(5) Annually perform and document evaluations of nutrition education and breastfeeding promotion and support activities. The evaluations shall include an assessment of participants' views concerning the effectiveness of the nutrition education and breastfeeding promotion and support they received.

(6) Monitor local agency activities to ensure compliance with provisions set forth in paragraphs (c)(8), (d), and (e) of this section.

(7) Establish standards for participant contacts that ensure adequate nutrition education in accordance with paragraph (e) of this section.

(8) Establish standards for breastfeeding promotion and support which include, at a minimum, the following:

(i) A policy that creates a positive clinic environment which endorses breastfeeding as the preferred method of infant feeding;

(ii) A requirement that each local agency designate a staff person to coordinate breastfeeding promotion and support activities;

(iii) A requirement that each local agency incorporate task-appropriate breastfeeding promotion and support training into orientation programs for new staff involved in direct contact with WIC clients; and

(iv) A plan to ensure that women have access to breastfeeding promotion and support activities during the prenatal and postpartum periods.

(d) *Local agency responsibilities.* Local agencies shall perform the following activities in carrying out their nutrition education responsibilities:

(1) Make nutrition education available or enter into an agreement with another agency to make nutrition education available to all adult participants, and to parents or caretakers of infant and child participants, and whenever possible, to child participants. Nutrition education may be provided through the use of individual or group sessions. Educational materials designed for Program participants may be utilized to provide education to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other than the program.

(2) Develop an annual local agency nutrition education plan consistent with the State's nutrition education component of Program operations and in accordance with this part and FCS guidelines. The local agency shall submit its nutrition education plan to the State agency by a date specified by the State agency.

(e) *Participant contacts.* (1) The nutrition education contacts shall be made available through individual or group sessions which are appropriate to the individual participant's nutritional needs. All pregnant participants shall be encouraged to breastfeed unless contraindicated for health reasons.

(2) During each six-month certification period, at least two nutrition contacts shall be made available to all adult participants and the parents or caretakers of infant and child participants, and wherever possible, the child participants themselves.

(3) Nutrition education contacts shall be made available at a quarterly rate, but not necessarily taking place within each quarter, to parents or caretakers of infant participants certified for a period in excess of six months.

(4) The local agency shall document in each participant's certification file that nutrition education has been given to the participant in accordance with State agency standards, except that the second or any subsequent nutrition education contact during a certification period that is provided to a participant in a group setting may be documented in a masterfile. Should a participant miss a nutrition education appointment, the local agency shall, for purposes of monitoring and further education efforts, document this fact in the participant's file, or, at the local agency's discretion, in the case of a second or subsequent missed contact where the nutrition education was offered in a group setting, document this fact in a master file.

(5) An individual care plan shall be provided for a participant based on the need for such plan as determined by the competent professional authority, except that any participant, parent, or caretaker shall receive such plan upon request.

(6) Contacts shall be designed to meet different cultural and language needs of Program participants.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985, as amended at 58 FR 11507, Feb. 26, 1993; 59 FR 11503, Mar. 11, 1994]

## Subpart E—State Agency Provisions

### § 246.12 Food delivery systems.

(a) *General.* This section sets forth design and operational requirements for State and local agency food delivery systems.

(1) The State agency is responsible for the fiscal management of, and accountability for, food delivery systems under its jurisdiction.

(2) The State agency shall design all food delivey systems to be used by local agencies under its jurisdiction.

(3) FCS may, for a stated cause and by written notice, require revision of a proposed or operating food delivery system and will allow a reasonable time for the State agency to effect such a revision.

(4) All contracts or agreements entered into by the State or local agency for the management or operation of food delivery systems shall be in conformance with the requirements of 7 CFR part 3016.

(b) *Uniform food delivery systems.* The State agency may operate up to three types of food delivery systems—retail purchase, home delivery or direct distribution. Each system shall be procedurally uniform within the jurisdiction of the State agency. When used, food instruments shall be uniform within each type of system.

(c) *Free of charge.* Participants shall receive the Program's supplemental foods free of charge.

(d) *Compatibility of food delivery system.* The State agency shall ensure that the food delivery system is compatible with delivery of health and nutrition education services to the participants.

(e) *Authorization of food vendors.* Only food vendors authorized by the State agency may redeem food intruments or otherwise provide supplemental foods to participants.

(1) There shall be a documented onsite visit prior to, or at the time of, initial authorization of a new vendor. However, vendors authorized prior to the date of State implementation of the amendment to Program regulations published at 47 FR 23626 need not have a documented visit.

(2) The State agency shall authorize an appropriate number and distribution of food vendors in order to assure adequate participant convenience and access and to assure that State or local officials can effectively manage review of authorized food vendors in their jurisdiction. The State agency may establish criteria to limit the number of authorized food vendors in its jurisdiction.

(3) The State agency is encouraged to consider the impact of authorization decisions on small businesses.

(f) *Food vendor agreements.* The State agency shall ensure that all participating food vendors enter into written contracts or agreements with the State or local agency. The food vendor contract or agreement shall be signed by a representative who has legal authority to obligate the food vendor. When the food vendor is obligating more than one outlet, all outlets shall be specified in the contract or agreement. When more than one outlet is specified in the contract or agreement, an individual outlet may be added or deleted without affecting the remainder of outlets. Neither the State or local agency nor the vendor has an obligation to renew the vendor contract or agreement. The State or local agency shall provide vendors with not less than 15 days advance written notice of the expiration of a contract or agreement.

(1) In the retail purchase system, a standard vendor contract or agreement shall be used statewide, though exceptions may be made with the approval of the State agency.

(2) The food vendor contract or agreement shall contain the following specifications, although the State agency may determine the exact wording to be used:

(i) In providing supplemental foods to the participants, the food vendor shall only provide the supplemental foods specified on the food instrument.

(ii) The food vendor shall provide supplemental foods at the current price or at less than the current price charged to other customers.

(iii) When food instruments are used, the food vendor shall submit those food instruments for payment within the allowed time period and accept food instruments from a participant only within the allowed time period.

(iv) The State agency has the right to demand refunds for charges of more than the actual purchase price for supplemental foods.

(v) The State agency may deny payment to the food vendor for improper food instruments or may demand refunds for payments already made on improper food instruments.

(vi) The food vendor shall not seek restitution from participants for food instruments not paid by the State or local agency.

(vii) The manager of the store or an authorized representative such as the head cashier shall agree to accept training on Program procedures.

(viii) The food vendor shall inform and train cashiers or other staff on Program requirements.

(ix) The food vendor shall be accountable for actions of employees in the utilization of food instruments or provision of supplemental foods.

(x) The food vendor shall offer Program participants the same courtesies as offered to other customers.

(xi) The food vendor may be monitored for compliance with Program rules.

(xii) During a monitoring visit of a retail vendor, the food vendor shall provide access to food instruments negotiated the day of the review at the request of the reviewer.

(xiii) Retail vendors shall provide access to shelf price records, if available.

(xiv) A vendor who commits fraud or abuse of the Program is liable to prosecution under applicable Federal, State or local laws. Under § 246.23 of the regulations, those who have willfully misapplied, stolen or fraudulently obtained program funds shall be subject to a fine of not more than $10,000 or imprisonment for not more than five years or both, if the value of the funds is $100 or more. If the value is less than $100, the penalties are a fine of not more than $1,000 or imprisonment for not more than one year or both.

(xv) The food vendor shall comply with the nondiscrimination provisions of Departmental regulations (7 CFR parts 15, 15a and 15b).

(xvi) Neither the State agency nor the food vendor has an obligation to renew the vendor contract or agreement.

(xvii) Either the State agency or the vendor may terminate the contract or agreement for cause after providing advance written notice, of a period of not less than 15 days to be specified by the State agency.

(xviii) The State agency may disqualify a food vendor for reasons of Program abuse. The vendor has the right to appeal a State agency decision pertaining to denial of application to participate, vendor disqualification or any other adverse action which affects participation during the contract or agreement performance period. Expiration of a contract or agreement with a food vendor is not subject to appeal.

(xix) The food vendor shall notify the State agency when the vendor ceases operations or ownership changes. The contract or agreement is null and void if the ownership changes.

(xx) The food vendor shall not collect sales tax on WIC food purchases.

(3) Other provisions shall be added to the contracts or agreements to implement State agency options in paragraphs (k)(1)(iii), (k)(1)(iv), and (s)(5)(iv) of this section.

(g) *Periodic review of food vendor qualifications.* The State agency shall conduct a periodic review of the qualifications of all authorized food vendors under its jurisdiction, at least once every two years. The State agency shall establish criteria used to assess the adequacy of all food vendor qualifications. Based upon the results of such reviews the State agency shall make appropriate adjustments among the participating food vendors, such as termination of agreements.

(h) *Food vendor training and guidelines.* The State agency shall ensure that training is provided by the State or local agency for participating food vendors. The training shall be designed to prevent Program errors or abuse and to improve Program service.

(1) When vendor training is delegated to the local agency, the State agency shall provide training to local agency staff on effective vendor training methods.

(2) Food vendors shall be provided with pertinent Program information and guidance concerning the authorized supplemental foods, including a list of acceptable brand name products.

(i) *Monitoring of food vendors.* The State agency shall be responsible for the monitoring of food vendors within its jurisdiction. If the State agency chooses to delegate all or part of this responsibility to local agencies, the State agency shall provide training to local agency staff in effective methods of vendor monitoring.

(1) The State agency shall design and implement a system to identify high risk vendors and ensure on-site monitoring, further investigation, and sanctioning of such vendors as appropriate. Criteria for identifying high risk vendors may include such considerations as level and/or severity of suspected overcharges in redeemed food instruments, errors in redeemed food instruments, or participant complaints.

(2) The State agency shall design and implement a system to conduct on-site monitoring visits to at least 10 percent of authorized food vendors per year, selected on a representative basis, in order to survey the types and levels of abuse and errors among participating food vendors and to take corrective action, as appropriate. The State agency may submit an alternate representative vendor monitoring plan, based on statistical sampling methods, for FCS approval.

(3) A summary of the results of the monitoring of high risk and representative food vendors and of the review of

food instruments shall be submitted annually to FCS and within four months after the end of each fiscal year. Plans for improvement in the coming year shall be included in the State Plan, in accordance with § 246.4.

(4) The following shall be documented for all on-site vendor monitoring visits, at a minimum: Names of both vendor and reviewer; date of review; nature of problem(s) detected or the observation that the vendor appears to be in compliance with Program requirements; how the vendor plans to correct deficiencies detected; and the signature of the reviewer. Methods of on-site monitoring visits may include, but are not limited to: compliance purchases, review of cashier check-out procedures, review of inventory records, and review of the availability and prices of Program supplemental foods.

(5) The State agency shall have the capability to conduct compliance purchases to collect evidence of improper vendor practices, or shall arrange for this responsibility to be assumed by the proper State or local authorities.

(j) *Participant and vendor complaints.* The State agency shall have procedures which document the handling of complaints by participants and vendors. Complaints of civil rights discrimination shall be handled in accordance with § 246.8(b).

(k) *Participant and vendor sanctions.* (1) The State agency shall establish policies which determine the type and level of sanctions to be applied against food vendors, based upon the severity and nature of the Program violations observed, and such other factors as the State agency determines appropriate, such as whether the violation represented repeated offenses over a period of time, whether the offenses represented vendor policy or whether they represented the actions of an individual employee who did not understand Program rules, and whether prior warning and an opportunity for correction was provided to the vendor. Vendor offenses which are subject to sanctions shall include at least the following: Providing cash, unauthorized foods or other items to participants in lieu of authorized supplemental foods; charging the State or local agency for foods not received by the participant; and charging the State or local agency more for supplemental foods than other customers are charged for the same food item. The State agency shall provide adequate procedures for vendors to appeal a disqualification from participation under the Program as specified in § 246.18.

(i) Food vendors may be subject to sanctions in addition to, or in lieu of, disqualification, such as claims for improper or overcharged food instruments and the penalties outlined in § 246.23, in case of deliberate fraud.

(ii) The period of disqualification from Program participation shall be a reasonable period of time, not to exceed three years. The maximum period of disqualification shall be imposed only for serious or repeated Program abuse.

(iii) The State agency may disqualify a food vendor from the Program who is currently disqualified from another FCS program. If a State agency chooses to use this opion, it shall include a provision to this effect in its vendor agreement, in accordance with paragraph (f) of this section.

(iv) The State agency may disqualify a vendor who has been assessed a civil money penalty in the Food Stamp Program in lieu of disqualification, as provided in 7 CFR 278.6, only if the State agency:

(A) Documents that any such disqualification will not create undue hardship for participants; and

(B) Includes notification that it will take such disqualification action in its vendor agreement, in accordance with paragraph (f)(3) of this section.

(v) Prior to disqualifying a food vendor, the State agency shall consider whether the disqualification would create undue hardships for participants.

(2) The State agency shall establish procedures designed to control participant abuse of the program. Participant abuse includes, but is not limited to, intentionally making false or misleading statement or intentionally misrepresenting, concealing or withholding facts to obtain benefits; sale of supplemental foods or food instruments to, or exchange with, other individuals or entities; receipt from food vendors of

cash or credit toward purchase of unauthorized food or other items of value in lieu of authorized supplemental foods; and physical abuse, or threat of physical abuse, of clinic or vendor staff. The State agency shall establish sanctions for participant abuse. Such sanctions may, at the discretion of the State agency, include disqualification from the Program for a period up to three months. Warnings may be given prior to the imposition of sanctions. Before a participant is disqualified from the Program for alleged abuse, that participant shall be given full opportunity to appeal a disqualification as set forth in § 246.9.

(3) The State agency shall refer food vendors and participants who abuse the Program to Federal, State or local authorities for prosecution under applicable statutes, where appropriate.

(l) *Control of food instruments.* The State agency shall control and provide accountability for the receipt and issuance of supplemental foods and food instruments. The State agency shall ensure that there is secure transportation and storage of unissued food instruments.

(m) *Payment to food vendors.* The State agency shall ensure that food vendors are promptly paid for food costs. Payments for valid food instruments shall be made within 60 days after receipt of the food instruments. Actual payment to food vendors may be made by local agencies.

(n) *Reconciliation of food instruments.* The State agency shall identify disposition of all food instruments as: Validly redeemed, lost or stolen, expired, duplicate, voided or not matching issuance records. Reconciliation of food instruments shall entail reconciliation of each food instrument issued with food instruments redeemed and adjustment of previously reported financial obligations to account for actual redemptions and other changes in the status of food instruments.

(1) Reconciliation of food instruments shall be performed within 150 days of the first valid date for participant use and shall be in accordance with the financial management requirements of § 246.13.

(2) The State agency shall be able to demonstrate to FCS its capability to reconcile a given redeemed food instrument to valid certification records.

(o) *Recipients of food instruments.* The State agency shall ensure that each participate or representative signs a receipt for supplemental foods or food instruments. This requirement shall not pertain to systems which deliver food instruments by alternate means pursuant to paragraph (r)(8) of this section, such as by mailing. The State agency shall establish uniform procedures which allow proxies designated by participants to act on their behalf. In determining whether an individual participant should be allowed to designate a proxy or proxies, there shall be consideration of whether there are adequate measures for the provision of nutrition education and health services to that participant.

(p) *Instructions to recipients.* The State agency shall ensure that participants and their proxies receive instructions on the proper use of food instruments, or on the procedures for receiving supplemental foods. Participants and their proxies shall also be notified that they have the right to complain about improper vendor practices with regard to Program responsibilities.

(q) *Conflict of interest.* The State agency shall ensure that no conflict of interest exists between any local agency and the food vendor or vendors within the local agency's jurisdiction.

(r) *Retail purchase systems.* Retail purchase food delivery systems are systems in which participants obtain supplemental foods by submitting a food instrument to local retail outlets. All retail purchase food delivery systems shall meet the following requirements:

(1) The State agency shall use uniform food instruments within its jurisdiction. The State agency is responsible for the design and printing of the uniform food instruments, and their serialization.

(2) Each food instrument shall clearly bear on its face the following information:

(i) The first date on which the food instrument may be used by the participant to obtain supplemental foods.

(ii) The last date by which the participant may use the food instrument to obtain supplemental foods. This date shall be a minimum of 30 days from the

date specified in paragraph (r)(2)(i) of this section or, for the participant's first month of issuance, it may be the end of the month or cycle for which the food instrument is valid. Rather than entering a specific expiration date on each instrument, all instruments may be printed with a notice that the participant must transact them within a specified number of days after the first date on which the instrument may be used.

(iii) An expiration date by which the food vendor is required to submit the food instrument for payment. This date shall be no more than 90 days from the date specified in paragraph (r)(2)(i) of this section. If the date is less than 90 days, then the State agency shall ensure that the food vendor is able to submit food instruments for redemption within the required time limit without undue burden. This date may otherwise be printed as being no more than 90 days after the date in paragraph (r)(2)(i) of this section.

(iv) A unique and sequential serial number.

(v) At the discretion of the State agency, a maximum purchase price which is higher than the price of the food for which it will be used, but low enough to be a reasonable protection against potential losses of funds. When the maximum value is shown, the space for the actual value of the supplemental foods purchased shall be clearly distinguishable. For example, the words ''actual amount of sale'' could be printed larger and in a different area of the food instrument than the maximum value.

(3) The State agency shall implement requirements to ensure that the actual purchase price of the supplemental foods is recorded at the time of purchase. For example, the State agency may require that the food vendor write the purchase price on the food instrument prior to the signature of the participant.

(4) The State agency shall implement procedures to ensure that every redeemed food instrument can be identified to the food vendor which redeemed the food instrument. If the vendor utilizes outlets, all outlets participating in the Program shall be identified. For example, the State agency may require that all authorized food vendors stamp their names on all redeemed food instruments prior to submission.

(5) The State agency shall establish procedures to ensure the propriety of redeemed food instruments.

(i) The State agency shall design and implement a system of review of food instrument to detect suspected overcharges and to identify food vendors with high levels of suspected overcharges.

(ii) The State agency shall design and implement a system of review of food instruments to detect errors, including, at least, purchase price missing, participant signature missing, vendor identification missing, redemption by vendor outside of the valid date and, as appropriate, altered prices. The State agency shall implement procedures to reduce the number of errors, where possible.

(iii) When payment for a food instrument is denied or delayed, or a claim for reimbursement is assessed, the affected food vendor shall have an opportunity to correct or justify the overcharge or error. For example, if the actual price is missing, the vendor may demonstrate what price should have been included. If the State agency is satisfied with the correction or justification, then it shall provide payment, or adjust the payment or claim to the vendor accordingly.

(iv) If a claim is assessed against a food vendor after the problem food instrument has been paid, the State agency may offset future payments to the food vendor for the amount of the claim. If a State agency chooses to utilize this option, it shall include a provision to this effect in its vendor agreement, in accordance with paragraph (f) of this section.

(6) With justification and documentation, State agencies may reimburse food vendors for food instruments submitted after the expiration date. If the total value of the food instruments submitted at one time exceeds $200.00, reimbursement may not be made without the approval of the FCS Regional Office.

(7) The State agency shall ensure that no more than a three-month supply of food instruments is issued to any

participant at one time and that nutrition education and health services are frequently made available to the participant.

(8) Participants or their authorized proxies shall personally pick up food instruments when scheduled for nutrition education or for an appointment to determine whether participants are eligible for a second or subsequent certification period. However, in all other circumstances the State agency may provide for issuance of food instruments through an alternative means, such as electronic benefit transfer (EBT) or mailing, unless FCS determines that such action would jeopardize the integrity of program services or program accountability. If a State agency opts to mail WIC food instruments, it must provide justification, as part of the description of its alternative issuance system in its State plan, as required in §246.4(a)(21), for mailing WIC food instruments to areas where food stamps are not mailed.

State agencies which opt to mail food instruments must establish and implement a system which ensures the return of food instruments to the State or local agency if the participant no longer resides or receives mail at the address to which the food instruments were mailed.

(s) *Home food delivery systems.* Home food delivery systems are systems in which food is delivered to the participant's home. Systems for home delivery of food shall provide for—

(1) Uniform food instruments, where applicable, which comply with the appropriate requirements set forth in paragraph (s) of this section;

(2) Procurement of supplemental foods in accordance with §246.24, which may entail measures such as the purchase of food in bulk lots by the State agency and the use of discounts that are available to States. The selection of home delivery vendors that are given exclusive contracts to an area shall conform to requirements of 7 CFR part 3016; and

(3) The accountable delivery of supplemental foods to participants. The State agency shall ensure that—

(i) Home delivery vendors are paid only after the delivery of supplemental foods to the participants;

(ii) There exists a routine procedure to verify the actual delivery of supplemental foods to participants. At a minimum, such verification must occur at least once a month; and

(iii) There is retention of records of delivery of supplemental foods and bills sent or payments received for such supplemental foods for at least three years and access of State, local and/or Federal authorities to such records.

(t) *Direct distribution systems.* Direct distribution food delivery systems are systems in which participants pick up food from storage facilities operated by the State or local agency. Systems for direct distribution of food shall provide for—

(1) Uniform food instruments, where applicable, which comply with the appropriate requirements set forth under paragraph (s) of this section;

(2) Adequate storage and insurance coverage that minimizes the danger of loss due to theft, infestation, fire, spoilage, or other causes;

(3) Adequate inventory control of food received, in stock, and issued;

(4) Procurement of supplemental foods in accordance with §246.24, which may entail measures such as purchase of food in bulk lots by the State agency and the use of discounts that are available to States;

(5) The availability of Program benefits to participants and potential participants who live at great distance from storage facilities; and

(6) The accountable delivery of supplemental foods to participants.

[50 FR 6121, Feb. 13, 1985, as amended at 52 FR 21237, June 4, 1987; 53 FR 35301, Sept. 13, 1988; 54 FR 51295, Dec. 14, 1989; 59 FR 11503, Mar. 11, 1994]

### §246.13 Financial management system.

(a) *Disclosure of expenditures.* The State agency shall maintain a financial management system which provides accurate, current and complete disclosure of the financial status of the Program. This shall include an accounting for all property and other assets and all Program funds received and expended each fiscal year.

(b) *Internal control.* The State agency shall maintain effective control over and accountability for all Program

grants and funds. The State agency must have effective internal controls to ensure that expenditures financed with Program funds are authorized and properly chargeable to the Program.

(c) *Record of expenditures.* The State agency shall maintain records which adequately identify the source and use of funds expended for Program activities. These records shall contain, but are not limited to, information pertaining to authorization, receipt of funds, obligations, unobligated balances, assets, liabilities, outlays, and income.

(d) *Payment of costs.* The State shall implement procedures which ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocability of costs in accordance with the cost principles and standard provisions of this part, 7 CFR part 3016, and FCS guidelines and instructions.

(e) *Identification of obligated funds.* The State agency shall implement procedures which accurately identify obligated Program funds at the time the obligations are made.

(f) *Resolution of audit findings.* The State agency shall implement procedures which ensure timely and appropriate resolution of claims and other matters resulting from audit findings and recommendations.

(g) *Use of minority- and women-owned banks.* Consistent with the national goals of expanding opportunities for minority business enterprises, State and local agencies are encouraged to use minority- and women-owned banks.

(h) *Reconciliation of food instruments.* The State agency shall reconcile food instruments in accordance with § 246.12(n).

(i) *Transfer of cash.* The State agency shall have controls to minimize the time elapsing between receipt of Federal funds from the U.S. Department of Treasury and the disbursements of these funds for Program costs. In the Letter of Credit system, the State agency shall make drawdowns from the U.S. Department of Treasury's Regional Disbursing Office as close as possible to the actual date that disbursement of funds is made. Advances made by the State agency to local agencies shall also conform to these same standards.

(j) *Local agency financial management.* The State agency shall ensure that all local agencies develop and implement a financial management system consistent with requirements prescribed by FCS and the State agency pursuant to the requirements of this section.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985]

### § 246.14 Program costs.

(a) *General.* (1) The two kinds of allowable costs under the Program are ''food costs'' and ''nutrition services and administration costs.'' In general, costs necessary to the fulfillment of Program objectives are to be considered allowable costs. The two types of nutrition services and administration costs are:

(i) Direct costs. Those direct costs that are allowable under 7 CFR part 3016.

(ii) Indirect costs. Those indirect costs that are allowable under 7 CFR part 3016. When computing indirect costs, food costs may not be used in the base to which the indirect cost rate is applied. In accordance with the provisions of 7 CFR part 3016, a claim for indirect costs shall be supported by an approved allocation plan for the determination of allowable indirect costs.

(2) Except as provided in paragraph (e) of this section and §§ 246.16(g) and 246.16(h) of this part, funds allocated by FCS for food purchases may not be used to pay nutrition services and administration costs. However, nutrition services and administration funds may be used to pay for food costs.

(b) *Specified allowable food costs.* Food costs are the acquisition cost of the supplemental foods provided to State or local agencies or to participants, whichever receives foods first, except the warehouse facilities costs shall be considered as an allowable food cost. The State agency shall ensure that food costs do not exceed the food vendor's customary sale price. Food example, in retail purchase systems, food costs may not exceed the shelf price of the food provided.

(c) *Specified allowable nutrition services and administration costs.* Allowable nutrition services and administration (NSA) costs include the following:

(1) The cost of nutrition education and breastfeeding promotion and support which meets the requirements of §246.11. During each fiscal year, each State agency shall expend for nutrition education activities and breastfeeding promotion and support activities, an aggregate amount that is not less than the sum of one-sixth of the amount expended by the State agency for costs of NSA, and an amount equal to a proportionate share of $8 million targeted specifically for breastfeeding promotion and support activities. Each State agency's share of the $8 million shall be determined on the basis of the average monthly number of pregnant and breastfeeding women served by a WIC State agency as a percentage of the average monthly number of pregnant and breastfeeding women served by all WIC State agencies. The amount to be spent on nutrition education shall be computed by taking one-sixth of the total fiscal year NSA expenditures. The amount spent by a State agency on breastfeeding promotion and support activities shall be at least an amount that is equal to its proportionate share of the $8 million as specified in this paragraph. If the State agency's total reported nutrition education and breastfeeding promotion and support expenditures are less than the required amount of expenditures, the Department will issue a claim for the difference. The State agency may also request prior written permission from the Department to spend less than the required portions of its NSA grant for either nutrition education or for breastfeeding promotion and support activities. The Department may grant such permission if the State agency has documented that other resources, including in-kind resources, will be used to conduct these activities at a level commensurate with the requirements of this paragraph. Such requests should be submitted to the appropriate FCS regional office for approval. Nutrition education costs are limited to activities which are distinct and separate efforts to help participants understand the importance of nutrition to health. The cost of dietary assessments for the purpose of certification, the cost of prescribing and issuing supplemental foods, the cost of screening for drug and other harmful substance use and making referrals to drug and other harmful substance abuse services, and the cost of other health-related screening shall not be applied to the expenditure requirement for nutrition education and breastfeeding promotion and support activities. The Department shall advise State agencies regarding methods for minimizing documentation of the nutrition education and breastfeeding promotion and support expenditure requirement. Costs to be applied to the one-sixth minimum amount required to be spent on nutrition education and the target share of funds required to be spent on breastfeeding promotion and support include, but need not be limited to—

(i) Salary and other costs for time spent on nutrition education and breastfeeding promotion and support consultations whether with an individual or group;

(ii) The cost of procuring and producing nutrition education and breastfeeding promotion and support materials including handouts, flip charts, filmstrips, projectors, food models or other teaching aids, and the cost of mailing nutrition education or breastfeeding promotion and support materials to participants;

(iii) The cost of training nutrition or breastfeeding promotion and support educators, including costs related to conducting training sessions and purchasing and producing training materials;

(iv) The cost of conducting evaluations of nutrition education or breastfeeding promotion and support activities, including evaluations conducted by contractors;

(v) Salary and other costs incurred in developing the nutrition education and breastfeeding promotion and support portion of the State Plan and local agency nutrition education and breastfeeding promotion and support plans; and

(vi) The cost of monitoring nutrition education and breastfeeding promotion and support activities.

(2) The cost of Program certification procedures, including the following—

(i) Laboratory fees incurred for tests conducted to determine whether persons are at nutritional risk;

(ii) Expendable medical supplies necessary to determine whether persons are at nutritional risk;

(iii) In connection with nutritional risk determinations, medical equipment used for taking anthropometric measurements, such as scales, measuring boards, and skin fold calipers; and for blood analysis to detect anemia, such as spectrophotometers, hematofluorometers and centrifuges; and

(iv) Salary and other costs for time spent on certification.

(3) The cost of outreach services.

(4) The cost of administering the food delivery system, including the cost of transporting food.

(5) The cost of translators for materials and interpreters.

(6) The cost of fair hearings, including the cost of an independent medical assessment of the appellant, if necessary.

(7) The cost of transporting rural participants to clinics when prior approval for using Program funds to provide transportation has been granted by the State agency and documentation that such service is considered essential to assure Program access has been filed at the State agency. Direct reimbursement to participants for transportation cost is not an allowable cost.

(8) The cost of monitoring and reviewing Program operations.

(9) The cost, exclusive of laboratory tests, of screening for drug and other harmful substance use and making referrals for counseling and treatment services.

(10) The cost of breastfeeding aids which directly support the initiation and continuation of breastfeeding.

(d) *Costs allowable with approval.* The following costs are allowable only with the prior approval of FCS:

(1) Automated information systems which are required by a State or local agency except for those used in general management and payroll, including acquisition of automatic data processing hardware or software whether by outright purchase, rental-purchase agreement or other method of acquisition. Approval shall be granted by FCS if the proposed system meets the requirements of this part, A–130, and 7 CFR part 3016. At the time the State agency decides to seek computerization, except for use in general management or payroll, it shall inform FCS and seek approval, if required.

(2) Capital expenditures over $2,500.00, such as the cost of facilities, equipment, including medical equipment, other capital assets and any repairs that materially increase the value of useful life of capital assets.

(3) Management studies performed by agencies or departments other than the State or local agency or those performed by outside consultants under contract with the State or local agency.

(e) *Recovery of vendor claims.* The State agency shall retain funds collected by the recovery of claims assessed against food vendors or funds not paid to food vendors as a result of reviews of food instruments prior to payment. The State agency may use up to 50 percent of these funds for nutrition services and administration purposes, provided that the base amount from which the percentage may be taken is not established until after the vendor has had full opportunity to correct or justify the error or apparent overcharge in accordance with § 246.12(s)(5)(iii). The State agency shall not transfer any such funds from its food account to its nutrition services and administration account until after the vendor has exercised this right, if the vendor chooses to do so. After such funds have been transferred, the remainder shall be used to pay food costs. When these funds are used for nutrition services and administration purposes, the State agency shall report such expenditures to FCS through routine reporting procedures. The State agency shall maintain documentation to support the level of funds retained under this paragraph by the State agency for nutrition services and administration purposes.

[50 FR 6121, Feb. 13, 1987, as amended at 52 FR 21237, June 4, 1987; 53 FR 25314, July 6, 1988; 54 FR 18091, Apr. 27, 1989; 58 FR 11507, Feb. 26, 1993; 59 FR 11503, Mar. 11, 1994]

**§246.15 Program income other than grants.**

(a) *Interest earned on advances.* State and local agencies and clinics may retain interest earned on advances of Program funds in accordance with the provisions of 7 CFR part 3016.

(b) *Other Program income.* The State agency may use current Program income for costs incurred in the current fiscal year and, with the approval of FCS, for costs incurred in previous or subsequent fiscal years. With the approval of FCS, Program income may be used for costs which are in addition to the allowable costs of the Program but which nevertheless further the objectives of the law authorizing the Program. Provided that the costs supported by the income further the broad objectives of the Program, they need not be a kind that would be permissible as charges to Federal funds.

**§246.16 Distribution of funds.**

(a) *General.* This paragraph describes the timeframes for distribution of appropriated funds by the Department to participating State agencies and the authority for the Secretary to use appropriated funds for evaluation studies and demonstration projects.

(1) Authorized appropriations to carry out the provisions of this section may be made not more than 1 year in advance of the beginning of the fiscal year in which the funds shall become available for disbursement to the State agencies. The funds shall remain available for the purposes for which appropriated until expended.

(2) In the case of appropriations legislation providing funds through the end of a fiscal year, the Secretary shall issue to State agencies an initial allocation of funds provided under such legislation not later than the expiration of the 15-day period beginning on the date of the enactment and subsequent allocation of funds shall be issued not later than the beginning of each of the second, third and fourth quarters of the fiscal year.

(3) Allocations of funds pursuant to paragraph (a)(2) of this section shall be made as follows: The initial allocation of funds to State agencies shall include not less than ⅓ of the appropriated amounts for the fiscal year. The allocation of funds to be made not later than the beginning of the second and third quarters shall each include not less than ¼ of the appropriated amounts for the fiscal year.

(4) In the case of legislation providing funds for a period that ends prior to the end of a fiscal year, the Secretary shall issue to State agencies an initial allocation of funds not later than the expiration of the 10-day period beginning on the date of enactment. In the case of legislation providing appropriations for a period of not more than 4 months, all funds must be allocated to State agencies except those reserved by the Secretary to carry out paragraph (a)(6) of this section.

(5) In any fiscal year unused amounts from a prior fiscal year that are identified by the end of the first quarter of the fiscal year shall be recovered and reallocated not later than the beginning of the second quarter of the fiscal year. Unused amounts from a prior fiscal year that are identified after the end of the first quarter of the fiscal year shall be recovered and reallocated on a timely basis.

(6) Up to one-half of one percent of the sums appropriated for each fiscal year, not to exceed $5,000,000, shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits, providing technical assistance to improve State agency administrative systems preparing the biennial Participation Report to Congress described in §246.25(b)(3) of this part, and administering pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations.

(b) *Distribution and application of grant funds to State agencies.* Notwithstanding any other provision of law, funds made available to the State agencies for the Program in any fiscal year will be managed and distributed as follows:

(1) The State agency shall ensure that all Program funds are used only for Program purposes. As a prerequisite to the receipt of funds, the State agency shall have executed an agreement with the Department and shall have received approval of its State Plan.

(2) Notwithstanding any other provision of law, all funds not made available to the Secretary in accordance with paragraph (a)(6) of this section shall be distributed to State agencies on the basis of funding formulas which allocate funds to all State agencies for food costs and NSA costs incurred during the fiscal year for which the funds had been made available to the Department. Final State agency grant levels as determined by the funding formula and State agency breastfeeding promotion and support expenditure targets will be issued in a timely manner.

(3) A State agency may transfer funds allocated to it for one fiscal year to another fiscal year under the following conditions:

(i) Not more than 1 percent of the funds allocated to a State agency for food costs incurred in any fiscal year may be expended by the State agency for food costs incurred in the preceding fiscal year;

(ii) Not more than 1 percent of the total funds allocated to a State agency for food costs and for NSA costs in any fiscal year may be spent forward and expended by the State agency for such costs incurred in the subsequent fiscal year, except that State agencies which converted food funds to NSA funds under paragraph (f) of this section during a fiscal year shall not spend NSA funds forward into the following fiscal year.

(iii) The total amount of funds transferred from any fiscal year under paragraphs (b)(3)(i) and (b)(3)(ii) of this section shall not exceed 1 percent of the funds allocated to a State agency for the fiscal year.

(iv) A State agency which has implemented an acceptable cost containment measure(s) resulting in increased annual food cost savings of more than 5 percent of its food grant, may spend forward into the fiscal year following the fiscal year of implementation a maximum of 5 percent of the funds allocated to the State agency for food costs for the fiscal year of implementation of such system, less any food funds backspent into the prior fiscal year under paragraph (b)(3)(i) of this section and any food and NSA funds spent forward into the succeeding fiscal year under paragraph (b)(3)(ii) of this section.

(v) Any State agency entering the second fiscal year following the fiscal year of implementation of, or a significant change to, any cost containment measure may, at its discretion, spend forward up to 3 percent of the funds allocated to such State agency for food costs for such fiscal year, less any food funds backspent under paragraph (b)(3)(i) of this section and any food and NSA funds spent forward from the fiscal year under paragraph (b)(3)(ii) of this section.

(vi) The State agency shall specify in writing to the Department the amount of funds it intends to backspend under paragraph (b)(3)(i) of this section and to spend forward under paragraphs (b)(3) (ii), (iv) and (v) of this section not later than March 1 of the fiscal year following the fiscal year from which funds are to be transferred.

(vii) Food funds transferred by the State agency from one fiscal year to another shall be used by the State agency only for food costs in the subsequent fiscal year and, in accordance with § 246.14(a)(2) of this part, shall not be used to cover NSA costs. Any funds spent forward by the State agency for expenditure in the subsequent fiscal year shall not affect the amount of funds allocated to such State agency for the subsequent fiscal year. The Department shall presume that any funds spent forward are the first funds expended by such State agency for costs incurred in the subsequent fiscal year.

(4) Any State agency using an approved cost containment measure as defined in § 246.2 of this part (rebates, competitive bidding, home delivery and direct distribution), may temporarily borrow amounts made available to the State agency for the first quarter of a fiscal year to defray expenses for costs incurred during the final quarter of the preceding fiscal year. Any State agency that uses this authority shall restore or reimburse such borrowed amounts when the State agency receives payment as a result of its cost containment measures for such expenses.

(5) Each State agency's funds will be provided by means of a Letter of Credit

unless another funding method is specified by the Department. State agencies shall use funds to cover those allowable and documented Program costs, as defined in § 246.14, which are incurred by the State agency and participating local agencies within their jurisdictions.

(c) *Allocation formula.* State agencies shall receive grant allocations according to the formulas described in this paragraph. To accomplish the distribution of funds under the allocation formulas, State agencies shall furnish the Department with any necessary financial and Program data.

(1) *Use of participation data in the formula.* Wherever the formula set forth in paragraphs (c)(2) and (c)(3) of this section require the use of participation data, the Department shall use participation data reported by State agencies according to § 246.25(b).

(2) *Allocation for nutrition services and administration.* The funds available for allocation to State agencies for NSA for each fiscal year shall be an amount sufficient to guarantee a national average per participant grant, as adjusted for inflation. The amount of the national average per participant grant for NSA for any fiscal year will be $8.24, the amount of the national average per participant grant for NSA allocated for Fiscal Year 1987, annually adjusted for inflation. This inflation adjustment will be made by revising the $8.24 to reflect the percentage change in the value of the index for State and local government purchases, calculated using the implicit price deflator, as published by the Bureau of Economic Analysis of the Department of Commerce. The percentage change shall be calculated based upon the change between (x) the base year, and (y) the most recent estimate that is available as of the start of the current fiscal year of the value of such index for the 12-month period ending June 30 of the previous fiscal year. The base year is the value of such index for the 12-month period ending June 1986. Funds for NSA costs will be allocated according to the following procedure:

(i) *Allocation of stability funds.* To the extent funds are available, and subject to the provisions of paragraph (c)(2)(iii) of this section, each State agency shall, at a minimum, receive an amount equal to the final amount of funds received for NSA in the preceding fiscal year.

(ii) *Allocation of residual funds.* Subject to the provisions of paragraph (c)(2)(iii) of this section, any funds remaining available for allocation for NSA after the stability allocation required by paragraph (c)(2)(i) of this section has been completed shall be allocated as residual funds.

(A) The Department shall allocate residual funds to each State agency according to a method that determines the higher of an amount equalling the stability funds which are allocated in accordance with paragraph (c)(2)(i) of this section plus an amount commensurate with the projected increase in participation from the preceding year as determined by the Department or the amount of funds generated by the formula set forth in paragraph (c)(2)(ii)(B) of this section.

(B) The formula shall calculate the amount of funds each State agency would receive if all available NSA funds were allocated on the basis of the average monthly participation levels, as projected by the Department. Each State agency's projected participation level shall be adjusted to account for the higher (per participant) costs associated with small participation levels, differential salary levels relative to a national average salary level, and service to Priority I participants relative to the national average service to Priority I participants. The formula shall be adjusted to account for these costs factors in the following manner: 80 percent of available funds shall provide compensation based on rates which are proportionately higher for the first 15,000 or fewer participants, as projected by the Department, and 20 percent of available funds shall provide compensation based on differential salary levels and service to Priority I participants, as determined by the Department.

(iii) *Discretionary funds.* Each State agency's final NSA grant shall be reduced by 10 percent, and these funds shall be aggregated for all State agencies within each FCS region to form a discretionary fund. The Department shall distribute these funds according

to guidelines which shall be established nationally each year and which shall consider the varying needs of State agencies within the region.

(iv) *Operational level.* The sum of each State agency's stability, residual and discretionary funds shall constitute the State agency's operational level. This operational level shall remain unchanged for such year even if the number of Federally-supported participants in the program at such State agency is lower than the Federally-projected participation level. However, if the provisions of paragraph (e)(2)(ii) of this section are applicable, a State agency will have its operational level for NSA reduced in the immediately succeeding fiscal year.

(3) *Allocation of food benefit funds.* In any fiscal year, any amounts remaining from amounts appropriated for such fiscal year and amounts appropriated from the preceding fiscal year after making allocations under paragraph (a)(6) of this section and allocations for nutrition services and administration (NSA) as required by paragraph (c)(2) of this section shall be made available for food costs. Allocations to State agencies for food costs will be determined according to the following procedure:

(i) *Fair share allocation.* (A) For each State agency, establish a fair share allocation which shall be an amount of funds proportionate to the State agency's share of the national aggregate population of persons who are income eligible to participate in the Program based on the 185 percent of poverty criterion. The Department will determine each State agency's population of persons categorically eligible for WIC which are at or below 185% of poverty, through the best available, nationally uniform, indicators as determined by the Department. If the Commodity Supplemental Food Program (CSFP) also operates in the area served by the WIC State agency, the number of participants in such area participating in the CSFP but otherwise eligible to participate in the WIC Program, as determined by FCS, shall be deducted from the WIC State agency's population of income eligible persons.

(B) The Department may adjust the respective amounts of food funds that would be allocated to a State agency which is outside the 48 contiguous states and the District of Columbia when the State agency can document that economic conditions result in higher food costs for the State agency. Prior to any such adjustment, the State agency must demonstrate that it has successfully implemented voluntary cost containment measures, such as improved vendor management practices, participation in multi-state agency infant formula rebate contracts or other cost containment efforts. The Department may use the Thrifty Food Plan amounts used in the Food Stamp Program, or other available data, to formulate adjustment factors for such State agencies.

(ii) *Stability allocation.* If funds are available, each State agency shall receive a stability allocation equal to its final authorized grant level as of September 30 of the prior fiscal year plus a full inflation increase. The inflation factor shall reflect the anticipated rate of food cost increases as determined by the Department. If funds are not available to provide all State agencies with their full stability allocation, all State agencies shall receive a prorata reduction from their full stability allocation as required by the short fall of available funds.

(iii) *Growth allocation.* (A) If additional funds remain available after the allocation of funds under (c)(3)(ii) of this section, each State agency which has a stability allocation, as calculated in paragraph (c)(3)(ii) of this section, which is less than its fair share allocation shall receive additional funds based on the difference between its stability allocation and fair share allocation. Each State agency's difference shall be divided by the total of the differences for all such State agencies, to determine the percent share of the available growth funds each State agency shall receive. In the event a State agency declines any of its allocation in paragraph (c)(3)(ii) of this section or this paragraph, the funds declined shall be allocated to the remaining State agencies which are still under their fair share.

(B) In the event funds still remain after completing the distribution in paragraph (c)(3)(iii)(A) of this section,

these funds shall be allocated to all State agencies including those with a stability allocation at, or greater than, their fair share allocation. Each State agency which can document the need for additional funds shall receive additional funds based on the difference between its prior year grant level and its fair share allocation. State agencies closest to their fair share allocation shall receive first consideration.

(iv) *Migrant services.* At least 9/10 of one percent of appropriated funds for each fiscal year shall be available first to assure service to eligible members of migrant populations. For those State agencies serving migrants, a portion of the grant shall be designated to each State agency for service to members of migrant populations based on that State agency's prior year reported migrant participation. The national aggregate amount made available first for this purpose shall equal 9/10 of one percent of all funds appropriated each year for the Program.

(v) *Special provisions for Indian State agencies.* The Department may choose to adjust the allocations and/or eligibles data among Indian State agencies, or among Indian State agencies and the geographic State agencies in which they are located when eligibles data for the State agencies' population is determined to not fairly represent the population to be served. Such allocations may be redistributed from one State agency to another, based on negotiated agreements among the affected State agencies approved by FCS.

(4) *Adjustment for new State agencies.* Whenever a State agency that had not previously administered the program enters into an agreement with the Department to do so during a fiscal year, the Department shall make any adjustments to the requirements of this section that are deemed necessary to establish an appropriate initial funding level for such State agency.

(d) *Distribution of funds to local agencies.* The State agency shall provide to local agencies all funds made available by the Department, except those funds necessary for allowable State agency NSA costs and food costs paid directly by the State agency. The State agency shall distribute the funds based on claims submitted at least monthly by the local agency. Where the State agency advances funds to local agencies, the State agency shall ensure that each local agency has funds to cover immediate disbursement needs, and the State agency shall offset the advances made against incoming claims each month to ensure that funding levels reflect the actual expenditures reported by the local agency. Upon receipt of Program funds from the Department, the State agency shall take the following actions:

(1) Distribute funds to cover expected food cost expenditures and/or distribute caseload targets to each local agency which are used to project food cost expenditures.

(2) Allocate funds to cover expected local agency NSA costs in a manner which takes into consideration each local agency's needs. For the allocation of NSA funds, the State agency shall develop an NSA funding procedure, in cooperation with representative local agencies, which takes into account the varying needs of the local agencies. The State agency shall consider the views of local agencies, but the final decision as to the funding procedure remains with the State agency. The State agency shall take into account factors it deems appropriate to further proper, efficient and effective administration of the program, such as local agency staffing needs, density of population, number of persons served, and availability of administrative support from other sources.

(3) The State agency may provide in advance to any local agency any amount of funds for NSA deemed necessary for the successful commencement or significant expansion of program operations during a reasonable period following approval of a new local agency, a new cost containment measure, or a significant change in an existing cost containment measure.

(e) *Recovery and reallocation of funds.* (1) Funds may be recovered from a State agency at any time the Department determines, based on State agency reports of expenditures and operations, that the State agency is not expending funds at a rate commensurate with the amount of funds distributed or provided for expenditures under the

Program. Recovery of funds may be either voluntary or involuntary in nature. Such funds shall be reallocated by the Department through application of appropriate formulas set forth in paragraph (c) of this section.

(2) *Performance standards.* The following standards shall govern expenditure performance.

(i) The amount allocated to any State agency for food benefits in the current fiscal year shall be reduced if such State agency's food expenditures for the preceding fiscal year do not equal or exceed 96 percent of the amount allocated to the State agency for such costs for fiscal year 1995 and fiscal year 1996 and 97 percent for fiscal year 1997 and beyond. Such reduction shall equal the difference between the State agency's preceding year food expenditures and the performance expenditure standard amount. For purposes of determining the amount of such reduction, the amount allocated to the State agency for food benefits for the preceding fiscal year shall not include food funds expended for food costs incurred under the spendback provision in paragraph (b)(3)(i) of this section or conversion authority in paragraph (g) of this section. Temporary waivers of the performance standard may be granted at the discretion of the Department.

(ii) *Reduction of NSA operational level.* If a State agency's per participant expenditure for NSA is more than 15 percent higher than its per participant grant for NSA without good cause, the Secretary shall reduce such State agency's operational level for costs of NSA in the next fiscal year. Circumstances that may meet the good cause criterion include, but are not limited to, dramatic and unforeseen increase in food costs, which result in the inability to reach Federally-projected participation levels. To avoid a reduction, the State agency must submit to and receive approval from the Department, justification for exceeding the 15 percent limit on excess NSA expenditures under the ''good cause'' allowance. The justification must be submitted at the time it submits its closeout report for the applicable fiscal year.

(iii) *Spend forward funds.* If any State agency notifies the Department of its intent to spend forward a specific amount of funds for expenditure in the subsequent fiscal year, in accordance with paragraph (b)(3)(ii) of this section, such funds shall not be subject to recovery by the Department.

(f) *Conversion of food funds.* In any fiscal year that a State agency achieves, through use of acceptable measures (including, but not limited to, use of cost containment measures, curtailment of vendor abuse, and breastfeeding promotional activities), increased Federal participation that exceeds its current year Federally-projected participation level as determined by the allocation in the second quarter, such State agency may convert food funds to NSA funds. The conversion rate (per participant administrative grant) will be determined after the initial allocation (excluding partial year appropriations) by dividing the current year's administrative grant, inclusive of regional discretionary funds, by the current year's Federally-projected participation level. This conversion is allowable to the extent that the funds are necessary to cover allowable NSA expenditures in such fiscal year and the State agency does not exceed the per participant grant for NSA established by the funding procedure in paragraph (c)(2) in this section. If a State agency increases its participation level through measures that are not in the nutritional interests of participants or not otherwise allowable under program regulations (such as reducing the quantities of foods provided for reasons not related to nutritional need), the State agency may not convert amounts allocated for food benefits to defray costs of NSA and the expenditure of such funds for NSA purposes will be disallowed in accordance with paragraph (h) of this section.

(g) *Expenditure of converted food funds.* The State agency may convert food funds to NSA funds under paragraph (f) of this section only to the extent necessary to cover allowable NSA costs which exceed the State agency's NSA grant for the current fiscal year and any NSA funds which the State agency has spent forward into the current fiscal year.

(h) *Limits on converted food funds.* At the end of the fiscal year, the Department will determine the amount of food funds which the State agency was entitled to convert to NSA funds under paragraph (f) of this section. In the event that the State agency has converted more than the permitted amount of funds, the Department will disallow the amount of excess conversion.

(i) *Converted funds in relation to grants.* For purposes of establishing a State agency's stability food grant and stability NSA grant under paragraphs (c)(2)(i) and (c)(3)(i) of this section, respectively, amounts converted from food funds to NSA funds under paragraph (f) of this section and § 246.14(e) of this part during the preceding fiscal year shall be treated as though no conversion had taken place.

(j) *Cost-containment measures for WIC Program foods.* No State agency may receive its allocation unless on or before August 30, 1989 (or a subsequent date established by the Secretary for any State) such State has: (1) Examined the feasibility of implementing cost containment measures with respect to procurement of infant formula, and, where practicable, other foods necessary to carry out the program; and (2) initiated action to implement such measures unless the State agency demonstrates, to the satisfaction of the Secretary, that such measures would not lower costs or would interfere with the delivery of formula or foods to participants in the program.

(k) *Requirements for infant formula procurement.* Unless granted a waiver under paragraph (n) of this section, all State agencies with retail food delivery systems (except Indian State agencies with 1000 or fewer participants in April of any fiscal year, which shall be exempted for the following fiscal year) shall implement infant formula cost containment measures for each of the types and forms of infant formulas prescribed to the majority of participants, i.e., milk and soy-based iron-fortified, liquid concentrate formulas, or whatever other types and forms of formula routinely prescribed, through one of the following two methods:

(1) *Single-supplier competitive method.* The single-supplier competitive method is a solicitation of sealed competitive bids from infant formula manufacturers for a competitive single-supplier system in which the manufacturer offering the lowest net wholesale cost per unit of infant formula or highest rebate per unit of infant formula is awarded the contract to provide all infant formula of the forms and types specified in the invitation for bids for the State agency's WIC Program (except alternate brands prescribed by a physician).

(2) *Comparative method.* The comparative method is a procedure in which bids for two or more types of cost containment systems are simultaneously solicited and a contract or contracts are awarded under the system which will provide the greatest savings. This system shall include the solicitation of bids under the single-supplier competitive system described in paragraph (m)(1) of this section. The State agency may prescribe standards of its choice for the other alternative cost containment systems, provided that conditions established for each system addressed in the invitation for bids include identical bid specifications for the contract period length and the types and forms of infant formula products to be included in the systems. Additionally, the rate of utilization of the various types and forms of formula must be comparable. The State agency shall employ the following procedure in conducting a cost comparison to determine which system offers the greatest savings over the entire effective contract period specified in the invitation for bids.

(i) *Food cost savings*—(A) *Single Supplier Competitive System.* The State agency shall project food cost savings in the single-supplier competitive system based on the rebate amount or net wholesale price and the total number of units of the specified types and forms of infant formula to be purchased under the Program less the number of units of alternative brands anticipated to be prescribed by physicians and purchased by participants. If the number of units of non-specalized, non-contract formula expected to be purchased exceeds 4 percent of the anticipated total number of units, the State agency shall submit empirical

evidence in support of the percentage to FCS for review and approval prior to issuing the invitation for bids.

(B) *Alternative Cost Containment Systems.* The State agency shall project food cost savings under alternative rebate systems based on the rebate amount or wholesale net price, the total number of units of the specified types and forms of the infant formula to be purchased under the Program less the number of units of alternative brands anticipated to be prescribed by physicians and purchased by participants and the percentage of anticipated total WIC formula purchases attributable to each manufacturer. The State agency must use the aggregate market share of the manufacturers submitting bids in calculating its cost savings estimate.

(C) *General.* In establishing the potential food cost savings under each system, the State agency shall take into consideration in its estimate of savings any inflation factors which would affect the amount of savings over the life of the contract. Further, the State agency shall not subtract any loss of payments which would occur under the terms of a current contract as the result of any State agency action to be effective after expiration of the contract.

(ii) *Nutrition services and administration cost adjustment.* The State agency shall deduct from food cost savings projected for each system under paragraph (m)(2)(i) of this section nutrition services and administration costs associated with developing and implementing—but not operating—each cost containment system, including any anticipated costs for modifying its automated data processing system or components of its food delivery system(s), and of training participants, local agencies, vendors, and physicians on the purpose and procedures of the new system. For contracts of two years or less, such costs shall be proportionately distributed over at least a 2 year period. The State agency shall not deduct any costs associated with procurement. The State agency shall itemize and justify all nutrition services and administration cost adjustments as necessary and reasonable for the development and implementation of each system.

(iii) *Final cost comparison.* The State agency shall calculate the food cost savings and deduct the appropriate nutrition services and administration costs for each system for which bids were received. The State agency must implement the competitive single-supplier system, unless its comparative cost analysis shows that, over the length of the contract stipulated in the bid invitation, an alternative system offers savings at least equal to, or greater than, those under the competitive single-supplier system. If the comparative cost analysis permits selection of the alternative system and the State agency wishes to implement that system, it must first submit a State Plan amendment with the calculations and supporting documentation for this cost analysis to FCS for approval. Only after the calculations are approved by FCS may the State agency award the contract or contacts under the alternative system.

(l) A State agency which, after completing the cost comparison in paragraph (m)(2)(iii) of this section, is required to implement the competitive single-supplier system for infant formula procurement, may request a waiver to permit it to implement an alternative system. State agencies shall support all waiver requests with documentation in the form of a State Plan amendment as required under § 246.4(a)(14)(x) of this part and may submit such requests only in either of the following circumstances:

(1) The difference between the competitive single-supplier system and the system preferred by the State agency is less than 3 percent of the savings anticipated under the latter system and not more than $100,000 per annum.

(2) The competitive single-supplier system would be inconsistent with efficient or effective operation of the program. Examples of justifications FCS will not accept for a waiver, include, but are not limited to: Preservation of participant preference for otherwise nutritionally equivalent infant formulas; maintenance of health care professionals' prerogatives to prescribe otherwise nutritionally equivalent infant formulas for non-medical reasons;

potential loss of free or otherwise discounted materials to WIC clinics and other health care facilities; potential inability of a manufacturer selected in accordance with applicable State procurement procedures to supply contractually-specified amounts of infant formula; and the possibility of interrupted infant formula supplies to retail outlets as a consequence of entering into a contract with a single manufacturer.

(m) *Implementation time frames.* All state agencies except those with an FCS approval feasibility study demonstrating the infeasibility of implementing a cost containment system shall continuously operate such a system, in accordance with the following time frames:

(1) Any State agency without an infant formula cost containment system in effect as of March 15, 1990 shall fully implement a system not later than November 10, 1990.

(2) A State agency operating a retail food delivery system which has a cost containment contract for infant formula in effect on November 10, 1989 shall enter into a contract or contracts in compliance with paragraph (m) of this section to be effective not later than the expiration date of the last of its current contracts. A State agency with more than one contract in effect as of November 10, 1989 may extend all contracts to the expiration date of the last of those contracts; however, the State agency may not renew, extend, or otherwise continue such contracts after that date, except in the following circumstances:

(i) The State agency's contract expires before June 13, 1990. Such State agencies will be granted a 120-day extension for implementing an infant formula cost containment system which complies with paragraph (m) of this section upon written request to FCS.

(ii) The State agency has obtained a postponement of implementation under paragraph (o)(5) of this section.

(3) When a State agency finds that it is practicable and feasible to implement a cost containment system for any WIC food other than infant formula, the State agency shall fully implement that system in accordance with time frames established by the State agency and notification must be given to FCS by means of the State agency's State Plan.

(4) If an Indian State agency operating a retail food delivery system expands its Program participation above 1000 and thereby loses its exemption from the requirements of § 246.16(m) regarding the method of cost containment for infant formula, that Indian State agency shall begin compliance with § 246.16(m) in accordance with times frames established by FCS on a case-by-case basis.

(5) A State agency may request a postponement of the deadlines established in this paragraph when the State agency has taken timely and responsible action to implement a cost containment system within the deadlines but has been unable to do so due to procurement delays, disputes with FCS concerning cost containment issues during the State Plan approval process, or other circumstances beyond its control. Such request shall be submitted prior to the earlier of the expiration of its current system or the deadline established under this paragraph. The postponement period shall be no longer than 120 days. If a postponement is granted, the State agency may extend, renew or otherwise continue an existing system during the period of the postponement.

(n) *Penalty for noncompliance.* Any State agency which FCS determines to be in noncompliance with the cost containment requirements of this part shall not draw down on or obligate any Program grant funds, nor will FCS make any further Program funds available to such State agency, until such State agency complies with these requirements.

(o) *Cost Containment Contract provisions.* State agencies shall not issue invitations for bids or enter into contracts which:

(1) Prescribe conditions that would void, reduce the savings under or otherwise limit the original contract if the State agency solicited or secured bids for, or entered into, a subsequent cost containment contract to take effect after the expiration of the original contract;

(2) Exclude from consideration in the bidding evaluation any infant formula

manufacturer in compliance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321 *et seq.*); or

(3) Require infant formula manufacturers to submit bids on more than one of the systems specified in the invitation for bids.

(p) *National Cost Containment Bid Solicitation and Selection.* FCS shall solicit and select bids for infant formula rebates on behalf of State agencies with retail food delivery systems based on the following guidelines:

(1) FCS shall solicit bids and select the winning bidder(s) for infant formula cost containment contracts only if 2 or more State agencies with retail food delivery systems request FCS to conduct bid solicitation and selection on their behalf. FCS shall conduct the bid solicitation and selection process only and shall not award or enter into any infant formula cost containment contract on behalf of the individual State agencies. Each State agency will individually award and enter into infant formula cost containment contract(s) with the winning bidder(s). State agencies shall obtain the rebates directly from the infant formula manufacturer(s). FCS shall conduct the bid solicitation in accordance with this paragraph and the competitive bidding procurement procedures of the State agency with the highest infant participation in the bid group on whose behalf bids are being solicited. Any bid protests and contractual disputes are the responsibility of the State agencies individually.

(2) FCS shall make a written offer to all State agencies to conduct bid solicitation and selection on their behalf at least once every 12 months. FCS shall send State agencies a copy of the draft Request for Rebates when making the offer to State agencies. Only State agencies that provide the information required by this subparagraph in writing, signed by a responsible State agency official, by certified mail, return receipt requested or by hand delivery with evidence of receipt within 15 days of receipt of the offer will be included in the national bid solicitation and selection process. Each interested State agency must provide:

(i) A statement that the State agency requests FCS to conduct bid solicitation and selection on its behalf;

(ii) A statement of the State agency's minimum procurement procedures applicable to competitive bidding (as defined in § 246.2) for infant formula cost containment contracts and supporting documentation;

(iii) A statement of any limitation on the duration of infant formula cost containment contracts and supporting documentation;

(iv) A statement of any contractual provisions required to be included in infant formula cost containment contracts by the State agency;

(v) An infant participation estimate for the term to be covered by the infant formula cost containment contract and supporting documentation;

(vi) Infant formula usage rates by type (i.e. milk-based or soy-based), form (e.g., concentrated, ready-to-feed, etc.), and container size and supporting documentation;

(vii) A statement of the termination date of the State agency's current infant formula cost containment contract; and

(viii) Any other related information that FCS may request.

(3) If FCS determines that the number of State agencies making the request provided for in paragraph (p)(2) of this section so warrants, FCS may, in consultation with such State agencies, divide such State agencies into more than one group and solicit bids for each group. These groups of State agencies are referred to as ''bid groups'' in this rule. In determining the size and composition of the bid groups, FCS shall, to the extent practicable, take into account the need to maximize the number of potential bidders so as to increase competition among infant formula manufacturers and the similarities in the State agencies' procurement and contract requirements (as provided by the State agencies in accordance with paragraphs (p)(2) (ii), (iii), and (iv) of this section). FCS reserves the right to exclude a State agency from the national bid solicitation and selection process if FCS determines that the State agency's procurement requirements or contractual requirements are so dissimilar from

those of the other State agencies in any bid group that the State agency's inclusion in the bid group could adversely affect the bids.

(4) For each bid group formed pursuant to paragraphs (p)(2) and (3) of this section, FCS shall choose the competitive bidding procurement procedures of the State agency in the group with the highest infant participation to be used in soliciting the bids for that bid group. To the extent not inconsistent with the requirements of this paragraph, FCS shall use that set of procedures in soliciting the bids for that bid group of State agencies. FCS shall notify each State agency in the bid group of the choice and provide them each a copy of the procurement procedures of the chosen State agency. Each State agency shall provide FCS a written statement, signed by a responsible State agency official, by certified mail, return receipt requested or by hand delivery with evidence of receipt stating whether that State agency is legally authorized to award an infant formula cost containment contract pursuant to that set of procedures within 10 days of the receipt of the notification. If the State agency determines it is not legally authorized to award an infant formula cost containment contract pursuant to those procedures, that State agency may not continue in that round of the national bid solicitation and selection.

(5) At a minimum, in soliciting bids FCS shall address the following:

(i) Unless FCS determines that doing so would not be in the best interest of the Program, bids shall be solicited from infant formula manufacturers both for milk-based and soy-based infant formula separately.

(ii) Infant formula cost containment contracts to be entered into by the State agencies and infant formula manufacturers must provide for a constant net price for infant formula for the full term of the infant formula cost containment contracts and provide rebates for all units of infant formula sold through the Program that are produced by the manufacturer awarded the infant formula cost containment contract. The infant formula cost containment contracts shall cover all types and forms of infant formula products normally provided to the majority of participants by the State agencies, with the exception of infant formulas for participants with special dietary needs.

(iii) The duration of the infant formula cost containment contracts for each bid group shall be determined by FCS in consultation with the State agencies. The term shall be for a period of not less than 2 years, unless the law applicable to a State agency regarding the duration of infant formula cost containment contracts is more restrictive than this paragraph. In such cases, the term of the contract for only that State agency shall be for one year, with the option provided to the State agency to extend the contract for a specified number of additional years (to be determined by FCS in consultation with the State agency). The date on which the individual State agencies' current infant formula cost containment contracts terminate may vary, so the infant formula cost containment contracts awarded by the State agencies within a bid group may begin on different dates.

(iv) FCS shall not prescribe conditions that are prohibited under paragraph (q)(1) of this section.

(v) FCS shall solicit bids for rebates only from infant formula manufacturers. FCS may limit advertising to contacting in writing each infant formula manufacturer which has registered with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.).

(6) FCS shall select the winning bidder(s). The winning bidder(s) shall be the responsive and responsible bidder(s) meeting the specifications and all bid terms and conditions which offers the lowest net price weighted to take into account infant formula usage rates and infant participation. In all instances the winning bidder(s) will be those which singly or in combination yield the greatest aggregate savings based on the net price weighted to take into account the infant formula usage rates. To break a tie between 2 equally low bids, FCS shall select the bidder to be awarded the infant formula cost containment contract by a drawing by

lot limited to the bidders which submitted those bids.

(7) Once FCS has conducted bid selection, a State agency may decline to award the infant formula cost containment contract(s) only if the State agency determines that to award the contract(s) would not be in the best interests of its Program, taking into account whether the national bid solicitation and selection would achieve a lower aggregate savings.

(8) As soon as practicable after selecting the winning bid(s), FCS will notify the affected State agencies in writing of the bid results, including the name(s) of the winning bidder(s). If a State agency chooses to request approval to decline to award the infant formula cost containment contract(s) in accordance with paragraph (p)(7) of this section, it must notify FCS in writing, signed by a responsible State agency official, together with supporting documentation, by certified mail, return receipt requested or by hand delivery with evidence of receipt within 10 days of the State agency's receipt of this notification of bid results.

(9) If FCS approves any State agency's request to decline to award the infant formula cost containment contract(s) in accordance with paragraphs (p) (7) and (8) of this section, FCS shall notify the bidders of the decision. If two or more State agencies remain in the group, FCS shall require the bidders to indicate in writing whether they wish to withdraw or modify their bids within 5 days of receipt of this notification. After receiving this information, FCS shall again permit State agencies to decline to award the infant formula cost containment contract(s) in accordance with paragraphs (p) (7) and (8) of this section. If FCS approves these additional State agency requests to decline, FCS may conduct a resolicitation of bids in accordance with this paragraph.

[50 FR 6121, Feb. 13, 1985, as amended at 52 FR 21237, June 4, 1987; 52 FR 25190, July 2, 1987; 53 FR 2221, Jan. 27, 1988; 53 FR 25315, July 6, 1988; 54 FR 18091, Apr. 27, 1989, 54 FR 19486, May 5, 1989; 55 FR 9717, Mar. 15, 1990; 55 FR 11109, Mar. 26, 1990; 58 FR 47022, Sept. 7, 1993; 58 FR 51568, Oct. 4, 1993; 59 FR 11504, Mar. 11, 1994; 59 FR 50823, Oct. 6, 1994]

**§ 246.17 Closeout procedures.**

(a) *General.* State agencies shall submit preliminary and final closeout reports for each fiscal year. All obligations shall be liquidated before closure of a fiscal year grant. Obligations shall be reported for the fiscal year in which they occur.

(b) *Fiscal year closeout reports.* State agencies—

(1) Shall submit to FCS, within 30 days after the end of the fiscal year, preliminary financial reports which show cumulative actual expenditures and obligations for the fiscal year, or part thereof, for which Program funds were made available;

(2) Shall submit to FCS, within 150 days after the end of the fiscal year, final fiscal year closeout reports;

(3) May submit revised closeout reports. FCS will reimburse State agencies for additional costs claimed in a revised closeout report up to the State's original grant level, if costs are properly justified and if funds are available for the fiscal year pertaining to the request. FCS will not be responsible for reimbursing State agencies for unreported expenditures later than one year after the end of the fiscal year in which they were incurred.

(c) *Grant closeout procedures.* When grants to State agencies are terminated, the following procedures shall be performed in accordance with 7 CFR part 3016.

(1) FCS may disqualify a State agency's participation under the Program, in whole or in part, or take such remedies as may be legal and appropriate, whenever FCS determines that the State agency failed to comply with the conditions prescribed in this part, in its Federal-State Agreement, or in FCS guidelines and instructions. FCS will promptly notify the State agency in writing of the disqualification together with the effective date. A State agency shall disqualify a local agency by written notice whenever it is determined by FCS or the State agency that the local agency has failed to comply with the requirements of the Program.

(2) FCS or the State agency may disqualify the State agency or restrict its participation in the Program when both parties agree that continuation under the Program would not produce

beneficial results commensurate with the further expenditure of funds. The State agency or the local agency may disqualify the local agency or restrict its participation in the Program under the same conditions. The two parties shall agree upon the conditions of disqualification, including the effective date thereof, and, in the case of partial disqualification, the portion to be disqualified.

(3) Upon termination of a grant, the affected agency shall not incur new obligations for the disqualified portion after the effective date, and shall cancel as many outstanding obligations as possible. FCS will allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to disqualification, and the State agency shall do the same for the local agency.

(4) A grant closeout shall not affect the retention period for, or Federal rights of access to, grant records as specified in §246.25. The closeout of a grant does not affect the State or local agency's responsibilities regarding property or with respect to any Program income for which the State or local agency is still accountable.

(5) A final audit is not a required part of the grant closeout and should not be needed unless there are problems with the grant that require attention. If FCS considers a final audit to be necessary, it shall so inform OIG. OIG will be resonsible for ensuring that necessary final audits are performed and for any necessary coordination with other Federal cognizant audit agencies or the State or local auditors. Audits performed in accordance with §246.20 may serve as final audits providing such audits meet the needs of requesting agencies. If the grant is closed out without the audit, FCS reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

### §246.18 Administrative appeal of State agency decisions.

(a) *Requirements.* The State agency shall provide a hearing procedure whereby a food vendor or local agency adversely affected by a State or local agency action may appeal the action.

(1) The right of appeal shall be granted when a local agency's or a food vendor's application to participate is denied or, during the course of the contract or agreement, when a local agency or vendor is disqualified or any other adverse action which affects participation is taken. Expiration of a contract or agreement with a food vendor or local agency shall not be subject to appeal.

(2) The adverse action affecting a participating local agency shall be postponed until a hearing decision is reached.

(3) The State agency may take adverse action against a vendor after the 15-day advance notification period mandated by paragraph (b)(1) of this section has elapsed. In deciding whether or not to postpone adverse action until a hearing decision is rendered, the State agency shall consider whether participants would be unduly inconvenienced and may consider other relevant criteria, determined by the State agency.

(b) *Procedure.* The State agency hearing procedure shall at a minimum provide the local agency or vendor with the following:

(1) Written notification of the adverse action, the cause(s) for and the effective date of the action. Such notification shall be provided to participating food vendors not less than 15 days in advance of the effective date of the action. In the case of the disqualification of local agencies, the State agency shall provide not less than 60 days advance notice of pending action.

(2) The opportunity to appeal the adverse action within a time period specified by the State agency in its notification of adverse action.

(3) Adequate advance notice of the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing.

(4) The opportunity to present its case and at least one opportunity to reschedule the hearing date upon specific request. The State agency may set standards on how many hearing dates can be scheduled, provided that a minimum of two hearing dates is allowed.

(5) The opportunity to confront and cross-examine adverse witnesses.

(6) The opportunity to be represented by counsel, if desired.

(7) The opportunity to review the case record prior to the hearing.

(8) An impartial decision maker, whose decision as to the validity of the State or local agency's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the Program. The basis for the decision shall be stated in writing, although it need not amount to a full opinion or contain formal findings of fact and conclusions of law.

(9) Written notification of the decision concerning the appeal, within 60 days from the date of receipt of the request for a hearing by the State agency.

(c) *Continuing responsibilities.* Appealing an action does not relieve a local agency, or a food vendor permitted to continue in the Program while its appeal is in process, from the responsibility of continued compliance with the terms of any written agreement or contract with the State or local agency.

(d) *Judicial review*. If a State level decision is rendered against the local agency or food vendor and the appellant expresses an interest in pursuing a higher review of the decision, the State agency shall explain any further State level review of the decision and any available State level rehearing process. If neither is available or both have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

## Subpart F—Monitoring and Review

### § 246.19 Management evaluation and reviews.

(a) *Management evaluations and reviews.* (1) FCS and each State agency shall establish a management evaluation system in order to assess the accomplishment of Program objectives as provided under this part, FCS guidelines, instructions, and the Federal-State agreement with the Department. FCS will provide assistance to States in discharging this responsibility, establish standards and procedures to determine how well the objectives of this part are being accomplished, and implement sanction procedures as warranted by State Program performance.

(2) If FCS determines through a management evaluation or other means that the State agency has failed, without good cause, to demonstrate efficient and effective administration of its Program or has failed to comply with the requirements contained in this part or the State Plan, FCS may withhold an amount up to 100 percent of the State agency's nutrition services and administration funds.

(3) Sanctions imposed upon a State agency by FCS in accordance with this section (but not claims for repayment assessed against a State agency) may be appealed in accordance with the procedures established in § 246.22. Before carrying out any sanction against a State agency, the following procedures will be followed:

(i) FCS will notify the Chief State Health Officer or equivalent in writing of the deficiencies found and of FCS' intention to withhold nutrition services and administration funds unless an acceptable corrective action plan is submitted by the State agency to FCS within 60 days after mailing of notification.

(ii) The State agency shall develop a corrective action plan with a schedule according to which the State agency shall accomplish various actions to correct the deficiencies and prevent their future recurrence.

(iii) If the corrective action plan is acceptable, FCS will notify the Chief State Health Officer or equivalent in writing within 30 days of receipt of the plan. The letter approving the corrective action plan will describe the technical assistance that is available to the State agency to correct the deficiencies. The letter will also advise the Chief State Health Officer or equivalent of the sanctions to be imposed if the corrective action plan is not implemented according to the schedule set forth in the approved plan.

(iv) Upon notification from the State agency that corrective action as been taken, FCS will assess such action, and, if necessary, will perform a follow-up review to determine if the noted deficiencies have been corrected. FCS will then advise the State agency of

whether the actions taken are in compliance with the corrective action plan, and whether the deficiency is resolved or further corrective action is needed.

(v) If an acceptable corrective action plan is not submitted within 60 days, or if corrective action is not completed according to the schedule established in the corrective action plan, FCS may withhold nutrition services and administration funds through a reduction of the State agency Letter of Credit or by assessing a claim against the State agency. FCS will notify the Chief State Health Officer or equivalent of this action.

(vi) If compliance is achieved before the end of the fiscal year in which the nutrition services and administration funds are withheld, the funds withheld shall be restored to the State agency's Letter of Credit. FCS is not required to restore funds withheld if compliance is not achieved until the subsequent fiscal year. If the 60-day warning period ends in the fourth quarter of a fiscal year, FCS may elect not to withhold funds until the next fiscal year.

(b) *State agency responsibilities.* (1) The State agency shall establish an ongoing management evaluation system which includes at least the monitoring of local agency operations, the review of local agency financial and participation reports, the development of corrective action plans to resolve Program deficiencies, the monitoring of the implementation of corrective action plans, and on-site visits. The results of such actions shall be documented.

(2) Monitoring of local agencies shall encompass, but not be limited to, evaluation of management, certification, nutrition education, civil rights compliance, accountability, financial management systems, and food delivery systems. In accordance with §246.12(i), the State agency shall ensure that State or local agency personnel conduct the necessary on-site monitoring of high risk and representative vendors. If the State agency delegates vendor monitoring to local agencies, it shall evaluate the effectiveness of these monitoring visits.

(3) The State agency shall conduct monitoring reviews of each local agency at least once every two years. Such reviews shall include on-site reviews of a minimum of 20 percent of the clinics in each local agency or one clinic, whichever is greater. The State agency may conduct such additional on-site reviews as the State agency determines to be necessary in the interest of the efficiency and effectiveness of the program.

(4) The State agency shall develop a corrective action process which includes: prompt notification of deficiencies to the local agency, timely development of corrective action plans, and monitoring of local agency implementation of such plans.

(5) When required by FCS, the State agency shall provide special reports on Program activities and act to correct deficiences in Program operations.

(6) The State agency shall require local agencies to establish management evaluation systems to review their operations and those of associated clinics or contractors.

[50 FR 6121, Feb. 13, 1985, as amended at 59 FR 11508, Mar. 11, 1994]

### §246.20 Audits.

(a) *Federal audit responsibilities.* (1) OIG reserves the right to perform audits of State and local agencies and other organizations involved in the Program as determined by OIG to be necessary. In performing such audits, OIG will rely to the extent feasible on audit work performed by other Federal and non-Federal auditors.

(2) The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a response or statement to FCS as to the action taken or a proposed corrective action plan regarding the findings. A proposed corrective action plan developed and submitted by the State agency shall include specific timeframes for its implementation and for completion of correction of deficiencies and their causes.

(3) FCS will determine whether Program deficiencies have been adequately corrected. If additional corrective action is necessary, FCS shall schedule a follow-up review, allowing a reasonable time for such corrective action to be taken.

(b) *State audit responsibilities.* (1) State agencies shall comply with the provisions of 7 CFR part 3016 regarding independent organization-wide audits of financial operations. In conformance with 7 CFR part 3016, State agencies shall arrange for independent audits of financial operations, including compliance with appropriate provisions of Federal laws and regulations, and shall ensure that audits are made on an organization-wide basis rather than on a program basis. When organization-wide audits are done the State agency shall cause procedures to be established which ensure that FCS programs are included in the universe of Federal awards from which a sample is drawn.

(2) Such organization-wide audits shall be used to determine whether—

(i) Financial operations are conducted properly;

(ii) Financial statements are presented fairly;

(iii) State and local agencies are complying with the laws, regulations and administrative requirements that affect the expenditure of Federal funds;

(iv) State and local agencies have established internal procedures to meet the financial management objectives of federally assisted programs; and

(v) State and local agencies are providing accurate and reliable information to the Federal government. If such agencies fail to arrange for the required audits at the appropriate frequency or fail to ensure that an acceptable audit is performed at the appropriate frequency, the respective cognizant audit agencies may arrange for the performance of the required audits. If the cognizant audit agencies arrange for the required audits because of these circumstances, the State agencies shall reimburse the respective cognizant audit agencies for the pro rata cost of their organization-wide audits.

(3) Each State agency shall make all State or local agency sponsored audit reports of Program operations under its jurisdiction available for the Department's review upon request. The cost of these audits shall be considered a part of nutrition services and administration costs and may be funded from the State or local agency nutrition services and administration funds, as appropriate. For purposes of determining the Program's pro rata share of indirect costs associated with organization-wide audits, the cost of food shall not be considered in the total dollar amount of the Program.

### § 246.21 Investigations.

(a) *Authority.* The Department may make an investigation of any allegation of noncompliance with this part and FCS guidelines and instructions. The investigation may include, where appropriate, a review of pertinent practices and policies of any State or local agency, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the State or local agency has failed to comply with the requirements of this part.

(b) *Confidentiality.* No State or local agency, participant, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under this part because that person has made a complaint or formal allegation, or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conducting of any investigation, hearing, or judicial proceeding.

## Subpart G—Miscellaneous Provisions

### § 246.22 Administrative appeal of FCS decisions.

(a) *Right to appeal.* When FCS asserts a sanction against a State agency under the provisions of § 246.19, the State agency may appeal and must be afforded a hearing or review by an FCS Administrative Review Officer. The right of appeal shall not apply to claims for repayment assessed by FCS against the State agency under § 246.23(a). A State agency shall have the option of requesting a hearing to present its position or a review of pertinent documents and records including any additional written submission prepared by the State agency.

(1) FCS will send a written notice by Certified Mail-Return Receipt Requested to the state agency or otherwise ensure receipt of such notice by the agency when asserting a sanction against a State agency as specified in §246.19(a).

(2) A State agency aggrieved by a sanction asserted against it may file a written request with the Director, Administrative Review Division, U.S. Department of Agriculture, Food and Consumer Service, 3101 Park Center Drive, Alexandria, Va. 22302, for a hearing or a review of the record. Such request shall be sent by Certified Mail-Return Receipt Requested and postmarked within 30 days of the date of receipt of the sanction notice. The envelope containing the request shall be prominently marked ''REQUEST FOR REVIEW OR HEARING.'' The request shall clearly identify the specific FCS sanction(s) being appealed and shall include a photocopy of the FCS notice of sanction. If the State agency does not request a review of hearing within 30 days of receipt of the notice, the administrative decision on the sanctions will be considered final.

(b) *Acknowledgment of request.* Within 15 days of receipt by the Director of the Administrative Review Division of a request for review or hearing, the Director will provide the State agency with a written acknowledgment of the request.

(1) The acknowledgment will include the name and address of the FCS Administrative Review Officer to review the sanction;

(2) The acknowledgment will also notify the State agency that within 30 days of the receipt of the acknowledgment, the State agency shall submit three sets of the following information to the Administrative Review Officer—

(i) A clear, concise identification of the issue(s) in dispute;

(ii) The State agency's position with respect to the issue(s) in dispute;

(iii) The pertinent facts and reasons in support of the State agency's position with respect to the issue(s) in dispute and a copy of the specific sanction notice provided by FCS;

(iv) All pertinent documents, correspondence and records which the State agency believes are relevant and helpful toward a more thorough understanding of the issue(s) in dispute;

(v) The relief sought by the State agency;

(vi) The identity of the person(s) presenting the State agency's position when a hearing is involved; and

(vii) A list of prospective State agency witnesses when a hearing is involved.

(c) *FCS action.* (1) When a hearing is requested pursuant to this section, the Administrative Review Officer will, within 60 days after receipt of the State agency's information, schedule and conduct the hearing. The State agency will be advised of the time, date and location of the hearing at least 10 days in advance.

(2) When a hearing is requested, the FCS Administrative Review Officer will make a final determination within 30 days after the hearing, and the final determination will take effect upon delivery of the written notice of this final decision to the State agency.

(3) When a review is requested, the FCS Administrative Review Officer will review information presented by a State agency and will make a final determination within 30 days after receipt of that information. The final determination will take effect upon delivery of the written notice of this final decision to the State agency.

### §246.23 Claims and penalties.

(a) *Claims against State agencies.* (1) If FCS determines through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any Program funds provided to a State agency for supplemental foods or nutrition services and administration purposes were, through State or local agency negligence or fraud, misused or otherwise diverted from Program purposes, a formal claim will be assessed by FCS against the State agency. The State agency shall pay promptly to FCS a sum equal to the amount of the nutrition services and administration funds or the value of supplemental foods or food instruments so misused or diverted.

(2) If FCS determines that any part of the Program funds received by a State agency; or supplemental foods,

either purchased or donated commodities; or food instruments, were lost as a result of thefts, embezzlements, or unexplained causes, the State agency shall, on demand by FCS, pay to FCS a sum equal to the amount of the money or the value of the supplemental foods or food instruments so lost.

(3) The State agency shall have full opportunity to submit evidence, explanation or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.

(4) FCS is authorized to establish claims against a State agency for unreconciled food instruments. When a State agency can demonstrate that all reasonable management efforts have been devoted to reconciliation and 99 percent or more of the food instruments issued have been accounted for by the reconciliation process, FCS may determine that the reconciliation process has been completed to satisfaction.

(b) *Interest charge on claims against State agencies.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit within 30 days from the date of the first demand letter from FCS, FCS will assess an interest (late) charge against the State agency. Interest accrual shall begin on the 31st day after the date of the first demand letter, bill or claim, and shall be computed monthly on any unpaid balance as long as the debt exists. From a source other than the Program, the State agency shall provide the funds necessary to maintain Program operations at the grant level authorized by FCS.

(c) *Claims against participants.* If a State agency determines that food benefits have been improperly issued under the Program as the result of a participant, guardian, or caretaker intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such participant, guardian, or caretaker an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost-effective. The State agency shall establish standards, based on a cost benefit review, for determining when recovery is cost-effective and maintain on file documentation of the disposition of all cases of improperly issued benefits. All such cases shall be pursued to the fullest extent possible, consistent with the State agency's cost-effectiveness standards. The State agency may delegate to its local agencies the responsibility for the collection of such claims in accordance with the State agency's standards.

(d) *Penalties.* In accordance with section 12(g) of the National School Lunch Act, whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under section 17 of the Child Nutrition Act of 1966, as amended, whether received directly or indirectly from USDA, or whoever receives, conceals or retains such funds, assets or property for his or her own interest, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or if such funds, assets or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

[50 FR 6121, Feb. 13, 1985, as amended at 52 FR 21238, June 4, 1987]

### § 246.24 Procurement and property management.

(a) *Requirements.* State and local agencies shall ensure that subgrantees comply with the requirements of 7 CFR part 3016, the nonprocurement debarment/suspension requirements of 7 CFR part 3017, and if applicable, the lobbying restrictions as required in 7 CFR part 3018 concerning the procurement and allowability of food in bulk lots, supplies, equipment and other services with Program funds. These requirements are adopted to ensure that such materials and services are obtained for the Program in an effective manner and in compliance with the provisions of applicable law and executive orders.

(b) *Contractual responsibilities.* The standards contained in A–130 and 7 CFR part 3016 do not relieve the State or

local agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FCS, 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, disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State or local agency may use its own procurement regulations which reflect applicable State and local regulations, provided that procurements made with Program funds adhere to the standards set forth in A–130 and 7 CFR part 3016.

(d) *Property acquired with Program funds.* State and local agencies shall observe the standards prescribed in 7 CFR part 3016 in their utilization and disposition of real property and equipment, including automated data processing equipment, acquired in whole or in part with Program funds.

[50 FR 6121, Feb. 13, 1985, as amended at 59 FR 11508, Mar. 11, 1994]

### §246.25 Records and reports.

(a) *Recordkeeping requirements.* Each State and local agency shall maintain full and complete records concerning Program operations. Such records shall comply with 7 CFR part 3016 and the following requirements:

(1) Records shall include, but not be limited to, information pertaining to financial operations, food delivery systems, food instrument issuance and redemption, equipment purchases and inventory, certification, nutrition education, civil rights and fair hearing procedures.

(2) All records shall be retained for a minimum of three years following the date of submission of the final expenditure report for the period to which the report pertains. If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the three-year period, the records shall be kept until all issues are resolved, or until the end of the regular three-year period, whichever is later. If FCS deems any of the Program records to be of historical interest, it may require the State or local agency to forward such records to FCS whenever either agency is disposing of them.

(3) Records for nonexpendable property acquired in whole or in part with Program funds shall be retained for three years after its final disposition.

(4) All records, except medical case records of individual participants (unless they are the only source of certification data), shall be available during normal business hours for representatives of the Department of the Comptroller General of the United States to inspect, audit, and copy. Any reports resulting from such examinations shall not divulge names of individuals.

(b) *Financial and participation reports*—(1) *Monthly reports.* State agencies shall submit financial and program performance data on a monthly basis as specified by FCS. Such information may include, but shall not be limited to, actual and projected participation, the number of persons on waiting lists, and itemized nutrition services and administration funds expenditures. State agencies shall require local agencies to report such financial and participation information as is necessary for the efficient management of food and nutrition services and administration funds. When considered necessary and feasible by FCS, State agencies may be required to:

(i) Show in the ''Remarks'' section of the Financial and Participation Report the amount of cash allowances exceeding three days need being held by their local agencies or contractors; and

(ii) Provide short narrative explanations of actions taken by the State agency to reduce such excess balances.

(2) *Quarterly reports.* Quarterly, on dates specified by FCS, State agencies shall report the number of persons participating in the Program by category (i.e., pregnant, breastfeeding, and postpartum women, infants and children) within each priority level as established in §246.7(e)(4).

(3) *Biennial reports.* State and local agencies shall provide such information as may be required by FCS to fulfill the requirement that biennially a report be provided to Congress which

includes, at a minimum, information on income and nutritional risk characteristics of participants and participation in the program by members of families of migrant farmworkers.

(c) *Civil rights.* The State agency shall ensure that each local agency participating under the Program submits a report of racial and ethnic participation data to the State agency, at a frequency prescribed by FCS.

(d) *Source documentation.* To be acceptable for audit purposes, all financial and Program performance reports shall be traceable to source documentation.

(e) *Certification of reports.* Financial and Program reports shall be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(f) *Use of reports.* FCS will use State agency reports to measure progress in achieving objectives set forth in the State Plan, and this part, or other State agency performance plans. If it is determined, through review of State agency reports, Program or financial analysis, or an audit, that a State agency is not meeting the objectives set forth in its State Plan, FCS may request additional information including, but not limited to, reasons for failure to achieve its objectives.

(g) *Extension of reporting deadline.* FCS may extend the due date for any Financial and Participation Report upon receiving a justified request from the State agency. The State agency should not wait until the due date if an extension is to be requested, but should submit the request as soon as the need is known. Failure by a State agency to submit a report by its due date may result in appropriate enforcement actions by FCS in accordance with § 246.19(a)(2), including withholding of further grant payments, suspension or termination of the grant.

[50 FR 6121, Feb. 13, 1985, as amended at 52 FR 21238, June 4, 1987; 53 FR 15653, May 3, 1988; 59 FR 11508, Mar. 11, 1994]

### § 246.26 Other provisions.

(a) *No aid reduction.* The value of benefits or assistance available under the Program shall not be considered as income or resources of participants or their families for any purpose under Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare and public assistance programs.

(b) *Statistical information.* FCS reserves the right to use information obtained under the Program in a summary, statistical or other form which does not identify particular individuals.

(c) *Medical information.* FCS may require the State or local agencies to supply medical data and other information collected under the Program in a form that does not identify particular individuals, to enable the Secretary or the State agencies to evaluate the effect of food intervention upon low-income individuals determined to be at nutritional risk.

(d) *Confidentiality.* The State agency shall restrict the use or disclosure of information obtained from program applicants and participants to:

(1) Persons directly connected with the administration or enforcement of the program, including persons investigating or prosecuting violations in the WIC Program under Federal, State or local authority;

(2) Representatives of public organizations designated by the chief State health officer (or, in the case of Indian State agencies, the governing authority) which administer health or welfare programs that serve persons categorically eligible for the WIC Program. The State agency shall execute a written agreement with each such designated organization:

(i) Specifying that the receiving organization may employ WIC Program information only for the purpose of establishing the eligibility of WIC applicants and participants for health or welfare programs which it administers and conducting outreach to WIC applicants and participants for such programs, and

(ii) Containing the receiving organization's assurance that it will not, in turn, disclose the information to a third party; and

(3) The Comptroller General of the United States for audit and examination authorized by law.

[50 FR 6121, Feb. 13, 1985, as amended at 53 FR 35301, Sept. 13, 1988]

### § 246.27 Program information.

Any person who wishes information, assistance, records or other public material shall request such information from the State agency, or from the FCS Regional Office serving the appropriate State as listed below:

(a) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont: U.S. Department of Agriculture, FCS, Northeast Region, 10 Causeway Street, room 501, Boston, Massachusetts 02222–1066.

(b) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FCS, Mid-Atlantic Region, Mercer Corporate Park, 300 Corporate Boulevard, Robbinsville, New Jersey 08691–1598.

(c) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FCS, Southeast Region, 77 Forsyth Street, SW., suite 112, Atlanta, Georgia 30303.

(d) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: U.S. Department of Agriculture, FCS, Midwest Region, 77 West Jackson Boulevard—20th Floor, Chicago, Illinois 60604–3507.

(e) Arkansas, Louisiana, New Mexico, Oklahoma, Texas: U.S. Department of Agriculture, FCS, Southwest Region, 1100 Commerce Street, room 5–C–30, Dallas, Texas 75242.

(f) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: U.S. Department of Agriculture, FCS, Mountain Plains Region, 1244 Speer Boulevard, suite 903, Denver, Colorado 80204.

(g) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, Washington: U.S. Department of Agriculture, FCS, Western Region, 550 Kearny Street, room 400, San Francisco, California 94108.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985, as amended at 59 FR 11508, Mar. 11, 1994]

### § 246.28 OMB control numbers.

The following control numbers have been assigned to the information collection requirements in 7 CFR part 246 by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

| 7 CFR part 246 section where requirements are described | Currrent OMB control no. |
|---|---|
| .4(a) (8), (9), (11) | 0584–0386 |
| .5 | 0584–0043 |
| .6 | 0584–0043 |
| .7(a) | 0584–0386 |
| .7(e), (h), (j) | 0584–0043 |
| .7(n) | 0584–0386 |
| .7(i) | 0584–A536 |
| .10 | 0584–A536 |
| .11(a)(3) | 0584–0386 |
| .11(d) | 0584–0043 |
| .12(f), (i), (i)(3), (j) | 0584–0043 |
| .14(d)(1) | 0584–0043 |
| .16(c) | 0584–0043 |
| .17(c)(1) | 0584–0043 |
| .19 | 0584–0043 |
| .20(a) | 0584–0043 |
| .25(a), (b) | 0584–0043, 0584–0347 |

[50 FR 6121, Feb. 13, 1985, as amended at 53 FR 15653, May 3, 1988; 54 FR 51295, Dec. 14, 1989; 58 FR 11507, Feb. 26, 1993]

## PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

Sec.
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247.20 Fair hearing procedures.
247.21 Management evaluation and reviews.
247.22 Administrative appeal of State agency decisions.
247.23 Miscellaneous provisions.

AUTHORITY: Sec. 5, Pub.L. 93–86, 87 Stat. 249, as added by sec. 1304(b)(2), Pub.L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub.L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c note);

sec. 209, Pub.L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub.L. 98–92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub.L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub.L. 100–202; sec. 1771(a), Pub.L 101–624, 101 Stat. 3806 (7 U.S.C. 612c note); sec. 402(a), Pub.L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c note).

SOURCE: 46 FR 6341, Jan. 21, 1981, unless otherwise noted.

### § 247.1 General purpose and scope.

This part specifies the policies and prescribes the regulations for the Commodity Supplemental Food Program (CSFP) under which women, infants and children in low-income groups, vulnerable to malnutrition, may obtain supplemental nutritious foods donated by the U.S. Department of Agriculture. The purpose of the Program is to provide supplemental foods and nutrition education to eligible persons through State or local agencies.

### § 247.2 Definitions.

For the purpose of this part and of all contracts, guidelines, instructions, forms, and other related documents, the term:

*Administrative costs* means those direct and indirect costs, identified under FMC 74–4, which State and local agencies determine to be necessary to support Program operations. Such costs are further addressed in § 247.11.

*A–90* means Office of Management and Budget Circular A–90 which provides guidance for the coordinated development and operation of information systems.

*A–102* means Office of Management and Budget Circular A–102 which sets forth uniform administrative requirements for grants-in-aid to State and local governments and federally recognized Indian tribal governments.

*A–110* means Office of Management and Budget Circular A–110 which sets forth uniform administrative requirements for grants to, and other agreements with, institutions of higher education, hospitals, and other quasi-public and private non-profit organizations.

*Breastfeeding women* means women up to one year postpartum who are breastfeeding their infants.

*Caseload* means the monthly average number of persons a State agency is authorized by FCS to serve over a specified period of time.

*Caseload cycle* means the period beginning with the later of (1) each December 1 or (2) a date not to exceed 30 days after enactment of appropriations legislation for the full fiscal year, and ending each November 30.

*Categorical ineligibility* means persons who do not meet the definition of pregnant women, breastfeeding women, postpartum women, infants, children, or elderly persons.

*Certification* means the use of criteria and procedures to assess and document each applicant's eligibility for the Program.

*Children* means persons who are at least one year of age but have not reached their sixth birthday.

*Department* means the U.S. Department of Agriculture.

*Distributing agency* means an agency which has entered into an agreement with a State agency and with the Department for the distribution of commodities under 7 CFR part 250, subchapter B—Food Distribution Regulations.

*Dual participation* means simultaneous participation by an individual in the CSFP in more than one local agency or clinic, or simultaneous participation in the CSFP and in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) 7 CFR part 246.

*Elderly persons* means persons 60 years of age or older.

*Fiscal year* means the Federal fiscal year covering the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following year.

*FMC 74–4* means Federal Management Circular 74–4, which sets forth principles for determining costs applicable to grants and contracts with State and local governments.

*FCS* means the Food and Consumer Service of the U.S. Department of Agriculture.

*Homebound elderly persons* means persons who are, in the judgment of the local agency, unable to obtain monthly food packages without assistance provided by or through the local agency.

*Infants* means persons under one year of age.

*Local agency* means a public or private nonprofit agency which enters into an agreement with the State agency to administer the Program at the local level. A local agency determines the eligibility of applicants, distributes supplemental foods and provides nutrition education to low-income persons, either directly or through another agency with which it has entered into a written agreement in accordance with §247.6. In addition, existing local agencies are required to maintain the health-ties at the same level that were effective prior to March 3, 1978.

All other local agencies are encouraged to develop health services linkages and, at a minimum, are required to advise participants of the importance of health care and where low-income persons can obtain such services. The term local agency includes an IHS service unit, an Indian tribe, band or group recognized by the Department of the Interior, or an intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior.

*Nonprofit agency* means a private agency which is exempt from income tax under the Internal Revenue Code of 1954, as amended.

*Participants* means pregnant women, breastfeeding women, postpartum women, infants, children and elderly persons who are receiving supplemental foods under the Program.

*Participation* means the number of persons who have received supplemental foods through the Program in the reporting period.

*Postpartum women* means women up to 12 months after termination of pregnancy.

*Pregnant women* means women determined to have one or more embryos or fetuses in utero.

*Program* means the Commodity Supplemental Food Program (CSFP) of the Food and Consumer Service of the U.S. Department of Agriculture.

*Secretary* means the Secretary of the U.S. Department of Agriculture.

*SFPD* means the Supplemental Food Programs Division of the Food and Consumer Service of the U.S. Department of Agriculture.

*State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Northern Mariana Islands.

*State agency* means the agency of a State designated by the State to administer the Program; or an Indian tribe, band or group recognized by the Department of the Interior; or an Intertribal council or group recognized by the Department of the Interior and which has an ongoing relationship with Indian tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service of the Department of Health and Human Services.

*State Agency Plan of Program Operation and Administration (State Plan)* means the document which, as required by §247.5 describes the manner in which the State agency intends to implement and operate all aspects of Program administration within its jurisdiction.

*Supplemental foods* means foods donated by the Department for use by eligible persons in low-income groups who are vulnerable to malnutrition.

*WIC Program* means the Special Supplemental Nutrition Program for Women, Infants and Children (7 CFR part 246).

[46 FR 6341, Jan. 21, 1981, as amended at 48 FR 29124, June 24, 1983; 51 FR 32900, Sept. 17, 1986; 53 FR 4838, Feb. 18, 1988]

### §247.3 Administration.

(a) *Delegation of Authority to FCS.* Within the Department, FCS shall act on behalf of the Department in the administration of the Program. Within FCS, SFPD and the Regional Offices are responsible for Program administration. FCS will provide assistance to State and local agencies and evaluate all levels of Program operations to assure that the goals of the Program are achieved in the most effective and efficient manner possible.

(b) *Delegation of authority to State agency.* The State agency is responsible for all operations under the Program within its jurisdiction and shall administer the Program in accordance with the requirements of this part, FMC 74–4, A–90, A–95, A–102, A–110, and 7 CFR

part 250 subchapter B where applicable. The State agency shall provide guidance to local agencies on all aspects of Program operations. If distribution of supplemental foods or other Program operations at the State level are performed by an agency of the State other than the State agency, the State agency shall enter into a written agreement with the other agency. The agreement shall outline the responsibilities of each agency under the Program and shall be included in the State Plan. In addition, when a State agency enters into an agreement with a distributing agency, the distributing agency still must enter into a separate agreement with the Department as required by 7 CFR part 250 subchapter B, Food Distribution.

(c) *Agreement and State plan.* Each State agency desiring to administer the Program shall annually submit a State Plan and enter into a written agreement with the Department for the administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this part.

(d) *Delegation of authority to local agency.* The local agency shall provide Program benefits to participants in the most effective and efficient manner, and shall comply with this part and the State Plan.

(Approved by the Office of Management and Budget under control number 0584–0063)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

### § 247.4 Donation of supplemental foods.

The Department shall donate supplemental foods for use in the Program in accordance with the terms and conditions of this part and with the terms and conditions applicable to distributing agencies under 7 CFR part 250 subchapter B, Food Distribution Regulations, as long as these provisions are not inconsistent with this part. The State agency is strictly liable to FCS for losses of supplemental foods donated by the Department and shall safeguard items from theft, spoilage, other damage or destruction or other loss. If supplemental foods donated by the Department are lost through any cause, prior to issuance to the participant, the State agency shall provide replacement in kind or submit payment to FCS in accordance with § 250.6(m) under 7 CFR part 250 subchapter B, Food Distribution regulations.

### § 247.5 State agency plan of program operation and administration.

(a) *Requirements.* State applications to continue or initiate program operations and requests for additional caseload to expand service to women, infants, children, and elderly persons shall be made through State Plan submissions. By August 15 of each year, the State agency shall submit to FCS for approval a State Plan for the following fiscal year. State agencies whose Plans are approved by the beginning of the fiscal year shall be eligible to commence program operations or receive caseload increases at the beginning of the first caseload cycle to commence after that date. Plans or Plan amendments to initiate or expand operations which are approved after this date may be considered for caseload assignment if additional resources become available during that caseload cycle. The State agency may submit the State Plan in the format provided by FCS guidance. Alternatively, the State agency may submit the Plan in combination with other federally required planning documents or develop its own format, provided that the information required below is included. FCS requests advance notification that a State agency intends to use an alternative format. The State Plan and all amendments shall be signed by the State-designated official responsible for ensuring that the program is operated in accordance with the State Plan. FCS shall provide written approval or denial of a completed State Plan or amendment within 30 days of receipt. Within 15 days after FCS receives an incomplete submission, FCS shall notify the State agency that additional information is needed to complete the Plan. Any disapproval shall be accompanied by a statement of the reasons for the disapproval. Approval of the Plan by FCS is a prerequisite to the assignment of caseload and payment of funds for administration to the State agency. In approving the State

Plan or Plan amendment to initiate or expand program operations, FCS shall specify the number of caseload slots it believes the State agency can use, and which the State agency has the administrative capacity to manage. This determination shall be based on the content of the Plan or amendment, demographic data, past performance of the State agency, and other information which FCS considers relevant. Portions of the State Plan which do not change from year to year need not be resubmitted. However, the State agency shall provide the title of each section that remains unchanged, as well as the year of the last Plan in which the section was submitted. The State Plan shall provide the following:

(1) The names and addresses of each local agency (i) which have an agreement with the State agency for Program administration; and (ii) the name and address of each certification, food distribution and storage site under the jurisdiction of the local agency.

(2) The specific income criteria and nutritional risk criteria (if used) to be used in certifying persons as being in need of supplemental foods and the period of time covered by certifications in each local agency.

(3) A description of any plans for requesting program expansion or major redistribution of caseloads within the State during the fiscal year.

(4) A description of any plans for conducting outreach to ensure that all women, infants, and children, and elderly persons are aware of program benefits.

(5) The plan for nutrition education services for the fiscal year. The nutrition education portion of the State Plan shall include an evaluation component which includes a systematic procedure for participants' input.

(6) A detailed description of the manner in which foods are distributed to each local agency and to participants by the local agency.

(7) A description of the manner in which the State agency plans to monitor each local agency.

(8) A description of plans to involve local agencies, participants and other interested parties in the development of the State Plan for the next fiscal year.

(9) A description of how the financial management system will provide an accurate, current and complete disclosure of the financial status of the State's Program including an accurate accounting of all administrative funds received and expended.

(10) A plan for the detection of dual participation within the jurisdiction of the State agency. In States where the CSFP and either an Indian State agency for CSFP or a WIC Program State agency operate in the same area, a copy of the written agreement between the State agencies for the detection and prevention of dual participation must be submitted.

(11) Procedures developed in accordance with §250.6(u) and provided to local agencies for reporting, processing and resolving complaints about supplemental foods.

(12) A description of the audit procedures, including: (i) A description of the scope and frequency of audits of the State agency and local agencies and a delineation of the procedures used that assure audit examinations of the CSF Program at reasonable frequency. Audit agency guidelines for selecting a sample of grant programs for audits should be addressed; (ii) a description of the audit organization in sufficient detail to demonstrate the independence of the audit organization; and (iii) the number of local agencies in which the CSF Program was included in the audit in the last four full quarters, and the number of local agency audits planned for the coming fiscal year which include examinations of the CSF Program.

(13) A description of the procedures used to comply with the nondiscrimination requirements of title VI of the Civil Rights Act of 1964, the FCS Civil Rights Instruction 113–2 and with 7 CFR part 15, including racial and ethnic participation data collection, public notification procedures and the annual civil rights compliance review process.

(14) A description of the fair hearing procedures for participants.

(15) If a State agency wishes to initiate service to the elderly, or request expansion caseload to serve the elderly, a description of plans for providing program benefits to elderly persons within

the State during the caseload cycle. Such description shall include—

(i) An identification of the elderly population to be served, including documentation of the extent of need in the proposed service area; and

(ii) A description of the means by which the State agency will meet the needs of the homebound elderly.

(b) *Submission of local agency information.* Local agencies under the State agency's jurisdiction may be required to submit information, similar to the preceding requirements, to the State agency for its use in assuring compliance with this section.

(c) *Amendments.* Except as provided in paragraph (a) of this section, the State agency may amend the State Plan at any time. The State agency shall submit the amendments to FCS for approval.

(d) *Retention of copy.* A copy of the approved State Plan shall be kept on file at the State agency for public inspection.

(Approved by the Office of Management and Budget under control number 0584–0063)

(44 U.S.C. 3506; E.O. 12372 (July 14, 1982, 47 FR 30959); secs. 401(b), Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b)))

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982; 48 FR 29123, June 24, 1983; 51 FR 32900, Sept. 17, 1986; 53 FR 4838, Feb. 18, 1988; 62 FR 55145, Oct. 23, 1997]

### § 247.6 Selection of local agencies.

(a) *Application of local agencies.* The State agency shall require each agency which desires approval as a local agency to submit a written application which contains sufficient information to enable the State agency to make a determination as to the eligibility of that agency. If the State agency and the local agency are the same, this requirement does not apply. The State agency shall notify the agency of the approval or disapproval of its application within 30 days of receipt of the agency's application. If the application is denied the State agency shall advise the agency of the reasons for the denial in writing and the right to appeal as set forth in § 247.22 of this part. When an agency submits an application and there are no funds to serve the area, the applicant agency shall be notified within 30 days of receipt of the application that there are currently no funds available for Program initiation or expansion. The State agency shall return the application and maintain a record of the name and address of the applicant agency. The potential agency whose application was returned shall be notified by the State agency when funds become available. The State agency may approve the application of a local agency in an area already served by the Program or a WIC program only if a new local agency is necessary to serve the full extent of need in that area or population. If the State agency approves the operation of a new local agency in an area already served by an existing Program or a WIC Program, documentation which indicates the need for both local agencies in that area shall be maintained on file at the State agency for FCS review and evaluation.

(b) *Agreements between State and local agencies.* (1) State agencies shall enter into agreements with local agencies which are approved to participate in the Program. If the State agency and the local agency are the same, this requirement does not apply. Copies of the agreement shall be kept on file at both the State and local agency for purposes of review and audit. Such agreements shall be in writing and shall contain the following:

(i) An assurance that local agencies will comply with all the fiscal and operational requirements prescribed by the State agency as required by this part; (ii) an assurance that local agencies will provide nutrition education as required by this part; (iii) for those local agencies in existence prior to March 3, 1978, an assurance that they will continue arrangements with health service providers for the provision of services to Program participants at least at the level that existed on March 2, 1978, and for other local agencies, an assurance that they will advise participants of the importance of health care and where low-income persons can obtain such care; (iv) an assurance that issuance of supplemental food is in accordance with this

part and FCS food package instructions; (v) a statement that local agencies are responsible to the State agency for any loss resulting from improper or negligent issuance by them of prescriptions for supplemental foods; (vi) a statement that local agencies are responsible to the State agency for any Program losses caused by other agencies which have entered into agreements with the local agency; (vii) the names and address of each certification, food distribution and storage site under the jurisdiction of the local agency; and (viii) an assurance that the local agencies will maintain accurate and complete records with respect to their activities under the Program and retain such records for a period of 3 years following the date of submission of the final expenditure report for the period to which the report pertains.

(c) *Agreements between local agencies and other agencies.* A local agency which cannot fulfill one or more of these requirements shall enter into written agreement with another agency(s) in order to comply with these requirements. The written agreement shall state the Program responsibilities of the other agency, shall be approved by the State agency, and shall be on file at both the State agency and local agency. State agency approval of agreements with applicant agencies shall be accomplished during the application process.

(Approved by the Office of Management and Budget under control number 0584–0063)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

### §247.7 Certification.

(a) *Eligibility requirements.* To be certified as eligible to receive supplemental foods under the Program, each applicant shall meet the following requirements:

(1) Categorical eligibility as an infant, child, pregnant, postpartum or breastfeeding woman, or elderly person;

(2) For women, infants and children, income eligibility for local benefits under existing Federal, State or local food, health or welfare programs for low-income persons;

(3) For elderly persons certified on or after September 17, 1986, household income at or below 130 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services. Elderly persons certified before September 17, 1986, shall be subject to the terms and conditions in effect on the date of their certification.

(4) At the State agency's discretion, be determined by a physician, a staff member of the local agency or his or her designee to be at nutritional risk; and

(5) Meet a residency requirement if one is established by the State agency. The State agency may determine a service area for any local agency, and may require that an applicant be residing within the service area at the time of application to be eligible for the Program. However, the State agency may not impose any durational or fixed residency requirements. For example, migrant and seasonal farmworkers entering a CSFP service area shall be considered as meeting the residency requirement.

(b) *Processing standards.* (1) When there are no funds available to provide program benefits, the local agency shall maintain waiting lists of individuals who visit the local agency to apply for the Program. To enable the local agency to contact the individuals when caseload space becomes available, these waiting lists shall include the name of the applicant, the date placed on the waiting list, an address or phone number of the applicant and the applicant's status, i.e., pregnant, breastfeeding, child's age. Individuals shall be notified of their placement on a waiting list within 20 days after they visit the local agency during clinic office hours to request Program benefits.

(2) The following priorities based on categorical eligibility shall be applied when vacancies occur after the local agency has filled all caseload, except that these priorities shall not apply to the minimum protected caseload assigned under §247.10(a) (2)(i).

(i) *Priority I.* Pregnant women, breastfeeding women, and infants.

(ii) *Priority II.* Children ages 1 through 3.

(iii) *Priority III.* Children ages 4 through 5.

(iv) *Priority IV.* Postpartum women.

(v) *Priority V.* Elderly persons.

(c) *Issuance of supplemental foods.* Participants shall be issued prescriptions for supplemental foods by personnel of the local agency or by such other personnel as the local agency may designate. The local agency may choose to issue either a one month supply of supplemental foods each month or a two month supply of supplemental foods every other month. However, local agencies which choose to issue a two month supply every other month shall inform participants that they may still receive one month's supply if they so request.

(d) *Certification forms.* All certification data for each applicant shall be recorded on a certification form. At a minimum the information on the form shall include the following:

(1) The person's name and address.

(2) The date of initial visit to apply for participation and the date of the certification or denial.

(3) The criteria used to determine the person's eligibility or ineligibility and the signature and title of the persons making the eligibility determination.

(4) The following statement shall be located directly above the applicant's signature line and shall be read by or to the applicant, or the applicant's parent or caretaker, before the application is signed:

This certification form is being completed in connection with the receipt of Federal assistance. Program officials may verify information on this form. I am aware that deliberate misrepresentation may subject me to prosecution under applicable State and Federal statutes. I have been advised of my rights and obligations under the Program. I certify that the information I have provided for my eligibility determination is correct to the best of my knowledge.

(e) *Applicant's rights.* The following sentences shall be read by, or read to, the applicant or the applicant's parent or caretaker at the time of certification. When a significant proportion of the population served by a local agency is composed of non-English or limited English speaking persons who speak the same language, the sentences shall be stated to such persons in a language they understand:

(1) Standards for participation in the Program are the same for everyone regardless of race, color, or national origin.

(2) You may appeal any decision made by the local agency regarding your denial or termination from the Program.

(3) If your application is approved, the local agency will make nutrition education available to you and you are encouraged to participate.

(f) *Notification requirements.* The following responsibilities shall be performed by the State or local agency;

(1) Each applicant shall be informed during the certification procedure of the right to a fair hearing and of the illegality of participation in the Commodity Supplemental Food Program in more than one local agency, or simultaneous participation in the Commodity Supplemental Food Program and in the WIC Program.

(2) A person found ineligible for the Program during a certification visit shall be advised in writing of the ineligibility and of the right to a fair hearing in accordance with the provisions in § 247.20. The reasons for ineligibility shall be properly documented and shall be retained on file at the local agency.

(3) A person found ineligible for the Program at any time during the certification period shall be advised in writing 15 days before termination of eligibility of the reasons for ineligibility and of the right to a fair hearing.

(4) Each participant shall be notified at least 15 days before the expiration of each certification period that eligibility for the Program is about to expire.

(5) Each participant shall receive an explanation of how the food delivery system in the local agency operates.

(6) Each participant shall be advised of the importance of participating in ongoing routine health care, the types of health services available, where they are located and how they may be obtained.

(g) *Certification periods.* (1) Program benefits shall be based upon certifications established in accordance with the following time frames.

(i) Pregnant women shall be certified for the duration of their pregnancy and for up to 6 weeks postpartum;

(ii) Postpartum and breastfeeding women, infants and children shall be certified at intervals prescribed by the State agency, provided such intervals do not exceed 6 months in length; and

(iii) Elderly persons, except those certified before September 17, 1986, shall be certified at intervals prescribed by the State agency, provided such intervals do not exceed 6 months in length. The Initial and any subsequent odd-numbered certifications of elderly persons first certified on or after September 17, 1986 shall be based on an assessment of newly submitted information for all applicable eligibility requirements, except that age need be established only at the first certification. The State agency may authorize local agencies to certify such elderly participants for an additional 6 months without reviewing the case record or collecting new eligibility data at the second and any subsequent even-numbered certifications if there are no women, infants or children waiting to be served. State agencies shall, however, require local agencies to establish contact with such participants prior to such even-numbered certifications in order to confirm each participant's address and continued interest in program participation.

(iv) Elderly persons certified before September 17, 1986 shall be subject to the terms and conditions in effect on the date of their certification.

(2) Program benefits may be continued until the end of the month in which categorical ineligibility begins, for example, until the end of the month in which a child reaches its sixth birthday.

(h) *Restrictions.* The following restrictions shall be observed by State agencies:

(1) Participants shall not be required to make any payments in money, materials or services for, or in connection with, the receipt of supplemental foods. Also, they shall not be solicited in connection with the receipt of supplemental foods for voluntary cash contributions for any purpose.

(2) Distribution of supplemental foods shall not be used as a means for furthering the political interest of any person or party.

(i) *Transfer of certification.* Each State agency shall ensure issuance of a verification of certification form to every participant who intends to relocate during the certification period. The State agency shall require the local agencies under its jurisdiction to accept verification of certification forms from participants who have been participating in the Program or the WIC Program in another local agency within or outside of the jurisdiction of the State agency. The verification of certification is valid until the certification period expires, and shall be accepted as proof of eligibility for Program benefits. However, if the receiving local agency has waiting lists for participation, the transferring participant shall be placed on the list ahead of all waiting applicants. The verification of certification shall include the name of the participant, the date the certification was performed, the date the certification period expires, the signature and printed or typed name of the local agency official in the originating jurisdiction, the name and address of the certifying local agency and an identification number or some other means of accountability. The verification of certification form shall be uniform throughout the jurisdiction of the State agency.

(j) *Dual participation.* The State agency shall be responsible for the following:

(1) In conjunction with the local agency, the detection and prevention of dual participation within each local agency and between local agencies. As part of the certification process, applicants shall be informed of the illegality of simultaneous participation in the WIC Program and this Program or of simultaneous participation in more than one CSFP.

(2) In areas where a local agency serves the same area as an Indian State agency or WIC Program, the CSFP State agency for the Program or the WIC State agency shall agree to a plan for the detection and prevention of dual participation. The agreement must be in writing and must be made prior to operation within the same area.

(3) Participants found committing dual participation shall be terminated

from one of the Programs immediately and shall be notified of termination from the other program as specified in § 247.7.

(4) At certification the local agency shall check the identification of each participant. For a child participant, an immunization record, birth certificate, or other records that local agency personnel consider adequate identification shall be acceptable. Also, when issuing supplemental foods, the local agency shall check the identification of each participant or the identity of the adult responsible for picking up the food for a child participant.

(k) *Disqualification.* (1) The State agency may disqualify applicants and participants from Program participation for a period not to exceed 3 months if it is established by the State or local agency that the applicant, participant, parent, or caretaker fraudulently applied for and/or obtained Program benefits. However, if the person who determined the participant's eligibility determines that a serious health risk will result from disqualification from the Program and the participant is currently eligible, the disqualification shall be waived. In addition, participants may request a fair hearing, as specified in § 247.20, to contest a disqualification.

(2) For Program purposes, fraud includes, but is not limited to, the following actions if they are taken knowingly, willfully and deceitfully:

(i) Making false statements orally or in writing in order to obtain benefits to which the individual would not otherwise be eligible; (ii) concealing information in order to obtain benefits to which the individual is not eligible; (iii) altering Program documents for the purpose of receiving increased benefits to which the individual is not eligible or for the purpose of transferring benefits to an unauthorized individual; (iv) using supplemental foods in an unauthorized manner, such as trading or selling the foods; or (v) committing dual participation.

[46 FR 6341, Jan. 21, 1981, as amended at 51 FR 32901, Sept. 17, 1986; 53 FR 4839, Feb. 18, 1988]

**§ 247.8 Nutrition education.**

(a) *General.* Nutrition education shall be thoroughly integrated into Program operations. Nutrition education shall be designed to be easily understood by individual participants and shall bear a practical relationship to their nutritional needs and household situations.

(b) *Goals.* Nutrition education shall be based on the following two broad goals: (1) To emphasize the relationship of proper nutrition to the total concept of good health, with special emphasis on the nutritional needs of pregnant, postpartum, and breastfeeding women, infants and children under 6 years of age; and

(2) To assist participants in obtaining a positive change in food habits, resulting in improved nutritional status and in the prevention of nutrition related problems through maximum use of the supplemental and other nutritious foods. This use is to be within the context of ethnic, cultural and geographic preferences. Consideration should also be given to tailoring nutrition education to meet any limitations experienced by groups of participants, such as lack of running water, lack of electricity, and limited cooking or refrigeration facilities.

(c) *State agency responsibilities.* The State agency shall ensure that the local agency fully performs its responsibilities as set forth in paragraph (d) of this section. The State agency shall also ensure that an evaluation procedure is maintained to determine the effectiveness of the nutrition education. Such evaluation procedure shall include a systematic procedure for participant input and may be conducted directly by State and local agencies or by contract for such services, so long as the evaluation is directed by a nutritionist or other professional determined by the State agency to be qualified to perform the evaluation procedure.

(d) *Local agency responsibilities.* (1) The local agency shall make nutrition education available to all adult participants and to parents or guardians of infant and child participants. Where appropriate, nutrition education for child participants is encouraged.

(2) The local agency shall direct Program funds for nutrition education to

the benefit of participants and local agency staff members involved in nutrition education, in accordance with this part.

(3) The local agency shall conduct or arrange for nutrition education in a manner consistent with the nutrition education portion of the State Plan.

(4) The local agency shall include the following subject matter in the instruction given to participants:

(i) An explanation of the importance of the consumption of the supplemental foods by the participant for whom they are prescribed rather than by other family members; (ii) reference to any special nutritional needs of participants and ways to provide adequate diets; (iii) an explanation of the Program as a supplemental rather than a total food program; (iv) information on the use of the supplemental foods and on the nutritional value of these foods; (v) information on the benefits of breastfeeding; and (vi) an explanation of the importance of health care.

(e) *Food demonstrations.* Any food demonstrations using supplemental foods shall be conducted by the State or local agency solely in conjunction with nutrition education and primarily for participants under the Program. Supplemental foods may not be used for outreach, refreshments for participants, or any other such purpose. Supplemental foods may not be provided to any other community agency or facility for any purpose whatsoever, unless such agency has entered into a signed written agreement with the State or local agency to provide nutrition education services under the Program.

(Approved by the Office of Management and Budget under control number 0584–0063)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

### §247.9 Financial management systems.

(a) *Disclosure of expenditures.* The State agency shall maintain a financial management system which provides accurate, current and complete disclosure of the financial status of the Program. This shall include an accounting for all property and other assets and all Program funds received and expended each fiscal year.

(b) *Reports.* The State agency shall maintain its financial and donated food accounts in a manner sufficient to permit the preparation of the reports required in §247.13.

(c) *Record of expenditures.* The State agency shall maintain records which adequately identify the source and use of funds expended for Program activities. These records shall contain, but are not limited to, information pertaining to authorization, receipt of funds, obligations, unobligated balances, assets, liabilities, outlays and income.

(d) *Payment of costs.* The State agency shall implement procedures which ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocation of costs in accordance with the cost principles and standard provisions of this part, and FMC 74–4.

(e) *Identification of obligated funds.* The State agency shall implement procedures which accurately identify obligated Program funds at the time obligations are made.

(f) *Resolutions of audit findings.* The State agency shall implement procedures which ensure timely and appropriate resolution of claims and other matters resulting from audit findings and recommendations.

(g) *Letters of Credit.* All administrative funds made available under this section shall be provided to participating State agencies by means of issuance of Letters of Credit unless other funding arrangements are made with FCS. If at the end of the fiscal year, funds authorized by a Letter of Credit issued to any State agency exceed obligations, FCS shall reduce the amount of the Letter of Credit by the unobligated portion.

(h) *Payments.* Letters of Credit shall be issued to the appropriate Regional Disbursing Office in favor of the State agency. The State agency shall obtain funds needed through presentation by designated officials of a payment voucher on the Letter of Credit in accordance with procedures prescribed by FCS and consistent with the U.S. Treasury Department Circular 1075.

(i) *Transfer of cash.* The State agency shall have controls to minimize the

time elapsing between receipt of Federal funds from the U.S. Department of Treasury and the disbursement of these funds for Program costs. In the Letter of Credit system, the State agency shall make drawdowns from the U.S. Department of Treasury's Regional Disbursing Office as close as possible to the time of the actual disbursement of funds. Advances made by the State agency to local agencies shall also conform to these same standards.

(j) *Local agency financial management.* The State agency shall ensure that all local agencies develop and implement a financial management system consistent with the requirements prescribed by the State agency pursuant to the requirements of this section.

(Approved by the Office of Management and Budget under control number 0584–0063)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

### § 247.10 Caseload assignment and administrative funding.

(a) *State agency caseload assignment.* (1) FCS shall assign caseload to State agencies on December 1 of each year or within 30 days after enactment of appropriations legislation covering the full fiscal year, whichever comes later. In the event appropriations legislation for the year is not enacted by December 1, caseload assignments for the previous caseload cycle shall remain in effect, subject to the availability of sufficient funding, until assignments are made for the current caseload cycle. Any caseload assigned for a period beyond the end of the current fiscal year shall be available only to the extent that program funds are appropriated for the next fiscal year.

(2) To the extent that funds are available, FCS shall assign caseload to State agencies in the following order.

(i) State agencies for the three elderly feeding projects in Detroit, New Orleans, and Des Moines shall be assigned caseload equal to the level of participation for each project in December 1985.

(ii) Currently participating State agencies, except those entering their second cycle of program service, shall receive caseload in amounts equal to the greatest of their total participation of women, infants, and children, and elderly persons (except for caseload equal to the December 1985 level of participation at the three elderly feeding projects) during September, or monthly average participation for the period July through September, or for the prior fiscal year; provided, however, that a State agency shall not receive caseload under this paragraph in excess of caseload assigned for the preceding caseload cycle. State agencies entering their second caseload cycle of program service shall receive caseload equal to the caseload level assigned for their first cycle of program service.

(iii) Requests from currently participating State agencies to expand service to women, infants, and children, and the elderly, shall be addressed in the following manner. Expansion requests to increase service to women, infants, and children shall receive priority over expansion requests to increase service to the elderly.

(A) State agencies shall be eligible to receive expansion caseload only if, during the preceding September, the period July through September, or the prior fiscal year, their monthly average participation equaled at least 90 percent of their assigned caseload level for the preceding caseload cycle.

(B) State agencies requesting expansion caseload to increase service to women, infants, and children shall be assigned the lesser of an equal share of available caseload or the amount of expansion caseload FCS has determined that the State agency needs and can effectively manage. If any State agencies' shares exceed their approved requests, the excess caseload shall be divided equally among State agencies whose approved requests exceed their shares.

(C) State agencies requesting expansion caseload to increase service to the elderly shall be assigned the lesser of an equal share of available caseload or the amount of expansion caseload FCS has determined that the State agency needs and can effectively manage. If any State agencies' shares exceed their approved requests, the excess caseload shall be divided equally among State agencies whose approved requests exceed their shares.

(iv) Requests from State agencies to initiate program service for women, infants, and children, and the elderly shall be addressed in the following manner. Requests to initiate service to women, infants, and children shall receive priority over requests to initiate service to the elderly.

(A) State agencies with approved State plans incorporating requests for program initiation to provide service to women, infants, and children shall be assigned caseload in the same manner described in paragraph (a)(2)(iii)(B) of this section.

(B) State agencies with approved State plans incorporating requests for program initiation to provide service to the elderly shall be assigned caseload in the same manner described in paragraph (a)(2)(iii)(C) of this section.

(b) *Administrative funding.* This subsection provides the policies and procedures for payment by FCS of funds for administrative costs to participating State agencies and disbursement by State agencies to local agencies. Funds shall be paid to State agencies as specified in § 247.9, Financial Management Systems. As a prerequisite to the receipt of such funds each fiscal year, the State agency shall have executed a written agreement with the Department and shall have received FCS approval of its State Plan.

(1) Funds for total State administrative costs for each fiscal year shall be allocated by FCS based on 15 percent of the sum of the annual appropriation for the program and the value of commodities provided without charge or credit by the Department to States and distributed by local agencies as part of, and in addition to, the food package.

(2) From the portion of program funds equal to 15 percent of the annual appropriation, each State shall receive an administrative grant proportionate to its share of the total caseload assigned. Each State agency shall receive its share of this funding on a quarterly basis.

(3) In addition to the funding provided under paragraph (b)(2) of this section, States shall receive administrative funding to support distribution of commodities provided without charge or credit by the Department to States and distributed as part of, and in addition to, the program food package. Prior to the beginning of each fiscal year, FCS shall estimate the value of such commodities expected to be distributed to participants by local agencies in each State during the fiscal year. Fifteen percent of this estimated amount shall be provided to each State agency. Funds provided under this paragraph shall be identified and accounted for by FCS separately from funds provided under paragraph (b)(2) of this section. After the end of the fiscal year, FCS shall compute the actual value of such commodities reported as distributed to participants by local agencies in each State. Unit values of such commodities shall be provided by the Agricultural Stabilization and Conservation Service. FCS shall make whatever adjustments are necessary to ensure that each State agency has received administrative funding equal to 15 percent of the value of such commodities reported as distributed to participants by its local agencies during the fiscal year.

(4) To ensure that State agencies can properly budget for program operations, FCS guarantees that 75 percent of the administrative funding provided to each State under paragraph (b)(2) of this section will be protected from recoveries during the current fiscal year.

(5) The State agency may retain a percentage of administrative funding for State level use, based on the following formula: 15 percent of the first $50,000; plus 10 percent of the next $100,000; plus 5 percent of the next $250,000. The State may retain a maximum amount of $30,000 annually for its administrative expenditures. However, if the State agency provides warehousing services, FCS approval may be requested at the beginning of the applicable fiscal year for funds greater than those allowed under the formula, provided that the State agency can document the need and ensure that the increase will not impose undue hardship on local agencies. The remaining funds and any unused funds at the State level shall be distributed to the local agencies.

(6) The State agency, in providing administrative funds to local agencies, shall apportion such funds among the

local agencies on the basis of their respective needs so as to ensure that those local agencies evidencing higher administrative costs, while demonstrating prudent management and fiscal controls, receive a greater portion of the administrative funds.

(c) *Reallocation*. FCS reserves the right to periodically recover and redistribute unused caseload slots and unspent administrative funds (subject to the limitation in paragraph (b)(4) of this section). In the event that caseload slots are recovered, they shall be allocated in accordance with the order of funding established in § 247.10(a)(2).

[51 FR 32901, Sept. 17, 1986, as amended at 53 FR 4840, Feb. 18, 1988; 62 FR 55145, Oct. 23, 1997]

### § 247.11 Administrative costs.

(a) *General.* Funds provided to State and local agencies may be used to cover administrative costs identified under FMC 74–4 which State agencies determine to be necessary to carry out the Program within their jurisdiction.

(b) *Allowable costs.* The following costs are specifically identified as illustrative of costs allowable under the Program:

(1) The cost of certification procedures including: (i) Laboratory fees incurred for tests conducted to determine the eligibility of persons to participate in the Program; (ii) expendable medical supplies necessary to determine the eligibility of persons to participate in the Program; and (iii) centrifuges, measuring boards, skin fold calipers, spectrophotometers, hematofluorometers, hemoglobinometers, and scales used for determining the eligibility of persons, provided that expenditure limits will be set by FCS for each piece of equipment and expenditures which exceed the limits shall receive prior approval by the FCS Regional Office.

(2) The cost of nutrition education services provided to participants and parents and guardians of participants, and used for training local agency staff members;

(3) The cost of transporting food and of administering the food distribution system;

(4) The cost of interpreters and translators for Program materials;

(5) The cost of outreach services;

(6) The cost of audits and fair hearings;

(7) General administration of the State and local agencies including, but not limited to, personnel, warehousing, and insurance;

(8) The cost of monitoring and reviewing Program operations; and

(9) The cost of transportation for participants to and from the local agency when the local agency has determined and documented the need for such assistance.

(c) *Restrictions on allowable costs.* The following costs are allowable only with the prior approval of FCS.

(1) Automatic Data Processing equipment and system purchases whether by outright purchase, rental-purchase agreement or other method of purchase;

(2) Capital expenditures over $2,500.00 such as the cost of facilities, equipment, other capital assets and any repairs that materially increase the value or useful life of capital assets, provided that any subsequent sale of real or personal properties, purchased in whole or in part with Program funds, shall be used to reimburse FCS in an amount computed by applying to the sale proceeds the percentage of FCS participation in the original acquisition costs;

(3) Occupancy of space under rental-purchase or a lease with option to purchase agreements;

(4) Equipment rental costs where the agreement provides for rental-purchase or a lease with option to purchase; and

(5) Management studies performed by agencies or departments other than the State or local agency or those performed by outside consultants under contract with the State or local agency.

(d) *Unallowable costs.* Expenditures by a State agency or local agencies which result in costs that may not be applicable to the Program objectives are ''unallowable costs.'' A State agency's system for financial management shall identify such unallowable costs. In addition to unallowable costs identified in FMC 74–4 the following are specifically unallowable costs for reimbursement by FCS:

(1) Costs incurred for rearrangement and alteration of facilities not required specifically for the program;

(2) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise).

**§247.12 Program income.**

Program income means gross income the State agency or local agencies earn from grant supported activities, with the exception of income from the sale of property as specified in §247.11(c)(2). Program income earned during the agreement period shall be retained by the State agency in accordance with the provisions of A–102, Attachment E and used to further Program objectives; except that interest earned on Program funds at the State or local levels shall be used in accordance with the provisions of A–102, Attachment E. A State agency's financial management system shall provide guidelines to assure that: income earned is recorded as individual transactions within the accounting records in conformance with generally accepted accounting principles for recording expenditures and revenues; and specifically earmarked Program income is used for the purpose(s) intended.

**§247.13 Records and reports.**

(a) *Recordkeeping requirements.* Each State agency shall, in accordance with §250.6(r), maintain accurate and complete records with respect to the receipt, disposal, and inventory of supplemental foods, including the determination made as to liability for any improper distribution or use of, or loss of, or damage to, such foods and the result obtained from the pursuit of claims arising in favor of the State agency. Accurate and complete records shall also be maintained with respect to the receipt and disbursement of administrative funds. State agencies shall require all local agencies to maintain accurate and complete records with respect to the receipt, disposal and inventory of supplemental foods and with respect to receipt and disbursement of administrative funds. All records required by this section shall be retained for a period of 3 years following the date of submission of the annual expenditure report for the period to which the reports pertain. All records, except medical case records of participants (unless they are the only source of certification data), shall be available during normal business hours for representatives of the Department and the General Accounting Office of the United States to inspect, audit, and copy. Any reports resulting from such examinations shall not divulge names of individuals.

(b) *Financial reports.* All financial data shall be submitted quarterly on the S.F. 269(WIC/CSFP) and/or the S.F. 272 for State agencies on the check payment system.

(c) *Participation and food distribution reports.* Participation and Food Distribution reports FCS–153 and FCS–155 shall be submitted as required by FCS, at a frequency prescribed by FCS. Annually, a physical inventory of all foods at each storage and distribution site is required to be submitted to FCS at a date specified by FCS.

(d) *Civil rights.* Each local agency participating under the Program shall submit a report of racial and ethnic participation data FCS–191, at a frequency prescribed by FCS.

(e) *Audit acceptability of reports.* To be acceptable for audit purposes, all financial and Program performance reports shall be traceable to source documentation.

(f) *Certification of reports.* Financial and Program reports shall be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(g) *Use of reports.* FCS shall use State agency reports to measure progress in achieving objectives set forth in the State Plan. If it is determined, through review of State agency reports, Program or financial analysis, or an audit, that a State agency is not operating according to its State Plan, FCS may request additional information and take other appropriate actions.

(Approved by the Office of Management and Budget under control number 0584–0063)

(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

**§ 247.14 Procurement and property management standards.**

(a) *Requirements.* State and local agencies shall comply with the requirements of Circular A–102, Attachment 0 for procurement of equipment and other services with Program funds. These requirements are adopted by FCS to ensure that such materials and services are obtained for the Program in an effective manner and in compliance with the provisions of applicable law and executive orders.

(b) *Contractual responsibilities.* The standards contained in Circulars A–90, A–102 and A–110, where applicable, do not relieve the State or local agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FCS, 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: Disputes, claims, protests of awards, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State or local agency may use its own procurement regulations which reflect applicable State and local regulations, provided that procurements made with Program funds adhere to the standards set forth in Circulars A–90, A–102 and Circular A–110, where applicable.

(d) *Property acquired with Program funds.* State and local agencies shall observe the standards prescribed in A–102, Attachment N, and A–110, Attachment N, where applicable, in their utilization and disposition of property acquired in whole or in part with Program funds.

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(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

**§ 247.15 Audits.**

(a) *Federal access to information.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, or State auditors shall have access to any books, documents, papers, and records of the State and local agencies and their contractors, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *State agency response.* The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a response or statement to FCS as to the action taken or planned regarding the findings. A proposed corrective action plan developed and submitted by the State agency shall include specific time frames for its implementation and for completion of the correction of deficiencies and problems leading to the deficiencies.

(c) *Corrective action.* FCS shall determine whether Program deficiencies have been adequately corrected. If additional corrective action is necessary, FCS shall schedule a followup review, allowing a reasonable time for such corrective action to be taken.

(d) *State sponsored audits.* (1) Each State agency shall provide for an independent audit of the financial operations of the State agency and local agencies. Audits may be conducted by State and local government audit staffs, State licensed public accountants who were licensed on or before December 31, 1970, or by Certified Public Accountants and audit firms under contract to the State or local agencies. Audits shall conform to: ''The Standards of Audit of Governmental Organizations, Program Activities and Functions,'' issued by the Comptroller General of the United States (Reprint 1974, for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402); the ''Guidelines for Financial and Compliance Audits of Federally Assisted Programs,'' issued by the U.S. General Accounting Office, October 1978 (for sale by the U.S. General Accounting Office, Distribution Section, Room 1518, 441 G Street, NW., Washington, DC 20013); any compliance supplements approved

by OMB; and generally accepted auditing standards established by the American Institute of Certified Public Accountants. An audit shall be used to determine whether:

(i) Financial operations are properly conducted; (ii) the financial reports are fairly presented; (iii) the State or local agency has complied with applicable laws, regulations, and administrative requirements pertaining to financial management; and (iv) proper inventory controls (physical and paper) are being maintained.

(2) The State agency shall conduct audits in accordance with the provisions of A–102, Attachment P. Audits of the State agency and the local agencies under the State agency's jurisdiction shall be performed in a representative sample of grant program audit examinations during each audit cycle which occurs, not less frequency than once every two years. In some audit cycles, a grant program or programs other than this Program may be audited. However, audits of the Program shall be performed at intervals frequent enough to ensure consistency with good Program management. Also, at any time, the Department, FCS or the State agency may at its discretion audit a Program if an audit appears to be warranted. If FCS in the course of Program reviews of State agency operations finds that the efficiency and effectiveness of the State agency's financial management system is in question, FCS may request the State agency to include the Program in the sample for the next audit examination.

(3) Each State agency shall make all State or local agency sponsored audit reports of Program operations under its jurisdiction available for the Department's review upon request. The cost of these audits shall be considered a part of administrative costs and funded from either State or local agency administrative funds.

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(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

### §247.16 Investigations.

(a) *Authority*. The Department may make an investigation of any allegation of noncompliance with this part. The investigation may include, where appropriate, a review of pertinent practices and policies of any State or local agency, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the State or local agency has failed to comply with the requirements of this part.

(b) *Confidentiality*. No State or local agency, participant, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under this part because the individual has made a complaint or formal allegation, or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purpose of this part, including the conduct of any investigation, hearing, or judicial proceeding.

### §247.17 Claims.

If FCS determines through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any Program funds provided to a State agency for administrative purposes were, through State agency or local agency negligence or fraud, misused or otherwise diverted from Program purposes, a claim shall be made by FCS against the State agency, and the State agency shall pay promptly to FCS a sum equal to the amount of the administrative funds so misused or diverted. Further, if FCS determines that any part of the money received by a State agency was lost as a result of thefts, embezzlements, or unexplained causes, the State agency shall, on demand by FCS, pay to FCS a sum equal to the amount of the money so lost. Claims for losses or misuse of supplemental foods shall be handled in accordance with §250.6(m), 7 CFR part 250—Subchapter

B—Food Distribution. The State agency shall have full opportunity to submit evidence, explanations or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.

### § 247.18 Closeout procedures.

(a) *Fiscal year closeout reports.* State agencies shall submit preliminary and final closeout reports for each fiscal year or part thereof. All obligations shall be liquidated before final closure of a fiscal year grant. Obligations shall be reported for the fiscal year in which they occur State agencies shall:

(1) Submit to FCS, within 30 days after the end of the fiscal year, preliminary financial reports which show cumulative actual expenditures and obligations for the fiscal year, or part thereof, for which Program funds were made available; and

(2) Submit to FCS, within 90 days after the end of the fiscal year, final fiscal year closeout reports.

(b) *Revised closeout reports.* Revised closeout reports may be submitted at any time. However, FCS shall not be responsible for reimbursing unpaid obligations later than one year after the close of the fiscal year in which they were incurred.

(c) *Grant closeout procedures.* When grants to State agencies are terminated, the following closeout procedures for the Program shall be performed in accordance with OMB Circular A–102.

(1) *Termination for cause.* FCS may terminate a State agency's participation under the Program, in whole or in part, whenever FCS determines that the State agency has failed to comply with the conditions prescribed in this part. FCS shall promptly notify the State agency in writing of the termination and the reasons for the termination, including the effective date. A State agency shall terminate a local agency's participation under the Program by written notice whenever it is determined by FCS or the State agency that the local agency has failed to comply with the requirements of the Program. When a State agency's participation under the Program is terminated for cause, any payments made to the State agency, or any recoveries by FCS from the State agency, shall be in conformance with the legal rights and liabilities of the parties.

(2) *Termination for convenience.* FCS or the State agency may terminate the State agency's participation under the Program, in whole or in part, when both parties agree that continuation under the Program would not produce beneficial results commensurate with the further expenditure of funds. The State agency or the local agency may terminate the local agency's participation, in whole or in part, under the same conditions. The two parties shall agree upon the termination conditions, including the effective date thereof 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. FCS 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.

### § 247.19 Nondiscrimination.

(a) *Requirement.* The State agency shall comply with the requirements of title VI of the Civil Rights Act of 1964, the FCS Civil Rights Instruction 113–2 and the Department's regulations concerning nondiscrimination (7 CFR part 15), including requirements of racial and ethnic participation data collection, public notification of the nondiscrimination policy, and annual reviews of each local agency to assure compliance with such policy, to the end that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program.

(b) *Non-English materials and staff.* Where a significant proportion of the population of the area served by a local agency is composed of non-English or limited English speaking persons who speak the same language, the State agency shall take action to ensure that Program information, except certification forms, is provided to such persons in the appropriate language orally

and in writing. The State agency shall ensure that there are bilingual staff members or interpreters available to serve these persons.

(c) *Complaints.* Complaints of discrimination filed by applicants or participants shall be referred to the Director, Supplemental Food Programs Division, Food and Consumer Service, U.S.D.A., Washington, DC 20250.

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(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

### §247.20 Fair hearing procedures.

(a) *Availability of hearings.* The State agency shall provide a hearing procedure through which any individual may appeal a State or local agency action which results in the denial or termination of benefits to the individual. The State agency shall conform to Program hearing procedures as outlined in this section at all times unless the State has an alternate hearing procedure whereby participants can appeal State or local agency actions. This alternate procedure may be used with FCS approval.

(b) *Notification of appeal rights.* At the time of application each applicant shall be informed of the right to a fair hearing.

At the time of denial or termination of benefits, each individual shall be informed in writing of the right to a fair hearing, of the method by which a hearing may be requested, and that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel or other spokesperson. Such notification is not required at the expiration of a certification period.

(c) *Request for hearing.* A request for a hearing is defined as any clear expression by the individual or the individual's parent, guardian or other representative, that an opportunity to present its case to a higher authority is desired. The State or local agency shall not limit or interfere with the individual's freedom to request a hearing.

(d) *Time limit for request.* The State or local agency shall provide individuals a reasonable period of time to request fair hearings. Such time limit shall not be less than 60 days from the date the agency mails or gives the applicant or participant the notice of adverse action to deny or terminate benefits, as required in §247.7(f)(2).

(e) *Denial or dismissal of request.* A request for a hearing shall not be denied or dismissed unless:

(1) The request is not received within the time limit set by the State agency in accordance with paragraph (d) of this section.

(2) The request is withdrawn in writing by the applicant or a writing by the applicant or a representative.

(3) The applicant or representative fails, without good cause, to appear at the scheduled hearing.

(f) *Continuation of benefits.* Participants who appeal the termination of benefits within the 15 day advance adverse notice period provided by §247.7(f)(2) shall continue to receive Program benefits until the hearing official reaches a decision. Applicants who are denied benefits at initial certification or at subsequent certifications may appeal the denial but shall not receive benefits while awaiting the hearing.

(g) *Rules of procedure.* The State and local agency shall process each request for a hearing under uniform rules of procedure. The uniform rules of procedure shall be available for public inspection and copying. At a minimum, the uniform rules of procedure shall include: The time limits for requesting and conducting a hearing; all advance notice requirements; the rules of conduct at the hearing; and the rights and responsibilities of the applicant. The procedures shall not be unduly complex or legalistic and the applicant's background shall be taken into consideration.

(h) *Hearing official.* Hearings shall be conducted by an impartial official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested. The hearing official shall:

(1) Administer oaths or affirmations if required by the State;

(2) Ensure that all relevant issues are considered;

(3) Request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised;

(4) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;

(5) Render a hearing decision which will resolve the dispute.

(i) *Conduct of the hearing.* The hearing shall be accessible to the applicant. The State or local agency shall provide the applicant with a minimum of 10 days advance written notice of time and place of the hearing and shall enclose the rules of procedure. The State and local agency shall also provide the applicant or representative an opportunity to:

(1) Examine, prior to and during hearing, the documents and records presented to support the decision under appeal; (2) be assisted or represented by an attorney or other persons; (3) bring witnesses; (4) advance arguments without undue interference; (5) question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and (6) submit evidence to establish all pertinent facts and circumstances in the case.

(j) *Hearing decisions.* (1) Decisions of the hearing official shall comply with Federal law or regulations and shall be based on facts in the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding shall constitute the exclusive record for a final decision by the hearing official. This record shall be retained in accordance with § 247.13. This record shall also be available, for copying and inspection, to the appellant or representative at any reasonable time.

(2) A decision by the hearing official shall be binding on the local agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations. The decision shall become a part of the record.

(3) Within 45 days of the request for the hearing, the applicant or representative shall be notified in writing of the decision and the reasons for the decision in accordance with paragraph (j)(2) of this section. Also, if the decision is in the favor of the applicant and benefits were denied, benefits shall begin within this 45-day time period. If the decision is in favor of the agency, as soon as administratively feasible any continued benefits shall be terminated as decided by the hearing official.

(4) All State and local agency hearing records and decisions shall be available for public inspection and copying, subject to the disclosure safeguards provided in § 247.22(d), and provided the names and addresses of participants and other members of the public are kept confidential.

(k) *Judicial review.* If a State level decision upholds the agency action, the State agency shall explain any available State review of the decision and any State rehearing process. If neither are available or have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

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(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

### § 247.21 Management evaluation and reviews.

(a) *General.* FCS and each State agency shall establish a management evaluation system in order to assess the accomplishment of Program objectives as provided under these regulations, the State Plan, and the written agreement with the Department. FCS will provide assistance to States in discharging this responsibility, and will establish standards and procedures to determine how well the objectives of this part are being accomplished.

(b) *Responsibilities of FCS.* FCS shall establish evaluation procedures to determine whether State agencies carry out the purposes and provisions of this part, the State Plan, and the written agreement with the Department. As a part of the evaluation procedure, FCS shall review audits performed by the

State agency to ensure that the Program at both the State and local levels has been included in audit examinations at a reasonable frequency. These evaluations shall include a review of each State agency, including on-site reviews of selected local agencies. These evaluations will measure the State agency's progress toward meeting the objective outlined in its State Plan and compliance with these regulations.

(c) *Responsibilities of State agencies.* The State agency is responsible for meeting the following requirements:

(1) The State agency shall establish evaluation and review procedures and document the results of such procedures. The procedures shall include, but not be limited to:

(i) Annual monitoring of the operation of all local agencies to evaluate certification procedures, management, nutrition education, civil rights compliance, food storage, inventory accountability, and financial management systems. However, more frequent reviews may be performed as the State agency deems necessary. The State agency shall provide a continuing evaluation of each local agency through on-site reviews of the local agency, reviews of local agency reports including inventory reports, reviews of storage facilities and safeguards for supplemental foods.

(ii) Instituting the necessary follow-up procedures to correct identified problem areas.

(2) On its own initiative or when required by FCS, the State agency shall provide special reports on Program activities, and take positive action to correct deficiencies in Program operations.

(3) The State agency shall require that local agencies establish Program review procedures to be used in reviewing their own operations and those of subsidiaries or contractors.

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(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

### §247.22 Administrative appeal of State agency decisions.

(a) *Requirements.* The State agency shall provide a hearing procedure whereby a local agency adversely affected by a State action may appeal the action. The right to appeal shall be granted when the local agency's application to participate is denied, when participation is terminated, when a contract is not renewed by the State agency or when any other adverse action which affects participation is taken. The adverse action shall be postponed until a hearing decision is reached.

(b) *Procedure.* The State agency hearing procedure shall at a minimum provide the local agency:

(1) Adequate advance notice of the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing;

(2) The opportunity to present its case;

(3) The opportunity to confront and cross-examine adverse witnesses;

(4) The opportunity to be represented by counsel, if desired;

(5) The opportunity to review the case record prior to the hearing;

(6) An impartial decision maker, whose decision as to the validity of the State or local agency's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the Program. The basis for the decision shall be stated in writing, although it need not amount to a full opinion or contain formal finding of fact and conclusions of law; and

(7) Written notification of the decision concerning the appeal, within 60 days from the date of the request for a hearing.

### §247.23 Miscellaneous provisions.

(a) *No aid reduction.* The value of benefits or assistance available under the Program shall not be considered as income to or resources of participants or their families for any purpose under Federal, State or local laws, including, but not limited to, laws relating to taxation, welfare and public assistance programs.

(b) *Statistical information.* FCS reserves the right to use information obtained under the Program in a summary, statistical or other form which does not identify particular individuals. FCS may require the State or local agencies to supply data and other information collected under the Program in a form that does not identify particular individuals, to enable the Secretary or the State agencies to evaluate the effect of food intervention upon low-income individuals determined to be eligible for Program benefits.

(c) *Confidentiality.* Each State agency shall restrict the use or disclosure of information obtained from Program applicants or participants to persons directly connected with the administration or enforcement of the Program.

(d) *Public information.* Any person who wishes information, assistance, records or other public material shall request such information from the State agency, or from the FCS Regional Office serving the appropriate State as listed below:

(1) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont:

U.S. Department of Agriculture, FCS, New England Region, 33 North Avenue, Burlington, Massachusetts 01803.

(2) Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia:

U.S. Department of Agriculture, FCS, Mid-Atlantic Region, One Vahlsing Center, Robbinsville, New Jersey 08691.

(3) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee:

U.S. Department of Agriculture, FCS, Southeast Region, 1100 Spring Street, NW, Atlanta, Georgia 30309.

(4) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin:

U.S. Department of Agriculture, FCS, Midwest Region, 536 South Clark Street, Chicago, Illinois 60605.

(5) Arkansas, Louisiana, New Mexico, Oklahoma, Texas:

U.S. Department of Agriculture, FCS, Southwest Region, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75242.

(6) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming:

U.S. Department of Agriculture, FCS, Mountain Plains Region, 2420 West 26th Avenue, Room 430–D, Denver, Colorado 80211.

(7) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, Washington:

U.S. Department of Agriculture, FCS, Western Region, 550 Kearney Street, Room 400, San Francisco, California 94108.

# PART 248—WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)

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AUTHORITY: 42 U.S.C. 1786.

SOURCE: 59 FR 11517, Mar. 11, 1994, unless otherwise noted.

## Subpart A—General

### §248.1 General purpose and scope.

This part announces regulations under which the Secretary of Agriculture shall carry out the WIC Farmers' Market Nutrition Program. The dual purposes of the FMNP are:

(a) To provide resources in the form of fresh, nutritious, unprepared foods (fruits and vegetables) from farmers' markets to women, infants, and children who are nutritionally at risk and who are participating in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) or are on the waiting list for the WIC Program; and

(b) To expand the awareness, use of and sales at farmers' markets.

This will be accomplished through payment of cash grants to approved State agencies which administer the FMNP and deliver benefits at no cost to eligible persons. The FMNP shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011 *et seq.*) and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

### §248.2 Definitions.

For the purpose of this part and all contracts, guidelines, instructions, forms and other documents related hereto, the term:

*Administrative costs* means those direct and indirect costs, exclusive of food costs, as defined in §248.12(b), which State agencies determine to be necessary to support FMNP operations. Administrative costs include, but are not limited to, the costs of administration, start-up, training, monitoring, auditing, the development of and accountability for coupon and market management, nutrition education, outreach, eligibility determination, and developing, printing, and distributing coupons.

*Compliance buy* means a covert, on-site investigation in which a FMNP representative poses as a FMNP participant and transacts one or more FMNP food coupons.

*Coupon* means a coupon, voucher, or other negotiable financial instrument by which benefits under the FMNP are transferred to recipients.

*Days* means calendar days.

*Demonstration project* means the Farmers' Market Coupon Demonstration Project authorized by section 17(m) of the Child Nutrition Act of 1966 (CNA), (42 U.S.C. 1786(m)), as amended by section 501 of the Hunger Prevention Act of 1988 (Pub. L. 100–435), enacted September 19, 1988. Public Law 102–314 authorized the Secretary to competitively award, subject to the availability of funds, a 3-year grant (which was subsequently extended for an additional year by Public Law 102–142) to up to 10 States that submitted applications that were approved for the establishment of demonstration projects designed to provide WIC participants with coupons that could be exchanged for fresh, nutritious, unprepared foods at farmers' markets. Those States are: Connecticut, Iowa, Maryland, Massachusetts, Michigan, New York, Pennsylvania, Texas, Vermont, and Washington.

*Department* means the U.S. Department of Agriculture.

*Eligible foods* means fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. Honey, maple syrup, cider, nuts, seeds, eggs, meat, cheese and seafood are examples of foods not eligible for purposes of the FMNP. State agencies shall consider locally grown to mean produce grown only within State borders but may also define it to include areas in neighboring States adjacent to its borders. Under no circumstances can produce grown outside of the United States and

its territories be considered eligible foods.

*Farmer* means an individual authorized to sell produce at participating farmers' markets. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the FMNP. For purposes of this part, the term ''farmer'' shall mean ''producer'' as that term is used in section 17(m)(6)(D) of the CNA (42 U.S.C. 1786(m)(6)(D)). A participating State agency has the option to authorize individual farmers or farmers' markets.

*Farmers' market* means an association of local farmers who assemble at a defined location for the purpose of selling their produce directly to consumers. In cases where recipient access to farmers' markets is an issue, with prior FCS approval this definition may be expanded at the State agency's option to include farmstands at which authorized farmers sell their produce.

*Farmstand* means a location at which a single, individual farmer sells his/her produce directly to consumers. This is in contrast to a group or association of farmers selling their produce at a farmers' market. With prior FCS approval, through the State Plan process, a State agency may authorize a farmstand or a nonprofit organization operating a farmstand to participate in the FMNP where necessary to ensure adequate recipient access to farmers' markets.

*Fiscal year* means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

*FMNP funds* means Federal grant funds provided for the FMNP, plus the required non-Federal match.

*FCS* means the Food and Consumer Service of the U.S. Department of Agriculture.

*Food costs* means the cost of eligible supplemental foods.

*Household* has the same definition as that of ''family'' defined in § 246.2 of this chapter. Each such family shall constitute a separate household for FMNP benefit issuance purposes.

*In-kind contributions* means property or services which benefit the FMNP and which are contributed by non-Federal parties without charge to the FMNP.

*Local agency* means any nonprofit entity or local government agency which issues FMNP coupons, and provides nutrition education and/or information on operational aspects of the FMNP to FMNP recipients.

*Matching requirement* means non-Federal outlays in an amount equal to not less than 30 percent of the total FMNP costs for the fiscal year. The Secretary may negotiate with an Indian State agency a lower percentage of matching funds, but not lower than 10 percent of the total cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council. The match may be satisfied through non-Federal expenditures for the FMNP or for similar farmers' market programs which operate during the same period as the FMNP. Similar programs include other farmers' market programs which serve low-income women, infants and children (who may or may not be WIC participants or on the waiting list for WIC services), as well as other categories of low-income recipients, such as, but not limited to, low-income elderly persons.

*Nonprofit agency* means a private agency which is exempt from income tax under the Internal Revenue Code of 1986, as amended, (26 U.S.C. 1 *et. seq.*).

*Nutrition education* means individual or group education sessions and the provision of information and educational materials designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

*OIG* means the Department's Office of the Inspector General.

*Program or FMNP* means the WIC Farmers' Market Nutritiona Program authorized by section 17(m) of the CNA (42 U.S.C. 1786(m)), as amended by Public Law 102–214, the WIC Farmers' Market Nutrition Act of 1992, enacted on July 2, 1992. The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is authorized by section 17 of the Child Nutrition Act of

1966, as amended. Within section 17, section 17(m) authorizes the FMNP.

*Recipient* means a person chosen by the State agency to receive FMNP benefits. Such person must be a woman, infant over 4 months of age, or child, who receives benefits under the WIC Program or is on the waiting list to receive benefits under the WIC Program.

*SFPD* means the Supplemental Food Programs Division of the Food and Consumer Service of the U.S. Department of Agriculture.

*Similar programs* means other farmers' market projects or programs which serve low-income women, infants and children, or other categories of recipients, such as, but not limited to, elderly persons.

*State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

*State agency* means the agriculture department, the health department or any other agency approved by the chief executive officer of the State; an Indian tribe, band or group recognized by the Department of the Interior; an intertribal council or group which is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior and which has an ongoing relationship with such tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service (IHS), an agency of the Department of Health and Human Services.

*State Plan* means a plan of FMNP operation and administration that describes the manner in which the State agency intends to implement, operate and administer all aspects of the FMNP within its jurisdiction in accordance with §248.4.

*Total FMNP costs* means the sum of all allowable costs incurred for FMNP purposes, whether funded from the Federal or the State matching share of total FMNP funds.

*Total FMNP funds* means the sum of the Federal funds provided to the State agency and non-Federal contributions provided by the State agency for FMNP purposes.

*WIC* means the Special Supplemental Nutrition Program for Women, Infants and Children authorized by section 17 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771 *et. seq.*).

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49745, Sept. 27, 1995]

### §248.3 Administration.

(a) *Delegation to FCS*. Within the Department, FCS shall act on behalf of the Department in the administration of the FMNP. Within FCS, SFPD and the FCS Regional Offices are responsible for FMNP administration. FCS shall provide assistance to State agencies and evaluate all levels of FMNP operations to ensure that the goals of the FMNP are achieved in the most effective and efficient manner possible.

(b) *Delegation to State agency*. The State agency is responsible for the effective and efficient administration of the FMNP in accordance with the requirements of this part; the requirements of the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a and 15b), administration of grants (7 CFR part 3016), nonprocurement debarment/suspension (7 CFR part 3017), drug-free workplace (7 CFR part 3017), and lobbying (7 CFR part 3018); and, Office of Management and Budget Circular A–130, FCS guidelines, and Instructions issued under the FCS Directives Management System. The State agency shall provide guidance to cooperating WIC State and local agencies on all aspects of FMNP operations. Pursuant to section 17(m)(2) of the CNA, State agencies may operate the FMNP locally through nonprofit organizations or local government entities and must ensure coordination among the appropriate agencies and organizations.

(c) *Agreement and State Plan*. Each State agency desiring to administer the FMNP shall annually submit a State Plan and enter into a written agreement with the Department for administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this part.

(d) *State agency ineligibility*. A State agency shall be ineligible to participate in the FMNP if State or local sales tax is collected on Program food

purchases in the area in which it administers the Program, except that, if sales tax is collected on Program food purchases by sovereign Indian entities which are not State agencies, the State agency shall remain eligible so long as any farmers' markets collecting such tax are disqualified.

(e) *Coordination with WIC agency.* The Chief Executive Officer of the State shall ensure coordination between the designated administering State agency and the WIC State agency, if different, by ensuring that the two agencies enter into a written agreement. Such coordination between agencies is necessary for the successful operation of the FMNP, because WIC participants or persons on the waiting list for WIC services are the only persons eligible to receive Federal benefits under the FMNP. The written agreement shall delineate the responsibilities of each agency, describe any compensation for services, and shall be signed by the designated representative of each agency. This agreement shall be submitted each year along with the State Plan.

(f) *State staffing standards.* Each State agency shall ensure that sufficient staff is available to efficiently and effectively administer the FMNP. This shall include, but not be limited to, sufficient staff to provide nutrition education in coordination with the WIC Program, coupon and market management, fiscal reporting, monitoring, and training. The State agency shall provide an outline of administrative staff and job descriptions for staff whose salaries will be paid from program funds in their State Plans.

## Subpart B—State Agency Eligibility

### § 248.4 State Plan.

(a) *Requirements.* By November 15 of each year, each applying or participating State agency shall submit to FCS for approval a State Plan for the following year as a prerequisite to receiving funds under this section. The State Plan shall be signed by the State designated official responsible for ensuring that the Program is operated in accordance with the State Plan. FCS will provide written approval or denial of a completed State Plan or amendment within 30 days. Portions of the State Plan which do not change annually need not be resubmitted. However, the State agency shall provide the title of the sections that remain unchanged, as well as the year of the last Plan in which the sections were submitted. At a minimum, the Plan must address the following areas in sufficient detail to demonstrate the State agency's ability to meet the requirements of the FMNP:

(1) A copy of the agreement between the designated administering State agency and the WIC State agency, if different, for services such as nutrition education, and documentation of coordinated efforts as required in § 248.3(e), as well as copies of agreements with agencies other than the WIC State agency.

(2) Estimated number of recipients for the fiscal year, and proposed months of operation.

(3) Estimated cost of the FMNP, including a minimum amount necessary to operate the FMNP.

(4) Description of how the Program will achieve its dual purposes of providing a nutritional benefit to WIC (or waiting list) participants and expanding the awareness and use of farmers' markets.

(5) Outline of administrative staff and job descriptions.

(6) Detailed description of the recordkeeping system including, but not limited to, the system for maintaining records pertaining to financial operations, coupon issuance and redemption, and FMNP participation.

(7) Detailed description of the financial management system, including, but not limited to documentation of how the State will meet the matching requirement and procedures for obligating funds.

(8) Detailed description of the service area including:

(i) The number and addresses of participating markets, farmstands and area WIC clinics including a map outlining the service area and proximity of markets/farmstands to clinics; and

(ii) Estimated number of WIC participants and persons on the WIC waiting list that will receive FMNP coupons.

(9) Description of the coupon issuance system including:

(i) How the State agency will target areas with highest concentrations of

eligible persons and greatest access to farmers' markets within the broadest possible geographic area;

(ii) Annual benefit amount per recipient;

(iii) Method for instructing recipients on the proper use of FMNP coupons and the purpose of the FMNP; and

(iv) Method for ensuring that FMNP coupons are only issued to eligible recipients.

(10) Detailed description of the coupon and farmers' market management system including:

(i) criteria for authorizing farmers' markets;

(ii) For those State agencies desiring to authorize farmstands, justification for doing so.

(iii) Procedures for training farmers and market managers, at authorization, and annually thereafter;

(iv) Procedures for monitoring farmers' markets;

(v) Description of system for identifying high risk farmers and farmers' markets and procedures for sanctioning farmers and farmers' markets;

(vi) Facsimile of the FMNP coupon;

(vii) Identification of the fresh, nutritious, unprepared fruits, vegetables, and herbs which are eligible for purchase under the Program;

(viii) Description of FMNP coupon replacement policy;

(ix) Procedures for handling recipient and farmer/farmers' market complaints.

(11) Detailed description of the FMNP coupon redemption process including:

(i) Procedures for ensuring the secure transportation and storage of FMNP coupons;

(ii) System for identifying and reconciling FMNP coupons;

(iii) Timeframes for FMNP coupon redemption by recipients; submission for payment by markets, and payment by the State agency;

(12) System for ensuring that FMNP coupons are redeemed only by authorized farmers/farmers' markets and only for eligible foods.

(13) System for identifying FMNP coupons which are redeemed or submitted for payment outside valid dates or by unauthorized farmers/farmers' markets.

(14) A copy of the written agreement to be used between the State agency and authorized farmers/farmers' markets. In those States which authorize farmers' markets, but not individual farmers, this agreement shall specify in detail the role of and procedures to be used by farmers' markets for monitoring and sanctioning farmers, and the appropriate procedures to be used by a farmer to appeal a sanction or disqualification imposed by a farmers' market.

(15) If available, information on the change in consumption of fresh fruits and vegetables by recipients. This information shall be submitted as an addendum to the State Plan and shall be submitted at such a date specified by the Secretary.

(16) If available, information on the effects of the program on farmers' markets. This information shall be submitted as an addendum to the State Plan and shall be submitted at such a date specified by the Secretary.

(17) A description of the procedures the State agency will use to comply with the civil rights requirements described in §248.7(a), including the processing of discrimination complaints.

(18) State agencies which have not previously participated in the FMNP, shall provide the following additional information:

(i) A statement assuring that if the State agency receives Federal funds, as specified under §248.14 to operate the FMNP, and applies those funds to similar programs operated in the previous fiscal year with State or local funds, the amount of State and local funds that were available to similar programs in the fiscal year preceding the first year of operation shall not be reduced. The State agency shall include data in the State Plan showing that it did not reduce the amount of State and local funds available to the similar program in the preceding fiscal year.

(ii) A capability statement which includes a summary description of any prior experience with farmers' market projects or programs, including information and data describing the attributes of such projects or programs.

(19) For States making expansion requests, documentation which meets the following requirements:

(i) Justifies the need for an increase in participation;

(ii) Demonstrates the State agency's ability to satisfactorily operate the existing FMNP;

(iii) Identifies the management capabilities of the State to expand.

(20) For those State agencies requesting the extra 2 percent administrative rate for market development or technical assistance to promote such development in disadvantaged areas or remote rural areas, an explanation of their justification and plans for the use of such funds.

(b) *Amendments.* At any time after approval, the State agency may amend the State Plan to reflect changes. The State agency shall submit the amendments to FCS for approval. The amendments shall be signed by the State designated official responsible for ensuring that the FMNP is operated in accordance with the State Plan.

(c) *Retention of copy.* A copy of the approved State Plan shall be kept on file at the State agency for public inspection.

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49746, Sept. 27, 1995]

### § 248.5 Selection of new State agencies.

In selecting new State agencies, the Department shall rank State Plans submitted in accordance with § 248.4, using the following criteria in making this ranking:

(a) Prior experience of the State with the demonstration project or similar farmers' market programs;

(b) Prior operation, by the State of a similar program with State or local funds and ability to present data concerning the beneficial attributes of such program;

(c) Emphasis on service to areas in the State that have:

(1) The highest concentration of eligible persons;

(2) The greatest access to farmers' markets;

(3) Broad geographic areas;

(4) The greatest number of recipients in the broadest geographical area within the State; and

(5) Any other characteristics the Department determines that maximize the availability of benefits to eligible persons.

(d) Consideration of the amount of funds necessary to successfully operate the FMNP in the State compared with other States and with the total amount of funds available to the FMNP.

(e) Approval of a State Plan does not equate to an obligation on the part of the Secretary to fund the FMNP within that State.

## Subpart C—Recipient Eligibility

### § 248.6 Recipient eligibility.

(a) *Eligibility for certification.* Individuals who are eligible to receive Federal benefits under the FMNP are those, excluding infants 4 months of age or younger, who are currently receiving benefits under WIC or who are on the waiting list to receive benefits from WIC.

(b) *Limitations on certification.* If necessary to limit the number of recipients, State agencies may impose additional eligibility requirements, such as limiting participant certification to certain geographic areas, or to high priority WIC participants such as pregnant and breastfeeding women. States may also preclude groups of low priority persons, such as persons on the waiting list for WIC. Each State agency must specifically identify these limitations on certification in its State Plan.

(c) *Recipient or household benefit allocation.* On a Statewide basis, State agencies shall elect to allocate and issue benefits either to recipients or households. A State agency allocating benefits on a household basis shall not issue more benefits to a household than it otherwise would if benefits were allocated to individual recipients within the household. For those State agencies issuing FMNP benefits on a household basis, each family as defined in § 246.2 of this chapter shall constitute a separate household. Foods provided, regardless of method of issuance, are intended for the sole benefit of FMNP recipients and are not intended to be shared with other non-participating household members. If a State agency issues benefits on a household basis, data concerning number and type of recipients must still be provided as required by § 248.23(b). Recipients shall receive FMNP benefits free of charge.

### §248.7 Nondiscrimination.

(a) *Civil rights requirements.* The State agency shall comply with the requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a and 15b), and applicable FCS Instructions to ensure that no person shall, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the FMNP. Because racial and ethnic participation data (as required by title VI of the Civil Rights Act of 1964) are collected at the time women, infants, and children are certified for participation in the WIC Program, the Department has determined that the WIC data collection effort is sufficient to fulfill the racial/ethnic data collection requirement for the FMNP. Therefore, no additional data collection is required. Compliance with title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and regulations and instructions issued thereunder shall include, but not be limited to:

(1) Notification to the public of the nondiscrimination policy and complaint rights of recipients and potentially eligible persons, which may be satisfied through the Department's required nondiscrimination statement on brochures and publications;

(2) Review and monitoring activity to ensure FMNP compliance with the nondiscrimination laws and regulations;

(3) Establishment of grievance procedures for handling recipient complaints based on sex and handicap.

(b) *Complaints.* Persons seeking to file discrimination complaints may file them either with the Secretary of Agriculture, or the Director, Office of Equal Opportunity, USDA, Washington, DC 20250 or with the office established by the State agency to handle discrimination grievances or complaints. All complaints received by State agencies which allege discrimination based on race, color, national origin, or age shall be referred to the Secretary of Agriculture or the Director of the Office of Equal Opportunity, USDA. A State agency may process complaints which allege discrimination based on sex or handicap if grievance procedures are in place.

## Subpart D—Recipient Benefits

### §248.8 Level of benefits and eligible foods.

(a) *General.* State agencies shall identify in the State Plan the fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs which are eligible for purchase under the FMNP. Ineligible foods for the purpose of the FMNP include, but are not limited to: honey, maple syrup, cider, nuts and seeds, eggs, cheese, meat and seafood. Locally grown shall mean produce grown only within a State's borders but may be defined to include border areas in adjacent States. Under no circumstances can produce grown outside of the United States and its territories be considered eligible foods.

(b) *The value of the Federal benefits received.* The value of the Federal share of the FMNP benefits received by each recipient, or by each family within a household in those States which elect to issue benefits on a household basis under §248.6(c) may not be less than $10 per year or more than $20 per year.

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49746, Sept. 27, 1995]

### §248.9 Nutrition education.

(a) *Goals.* Nutrition education shall emphasize the relationship of proper nutrition to the total concept of good health, including the importance of consuming fresh fruits and vegetables.

(b) *Requirement.* The State agency shall integrate nutrition education into FMNP operations and may satisfy nutrition education requirements through coordination with other agencies within the State. Such other agencies may include the WIC Program which routinely offers nutrition education to participants and which may wish to use the opportunity of the FMNP to reinforce nutrition messages. State agencies wishing to coordinate nutrition education with WIC shall

enter into a written cooperative agreement with WIC agencies to offer nutrition education relevant to the use and nutritional value of foods available to FMNP recipients. In cases where relevant WIC nutrition education sessions are used to meet this requirement, reimbursement to the WIC local agency shall not be permitted. In cases where FMNP recipients are not receiving relevant nutrition education from the WIC Program, the State agency shall arrange alternative methods for the provision of such nutrition education which is an allowable cost under the FMNP.

## Subpart E—State Agency Provisions

### § 248.10 Coupon and market management.

(a) *General.* This section sets forth State agency responsibilities regarding the authorization of farmers/farmers' markets. The State agency is responsible for the fiscal management of, and accountability for FMNP-related activities for farmers/farmers' markets. Each State agency may decide whether to authorize farmers individually, farmers' markets, or both farmers and farmers' markets. All contracts or agreements entered into by the State agency for the management or operation of farmers/farmers' markets shall conform with the requirements of 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(1) Only farmers' markets authorized by the State agency may redeem FMNP coupons. Only farmers authorized by the State agency or that have a valid agreement with an authorized farmers' market, may redeem coupons.

(2) The State agency shall establish criteria for the authorization of individual farmers and/or farmers' markets. Any authorized farmer/farmers' market must agree to sell recipients only those foods identified as eligible by the State agency, in exchange for FMNP coupons. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the FMNP, except individuals employed by a farmer otherwise qualified under these regulations, or individuals hired by a nonprofit organization to sell produce at urban farmstands on behalf of local farmers.

(3) The State agency shall ensure that an appropriate number of farmers/farmers' markets are authorized for adequate recipient convenience and access in the area(s) proposed to be served and for effective management of the farmers/farmers' markets by the State agency. The State agency may establish criteria to limit the number of authorized farmers/farmers' markets.

(4) The State agency shall ensure that face-to-face training is conducted prior to start up of the first year of FMNP participation of a farmers' market and individual farmer. The face-to-face training shall include at a minimum those items listed in paragraph (d) of this section.

(5) Authorized farmers shall display a sign stating that they are authorized to redeem FMNP coupons.

(6) Authorized farmers/farmers' markets shall comply with the requirements of Title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a and 15b), and FCS Instructions as outlined in § 248.7.

(7) The State agency shall ensure that there is no conflict of interest between the State or local agency and any participating farmer/farmers' market.

(b) *Farmers' market agreements.* The State agency shall ensure that all participating farmers' markets enter into written agreements with the State agency. State agencies which authorize individual farmers shall also enter into written agreements with the individual farmers. The agreement shall be signed by a representative who has legal authority to obligate the farmers/farmers' market. Agreements shall include a description of sanctions for noncompliance with FMNP requirements and shall contain at a minimum, the following specifications, although the

State agency may determine the exact wording to be used:

(1) The farmer/farmers' market shall:

(i) Provide such information as the State agency may require for its periodic reports to FCS;

(ii) Assure that FMNP coupons are redeemed only for eligible foods;

(iii) Provide eligible foods at the current price or less than the current price charged to other customers;

(iv) Accept FMNP coupons within the dates of their validity and submit such coupons for payment within the allowable time period established by the State agency;

(v) In accordance with a procedure established by the State agency, mark each transacted coupon with a farmer identifier. In those cases where the agreement is between the State agency and the farmer, each transacted FMNP coupon shall contain a farmer identifier and shall be batched for reimbursement under that identifier. In those cases where the agreement is between the State agency and the farmers' market, each transacted FMNP coupon shall contain a farmer identifier and be batched for reimbursement under a farmers' market identifier.

(vi) Accept training on FMNP procedures and provide training to farmers and any employees with FMNP responsibilities on such procedures;

(vii) Agree to be monitored for compliance with FMNP requirements, including both overt and covert monitoring;

(viii) Be accountable for actions of farmers or employees in the provision of foods and related activities;

(ix) Pay the State agency for any coupons transacted in violation of this agreement;

(x) Offer FMNP recipients the same courtesies as other customers;

(xi) Comply with the nondiscrimination provisions of USDA regulations as provided in §248.7; and

(xii) Notify the State agency if any farmer or farmers' market ceases operation prior to the end of the authorization period.

(2) The farmers' market/farmer shall not:

(i) Collect sales tax on FMNP coupon purchases;

(ii) Seek restitution from FMNP recipients for coupons not paid by the State agency;

(iii) Issue cash change for purchases that are in an amount less than the value of the FMNP coupon(s).

(3) Neither the State agency nor the farmer/farmers' market has an obligation to renew the agreement. Either the State agency or the farmer/farmers' market may terminate the agreement for cause after providing advance written notification.

(4) The State agency may deny payment to the farmer/farmers' market for improperly redeemed FMNP coupons and may demand refunds for payments already made on improperly redeemed coupons.

(5) The State agency may disqualify a farmer/farmers' market for FMNP abuse. The farmer/farmers' market has the right to appeal a denial of an application to participate, a disqualification, or a FMNP sanction by the State agency. Expiration of a contract or agreement with a farmer/farmers' market, and claims actions under §248.20, are not appealable.

(6) A farmer or farmers' market which commits fraud or engages in other illegal activity is liable to prosecution under applicable Federal, State or local laws.

(7) Agreements may not exceed 3 years.

(c) *Farmer agreements for State agencies which do not authorize farmers.* Those State agencies which authorize farmers' markets but not individual farmers shall require authorized farmers' markets to enter into a written agreement with each farmer within the market that is participating in FMNP. The State agency shall set forth the required terms for the agreement and provide a sample agreement which may be used.

(d) *Annual training for farmers/farmers' market managers.* State agencies shall conduct annual training for farmers/farmers' market managers participating in the FMNP. The State agency shall conduct a face-to-face training for all farmers and farmers' market managers who have never previously participated in the program prior to their commencing participation in the FMNP. After a farmer/farmers' market

manager's first year of FMNP operation, State agencies have discretion in determining the method used for annual training purposes. At a minimum, annual training shall include instruction emphasizing:

(1) Eligible food choices;

(2) Proper FMNP coupon redemption procedures, including deadlines for submission of coupons for payment;

(3) Equitable treatment of FMNP recipients, including the availability of produce to FMNP recipients that is of the same quality and cost as that sold to other customers;

(4) Civil rights compliance and guidelines;

(5) Guidelines for storing FMNP coupons safely; and

(6) Guidelines for cancelling FMNP coupons, such as punching holes or rubber stamping.

(e) *Monitoring and review of farmers/farmers' markets and local agencies.* The State agency shall be responsible for the monitoring of farmers/farmers' markets, and local agencies within its jurisdiction. This shall include developing a system for identifying high risk farmers/farmers' markets and ensuring on-site monitoring, conducting further investigation, and sanctioning of such farmers/farmers' markets as appropriate.

(1) Where coupon reimbursement responsibilities are delegated to farmers' market managers, farmers' market associations, or nonprofit organizations, the State agency may establish bonding requirements for these entities. Costs of such bonding are not reimbursable administrative expenses.

(2) Each State agency shall rank participating farmers and farmers' markets by risk factors, and shall conduct annual, on-site monitoring of at least 10 percent of farmers and 10 percent of farmers' markets which shall include those farmers and markets identified as being the highest-risk. Mandatory high-risk indicators are a proportionately high volume of FMNP coupons redeemed by a farmer as compared to other farmers within the farmers' market and within the State, recipient complaints, and farmers and farmers' markets in their first year of FMNP operation. States are encouraged to formally establish other high risk indicators for identifying potential problems. If additional high risk indicators are established, they shall be set forth in the farmers/farmers' market agreement and in the State Plan. If application of the high-risk indicators results in fewer than 10 percent of farmers and farmers' markets as high-risk, the State agency shall randomly select additional farmers and farmers' markets to be monitored in order to meet the 10 percent minimum. The high-risk indicators listed above generally apply to a State agency already participating in the FMNP. A State agency participating in the FMNP for the first time shall, in lieu of applying the high-risk indicators, randomly select 10 percent of its participating farmers and 10 percent of its participating farmers' markets for monitoring visits.

(3) The following shall be documented for all on-site farmers and farmers' markets monitoring visits, at a minimum: Names of both farmer/farmers' market and reviewer; date of review; nature of problem(s) detected or the observation that the farmer/farmers' market appears to be in compliance with FMNP requirements; record of interviews with recipients, market managers and/or farmers; and signature of the reviewer. Reviewers are not required to notify the farmer/farmers' market of the monitoring visit during, or immediately after the visit. The State agency shall do so after a reasonable delay when necessary to protect the identity of the reviewer(s) or the integrity of the investigation. After the farmer/farmers' market has been informed of any deficiencies detected by the monitoring visit, and instances where the farmer/farmers' market will be permitted to continue participation, the farmer/farmers' market shall provide plans as to how the deficiencies will be corrected.

(4) At least every 2 years, the State agency shall review all local agencies within its jurisdiction. WIC State agency reviews of WIC local agencies, which include reviews of FMNP practices, may contribute to meeting the requirement that all local agencies be reviewed once every 2 years.

(f) *Control of FMNP coupons.* (1) The State agency shall control and provide

accountability for the receipt and issuance of FMNP coupons.

(2) The State agency shall ensure that there is secure transportation and storage of unissued FMNP coupons.

(3) The State agency shall design and implement a system of review of FMNP coupons to detect errors. At a minimum, the errors the system must detect are a missing recipient signature, a missing farmer and/or market identification, and redemption by a farmer outside of the valid date. The State agency shall implement procedures to reduce the number of errors in transactions, where possible.

(g) *Payment to farmers/farmers' markets.* The State agency shall ensure that farmers/ farmers' markets are promptly paid for food costs.

(h) *Reconciliation of FMNP coupons.* The State agency shall identify the disposition of all FMNP coupons as validly redeemed, lost or stolen, expired, or not matching issuance records. Validly redeemed FMNP coupons are those that are issued to a valid recipient and redeemed by an authorized farmers/ farmers' market within valid dates. FMNP coupons that were redeemed but cannot be traced to a valid recipient or authorized farmer/farmers' market shall be subject to claims action in accordance with § 248.20. (1) If the State agency elects to replace lost, stolen or damaged FMNP coupons, it must describe its system for doing so in the State Plan.

(2) The State agency shall use uniform FMNP coupons within its jurisdiction.

(3) FMNP coupons must include, at a minimum, the following information:

(i) The last date by which the recipient may use the coupon. This date shall be no later than November 30 of each year.

(ii) A date by which the farmer or farmers' market must submit the coupon for payment. When establishing this date, State agencies shall take into consideration the date financial statements are due to the FCS, and allow time for the corresponding coupon reconciliation that must be done by the State agency prior to submission of financial statements. Currently, financial statements are due to FCS by January 30.

(iii) A unique and sequential serial number.

(iv) A denomination (dollar amount).

(v) A farmer identifier for the redeeming farmer when agreements are between the State agency and the farmer.

(vi) In those instances where State agencies have agreements with farmers' markets, there must be a farmer identifier on each coupon and a market identifier on the cover of coupons which are batched by the market manager for reimbursement.

(i) *Instructions to recipients.* Each recipient shall receive instructions on the proper use and redemption of the FMNP coupons, including, but not limited to: (1) A list of names and addresses of authorized farmers/farmers' markets at which FMNP coupons may be redeemed.

(2) A description of eligible foods and the prohibition against cash change.

(3) An explanation of their right to complain about improper farmer/farmers' market practices with regard to FMNP responsibilities and the process for doing so.

(j) *Recipients and farmer/farmers' market complaints.* The State agency shall have procedures which document the handling of complaints by recipients and farmers/farmers' markets. Complaints of civil rights discrimination shall be handled in accordance with § 248.7(b).

(k) *Recipients and farmer/farmers' market sanctions.* The State agency shall establish policies which determine the type and level of sanctions to be applied against recipients and farmers/ farmers' markets, based upon the severity and nature of the FMNP violations observed, and such other factors as the State agency determines appropriate, such as whether repeated offenses have occurred over a period of time. Farmers/farmers' markets may be sanctioned, disqualified, or both, when appropriate. Sanctions may include fines for improper FMNP coupon redemption procedures and the penalties outlined in § 248.20, in case of deliberate fraud. In those instances where compliance purchases are conducted,

the results of covert compliance purchases can be a basis for farmer/farmers' market sanctions. A farmer/farmers' market committing fraud or other unlawful activities is liable to prosecution under applicable Federal, State or local laws. State agency policies shall ensure that a farmer that is disqualified from the FMNP at one market shall not participate in the FMNP at any other farmers' market in the State's jurisdiction during the disqualification period.

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49746, Sept. 27, 1995]

### § 248.11 Financial management system.

(a) *Disclosure of expenditures.* The State agency shall maintain a financial management system which provides accurate, current and complete disclosure of the financial status of the FMNP. This shall include an accounting for all property and other assets and all FMNP funds received and expended each fiscal year.

(b) *Internal controls.* The State agency shall maintain effective controls over and accountability for all FMNP funds. The State agency must have effective internal controls to ensure that expenditures financed with FMNP funds are authorized and properly chargeable to the FMNP.

(c) *Record of expenditures.* The State agency shall maintain records which adequately identify the source and use of funds expended for FMNP activities. These records shall contain, but are not limited to, information pertaining to authorization, receipt of funds, obligations, unobligated balances, assets, liabilities, outlays, and income.

(d) *Payment of costs.* The State agency shall implement procedures which ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocability of costs in accordance with the cost principles and standard provisions of this part, 7 CFR part 3016, and FCS guidelines and Instructions.

(e) *Identification of obligated funds.* The State agency shall implement procedures which accurately identify obligated FMNP funds at the time the obligations are made.

(f) *Resolution of audit findings.* The State agency shall implement procedures which ensure timely and appropriate resolution of claims and other matters resulting from audit findings and recommendations.

(g) *Reconciliation of food instruments.* The State agency shall reconcile FMNP coupons in accordance with § 248.10(h).

(h) *Transfer of cash.* The State agency shall establish the timing and amounts of its cash draws against its Letter of Credit in accordance with 31 CFR part 205.

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49747, Sept. 27, 1995]

### § 248.12 FMNP costs.

(a) *General.*—(1) *Composition of allowable costs.* In general, a cost item will be deemed allowable if it is reasonable and necessary for FMNP purposes and otherwise satisfies allowability criteria set forth in 7 CFR 3016.22 and this part. FMNP purposes include the administration and operation of the FMNP. Program costs supported by State matching contributions must meet the same criteria for allowability as costs supported by Federal funds. Allowable FMNP costs may be classified as follows:

(i) *Food costs and administrative costs.* Food costs are the costs of food benefits provided to FMNP recipients. Administrative costs are the costs associated with providing FMNP benefits and services to recipients and generally administering the FMNP. Specific examples of allowable administrative costs are listed in paragraph (b) of this section. Except as provided in § 248.14(g) of this part, a State agency's administrative costs under the FMNP may not exceed 17 percent of its total FMNP costs. Any costs incurred for food and/or administration above the Federal grant level will be the State agency's responsibility.

(ii) *Market development or technical assistance costs.* Market development or technical assistance costs are those costs under § 248.14(h) incurred to promote the development of farmers' markets in socially or economically disadvantaged areas, or remote rural areas, where individuals eligible for participation in the program have limited access to locally grown fruits and vegetables. Subject to a determination

by the Secretary under §248.14(h), a State agency may, during any fiscal year, use not more than 2 percent of total program funds for such market development or technical assistance.

(iii) *Direct and indirect costs.* Direct costs are food and administrative costs incurred specifically for the FMNP. Indirect costs are administrative costs that benefit multiple programs or activities, and cannot be identified to any one without effort disproportionate to the results achieved. In accordance with the provisions of 7 CFR part 3016, a claim for reimbursement of indirect costs shall be supported by an approved allocation plan for the determination of such costs. An indirect cost rate developed through such an allocation plan may not be applied to a base that includes food costs.

(2) *Costs allowable with prior approval.* A State or local agency must obtain prior approval in accordance with 7 CFR 3016.22 before charging to the FMNP any capital expenditures and other cost items designated by 7 CFR 3016.22 as requiring such approval.

(3) *Unallowable costs.* Costs that are not reasonable and necessary for FMNP purposes, or that do not otherwise satisfy the cost principles of 7 CFR 3016.22, are unallowable. Notwithstanding any other provision of part 3016 or this part, the cost of constructing or operating a farmers' market is unallowable. Unallowable costs may never be claimed for Federal reimbursement or counted toward the State matching requirement.

(b) *Specified allowable administrative costs.* Allowable administrative costs include the following:

(1) The costs associated with the provision of nutrition education which meets the requirements of §248.9 of this part.

(2) The costs of FMNP coupon issuance, or recipient education covering proper coupon redemption procedures.

(3) The cost of outreach services.

(4) The costs associated with the food delivery process, such as printing FMNP coupons, processing redeemed coupons, and training market managers on the food delivery system.

(5) The cost of monitoring and reviewing Program operations.

(6) The cost of FMNP training.

(7) The cost of required reporting and recordkeeping.

(8) The cost of determining which local WIC sites will be utilized.

(9) The cost of recruiting and authorizing farmers/farmers' markets to participate in the FMNP.

(10) The cost of preparing contracts for farmers/farmers' markets and local WIC providers.

(11) The cost of developing a data processing system for redemption and reconciliation of FMNP coupons.

(12) The cost of designing program training and informational materials.

(13) The cost of coordinating FMNP implementation responsibilities between designated administering agencies.

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49747, Sept. 27, 1995]

### §248.13 FMNP income.

Program income means gross income the State agency earns from grant supported activities. It includes fees for services performed and receipts from the use or rental of real or personal property acquired with Federal grant funds, but does not include proceeds from the disposition of such property. The State agency shall retain Program income earned during the agreement period and use it for Program purposes in accordance with the addition method described in 7 CFR 3016.25(g)(2). Fines, penalties or assessments paid by local agencies or farmers/farmers' markets are also deemed to be FMNP income. The State agency shall ensure that the sources and applications of Program income are fully documented.

### §248.14 Distribution of funds.

(a) *Conditions for receipt of Federal funds.*—(1) *Matching of funds*—(i) *Match amount.* As a prerequisite to the receipt of Federal funds, a State agency must agree to contribute from non-Federal sources at least 30 percent of its total FMNP cost. The Secretary may negotiate a lower percentage of matching funds, but not lower than 10 percent of the total cost of the program, in the case of an Indian State agency that demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council. The

State agency may contribute more than this minimum amount. Non-federal contributions for similar programs as defined in § 248.2 may satisfy the State matching requirement. If a State receiving funds under the FMNP applies the Federal grant to a similar program operated in the previous fiscal year solely with State or local funds, the State shall not reduce in any fiscal year the amount of State or local funds made available to the similar program below the level at which the similar program was funded in the year prior to obtaining FMNP funding.

(ii) *Sources of matching contributions.* A State agency may count any form of contribution authorized by 7 CFR 3016.24 toward the State matching requirement including in-kind contributions.

(iii) *Failure to match.* A State agency's failure to meet the State matching requirement will result in the establishment of a claim for the amount of Federal grant funds not matched. The matching requirement will be considered satisfied if State or other non-Federal matching contributions reported on the final closeout report required by § 248.15(a) of this part amount to at least 30 percent of the total FMNP costs. This match amount may be lower for those Indian State agencies that have demonstrated to the Secretary financial hardship as set forth in paragraph (a)(1)(i) of this section.

(2) *State Plan and agreement.* A State agency shall have its State Plan approved and shall execute an agreement with the Department in accordance with § 248.3(c) of this part.

(b) *Distribution of FMNP funds to previously participating State agencies.* Provided that sufficient FMNP funds are available, each State agency that participated in the FMNP in any prior fiscal year, shall receive not less than the amount of funds the State agency received in the most recent fiscal year in which it received funding, if it otherwise complies with the requirements established in this part.

(c) *Ratable reduction.* If amounts appropriated for any fiscal year for grants under the FMNP are not sufficient to pay to each previously participating State agency at least an amount as identified in paragraph (b) of this section, each State agency's grant shall be ratably reduced, except that, to the extent permitted by available funds, each State agency shall receive at least $75,000 or the amount that the State agency received for the most recent prior fiscal year in which the State participated, if that amount is less than $75,000.

(d) *Expansion of participating State agencies and establishment of new State agencies.* Any FMNP funds remaining for allocation after meeting the requirements of paragraph (b) of this section shall be allocated in the following manner:

(1) Of the remaining funds, 75 percent shall be made available to State agencies already participating in the FMNP that wish to serve additional recipients. If this amount is greater than that necessary to satisfy all State plans approved for additional recipients, the unallocated amount shall be applied toward satisfying any unmet need in paragraph (d)(2) of this section.

(2) Of the remaining funds, 25 percent shall be made available to State agencies that have not participated in the FMNP in any prior fiscal year. If this amount is greater than that necessary to satisfy the approved State Plans for new States, the unallocated amount shall be applied toward satisfying any unmet need in paragraph (d)(1) of this section. The Department reserves the right not to fund every State agency with an approved State Plan.

(3) In any fiscal year, any FMNP funds that remain unallocated after satisfying the requirements of paragraphs (d)(1) and (d)(2) of this section, shall be reallocated in accordance with paragraph (k) of this section.

(e) *Expansion for current State agencies.* In providing funds to serve additional recipients in State agencies that participated in the FMNP in the previous fiscal year, the Department shall consider on a case-by-case basis, the following:

(1) Whether a State agency utilized at least 80 percent of its prior year food grant. States that did not spend at least 80 percent of their prior year food grant, may still be eligible for expansion funding if, in the judgment of the Department, good cause existed which

was beyond the management control of the State, such as severe weather conditions, or unanticipated decreases in participant caseload in the WIC Program.

(2) Documentation that justifies the need for an increase in participation. This documentation must be set forth in the State Plan as outlined in §248.4(a)(20).

(3) Demonstrated ability to satisfactorily operate the existing FMNP. Supporting documentation must be set forth in the State Plan as outlined in §248.4(a)(20).

(4) Documentation that identifies the management capabilities of the State to expand. This documentation must be set forth in the State Plan as outlined in §248.4(a)(20).

(f) *Funding of new State agencies.* Funds will be awarded to new State agencies in accordance with §248.5.

(g) *Administrative funding.* A State agency shall have available for administrative costs an amount not greater than 17 percent of total FMNP funds. The 17 percent administrative cost limitation shall not apply to any funds that a State agency may contribute in excess of its minimum matching requirement. A State agency may use any non-Federal contributions in excess of the 30 percent (or the negotiated percentage for those Indian State agencies that received a lower amount) matching requirement for food and/or administrative costs.

(h) *Market development.* A State agency shall be permitted to use not more than 2 percent of total program funds for market development or technical assistance to farmers' markets if the Secretary determines that the State intends to promote the development of farmers' markets in socially or economically disadvantaged areas, or remote rural areas, where individuals eligible for participation in the program have limited access to locally grown fruits and vegetables.

(i) *Transfer of funds.* A State agency may use not more than 5 percent of the Federal FMNP funds made available for the fiscal year to reimburse expenses incurred by the FMNP during a preceding fiscal year. The State agency shall provide such justification for its request to spend back funds under this paragraph as FCS may require.

(j) *Recovery of unused funds.* State agencies shall return to FCS any unexpended funds made available for a fiscal year by February 1 of the following fiscal year.

(k) *Reallocation of funds.* Any funds recovered under paragraphs (d)(3) and (j) of this section will be reallocated in accordance with the appropriate method determined by FCS.

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49747, Sept. 27, 1995; 60 FR 57148, Nov. 14, 1995]

### §248.15 Closeout procedures.

(a) *General.* State agencies shall submit to FCS a final closeout report for the fiscal year on a form prescribed by FCS on a date specified by FCS.

(b) *Grant closeout procedures.* When grants to State agencies are terminated, the following procedures shall be performed in accordance with 7 CFR part 3016.

(1) FCS may disqualify a State agency's participation under the FMNP, in whole or in part, or take such remedies as may be appropriate, whenever FCS determines that the State agency failed to comply with the conditions prescribed in this part, in its Federal-State Agreement, or in FCS guidelines and instructions. FCS will promptly notify the State agency in writing of the disqualification together with the effective date.

(2) FCS may disqualify the State agency or restrict its participation in the FMNP when both parties agree that continuation under the FMNP would not produce beneficial results commensurate with the further expenditure of funds.

(3) Upon termination of a grant, the affected agency shall not incur new obligations after the effective date of the disqualification, and shall cancel as many outstanding obligations as possible. FCS will allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to disqualification, and the State agency shall do the same for farmers/farmers' markets.

(4) A grant closeout shall not affect the retention period for, or Federal

rights of access to, FMNP records as specified in § 248.24(b) and (c). The closeout of a grant does not affect the responsibilities of the State agency regarding property or with respect to any FMNP income for which the State agency is still accountable.

(5) A final audit is not a required part of the grant closeout and should not be needed unless there are problems with the grant that require attention. If FCS considers a final audit to be necessary, it shall so inform OIG. OIG will be responsible for ensuring that necessary final audits are performed and for any necessary coordination with other Federal cognizant audit agencies or State or local auditors. Audits performed in accordance with § 248.18 may serve as final audits providing such audits meet the needs of requesting agencies. If the grant is closed out without an audit, FCS reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

### § 248.16 Administrative appeal of State agency decisions.

(a) *Requirements.* The State agency shall provide a hearing procedure whereby recipients, local agencies and farmers/farmers' markets adversely affected by certain actions of the State agency may appeal those actions. A recipient may appeal disqualification/suspension of FMNP benefits. A local agency may appeal an action of the State agency disqualifying it from participating in the FMNP. A farmer/farmers' market may appeal an action of the State agency denying its application to participate, imposing a sanction, or disqualifying it from participating in the FMNP. Expiration of a contract or agreement shall not be subject to appeal.

(b) *Postponement pending decision.* An adverse action may, at the State agency's option, be postponed until a decision in the appeal is rendered.

(1) In a case where an adverse action affects a local agency or farmer/farmers' market, a postponement is appropriate where the State agency finds that recipients would be unduly inconvenienced by the adverse action. In addition, the State agency may determine other relevant criteria to be considered in deciding whether or not to postpone an adverse action.

(2) In a case where a recipient appeals the termination of benefits, that recipient shall continue to receive FMNP benefits until the hearing official reaches a decision or the expiration of the current FMNP season, whichever occurs first. Applicants who are denied benefits may appeal the denial, but shall not receive benefits while awaiting the decision.

(c) *Procedure.* The State agency hearing procedure shall at a minimum provide the recipient, local agency or farmer/farmers' market with the following:

(1) Written notification of the adverse action, the cause(s) for the action, and the effective date of the action, including the State agency's determination of whether the action shall be postponed under paragraph (b) of this section if it is appealed, and the opportunity for a hearing. Such notification shall be provided within a reasonable timeframe established by the State agency and in advance of the effective date of the action.

(2) The opportunity to appeal the action within the time specified by the State agency in its notification of adverse action.

(3) Adequate advance notice of the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing.

(4) The opportunity to present its case and at least one opportunity to reschedule the hearing date upon specific request. The State agency may set standards on how many hearing dates can be scheduled, provided that a minimum of two hearing dates is allowed.

(5) The opportunity to confront and cross-examine adverse witnesses.

(6) The opportunity to be represented by counsel, or in the case of a recipient appeal, by a representative designated by the recipient, if desired.

(7) The opportunity to review the case record prior to the hearing.

(8) An impartial decision maker, whose decision as to the validity of the State agency's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory

provisions governing the FMNP. The basis for the decision shall be stated in writing, although it need not amount to a full opinion or contain formal findings of fact and conclusions of law.

(9) Written notification of the decision in the appeal, within 60 days from the date of receipt of the request for a hearing by the State agency.

(d) *Continuing responsibilities.* Appealing an adverse action does not relieve a farmer/farmers' market or local agency permitted to continue in the FMNP while its appeal is pending, from responsibility for continued compliance with the terms of the written agreement or contract with the State agency.

(e) *Judicial review.* If a State level decision is rendered against the recipient, local agency or farmer/farmers' market and the appellant expresses an interest in pursuing a further review of the decision, the State agency shall explain any further State level review of the decision and any available State level rehearing process. If neither is available or both have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

(f) *Additional appeals procedures for State agencies which authorize farmers' markets and not individual farmers.* A State agency which authorizes farmers' markets and not individual farmers shall ensure that procedures are in place to be used when a farmer seeks to appeal an action of a farmers' market or association denying the farmer's application to participate, or sanctioning or disqualifying the farmer. The procedures shall be set forth in the State Plan and in the agreements entered by the State agency and the farmers' market and the farmers' market and the farmer.

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49748, Sept. 27, 1995; 60 FR 57148, Nov. 14, 1995]

## Subpart F—Monitoring and Review of State Agencies

### §248.17 Management evaluations and reviews.

(a) *General.* FCS and each State agency shall establish a management evaluation system in order to assess the accomplishment of FMNP objectives as provided under these regulations, the State Plan, and the written agreement with the Department. FCS will provide assistance to State agencies in discharging this responsibility, and will establish standards and procedures to determine how well the objectives of this part are being accomplished, and implement sanction procedures as warranted by State FMNP performance.

(b) *Responsibilities of FCS.* FCS shall establish evaluation procedures to determine whether State agencies carry out the purposes and provisions of this part, the State Plan, and the written agreement with the Department. As a part of the evaluation procedure, FCS shall review audits to ensure that the FMNP has been included in audit examinations at a reasonable frequency. These evaluations shall also include reviews of selected local agencies, and on-site reviews of selected farmers/farmers' markets. These evaluations will measure the State agency's progress toward meeting the objectives outlined in its State Plan and the State agency's compliance with these regulations.

(1) If FCS determines that the State agency has failed, without good cause, to demonstrate efficient and effective administration of its FMNP or has failed to comply with the requirements contained in this section or the State Plan, FCS may withhold an amount up to 100 percent of the State agency's administrative grant.

(2) Sanctions imposed upon a State agency by FCS in accordance with this section (but not claims for repayment assessed against a State agency) may be appealed in accordance with the procedures established in §248.20. Before carrying out any sanction against a State agency, the following procedures will be followed:

(i) FCS will notify the chief departmental officer of the administering agency in writing of the deficiencies found and of FCS' intention to withhold administrative funds unless an acceptable corrective action plan is submitted by the State agency to FCS within 45 days after mailing of notification.

(ii) The State agency shall develop a corrective action plan, including timeframes for implementation to address

the deficiencies and prevent their future recurrence.

(iii) If the corrective action plan is acceptable, FCS will notify the chief departmental officer of the administering agency in writing within 30 days of receipt of the plan. The letter will advise the State agency of the sanctions to be imposed if the corrective action plan is not implemented according to the schedule set forth in the approved plan.

(iv) Upon notification from the State agency that corrective action has been taken, FCS will assess such action, and, if necessary, perform a follow-up review to determine if the noted deficiencies have been corrected. FCS will then advise the State agency of whether the actions taken are in compliance with the corrective action plan, and whether the deficiency is resolved or further corrective action is needed. Compliance buys can be required if during FCS management evaluations by regional offices, a State agency is found to be out of compliance with its responsibility to monitor and review farmers/farmers' markets.

(v) If an acceptable corrective action plan is not submitted within 45 days, or if corrective action is not completed according to the schedule established in the corrective action plan, FCS may withhold the award of FMNP administrative funds. If the 45-day warning period ends in the fourth quarter of a fiscal year, FCS may elect not to withhold funds until the next fiscal year. FCS will notify the chief departmental officer of the administering State agency.

(vi) If compliance is achieved before the end of the fiscal year in which the FMNP administrative funds are withheld, the funds withheld may be restored to the State agency. FCS is not required to restore funds withheld beyond the end of the fiscal year for which the funds were initially awarded.

(c) *Responsibilities of State agencies.* The State agency is responsible for meeting the following requirements:

(1) The State agency shall establish evaluation and review procedures and document the results of such procedures. The procedures shall include, but are not limited to:

(i) Annual monitoring reviews of participating farmers' farmers' markets, including on-site reviews of a minimum of 10 percent of farmers and 10 percent of farmers' markets, which includes those farmers and markets identified as being the highest risk. First year of operation in the FMNP shall be considered a high-risk indicator. More frequent reviews may be performed as the State agency deems necessary.

(ii) Conducting monitoring reviews of all local agencies within the State agency's jurisdiction at least once every 2 years. Monitoring of local agencies shall encompass, but not be limited to, evaluation of management, accountability, certification, nutrition education, financial management systems, and coupon management systems. WIC State agency reviews of local agencies conducted for the WIC Program may contribute to meeting the FMNP requirement that all local agencies be reviewed once every two years if the reviews include reviews of FMNP practices. When the WIC State agency conducts a review of the local agency outside of the FMNP season, a review of documents and procedural plans of the FMNP, rather than actual FMNP activities, is acceptable.

(iii) Instituting the necessary follow-up procedures to correct identified problem areas.

(2) On its own initiative or when required by FCS, the State agency shall provide special reports on FMNP activities, and take positive action to correct deficiencies in FMNP operations.

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49748, Sept. 27, 1995]

### § 248.18 Audits.

(a) *Federal access to information.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, or duly authorized State auditors shall have access to any books, documents, papers, and records of the State agency and their contractors, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *State agency response.* The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a

response or statement to FCS as to the action taken or planned regarding the findings. A proposed corrective action plan developed and submitted by the State agency shall include specific time frames for its implementation and for completion of the correction of deficiencies and problems leading to the deficiencies.

(c) *Corrective action*. FCS shall determine whether FMNP deficiencies identified in an audit have been adequately corrected. If additional corrective action is necessary, FCS shall schedule a follow-up review, allowing a reasonable time for such corrective action to be taken.

(d) *State sponsored audits.* State and local agencies shall conduct independent audits in accordance with 7 CFR part 3015, §3016.26 or part 3051, as applicable. A State or local agency may elect to obtain either an organization-wide audit or an audit of the Program if it qualifies to make such an election under applicable regulations.

### §248.19 Investigations.

(a) *Authority*. The Department may make an investigation of any allegation of noncompliance with this part and FCS guidelines and instructions. The investigation may include, where appropriate, a review of pertinent practices and policies of any State and local agency, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the State and local agency has failed to comply with the requirements of this part.

(b) *Confidentiality*. No State or local agency, recipient, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under this part because that person has made a complaint or formal allegation, or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conducting of any investigation, hearing, or judicial proceeding.

## Subpart G—Miscellaneous Provisions

### §248.20 Claims and penalties.

(a) *Claims against State agencies.* (1) If FCS determines through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any FMNP funds provided to a State agency for food or administrative purposes were, through State agency negligence or fraud, misused or otherwise diverted from FMNP purposes, a formal claim will be assessed by FCS against the State agency. The State agency shall pay promptly to FCS a sum equal to the amount of the administrative funds or the value of coupons so misused or diverted.

(2) If FCS determines that any part of the FMNP funds received by a State agency; or coupons, were lost as a result of theft, embezzlement, or unexplained causes, the State agency shall, on demand by FCS, pay to FCS a sum equal to the amount of the money or the value of the FMNP coupons so lost.

(3) The State agency shall have full opportunity to submit evidence, explanation or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.

(4) FCS is authorized to establish claims against a State agency for unreconciled FMNP coupons. When a State agency can demonstrate that all reasonable management efforts have been devoted to reconciliation and 99 percent or more of the FMNP coupons issued have been accounted for by the reconciliation process, FCS may determine that the reconciliation process has been completed to satisfaction.

(b) *Interest charge on claims against State agencies.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit within 30 days from the date of the first demand letter from FCS, FCS will assess an interest (late) charge against the State agency. Interest accrual shall begin on the 31st day after the date of the first demand letter, bill or claim, and shall be computed monthly on any unpaid balance as long as the debt exists. From a source other than

the FMNP, the State agency shall provide the funds necessary to maintain FMNP operations at the grant level authorized by FCS.

(c) *Penalties.* In accordance with section 12(g) of the National School Lunch Act, whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under section 17 of the Child Nutrition Act of 1966, as amended, whether received directly or indirectly from USDA, or whoever receives, conceals or retains such funds, assets or property for his or her own interest, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or if such funds, assets or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

### § 248.21 Procurement and property management.

(a) *Requirements.* State agencies shall comply with the requirements of 7 CFR part 3016 for procurement of supplies, equipment and other services with FMNP funds. These requirements are adopted by FCS to ensure that such materials and services are obtained for the FMNP in an effective manner and in compliance with the provisions of applicable law and executive orders.

(b) *Contractual responsibilities.* The standards contained in 7 CFR part 3016 do not relieve the State agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FCS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the FMNP. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State agency may use its own procurement regulations which reflect applicable State and local regulations, provided that procurements made with FMNP funds adhere to the standards set forth in 7 CFR part 3016.

(d) *Property acquired with program funds.* State and local agencies shall observe the standards prescribed in 7 CFR part 3016 in their utilization and disposition of real property and equipment acquired in whole or in part with FMNP funds.

### § 248.22 Nonprocurement debarment/suspension, drug-free workplace, and lobbying restrictions.

The State agency shall ensure compliance with the requirements of the Department's regulations governing nonprocurement debarment/suspension (7 CFR part 3017), drug-free workplace (7 CFR part 3017), and the Department's regulations governing restrictions on lobbying (7 CFR part 3018), where applicable.

### § 248.23 Records and reports.

(a) *Recordkeeping requirements.* Each State agency shall maintain full and complete records concerning FMNP operations. Such records shall comply with 7 CFR part 3016 and the following requirements:

(1) Records shall include, but not be limited to, information pertaining to financial operations, FMNP coupon issuance and redemption, equipment purchases and inventory, nutrition education, and civil rights procedures.

(2) All records shall be retained for a minimum of 3 years following the date of submission of the final expenditure report for the period to which the report pertains. If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the 3-year period, the records shall be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later. If FCS deems any of the FMNP records to be of historical interest, it may require the State agency to forward such records to FCS whenever the State agency is disposing of them.

(3) Records for nonexpendable property acquired in whole or in part with FMNP funds shall be retained for three years after its final disposition.

(4) All records shall be available during normal business hours for representatives of the Department of the Comptroller General of the United States to inspect, audit, and copy. Any reports resulting from such examinations shall not divulge names of individuals.

(b) *Financial and recipient reports.* State agencies shall submit financial and FMNP performance data on a yearly basis as specified by FCS and required by section 17(m)(8) of the CNA. Such information shall include, but shall not be limited to:

(1) Number and type of recipients (Federal and non-Federal).

(2) Value of coupons issued.

(3) Value of coupons redeemed.

(c) *Source documentation.* To be acceptable for audit purposes, all financial and FMNP performance reports shall be traceable to source documentation.

(d) *Certification of reports.* Financial and FMNP reports shall be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(e) *Use of reports.* FCS will use State agency reports to measure progress in achieving objectives set forth in the State Plan, and this part, or other State agency performance plans. If it is determined, through review of State agency reports, FMNP or financial analysis, or an audit, that a State agency is not meeting the objectives set forth in its State Plan, FCS may request additional information including, but not limited to, reasons for failure to achieve these objectives.

### § 248.24 Other provisions.

(a) *No aid reduction.* The value of benefits or assistance available under the FMNP shall not be considered as income or resources of recipients or their families for any purpose under Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare and public assistance programs. Section 17(m)(7)(B) of the CNA provides that any programs for which a grant is received under this subsection shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 *et seq.*) and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

(b) *Statistical information.* FCS reserves the right to use information obtained under the FMNP in a summary, statistical or other form which does not identify particular individuals.

(c) *Confidentiality.* The State agency shall restrict the use or disclosure of information obtained from FMNP applicants and recipients to persons directly connected with the administration or enforcement of the WIC Program or the FMNP, including persons investigating or prosecuting violations in the WIC Program or FMNP under Federal, State or local authority.

### § 248.25 FMNP information.

Any person who wishes information, assistance, records or other public material shall request such information from the State agency, or from the FCS Regional Office serving the appropriate State as listed below:

(a) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont: U.S. Department of Agriculture, FCS, Northeast Region, 10 Causeway Street, Room 501, Boston, Massachusetts 02222–1066.

(b) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FCS, Mid-Atlantic Region, Mercer Corporate Park, 300 Corporate Boulevard, Robbinsville, New Jersey, 08691–1598.

(c) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FCS, Southeast Region, 77 Forsyth Street, SW., suite 112, Atlanta, Georgia 30303.

(d) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: U.S. Department of Agriculture, FCS, Midwest Region, 77 West Jackson Boulevard—20th floor, Chicago, Illinois 60604–3507.

(e) Arkansas, Louisiana, New Mexico, Oklahoma, Texas: U.S. Department of Agriculture, FCS, Southwest Region, 1100 Commerce Street, room 5–C–30, Dallas, Texas 75242.

(f) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: U.S.

Department of Agriculture, FCS, Mountain Plains Region, 1244 Speer Boulevard, suite 903, Denver, Colorado 80204.

(g) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, Washington: U.S. Department of Agriculture, FCS, Western Region, 550 Kearny Street, room 400, San Francisco, California 94108.

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49748, Sept. 27, 1995; 60 FR 57148, Nov. 14, 1995]

### § 248.26 OMB control number.

The collecting of information requirements for part 248 have been approved by the Office of Management and Budget and assigned OMB control number 0584–0477.

[60 FR 49748, Sept. 27, 1995]

# SUBCHAPTER B—GENERAL REGULATIONS AND POLICIES—FOOD DISTRIBUTION

## PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

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### Subpart E—Where To Obtain Information


250.60 Program information.


AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a-1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

SOURCE: 53 FR 20426, June 3, 1988, unless otherwise noted.

## Subpart A—General

### § 250.1 General purpose and scope.

This part prescribes the terms and conditions under which donated foods may be obtained from the Department by Federal, State and private agencies for use in any State in child nutrition programs, nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, the Commodity Supplemental Food Program, the Special Supplemental Nutrition Program for Women, Infants, and Children, the Food Distribution Programs on Indian Reservations and the assistance of needy persons.

### § 250.2 Administration.

(a) *Delegation to FCS.* Within the Department, FCS shall act on behalf of the Department in the administration of the program. FCS will provide assistance to distributing agencies and evaluate all levels of program operations to assure that the goals of the program are achieved in the most effective and efficient manner possible.

(b) *Delegation to distributing agency.* The distributing agency is responsible for effective and efficient administration of program operations within its jurisdiction and shall administer the program in accordance with the requirements of this part and FCS guidelines and instructions. Distributing agencies may impose additional requirements for participation that are not inconsistent with the provisions of

this part, except that this provision shall not apply to distribution to households on all or part of an Indian reservation which is participating in the Food Distribution Program under part 253 and part 254 of this chapter. The distributing agency shall provide guidance to subdistributing agencies and recipient agencies on all aspects of program operations.

(c) *Personnel.* Each distributing agency shall provide adequate personnel, to administer the program in accordance with this part.

**§ 250.3 Definitions.**

*Charitable institutions* means:

(a) A nonpenal, noneducational public (Federal, State or local) institution,

(b) A nonprofit, tax exempt, private hospital, or

(c) Any other nonprofit, noneducational, tax exempt private institution, including hospitals and facilities caring for needy infants and children, organized to provide charitable or public welfare services in the same place without marked changes and, at the Department's option, approved by a public welfare agency as meeting a definite need in the community by administering to needy persons, and provides a meal service on a regular basis. Charitable institutions include any institution defined as ''service institution''; ''nonresidential child care institution''; or ''school'' which is not a commodity school or does not participate in a child nutrition program. For purposes of this paragraph, tax exempt shall mean exempt from income tax under the Internal Revenue Code, as amended, and a charitable institution shall be considered ''noneducational'' even though educational courses are given, where such courses are incidental to the primary purpose of the charitable institution.

*Child nutrition program* means the National School Lunch Program, the School Breakfast Program, the Summer Food Service Program for Children, or the Child Care Food Program (parts 210, 220, 225, and 226, respectively of this chapter).

*Commodities* means foods donated, or available for donation, by the Department under any of the legislation referred to in this part (see ''Donated Foods'').

*Commodity school* means a school that does not participate in the National School Lunch Program under part 210 of this chapter but which operates a nonprofit school food service under agreement with the State educational agency or FCSRO as provided for under part 210 of this chapter and receives donated foods, or donated foods and cash or services of a value of up to 5 cents per lunch in lieu of donated foods under part 240 of this chapter for processing and handling of the donated foods.

*Contract value of the donated foods* means the price assigned by the Department to a donated food which shall reflect the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

*Contracting agency* means the distributing agency, subdistributing agency, or recipient agency which enters into a processing contract.

*Department* means the United States Department of Agriculture or the Commodity Credit Corporation, whichever is the donor under the pertinent legislation.

*Disaster* means (a) Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) (Stafford Act) to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby; or

(b) Any other occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat

of a catastrophe in any part of the United States.

*Disaster organizations* means organizations authorized by appropriate Federal or State officials to assist disaster victims.

*Disaster victims* means persons who, because of acts of God or manmade disasters, are in need of food assistance, whether or not they are victims of a major disaster or an emergency as defined in this section.

*Discount system* means a system whereby a recipient agency purchases end products directly from a processor at an established wholesale price minus the contract value of the donated foods contained in the end products.

*Distributing agency* means a State, Federal or private agency, or Indian Tribal Organization (ITO) which enters into an agreement with the Department for the distribution of donated foods to eligible recipient agencies and recipients and the Food and Consumer Service of the Department when it accepts title to commodities from the Commodity Credit Corporation (CCC) for distribution to eligible recipient agencies pursuant to the National Commodity Processing System. A distributing agency may also be a recipient agency.

*Distributor* means a commercial food purveyor or handler who is independent of a processor and both sells and bills for the end products delivered to recipient agencies.

*Donated foods* means foods donated, or available for donation, by the Department under any of the legislation referred to in this part (see ''Commodities'').

*End product* means a product containing any amount of donated foods which have been processed.

*Federal acceptance service* means the acceptance service provided by:

(a) The applicable grading branches of the Department's Agricultural Marketing Service (AMS),

(b) The Department's Federal Grain Inspection Service, and

(c) The National Marine Fisheries Service of the U.S. Department of Commerce.

*Fee-for-service* means the price by pound or by case representing a processor's cost of ingredients (other than donated foods), labor, packaging, overhead, and other costs incurred in the conversion of the donated food into the specified end product.

*Fiscal year* means the period of 12 months beginning October 1 of any calendar year and ending September 30 of the following year.

*FCS* means the Food and Consumer Service of the Department of Agriculture.

*FCSRO* means the appropriate Food and Consumer Service Regional Office of the Food and Consumer Service of the Department of Agriculture.

*Food bank* means a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products thereof, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that provide meals or food to needy persons on a regular basis as an integral part of its normal activities.

*Food service management company* means a commercial enterprise or a nonprofit organization which is or may be contracted with by a recipient agency to manage any aspect of its food service in accordance with § 250.12(d) of this part or in accordance with part 210, 220, 225, or 226 of this chapter.

*Household* means a group of related or non-related individuals, exclusive of boarders, who are not residents of an institution, but who are living as one economic unit and for whom food is customarily purchased and prepared in common. It also means a single individual living alone.

*In-kind replacement* means replacement of lost donated foods with a quantity of the same foods of U.S. origin that are of equal or better quality than the lost foods and that are of at least equal monetary value to the Department's cost of replacing the lost foods.

*Multi-State processor* means:

(a) A processor which has entered into a processing contract with contracting agencies in more than one State, or

(b) A processor which has entered into a processing contract with one or more contracting agencies located in a State other than the one in which either the processor's plant or business office is located.

*Needy persons* means:

(a) Persons provided service by charitable institutions, who, because of their economic status, are in need of food assistance,

(b) All the members of a household who are certified as in need of food assistance, and

(c) Disaster victims.

*Nonprofit school food service* means all food service operations conducted by the school food authority principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food services.

*Nonprofit summer camps for children* means nonprofit camps which do not participate in the Summer Food Service Program for Children authorized under section 13 of the National School Lunch Act, as amended (42 U.S.C. 1761), and in which, during the months of May through September, meal services are conducted for children of high school grade and under.

*Nonresidential child or adult care institution* means any child or adult care institution (as defined in part 226 of this chapter) which participates in the Child and Adult Care Food Program authorized under section 17 of the National School Lunch Act, as amended (42 U.S.C. 1766).

*Nutrition program for the elderly* means a project conducted by a recipient of a grant or contract under title III or title VI of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a).

*Offer-and-acceptance system* means a procedure whereby a school food authority is given the opportunity to order only the amounts and varieties of donated foods it desires for its school lunch program on the basis of advance notification by the distributing agency.

*Performance supply and surety bond* means a written instrument issued by a surety company which guarantees performance and supply of end products by a processor under the terms of a processing contract.

*Processing* means:

(a) The conversion of a donated food or donated foods into a different end product or

(b) The repackaging of a donated food or donated foods.

*Processor* means any commercial facility which processes or repackages donated foods. However, commercial enterprises which handle, prepare and/or serve products or meals containing donated foods on-site solely for the individual recipient agency under contract are exempt under this definition. Notwithstanding this definition, a recipient agency which prepares products or meals containing donated foods for more than one recipient agency under more than one contract in the same facility or prepares products or meals for any one recipient agency off-site shall not be a processor if the recipient agency preparing products or meals provides: (1) accountability for any donated foods received from another recipient agency consistent with § 250.16 of this part and (2) any funds received as payment for preparing products or meals shall be deposited in the nonprofit meal account of the recipient agency preparing products or meals.

*Program* means the Food Distribution Program.

*Recipient agencies* means nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, disaster organizations, school food authorities, schools, nonresidential child care institutions, service institutions, and welfare agencies receiving foods for their own use or for distribution to eligible recipients.

*Recipients* means the needy persons receiving commodities for household consumption.

*Refund* means (a) a credit or check issued to a distributor in an amount equal to the contract value of donated foods contained in an end product sold by the distributor to a recipient agency at a discounted price and (b) a check issued to a recipient agency in an amount equal to the contract value of donated foods contained in an end product sold to the recipient agency under a refund system.

*Refund application* means an application by a recipient agency in any form acceptable to the processor which certifies purchase of end products and requests a refund of the contract value of the donated foods contained in the end products purchased.

*Refund system* means a system whereby a recipient agency purchases a processor's end products and receives from the processor a payment equivalent to the contract value of the donated foods contained in the end products.

*School* means (a) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings. The term ''high school grade or under'' includes classes of preprimary grade when recognized as part of the education system of the States;

(b) Any public or nonprofit private classes of preprimary grade when they are conducted in those schools defined in paragraph (a) of this definition having classes of primary or of higher grade;

(c) Any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes. The term ''residential child care institutions'' includes, but is not limited to: homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more; or

(d) With respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

*School food authority* means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a nonprofit school food service therein or otherwise approved by FCS to operate the NSLP.

*School year* means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.

*Secretary* means the Secretary of Agriculture.

*Section 4(a)* means section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note). Section 4(a) authorizes the purchase of foods for distribution to maintain the traditional level of assistance for food assistance programs as are authorized by law, including institutions, supplemental feeding programs, disaster areas, summer camps for children, the Trust Territory of the Pacific Islands, and Indians whenever a tribal organization requests distribution of federally-donated foods under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)).

*Section 6* means section 6 of the National School Lunch Act, as amended (42 U.S.C. 1755). Section 6 authorizes the purchase of foods for distribution to schools and institutions participating in child nutrition programs under the National School Lunch Act and specifies the level of assistance which is to be provided.

*Section 14* means section 14 of the National School Lunch Act, as amended (42 U.S.C. 1762a). Section 14 authorizes the purchase of foods for distribution to maintain the annually programmed level of assistance for programs carried on under the National School Lunch Act, the Child Nutrition Act of 1966, and title III of the Older Americans Act of 1965.

*Section 32* means section 32 of Pub. L. 74–320, as amended (7 U.S.C. 612c). Section 32 authorizes the Department to purchase nonbasic perishable foods available under surplus-removal operations, for the purpose of encouraging the domestic consumption of such foods by diverting them from the normal channels of trade or commerce.

*Section 311* means section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a). Section 311 authorizes the purchase of commodities for nutrition programs for the elderly.

*Section 416* means section 416 of the Agricultural Act of 1949, as amended (7 U.S.C. 1431). Section 416 authorizes the Department to donate basic nonperishable foods acquired through Federal price-support operations for use by needy persons, for use in nonprofit school lunch programs and nonprofit summer camps for children, and for use in charitable institutions to the extent that needy persons are served.

*Section 709* means section 709 of the Food and Agricultural Act of 1965, as amended (7 U.S.C. 1446a–1). Section 709 authorizes the purchase of adequate supplies of dairy products to meet the requirements of schools, domestic relief distribution, and other programs authorized by law when the stocks of the Commodity Credit Corporation are insufficient to meet those requirements.

*Service institutions* means camps or sponsors (as those terms are defined in part 225 of this chapter) which participate in the Summer Food Service program authorized under section 13 of the National School Lunch Act, as amended (42 U.S.C. 1761).

*Similar replacement* means replacement of lost donated foods with a quantity of similiar foods of U.S. origin of the same types as those normally donated by the Department and of at least equal monetary value to the Department's cost of replacing the lost foods. Such replacement shall be subject to the approval of the FCSRO.

*Situation of distress* means (a) A hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other natural catastrophe not declared by the President to be a disaster, but which, in the judgment of the distributing agency, warrants the use of USDA commodities for congregate feeding; and

(b) Any other situation not declared by the President to be a disaster, but which, in the judgment of FCS, warrants the use of USDA commodities for congregate feeding or household distribution.

*Soup kitchen* means a public or charitable institution that maintains an established feeding operation to provide food to needy homeless persons on a regular basis as an integral part of its normal activities.

*State* and *United States* means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

*State Agency on Aging* means:

(a) The State agency that has been designated by the Governor and approved by the United States Department of Health and Human Services (DHHS) to administer nutrition programs for the elderly under title III of the Older Americans Act of 1965, as amended or

(b) The Indian tribal organization which has been approved by DHHS to administer nutrition programs for the elderly under title VI of such act.

*Storage facility* means an operation that provides warehousing services, or provides both warehousing and delivery services.

*Students in home economics* means students in regular classes wherein they are taught general home economics including food preparation, cooking, serving, nutrition, food purchasing, child care and health.

*Subdistributing agency* means an agency performing one or more distribution functions for a distributing agency other than, or in addition to, functions normally performed by common carriers or warehousemen. A subdistributing agency may also be a recipient agency.

*Substituted food* means domestically produced food that is purchased or manufactured by a processor and is substituted for donated food.

*Substitution* means:

(a) The replacement of donated foods with like quantities of domestically produced commercial foods of the same generic identity and of equal or better quality (i.e. cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.); or

(b) In the case of donated nonfat dry milk, substitution as defined under (a) of this definition or replacement with an equivalent amount, based on milk solids content, of domestically produced concentrated skim milk.

*Welfare agency* means a public (Federal, State or local) or private agency

offering assistance on a charitable or welfare basis to needy persons, who are not residents of an institution, and to Tribal councils designated by the Bureau of Indian Affairs.

[53 FR 20426, June 3, 1988, as amended at 53 FR 20598, June 6, 1988; 53 FR 27475, July 21, 1988; 58 FR 39120, July 22, 1993; 59 FR 16972, Apr. 11, 1994; 59 FR 62983, Dec. 7, 1994; 62 FR 8365, Feb. 25, 1997; 62 FR 53729, Oct. 16, 1997]

## Subpart B—General Operating Provisions

### §250.10 Eligible distributing and subdistributing agencies.

(a) *State and Federal agencies.* Federal agencies and such State agencies as are designated by the Governor of the State, or by the State legislature, and approved by the Secretary are eligible to become distributing agencies.

(b) *Private agencies.* Where distributing agencies are not permitted by law to make distribution to private recipient agencies, or to any class of private recipient agency, private agencies which agree to make distribution of donated food on a State-wide basis and which apply directly to FCS, and are approved by the Secretary are eligible to become distributing agencies.

(c) *Subdistributing agencies.* If distributing agencies use subdistributing agencies to distribute donated foods, the distributing agencies' responsibilities to the Department for overall management and control of the distribution program shall not be delegated to such subdistributing agencies.

### §250.11 Eligibility determination for recipient agencies and recipients.

(a) *Verification of recipient agency eligibility*. Distributing agencies at the request of FCS shall:

(1) Verify that recipient agencies registered to participate in the National Commodity Processing (NCP) Program have a current agreement with the distributing agency to receive donated food in accordance with §252.1(c) and

(2) Report the results of such verification to FCS within timeframes determined by FCS.

(b) *Eligibility of recipient agencies and recipients.* Distributing agencies shall determine the eligibility of any agency which submits an application for participation in the program. Distributing agencies shall consider the past performance of recipient agencies when approving applications for participation. Once a recipient agency has been determined to be eligible for participation in the program, the distributing agency shall enter into an agreement with the agency in accordance with §250.12(b) and make donated food available. Distributing agencies shall impose upon welfare agencies the responsibility for determining that recipients to whom welfare agencies distribute donated foods are eligible: *Provided, however:* That the State agency or FCSRO administering the applicable program shall determine the eligibility under this part of school food authorities participating under part 210 or part 220, or sponsors participating in the Summer Food Service Program for Children under part 225, of this chapter, and of nonresidential child care institutions participating in the Child Care Food Program under part 226 of this chapter.

### §250.12 Agreements and contracts.

(a) *Agreements with Department.* Prior to the beginning of a distribution program, distributing agencies shall enter into written agreements with the Department which shall incorporate the terms and conditions set forth in this part. When requested by the Department an eligible agency shall present evidence of its authority to enter into such agreements. The agreements shall be considered permanent, with amendments initiated by distributing agencies, or submitted by them at the Department's request, all of which shall be subject to approval by the Department. In addition, agreements between the Department and State Agencies on Aging that elect to receive cash in lieu of commodities shall also be considered permanent, with amendments initiated by these agencies, or submitted by them at the Department's request, all of which amendments shall be subject to approval by the Department.

(b) *Distributing agency agreements.* Distributing agencies shall enter into written agreements with all subdistributing agencies, recipient agencies, warehouses, carriers, or other entities to which distributing agencies deliver

donated foods under their distribution program. Distributing agencies shall be responsible for ensuring that program integrity is maintained by all entities with whom agreements are entered into. All agreements shall contain such terms and conditions as the distributing agency deems necessary to ensure that:

(1) The distribution and use of donated foods is in accordance with this part,

(2) Subdistributing agencies, recipient agencies, warehouses, carriers, or other persons to whom donated foods are delivered by the distributing agency are responsible to the distributing agency for any improper distribution or use of donated foods or for any loss of, or damage to, donated foods caused by their fault or negligence,

(3) Subdistributing agencies and recipient agencies have and preserve a right to assert claims against other persons to whom donated foods are delivered for care, handling or distribution, and

(4) Subdistributing agencies and recipient agencies will take action to obtain restitution in connection with claims for improper distribution, use or loss of, or damage to, donated foods.

(c) *Duration of distributing agency agreements.*—(1) Recipient agencies. Distributing agency agreements with recipient agencies shall be considered permanent, with amendments to be made as necessary. Distributing agencies shall ensure that recipient agencies provide, on a timely basis, by amendment to the agreement, any changed information, including, but not limited to, any changes resulting from amendments to Federal regulatory requirements and policy and changes in site locations, and number of meals or needy persons to be served.

(2) *Subdistributing agencies, carriers, and other entities.* Distributing agency agreements with subdistributing agencies (as defined in § 250.3) that are not recipient agencies, carriers, and other entities shall be in effect for not longer than one year, and shall provide that they may be extended at the option of both parties for two additional one-year periods. The party contracting with the distributing agency shall update all pertinent information and demonstrate that all donated food received during the period of the previous agreement has been accounted for, before an agreement is extended.

(3) *Termination of agreements.* Agreements may be terminated for cause by either party upon 30 days notice.

(d) *Food service management company contracts.* Food service management companies may be employed to conduct the food service operations of nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, schools, nonresidential child care institutions, and service institutions. When a food service management company is employed to provide such services, the recipient agency shall enter into a written contract with the food service management company. The contract shall expressly provide that any donated foods received by the recipient agency and made available to the food service management company shall be utilized solely for the purpose of providing benefits for the employing agency's food service operation, and it shall be the responsibility of the recipient agency to demonstrate that the full value of all donated foods is used solely for the benefit of the recipient agency. All food service management companies shall be subject to review by the distributing agency for compliance with contractual requirements, in accordance with § 250.19(b)(1). In the case of nonprofit summer camps for children, charitable institutions, and nutrition programs for the elderly, the contract shall be in effect for no longer than one year, and may provide that it be extended at the option of both parties for not more than four additional one-year periods. Contracts shall provide that they may be terminated for cause by either party upon 30 days notice. Prior to extension of the contract, the nonprofit summer camp for children, charitable institution, or nutrition program for the elderly shall update all pertinent information and demonstrate that all donated food received during the previous contract period has been accounted for.

(e) *Storage facility contracts.* When contracting for storage facilities, distributing agencies and subdistributing

agencies shall enter into a written contract, in accordance with §250.14(d).

(f) *Processing contracts.* When contracting for the processing of donated foods, contracting agencies shall enter into agreements with processors in accordance with §250.30(c).

[53 FR 20426, June 3, 1988, as amended at 62 FR 53729, Oct. 16, 1997]

**§250.13 Distribution and control of donated foods.**

(a) *Availability and use of donated foods*—(1) *General.* (i) Donated foods shall be available only for distribution and use in accordance with the provisions of this part and, with respect to distribution to households on all or part of an Indian reservation, of parts 253 and 254 of this chapter.

(ii) Donated foods shall not be sold, exchanged or otherwise disposed of without the approval of the Department.

(iii) Donated foods which are provided as part of an approved food package or authorized level of assistance may be transferred between like recipient agencies only with prior authorization of the distributing agency. Donated foods which are provided in addition to the State's authorized level of assistance may be transferred between recipient agencies which are eligible to receive such foods with the prior authorization of the distributing agency. However, the transfer of donated foods between unlike recipient agencies (e.g., from schools to charitable institutions), which have been provided as part of an approved food package or authorized level of assistance, must be approved by the appropriate FCSRO.

(iv) Food donated under section 32 of Public Law 74–320 (7 U.S.C. 612c) may also be transferred by recipient agencies to emergency feeding organizations which are distributing donated foods under part 251 of this chapter. A transfer between recipient agencies and emergency feeding organizations may be made only with the prior approval of the distributing agency and the State agency responsible for administering TEFAP.

(v) All transfers of donated foods shall be documented. Such documentation shall be maintained in accordance with the recordkeeping requirements in §§250.16 and 251.10(a) of this chapter.

(2) *Quantities.* (i) The quantity of donated foods to be made available for donation under this part shall be determined in accordance with the pertinent legislation and the program obligations of the Department, and shall be such as can be effectively distributed to further the objectives of the pertinent legislation.

(ii) Donated foods shall be requested and distributed only in quantities which can be consumed without waste in providing food assistance for persons eligible under this part. Distributing agencies shall impose similar restrictions on recipient agencies.

(3) *Minimum donations.* Foods shall be donated only in such quantities as will protect the lower truck load freight rate, except as the Department determines to be in the best interest of the program.

(4) *Allocations.* As foods become available for donation, FCS shall notify distributing agencies regarding the donated foods, the class or classes of recipient agencies or recipients eligible to receive them, and any special terms and conditions of donation and distribution which attach to a particular donated food, in addition to the general terms and conditions set forth herein.

When a commodity is available in limited quantities, the Department shall allocate such commodities among the States using allocation percentages which are based on appropriate participation data for the program designated to receive the commodity.

(5) *Commodity value.* Distributing agencies shall establish a value for each commodity for school food authorities and nonresidential child and adult care institutions for purposes of offering and crediting each recipient agency with the correct amount of commodities to fulfill planned commodity assistance levels (i.e., volume of commodities expected to be needed in order to meet the anticipated assistance at the local level, as determined by the distributing agency). Each commodity value shall be used consistently throughout the State to value commodities. The distributing agencies shall document and maintain on file

for FCS review the method used to determine commodity values. Distributing agencies shall notify recipient agencies of the cost-per-pound used to value commodities at the time a commodity is offered to recipient agencies. If the cost used to credit a commodity differs from the cost used to offer a commodity, distributing agencies shall also advise recipient agencies of the cost used to credit a commodity. To value a commodity offered to a recipient agency and to credit a commodity towards a recipient agency's planned commodity assistance level, distributing agencies shall use one of the following: The actual cost-per-pound data used to charge a State's commodity entitlement; the estimated cost-per-pound data provided by the Department; or the USDA commodity file cost as of a specified date. Actual cost data shall be defined as the cost-per-pound for an individual commodity charged to a State's entitlement on the Entitlement Food Order Report, which is based on the USDA purchase cost. Estimated cost data shall be defined as the cost provided by USDA on commodity survey memoranda. The USDA commodity file cost shall be defined as the cost that is listed for a commodity as of a date specified by the distributing agency.

(6) *Announcement and delivery of commodities.* The Department shall make every reasonable effort to arrange commodity deliveries based on information obtained from distributing agencies. However, the Department shall not be held fiscally responsible for any delay in delivering or for nondelivery of donated foods due to any cause. Distributing agencies shall maintain monthly distribution schedules which provide for equitable and reliable deliveries to recipient agencies, recognize local hours of operation, holidays and vacations and, whenever possible, other special needs of recipient agencies. Upon request by the recipient agency, the distributing agency may make deliveries less frequent than monthly when the distributing agency determines that monthly service is not cost effective, due to distance or the size of a food order, or other necessary reasons, such as seasonal school closures. Distributing agencies shall notify recipient agencies of:

(i) General USDA purchase information at least quarterly;

(ii) Anticipated State delivery schedules at least quarterly, including the types and quantities of commodities available; and

(iii) Changes in delivery schedules when such changes affect the recipient agency.

(7) *Demonstrations and tests.* Notwithstanding any other provision of this part, a quantity of any food donated for use by any recipient agency or recipient may be transferred by the distributing agency or by the recipient agency to bona fide experimental or testing agencies, or for use in workshops, or for demonstrations or tests relating to the utilization of such donated food by the recipient agency or recipient. No such transfer by any recipient agency shall be made without the approval of the appropriate distributing agency.

(b) *Processing and other costs.* The Department shall pay such processing, reprocessing, transporting, handling and other charges accruing up to the time of transfer of title to distributing agencies as is deemed in the best interest of the Department.

(c) *Transfer of title.* Title to donated foods shall pass to distributing agencies upon their acceptance of donated foods at time and place of delivery, limited, however, by the obligation of the distributing agency to use such donated foods for the purposes and upon the terms and conditions set forth in this part.

(d) *Distribution of donated foods to recipient agencies or recipients*—(1) *Distribution.* Donated foods shall be distributed only to recipient agencies and recipients eligible to receive them under this part (see subpart D). Distributing agencies shall require that welfare agencies and disaster organizations distribute donated foods only to recipients eligible to receive them under this part. It shall not be deemed a failure to comply with the provisions of this part if recipient agencies serve meals containing donated foods to persons other than those who are eligible under this part, when such persons share common preparation, serving or

dining facilities with eligible persons (needy persons, children, participants in nutrition programs for the elderly) and at least one of the following is true:

(i) Such other persons are common beneficiaries with the eligible persons of the program of the recipient agency, or

(ii) Such other persons are few in number compared to the eligible persons and receive their meals as an incident of their service to the eligible persons.

Such other persons include, but are not limited to teachers, disaster relief workers, and staff members. Nothing in this paragraph shall be construed as authorizing allocation or issuance of donated foods to recipient agencies in greater quantity than that authorized for the assistance of persons eligible under this part.

(2) *Normal food expenditures.* Section 416 donated foods shall not be distributed to any recipient agencies or recipients whose normal food expenditures are reduced because of the receipt of donated foods.

(e) *Improper distribution, loss of or damage to donated foods.* (1) If a distributing agency improperly distributes or uses any donated foods or causes loss of or damage to a donated food through its failure to provide proper storage, care or handling, the provisions set forth in § 250.15(c) shall apply.

(2) In instances when it is determined by a distributing agency that a claim exists against a subdistributing agency, recipient agency, warehouse, carrier, processor or other person, the distributing agency shall pursue claims in accordance with § 250.15(c).

(f) *Disposition of damaged or out-of-condition foods.* Donated foods which are found to be damaged or out-of-condition and are declared unfit for human consumption by Federal, State or local health officials, or by other inspection services or persons deemed competent by the Department, shall be disposed of in accordance with instructions of the Department. Such instructions may direct that unfit donated food be:

(1) Sold in a manner prescribed by the Department with the net proceeds thereof remitted to the Department;

(2) Sold in a manner prescribed by the Department with the proceeds thereof retained for use in accordance with the provisions of § 250.15(f);

(3) Used in such manner as will serve a useful purpose as determined by the Department; or

(4) Destroyed in accordance with applicable sanitation laws and regulations.

Upon a finding by the Department that donated food are unfit for human consumption at the time of delivery to the distributing agency and when the Department or appropriate health officials require that such donated foods be destroyed, the Department may pay to the distributing agency any expenses incurred in connection with such donated foods as determined by the Department. The Department may, in any event, repossess damaged or out-of-condition donated foods.

(g) *Replacement of damaged commodities.* (1) The Department shall replace donated foods received by distributing or recipient agencies when:

(i) The distributing agency documents that the donated foods were stale, spoiled, out of condition or not in compliance with USDA specifications at the time they were delivered by the Department;

(ii) The donated foods have been provided as part of the State's authorized level of assistance (entitlement) as established by law; or, when the donated foods have been provided in addition to the State's entitlement, but the total amount of the specific donated food which the distributing agency can order is limited by the Department;

(iii) The loss is reported to the FCSRO within three months of the date the donated foods were received in the State, except that for canned commodities the reporting deadline shall be six months after receipt;

(iv) A signed consignee receipt or acceptable written documentation of delivery is submitted to the FCSRO; and

(v) At the request of the Department, the product has been reinspected and has been determined to be stale, spoiled, out of condition or not in compliance with USDA specifications.

(2) In instances in which a recipient agency seeks replacement of donated

foods, the recipient agency shall submit the information listed above to its distributing agency. The distributing agency shall promptly submit the information to the FCSRO.

(3) Replacement by the vendor shall be made with either the same or similar food agreed to by the Department. Physical replacement shall be on a per-pound or per-case basis. In rare instances, and only with the approval of the Department, distributing agency and recipient agency, vendor replacement will be made with a cash payment to the recipient or distributing agency. Any such cash payments shall be used to purchase replacement commodities which are the same or similar to the original commodities. Cash payments shall be made on the basis of the dollar value established by the Department of the donated food at the time the product was delivered or the cost to the Department for replacement, whichever is higher.

(4) Replacement by the Department shall be with either the same or similar food or by crediting the State's entitlement or cap. Physical replacement shall be on a per-pound or per-case basis. Entitlement or cap crediting shall be equal to the dollar value or the number of pounds which was deducted from the State's entitlement or cap for that shipment. The Department shall arrange for delivery of the replacement donated foods when the quantities to be delivered are sufficient to make it cost effective. Once the Department has replaced the donated foods, the distributing agency shall make arrangements for providing replacement donated foods to the recipient agency which incurred the loss.

(5) In instances in which it is determined that the donated foods were in good condition at the time they were delivered by the Department, the cost of the reinspection shall be borne by the distributing agency and the distributing agency shall follow the claims procedures contained in § 250.15(c) of this part and FCS Instruction 410–1, Non-Audit Claims—FCS Distribution Program.

(h) *Redonations.* Whenever a distributing agency has any donated food on hand which it cannot efficiently utilize, it shall immediately make a request to the appropriate FCSRO, in writing, for instructions as to the disposition of such donated food. Distributing agencies requesting authority from the Department to make redonation of any donated foods shall, upon the Department's request, have such donated foods federally inspected. Expenditures incurred by the distributing agency as a result of redonation shall be handled in accordance with § 250.15(e).

(i) *Embezzlement, misuse, theft, or obtainment by fraud of donated foods and donated food-related funds, assets, or property.* Notwithstanding paragraph (c) of this section concerning transfer of title to donated foods, whoever embezzles, willfully misapplies, steals, or obtains by fraud, donated foods or any funds, assets, or property deriving from donated foods or whoever receives, conceals, or retains such donated foods, funds, assets, or property for his/her own use or gain, knowing such donated foods, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall be subject to Federal criminal prosecution under section 12(g) of the National School Lunch Act, as amended (42 U.S.C. 1760(g)) or section 4(c) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note). For the purpose of this paragraph ''funds, assets, or property'' include, but are not limited to funds accruing from the sources identified in § 250.15(f)(1) and (2), donated foods which have been processed into different end products as provided for under subpart C of this part, and the containers in which donated foods have been received from the Department. Distributing agencies shall immediately notify FCSRO of any suspected violation of section 12(g) or section 4(c) to allow the Department, in conjunction with the U.S. Department of Justice, to determine whether Federal criminal prosecution under section 12(g) or section 4(c) is warranted. Prosecution of violations by the Federal Government shall not relieve any distributing agency of its obligation to obtain recovery for improperly distributed or lost donated foods, as required by § 250.15(c).

(j) *Commodity specifications.* Distributing agencies shall make summaries of

commodity specifications available to recipient agencies upon request.

(k) *Commodity acceptability reports.* To ensure that the Department is kept apprised of the commodities and packaging that are preferred by recipients and participating agencies, information shall be collected as follows:

(1) *Information collection.* Distributing agencies shall obtain information from recipient agencies which reflects:

(i) The types and forms of donated foods that are most useful to recipients;

(ii) Commodity specification recommendations; and

(iii) Requests for options regarding package sizes and forms of commodities.

(2) *Samples and representation.* The distributing agency shall collect information from recipient agencies from each of the following program categories: The National School Lunch Program, the Child and Adult Care Food Program, the Nutrition Program for the Elderly, the Commodity Supplemental Food Program, and the Food Distribution Program on Indian Reservations. At a minimum, distributing agencies shall obtain this information from a sample of at least 10 percent or 100 recipient agencies in each program category, whichever is less. To ensure that the sample is representative of all recipient agencies, distributing agencies shall consider the size and geographic location of all recipient agencies within the State and alternate among them so that over time each recipient agency is provided an opportunity to express its views. Distributing agencies are encouraged to extract information regarding commodity acceptability from all available sources, including, for example, State Food Distribution Advisory Council Reports.

(3) *Timeframes for submission.* Distributing agencies shall submit commodity acceptability reports to the appropriate FCSRO by April 30th of each year on form FCS–663.

[53 FR 20426, June 3, 1988, as amended at 53 FR 22469, June 16, 1988; 53 FR 27475, July 21, 1988; 58 FR 39120, July 22, 1993; 62 FR 53730, Oct. 16, 1997]

## §250.14 Warehousing, distribution and storage of donated foods.

(a) *Standards for Warehousing and Distribution Systems*—(1) *Use of cost efficient and effective facilities.* Distributing agencies shall use the most cost effective and efficient system for providing warehousing and distribution services to recipient agencies. For the purpose of this part, commercial facilities are defined as enterprises that provide commercial warehousing services or commercial delivery services, or those commercial enterprises that provide both warehousing and delivery services.

(2) *Timeframes for evaluation.* All distributing agencies shall evaluate their current warehousing and distribution systems. Initial evaluations shall be submitted to the FCSRO by June 30, 1990. Subsequent evaluations of noncommercial systems shall, at a minimum, be submitted to FCS every three years by March 31.

(3) *Evaluation of current systems.* The evaluation of the system in place shall, at a minimum, include the following information:

(i) A description of the principal warehousing/delivery techniques used by the distributing agency. The description should include:

(A) The frequency of delivery available;

(B) The timeframes for making deliveries;

(C) The type of delivery service offered (to the loading dock or placement in the storeroom); and

(D) The system for recipient agencies to order specific amounts of food from available inventory; and

(ii) An estimate of all costs that will be incurred in administering the Food Distribution Program for the upcoming school year. These costs include transportation, storage and handling of donated foods (if the current distributing agency system does not include delivery to recipient agencies, identification of costs incurred by recipient agencies to pick up commodities at a warehouse and to deliver the food to a centralized storage facility or the individual preparation sites), salaries of persons directly connected with the administration of the program and other

program related expenses. These expenses shall include fringe benefits, travel expenses, rent, utilities, accounting/auditing services to recipient agencies such as the costs for administering and monitoring the State's processing program, and technical assistance workshops.

(4) *Comparison of existing system with commercial systems.* All distributing agencies which do not use commercial facilities for a basic level of warehousing and distribution services shall compare the cost of warehousing and distributing commodities under their current system with the cost of comparable services under a commercial system for the upcoming school year.

(i) The cost comparison shall be made between the cost of providing a basic level of service under its current system and the cost of obtaining an equivalent level of service from commercial facilities. This basic level of service shall consist of the transportation, storage and handling of donated food from the time of delivery by the Department to a distributing agency until delivery to a recipient agency's centralized storage facility or individual preparation sites and shall include monthly deliveries of donated food to all recipient agencies except those that have agreed to less frequent deliveries.

(ii) A distributing agency may base its cost comparison on a level of service in excess of the basic level and/or on services not currently provided. In all cases, the comparison must be made on the costs of providing a comparable level of service under the existing system (as identified in § 250.14(a)(2)) versus a commercial system.

(iii) If a distributing agency is unable to locate any commercial facilities expressing interest in providing the basic level of warehousing and distribution services, the distributing agency shall indicate this in its cost comparison submission, together with documentation of its efforts to obtain cost estimates from commercial facilities.

(iv) All initial data regarding the cost of the current warehousing and distribution system and the cost for comparable commercial facilities shall be submitted to the FCSRO by June 30, 1990. Subsequent cost comparisons shall, at a minimum, be submitted to FCS once every three years by March 31.

(5) *Approval to use other systems.* Distributing agencies that do not implement a commercial warehousing and distribution system shall apply to the FCSRO for approval to use other facilities and must demonstrate that other facilities are more cost effective and efficient. All requests for a waiver shall be accompanied with a full evaluation of the existing system complete with cost comparison data. Each request will be considered on a case by case basis. Initial requests for approval of alternative systems shall be submitted to the FCSRO by June 30, 1990. Subsequent requests shall, at a minimum, be submitted to the FCSRO once every three years by March 31.

(6) *System implementation.* (i) Distributing agencies shall implement the most cost effective and efficient system for warehousing and distribution services to recipient agencies by July 1, 1991. Unless otherwise approved by the FCSRO, subsequent to July 1, 1991, a distributing agency shall convert to a commercial system within six months of:

(A) The date of submission of evaluation and cost comparison data indicating that a commercial system is more cost effective and efficient (if no request for approval of an alternate system is made); or

(B) The date of the denial of a request to use an alternative system.

(ii) If at any time FCS determines that the warehousing and distribution system in place is not cost effective or efficient, the distributing agency will be required to reevaluate its system (including a cost comparison and request for continued approval to use an alternative system) in accordance with this subsection within 90 days of notification by the FCSRO.

(7) *Revisions in system.* All distributing agencies (using either commercial or noncommercial systems) shall request approval from the FCSRO at least 90 days in advance of any planned reduction in the level of service provided or any increase in distribution charges beyond normal inflation. If FCS determines the proposed changes are inappropriate, FCS may require the

distributing agency to submit additional justification, deny the request, or request a reevaluation of the system in accordance with paragraph (a)(6)(ii) of this section.

(b) *Standards for storage facilities.* Distributing agencies, subdistributing agencies and recipient agencies shall provide facilities for the handling, storage and distribution of donated foods which:

(1) Are sanitary and free from rodent, bird, insect and other animal infestation;

(2) Safeguard against theft, spoilage and other loss;

(3) Maintain foods at proper storage temperatures;

(4) Stock and space foods in a manner so that USDA-donated foods are readily identified;

(5) Store donated food off the floor in a manner to allow for adequate ventilation; and

(6) Take other protective measures as may be necessary.

Distributing agencies, subdistributing agencies and recipient agencies shall ensure that storage facilities have obtained all required Federal, State and/or local health inspections and/or approvals and that such inspection/approvals are current.

(c) *Reviews.* All distributing agency-level storage facilities shall be reviewed annually. Distributing agencies shall ensure that subdistributing and recipient agencies. Conduct annual reviews of their respective storage facilities. Documentation shall be maintained on file at the distributing agency or local level as appropriate to reflect compliance with this section, including documentation of corrective action in cases of noncompliance. Corrective action must be taken immediately on all deficiencies identified in the review and the result of the corrective action must be forwarded to the distributing agency. Where applicable, the distributing agency shall determine and pursue claims in accordance with § 250.15(c).

(d) *Contracts.* When contracting for storage facilities, distributing agencies and subdistributing agencies shall enter into written contracts to be effective for no longer than five years, including option years extending a contract. Before the exercise of option years, the storage facility shall update all pertinent information and demonstrate that all donated foods received during the previous contract period have been accounted for. The contract shall, at a minimum, contain the following:

(1) Assurance that the storage facilities will be maintained in accordance with the standards specified in paragraph (b) of this section;

(2) Evidence that donated food shall be clearly identified;

(3) Assurance that an inventory system shall be maintained and an annual physical inventory will be conducted; and reconciled with the inventory records;

(4) Beginning and ending dates of the contract;

(5) A provision for immediate termination of the contract due to noncompliance on the part of the warehouse management;

(6) A provision allowing for termination of the contract for cause by either party upon 30 days written notification;

(7) The amount of any insurance coverage, which has been purchased to protect the value of food items which are being stored; and

(8) Express written consent for inspection and inventory by the distributing agency, subdistributing agency, recipient agency, the Comptroller General, the Department or any of their duly authorized representatives.

(e) *Physical inventory.* During the annual review required by paragraph (c) of this section, distributing agencies, subdistributing agencies and recipient agencies shall take a physical inventory of all storage facilities. Such inventory shall be reconciled annually with the storage facility's inventory records and maintained on file by the agency which contracted with or maintained the storage facility. Food items which have been lost, stolen or found to be out-of-condition shall be identified during the physical inventory and reported by the subdistributing or recipient agency to the distributing agency. Potential excessive inventory, as described in paragraph (f) of this section, shall be reported by the subdistributing or recipient agency to the

distributing agency. Corrective action shall be taken immediately on all deficiencies and inventory discrepancies and the results of the corrective action forwarded to the distributing agency. Where applicable, the distributing agency shall determine and pursue claims in accordance with § 250.15(c).

(f) *Excessive inventories.* (1) The distributing agency shall determine if a subdistributing or recipient agency's inventories are excessive based on:

(i) The rate of distribution;

(ii) Anticipated distribution; and

(iii) Other concerns such as logistical and economic considerations.

(2) In no case may the inventory level of each donated food in storage exceed a six-month supply unless sufficient justification for additional inventory has been submitted and approved. Subdistributing agencies and recipient agencies shall submit justification to the distributing agency in instances where more than a six-month inventory is needed. Justification shall be submitted by the distributing agency to the FCSRO for approval in instances where more than a six-month inventory is needed at the distributing agency level.

(3) The distributing agency shall take corrective action to ensure that excess inventories at all levels are eliminated and shall document actions taken to reduce excessive inventories.

[53 FR 20426, June 3, 1988, as amended at 54 FR 42475, Oct. 17, 1989; 62 FR 53730, Oct. 16, 1997]

### § 250.15 Financial management.

(a) *Distribution charges.* (1) Recipient agencies may be required to pay part or all of the direct costs for intrastate storage and distribution of donated food through distribution charges assessed by the distributing or subdistributing agency, except as provided in paragraph (a)(2) of this section.

(i) Distributing and subdistributing agencies assessing distribution charges shall submit a description of their system with all data used in calculating the rate to be used for the upcoming school year to the FCSRO for approval. The initial description and data shall be submitted by June 30, 1990. Updates to this information shall, at a minimum, be submitted to the FCSRO for approval every three years by March 31.

(ii) At least 90 days before increasing distribution charges beyond normal inflation, the distributing/subdistributing agency shall submit to the FCSRO a description of the change together with all data used to calculate the change. FCS will take action on the proposed increase in accordance with paragraph (a)(1)(v) of this section.

(iii) Allowable costs include but are not limited to those program costs referenced in paragraph (f)(2) of this section, i.e. transportation, storage and handling of donated foods, salaries of persons directly connected with the administration of the program and other program related expenses. Examples of other program related expenses are administrative costs such as fringe benefits, travel expenses, rent, utilities, accounting/auditing services, computer services, and the costs of providing program services to recipient agencies such as the cost for administering and monitoring the State's processing program, and technical assistance workshops.

(iv) Distribution charges shall not be assessed for costs which would be unallowable under the Cost Principles in the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015, subpart T. In no case may distribution charges be assessed for costs which are paid for by State Administrative Expense (SAE) funds, State or local appropriated funds or any other funds available to the distributing or subdistributing agency to administer the program. Distribution charges shall not be based on a percentage of the value of the commodities distributed.

(v) FCS shall review the information and inform the distributing agency of the appropriateness of its distribution charges. If it is determined that a distributing agency's proposed distribution charges are excessive or incorporate inappropriate costs, the distributing/subdistributing agency will be required to adjust the distribution charges to reflect an appropriate level or submit further justification sufficient to satisfy the FCSRO that the proposed distribution charges are essential to cover allowable costs and services. This further justification

shall include information from recipient agencies regarding their satisfaction with services provided.

(vi) Distribution charges, including any excess distribution charges which may accrue (as defined in paragraph (f)(4) of this section) shall be used in accordance with provisions of paragraph (f) of this section.

(2) Whenever a commodity is donated to a State without charge or credit against entitlement, recipient agencies may not be assessed for any part of the intrastate costs of storage and transportation of such commodity that is in excess of the distributing or subdistributing agency's direct costs for such storage and transportation minus any amount that the Department provides to the State to pay such costs under part 251 of this chapter.

(3) Under no circumstances shall recipients be required to make any payments in money, materials, or services for or in connection with the receipt of donated foods, nor shall voluntary contributions be solicited (except for the nutrition programs for the elderly) in connection with the receipt of donated foods for any purpose.

(b) *Sale of containers.* When containers or packing materials in which donated foods are received are disposed of by sale, the proceeds of such sale shall be used solely in accordance with the provisions of paragraph (f)(2) of this section.

(c) *Claims.* If a distributing agency improperly distributes or uses any donated foods, or causes loss of or damage to a donated food through its failure to provide proper storage, care, or handling, the distributing agency shall, at the Department's option:

(1) Replace the donated food in its distribution program in kind, or, in the case of section 6 donated foods, where replacement in kind may not be practicable, with other similar foods, or

(2) Pay to the Department the value of the donated food as determined by the Department.

Upon the happening of any event creating a claim in favor of a distributing agency against a subdistributing agency, recipient agency, warehouseman, carrier or other person, for the improper distribution, use, or loss of, or damage to, a donated food, the distributing agency shall take action to obtain recovery. All amounts collected by such action shall, at the Department's option, be used in accordance with the provisions of paragraph (c)(1) of this section, or, except for amounts collected on claims involving section 6 donated foods, shall be expended for program purposes in accordance with the provisions of paragraph (f) of this section. Determinations by a distributing agency that a claim has or has not arisen in favor of the distributing agency against a subdistributing agency, recipient agency, warehouseman, carrier or other person, shall, at the option of the Department, be approved by the Department prior to the distributing agency taking action thereon. Where prior approval has not been given by the Department, a distributing agency's claim determinations shall be subject to review by the Department. In the case of an inventory shortage, when the loss of any one commodity does not exceed one percent of the total quantity of the donated food distributed or utilized from any single storage facility during the fiscal year in which the loss occurred, or during the period for which an audit was conducted by representatives of the Department, or, if approved by FCS, during the period for which an audit was conducted by the distributing agency, if the distributing agency finds that: (i) The cause of the shortage cannot be established, (ii) the lost donated foods were held in non-commercial storage or other facilities owned or operated by the distributing agency, a subdistributing agency or a recipient agency, and (iii) there is no indication that the loss was the result of negligence or continued inefficiency in operations, the distributing agency need not take any further claims action, but the factual basis for not taking further claims action shall be subject to review by the Department. Furthermore, distributing agencies shall not be required to file or pursue a claim for a loss which does not exceed an amount established by State law, regulations, or procedure as a minimum amount for which a claim will be made for State losses generally, but no such claim shall be disregarded where there is evidence of violation of Federal or State

statutes. Distributing agencies which fail to pursue claims arising in their favor, or fail to provide for the right to assert such claims, or fail to require their subdistributing agencies and recipient agencies to provide for such rights in accordance with § 250.12(b), shall be responsible to the Department for replacing the donated foods or paying the value thereof in accordance with the provisions of paragraph (c)(1) or (2) of this section. Distributing agencies which pursue claims arising in their favor, but fail to obtain full restitution shall not be liable to the Department for any deficiency unless the Department determines that the distributing agency fraudulently or negligently failed to take reasonable action to obtain restitution. The Department may, at its option, require assignment to it of any claim arising from the distribution of donated foods.

(d) *Demurrage.* Demurrage or other charges which accrue after a car or truck has been placed for unloading by the delivering carrier, or which accrue because placement of a car or truck is prevented, shall be borne by the distributing agency, except that demurrage or other charges may be borne by the Department where such charges accrue because of actions by the Department and without the fault or negligence of the distributing agency.

(e) *Redonation expenditures.* In accordance with § 250.13(g), whenever a distributing agency requests authority to make redonation of any donated foods and the Department requests that the donated foods be federally inspected, these inspections will be made at the expense of the distributing agency. Any donated foods which the Department determines are acceptable for redonation shall be moved at the distributing agency's expense to the closest point within the FCS region in which the State is located where it can be utilized, or to a closer point outside the region, if such a transfer is mutually agreed to by the Department and the distributing agency. In those instances in which the distributing agency satisfactorily demonstrates to the Department that the need for any redonation resulted from no fault or negligence on its part, the Department shall assume such transportation costs as it determines to be proper. Whenever a redonation is made at the request of the Department, the Department shall pay all transportation and handling costs in connection with such redonation and shall pay to the distributing agency all storage and handling costs accrued on the donated foods at the time of redonation, as determined by the Department, except when the request is made as a result of negligence on the part of the distributing agency.

(f) *Use of funds accruing in operation of the program.* (1) *Funds accruing from claims.* Funds accruing from recoveries from loss or damage claims (which are authorized under paragraph (c) of this section to be expended for program purposes) shall be used only for the payment of expenses of the food distributing program, including transportation, storage and handling or donated foods, salaries of persons directly connected with the program, and other administrative expenses. In accordance with paragraph (f)(4) of this section, the receipt and expenditure of funds so accrued shall be reviewed by the distributing agency to determine that fund balances are not in excess of program needs.

(2) *Other funds.* Funds accruing from the sale of containers, packing materials, salvage of donated foods, distribution charges, or insurance shall be returned to the Department or used only for the payment of expenses of the program which will improve program operations including, but not limited to, transportation, storage and handling of donated foods, salaries of persons directly connected with the program and other program-related expenses. Funds accruing from the collection of distribution charges which are determined to be in excess of program needs pursuant to paragraph (f)(4) of this section shall be used in accordance with that paragraph. Funds accruing from the operation of the program shall not be used for those costs which are unallowable under the cost Principles in the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015, subpart T. These unallowable costs include, but are not limited to:

(i) Bad debts;

(ii) Contingencies;

(iii) Contributions and donations;

(iv) Entertainment;

(v) Fines and penalties;

(vi) Governor's expenses;

(vii) Interest and other financial costs;

(viii) Legislative expenses; and

(ix) Losses on other grants.

(3) *Segregation of funds.* Distributing agencies and subdistributing agencies shall maintain two separate accounts for funds accruing from program operations. Funds accruing from the collection of distribution charges shall be maintained in an operating account. Funds accruing from the sale of containers, salvage of foods, insurance and recoveries of claims for the loss or damage of donated foods shall be maintained in a salvage account.

(4) *Excess funds.* The distributing agency shall review the receipt and expenditures of funds annually to ensure that fund balances are not in excess of program needs. At a maximum, the operating account fund shall not exceed the sum of the previous year's highest three-month expenditures. Funds exceeding this maximum shall be considered in excess of program needs unless the distributing agency provides sufficient justification as to the need for such funds and receives approval from the FCSRO. FCSRO may determine that funds equal to or less than the expenditures for the previous year's highest three months are in excess of what is needed. In such instances, the distributing agency shall reduce the excess funds in the operating account by reducing distributing charges or returning the funds to the contributor. The salvage account will have no set limit. FCSRO must, however, give prior approval to each deposit to or expenditure from the salvage fund which is in excess of $2,500. The distributing agency shall impose upon subdistributing agencies and recipient agencies similar provisions for the use of such funds accruing from the operation of their programs.

[53 FR 20426, June 3, 1988, as amended at 54 FR 42476, Oct. 17, 1989]

### §250.16 Maintenance of records.

(a) *General requirements.* (1) Accurate and complete records shall be maintained with respect to the receipt, distribution/use and inventory of donated foods including:

(i) End products processed from donated foods and

(ii) The determination made as to liability for any improper distribution, use of, loss of, or damage to, such foods and the results obtained from the pursuit of claims by the distributing agency.

Such records shall also be maintained with respect to the receipt and disbursement of funds arising from the operation of the distribution program, including the determination as to the amount of payments to be made by any processor, upon termination of processing contracts.

(2) Distributing agencies shall require all subdistributing and recipient agencies to maintain accurate and complete records with respect to the receipt, distribution/disposal and inventory of donated foods, including end products processed from donated foods, and with respect to any funds which arise from the operation of the distribution program, including refunds made to recipient agencies by processors in accordance with §250.30(k).

(3) Unless a distributing agency maintains an offer-and-acceptance system in accordance with §250.48(e), the distributing agency shall maintain accurate and complete records with respect to amounts and value of commodities refused by school food authorities. School food authorities shall also be required to maintain such records of refusals.

(4) Each processor, food service management company, warehouse, or other entity which contracts with a distributing agency, subdistributing agency or recipient agency shall be required to keep accurate and complete records with respect to the receipt, distribution/disposal, storage and inventory of such foods similar to those required of distributing agencies under this paragraph. Where donated foods have been commingled with commercial foods, the processor shall maintain records which permit an accurate determination of the donated-food inventory. The processor shall also be required to keep formula, recipes, daily or batch production records, loadout sheets, bills of

lading, and other processing and shipping records to substantiate the use made of such foods and their subsequent redelivery, in whatever form, to any distributing agency, subdistributing agency or recipient agency. Processors must maintain records which will permit a determination regarding compliance with the contracting provisions required by § 250.30(f) (3) and (4) as well as maintain records used as the basis for compiling the processor performance reports required by § 250.30(m).

(5) All recipient agencies shall be required to keep accurate and complete records showing the data and method used to determine the number of eligible persons served by that agency.

(6) Failure by a distributing agency, subdistributing agency, recipient agency, processor, food service management company, warehouse or other entity to maintain records required by this Section shall be considered prima facie evidence of improper distribution or loss of donated foods and the agency, processor or entity shall be subject to the provisions of § 250.13(e).

(b) *Length of maintenance.* All records required by this Section shall be retained for a period of three years from the close of the fiscal year to which they pertain. However, in instances when claims action and/or audit findings have not been resolved, the records shall be retained as long as required for the resolution of such action or findings.

### § 250.17 Reports.

(a) *Inventory reports and receipt of donated foods.* Distributing agencies shall complete and submit to the FCSRO semiannual reports regarding excessive inventories (as defined in § 250.14(f)) of donated foods, utilizing form FCS–155, the Inventory Management Register, except that distributing agencies shall submit monthly inventory information on form FCS–152, for the Food Distribution Program on Indian Reservations, and on form FCS–153, for the Commodity Supplemental Food Program. FCS may require the use of other reporting formats. FCS may also require that form FCS–155 be submitted more frequently than semiannually if necessary to maintain program accountability, and that any inventory report be submitted less frequently if sufficient to meet program needs. Reports shall be submitted not later than 30 calendar days after the last month in the reporting period as established by FCS.

(b) *Processing inventory reports.* Distributing agencies shall complete and submit a quarterly processing inventory report in accordance with § 250.30(o).

(c) *Performance reports.* Monthly reports of performance shall be submitted by processors to distributing agencies in accordance with § 250.30(m).

(d) *Commodity acceptability reports.* Distributing agencies shall submit to the FCSRO reports relative to the types and forms of donated foods which are most useful to recipient agencies in accordance with § 250.13(k) of this part.

(e) *Other reports.* Distributing agencies shall complete and submit other reports relative to distribution operations in such form as may be required from time to time by the Department.

(f) *Report transmission.* Where a report is to be postmarked by a specific date and such report is transmitted by means of a facsimile machine, the date printed by the facsimile machine on the facsimile copy may serve as the postmark.

(Reporting requirements contained in paragraph (a) approved by the Office of Management and Budget under control number 0584–0001. Reporting requirements contained in paragraph (e) approved by the Office of Management and Budget under control numbers 0584–0028, 0584–0109, 0584–0288 and 0584–0293)

[53 FR 20426, June 3, 1988, as amended at 53 FR 27476, July 21, 1988; 59 FR 62983, Dec. 7, 1994; 62 FR 53730, Oct. 16, 1997]

### § 250.18 Audits.

(a) *Right of inspection and audit.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, may inspect and inventory donated foods in storage or the facilities used in the handling or storage of such donated foods, and may inspect and audit all records, including financial records, and reports pertaining to the distribution of donated foods and may review or audit the procedures and methods used in carrying out the requirements

of this part at any reasonable time. Subdistributing agencies, recipient agencies, processors, food service management companies and warehouses shall be required to permit similar inspection and audit by such entities or their representatives. Fiscal matters shall continue to be reviewed in audits under the Single Audit Act (31 U.S.C. 7501–07) and the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

(b) *Independent CPA audits of multi-State processors.* (1) For any year in which a multi-State processor receives more than $250,000 in donated foods, the processor shall obtain an independent CPA (certified public accountant) audit for that year. Multi-State processors which receive $75,000 to $250,000 in donated food each year shall obtain an independent CPA audit every two years and those which receive less than $75,000 in donated foods each year shall obtain an independent CPA audit every three years. Those multi-State processors which are in the two or three-year audit cycle shall move into the next audit cycle at the point in time in which the value of donated foods received reaches $75,000 or $250,000 in any year. The total value of donated food received shall be computed by adding the value of food received under State and National Commodity Processing contracts. In instances in which the Department determines that the audit is not acceptable or that the audit has disclosed serious deficiencies, the processor shall be subject to additional audits at the request of FCS.

(2) Audits shall be conducted in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (7 CFR part 3015, subpart I) and the FCS Audit Guide for Multi-State Processors. At the discretion of FCS, auditors will be required to attend training sessions conducted by the Department.

(3) The costs of the audits, including those costs associated with training, shall be borne by the processors.

(4) Audit findings relative to those elements associated with the processing of donated food shall be submitted to the processor and to FCS concurrently.

(5) Noncompliance with the audit requirements in paragraph (b)(1) of this section will render the processor ineligible to enter into another processing contract with any contracting agency until the required audit has been conducted and deficiencies corrected.

(6) *Processor response.* Multi-State processors shall develop a written response to FCS addressing deficiencies which have been identified in the audit. Such responses shall include:

(i) Corrective action which has already been taken to eliminate the deficiency;

(ii) Corrective action which the processor proposes to take to eliminate the deficiency;

(iii) The timeframes for the implementation and completion of the corrective action;

(iv) A determination of what caused the deficiency; and

(v) Deficiencies which have been identified that the processor takes exception to and an explanation for the exception.

Multi-State processors shall submit a written response to FCS in accordance with timeframes established by FCS.

[53 FR 20426, June 3, 1988, as amended at 54 FR 7525, Feb. 22, 1989]

### §250.19 Reviews.

(a) *General.* Each distributing agency shall establish a review system in order to assess the effectiveness of its food distribution program in meeting the requirements of these regulations.

(b) *Responsibilities of distributing agencies.* (1) Each distributing agency shall establish review procedures encompassing eligibility, food ordering procedures, storage practices, inventory controls, reporting and recordkeeping requirements and compliance with nondiscrimination provisions. The procedures shall include:

(i) An on-site review of all nutrition programs for the elderly under agreement in accordance with §250.12(b), at least once every four years, with not fewer than 25 percent of these programs being reviewed each year. These reviews shall also include on-site reviews of the storage facilities of sites receiving donated foods to ensure compliance with §250.14(b);

(ii) An on-site review of all charitable institutions and nonprofit summer camps for children under agreement in accordance with § 250.12(b), and the food service management companies under contract with these recipient agencies in accordance with § 250.12(d), at a minimum, whenever the distributing agency identifies actual or probable deficiencies in program administration, including compliance with civil rights provisions, through audits, investigations of complaints, reports submitted by recipient agencies, or any other information available to the State agency which, at the discretion of the State agency, warrants an on-site review, or at the request of FCS;

(iii) An on-site review at least once every 2 years of all processors except those that are multi-State processors as defined in § 250.3, with no fewer than 50 percent being reviewed each year;

(iv) An annual on-site review of each storage facility utilized by the distributing agency. On-site reviews conducted by FCS may be considered as contributing to the fulfillment of the minimum coverage required by this paragraph; and

(v) A biennial review of all food service management companies under contract with recipient agencies in accordance with § 250.12(d), except that:

(A) Food service management companies under contract with charitable institutions and nonprofit summer camps for children shall be reviewed in accordance with paragraph (b)(1)(ii) of this section; and,

(B) Food service management companies under contract with schools participating in the National School Lunch Program or commodity schools under part 210 of this chapter, or with schools participating in the School Breakfast Program under part 220 of this chapter, shall be reviewed in accordance with the provisions set forth in parts 210 and 220.

(2) Each distributing agency shall design and implement a system to verify sales of end products to all recipient agencies under that distributing agency's authority in instances when a processor transfers end products to a distributor and the distributor sells the end product to the recipient agencies at a discount and the distributor receives a refund from the processor. At a minimum, such a system must:

(i) At a minimum, provide for a semi-annual review of a statistically valid sample of sales for the previous six-month period for all processors which contract with the distributing agency or contracting agencies under the authority of the distributing agency, including multi-State processors. The sample size must ensure a 95 percent confidence level;

(ii) Support the projection of a claim against the processor when, in the review of the sample, it is determined that the value of donated foods has not been passed on to recipient agencies or when end products have been improperly distributed; and

(iii) Provide for the assessment of claims against the processor in accordance with FCS Instruction 410–1, Non-Audit Claims, Food Distribution Program, in instances when deficiences have been identified.

(iv) Provide for the adjustment of performance reports and processing inventory reports to refect any invalid sales;

(v) Provide for the development and submission by processors to the distributing agency of a corrective action plan designed to correct problems identified during the sales verification; and

(vi) In instances in which the distributing agency has delegated the responsibility of sales verification to processors, the distributing agency must:

(A) Establish guidelines which ensure that the criteria contained in paragraphs (b)(2)(i)-(v) are met;

(B) Ensure that processors report their findings to the distributing agency on a semi-annaul basis in accordance with § 250.30(m);

(C) Review the processor's findings and select a random sub-sample of at least 10 percent of all sales verified by the processor and reverify the sale by contacting the recipient agency by telephone or through written correspondence; and

(D) Submit a copy of the processor's review report and findings and the results of the reverification efforts to the appropriate FCSRO. In instances of

poor processor performance, the distributing agency shall require the processor to discontinue the abused value pass-through-system, initiate an audit or review to determine the extent to which sales are to be disallowed, establish a claim, and/or terminate the contract.

(3) The distributing agency shall submit a report of review findings to each entity reviewed. The report shall include:

(i) Each deficiency found;

(ii) The factors contributing to each deficiency;

(iii) Recommendations for needed corrective action, including timetables for completion and/or claims action to be pursued, if any; and

(iv) Provisions for evaluating effectiveness of corrective actions.

A copy of each processor review report shall be provided to the appropriate FCSRO.

(4) Distributing agencies shall monitor progress toward completion and the effectiveness of corrective actions taken in eliminating program deficiences.

(5) In addition to the review requirements of paragraph (b)(1) of this section, each distributing agency shall make a continuing evaluation of all recipient agencies, and processors by monitoring performance reports, food requests, participation data, and data regarding refunds and discounts to recipient agencies and distributors for the receipt of end products.

(6) Distributing agencies shall, where applicable, require that subdistributing agencies monitor and review their operations in accordance with this paragraph.

(c) *Corrective action plans.* Corrective action plans shall be submitted whenever a distributing agency is found by the FCSRO to be substantially out of compliance with a performance standard or any other provision of this part. The corrective action plan shall identify the corrective actions and the timeframes needed to correct the deficiencies found by the FCSRO. The plan shall be written, signed by the proper official in the State, and submitted to the FCSRO within 60 days after the distributing agency receives notification from the FCSRO of a deficiency. Extensions beyond 60 days may be made, for cause, with written justification to and approved by the FCSRO.

(d) *Responsibilities of State Agencies on Aging.* State Agencies on Aging which receive cash payments in lieu of donated foods in accordance with the provisions of §250.42(c) shall monitor use of such cash after disbursement to nutrition programs for the elderly to ensure that the amounts so received are expended solely for the purchase of U.S. agricultural commodities and other foods of U.S. origin for such programs.

[53 FR 20426, June 3, 1988, as amended at 54 FR 7525, Feb. 22, 1989, 54 FR 25564, June 16, 1989; 54 FR 42477, Oct. 17, 1989; 62 FR 53731, Oct. 16, 1997]

### §250.20 Sanctions.

Any distributing agency which has failed to comply with the provisions of this part or any instructions or procedures issued in connection with it or any agreements entered into pursuant to it, may, at the discretion of the Department, be disqualified from further participation in any distribution program. Reinstatement may be made at the option of the Department. Disqualification shall not prevent the Department from taking other action through other available means when considered necessary, including prosecution under applicable Federal statutes.

### §250.21 Civil rights.

Distributing agencies, subdistributing agencies and recipient agencies shall comply with the Department's nondiscrimination regulations (7 CFR parts 15, 15a, and 15b) and the FCS civil rights instructions to ensure that in the operation of the program no person is discriminated against because of race, color, national origin, age, sex or handicap.

### §250.22 Complaints.

Distributing agencies shall investigate promptly complaints received in connection with the distribution or use of donated foods. Irregularities which are disclosed shall be corrected immediately. Serious irregularities shall be promptly reported to the Department. Distributing agencies shall maintain or

file evidence of such investigations and actions. The Department also reserves the right to make investigations and shall have the final determination as to when a complaint has been properly handled. Complaints alleged on the basis of race, color, national origin, age, sex or handicap shall be handled in accordance with § 250.21.

### § 250.23 Buy American.

(a) *Purchase requirements.* When purchasing food products with Federal funds, whenever possible, recipient agencies shall purchase only food products that are produced in the United States (U.S.). Food products produced in the U.S. means:

(1) An unmanufactured food product produced in the U.S.; or

(2) A food product that is manufactured in the U.S.

(b) *Exceptions.* The purchase requirements described in paragraph (a) of this section shall not apply in instances when the recipient agency determines: (1) Recipients have unusual or ethnic food preferences which can only be met through purchases of products not produced in the U.S.; (2) the product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; (3) the cost of U.S. produced food products is significantly higher than foreign products, or (4) the recipient agency is located in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands.

[53 FR 27476, July 21, 1988, as amended at 58 FR 39122, July 22, 1993]

### § 250.24 Distributing agency performance standards.

This section establishes basic performance standards which must be followed by distributing agencies responsible for intrastate distribution of donated commodities and products. The seven standards address the level of service that shall be provided to recipient agencies. The basic standards include the following:

(a) *Program management and evaluation.* Distributing agencies shall conduct reviews in accordance with § 250.19. Distributing agencies shall also assess the adequacy of the service provided to recipient agencies.

(b) *Information dissemination.* Distributing agencies shall provide recipient agencies with all information needed for informed participation in the program. Distributing agencies shall provide program information relative to:

(1) Current program regulations,

(2) Summaries of commodity specifications upon request (§ 250.13(j)) and commodity fact sheets,

(3) Results of any test evaluations and surveys,

(4) Advisory council membership recommendations,

(5) Recipes, and

(6) Written procedures for ordering commodities, handling commodities which are stale, spoiled, out-of-condition or not in compliance with specifications (including procedures for replacement by the Department under § 250.13(g)), submitting complaints and other written policy which affects program operations.

(c) *Fiscal responsibility.* Distributing agencies shall maintain a financial management system which ensures fiscal integrity and accountability for all funds and includes a recordkeeping system which conforms to generally accepted accounting practices. Distributing agencies shall submit information relative to distribution charges to FCS in accordance with § 250.15(a).

(d) *Ordering and allocation.* Distributing agencies shall ensure that donated food is provided on an equitable basis and, to the extent practicable, in the types and forms most usable by recipient agencies. Distributing agencies shall be responsible for:

(1) Obtaining and utilizing commodity acceptability information in accordance with § 250.13(k);

(2) Providing recipient agencies with information regarding commodity availability;

(3) Providing recipient agencies with information regarding commodity assistance levels;

(4) Ordering and allocating donated food based on participation data for those programs which serve meals;

(5) Ensuring the availability of commodities, to the extent possible, in quantities requested and at times specified by recipient agencies;

(6) Permitting recipient agencies to refuse all or a portion of a commodity prior to delivery to the distributing agency if time permits;

(7) Permitting recipient agencies to change orders for Group B (grain, dairy, peanut and oil products) and unlimited bonus commodities prior to submission of an order to the Department;

(8) Providing recipient agencies with ordering options and commodity values (§250.13(a)(5));

(9) Offering schools participating in the National School Lunch Program the per meal value of donated food in accordance with §250.48(c); and

(10) Consider the preparation and storage capabilities of recipient agencies when ordering donated food, including capabilities of such agencies to handle commodity product forms, quantity, packaging and quantities.

(e) *Warehousing and distribution.* Distributing agencies shall use a warehousing and distribution system that is efficient, cost effective and responsive to needs of recipient agencies in accordance with §250.14(a). In addition, distributing agencies shall:

(1) Work with recipient agencies capable of receiving direct shipments to order donated food directly into their warehouses;

(2) Solicit information and recommendations regarding the individual delivery needs of recipient agencies;

(3) Maintain distribution schedules which are equitable and reliable, recognize hours of operation, holidays and vacations and other special needs of recipient agencies;

(4) And make donated food available at least monthly to all recipient agencies except those that have agreed to less frequent deliveries (§250.13(a)(6)); however, the distributing agency shall not be held liable for delays in deliveries of donated food when such delays are due to late deliveries of donated food to the distributing agency by the Department.

(f) *Disposition of damaged or out-of-condition commodities.* Distributing agencies shall establish a system for handling recipient agency complaints, notifying the Department of any commodity losses in accordance with §250.13(f) and arranging for the replacement of lost commodities in accordance with §250.13(g).

(g) *Processing.* Distributing agencies shall administer an acceptable processing program in accordance with §250.30. In addition, distributing agencies shall inform recipient agencies annually of processing options available to them in facilitating participation in State or National processing contracts. Prior to entering into a processing contract, distributing agencies shall test end products. The end product testing may be delegated to the purchasing recipient agency provided that test results are reviewed by the distributing agency. Distributing agencies shall monitor the acceptability of processed end products as required in §250.30(b)(1).

[54 FR 42477, Oct. 17, 1989, as amended at 62 FR 53731, Oct. 16, 1997]

## Subpart C—Processing and Labeling of Donated Foods

### §250.30 State processing of donated foods.

(a) *General.* This section sets forth the terms and conditions under which distributing agencies, subdistributing agencies, or recipient agencies may enter into contracts for the processing of donated foods and prescribes the minimum requirements to be included in such contracts.

(b) *Permissible contractual arrangements.* (1) A distributing agency, subdistributing agency, or recipient agency may contract for processing, pay the processing fee, and deliver the end products to eligible recipient agencies through its own distribution system. Distributing agencies shall assure that the acceptability of processed end products is tested with recipient agencies eligible to receive them prior to entering into a processing contract and shall develop a system for monitoring product acceptability. Distributing agencies may exempt end products from testing if they have been used previously, have been determined by the distributing agency to be acceptable by recipient agencies, and have had no changes in specifications.

(2) A distributing agency or subdistributing agency may contract for processing on behalf of one or more recipient agencies. All recipient agencies

eligible to receive the donated foods to be processed may receive end products made from those foods and produced under such processing contracts by virtue of the distributing agency—recipient agency agreement required by § 250.12(b). Under this arrangement and subject to the approval of the distributing agency:

(i) Processors shall utilize either a discount or a refund system as defined in § 250.3 when they sell end products directly to recipient agencies, or

(ii) When selling end products through a distributor, such sales shall be in accordance with paragraph (e) of this section.

(3) Distributing agencies shall permit subdistributing agencies and recipient agencies to enter into processing contracts with a processor under arrangements similar to those described in paragraph (b) (1) or (2) of this section.

(c) *Requirements for processing contracts.* (1) Contracts with processors shall be in a standard written form and shall be reviewed by the appropriate FCSRO. Processing contracts shall terminate on June 30 of each year. However, processing contracts may give contracting agencies the option of extending contracts for two 1-year periods, provided that any changed information must be updated before any contract extension is granted, including the information in paragraphs (c)(3), (c)(4)(ii), and (c)(4)(viii)(B) of this section. The processor must have performed to the satisfaction of the contracting agency during the previous contract year, submitted all required reports and any corrections to such reports up to the time that contract extension occurs, and submitted its certified public accountant report as required under paragraph (c)(4)(xi) of this section before the contract may be extended. Distributing agencies shall develop criteria for use in evaluating and selecting processing contracts. The selection criteria shall be used in selecting or rejecting processors in a manner that ensures equitable treatment of processors. The selection criteria shall, at a minimum, include:

(i) The nutritional contribution which the end product will provide;

(ii) The marketability of the end product;

(iii) The distribution method which the processor intends to utilize;

(iv) Price and yield schedule data;

(v) Any applicable labeling requirements; and

(vi) The ability of the processor to meet the terms and conditions set forth in the regulations.

These criteria will be reviewed by the appropriate FCSRO during the management evaluation review of the distributing agency. Distributing agencies and subdistributing agencies which enter into contracts on behalf of recipient agencies but which do not limit the types of end products which can be sold or the number of processors which can sell end products within the State are not required to follow the selection criteria. In addition to utilizing these selection criteria, when a contracting agency enters into a contract both for the processing of donated food and the purchase of the end products produced from the donated food, the procurement standards set forth in Attachment O to OMB Circular A–102 must be followed. Recipient agencies which purchase end products produced under Statewide agreements are also required to comply with Attachment O of OMB Circular A–102. Contracting agencies shall not enter contracts with processors which cannot demonstrate the ability to meet the terms and conditions of the regulations and the distributing agency agreements; furnish prior to the delivery of any donated foods for processing, a performance bond, an irrevocable letter of credit or an escrow account in an amount sufficient to protect the contract value of donated food on hand and on order; demonstrate the ability to distribute end products to eligible recipient agencies; provide a satisfactory record of integrity, business ethics and performance and provide adequate storage.

(2) Standard form contracts shall be prepared or reviewed by the appropriate State legal staff to assure conformity with the requirements of these regulations and of applicable Federal, State and local laws.

(3) The contract shall be signed for the processor by the owner, a partner, or a corporate officer duly authorized to sign the contract, as follows:

(i) In a sole proprietorship, the owner shall sign the contract;

(ii) In a partnership, a partner shall sign the contract;

(iii) In a corporation, a duly authorized corporate officer shall sign the contract.

(4) At a minimum, each processing contract shall include:

(i) The names and telephone numbers of the contracting agency and processor;

(ii) A description of each end product, the quantity of each donated food and the identification of any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), the total weight of all ingredients in the batch formula, the yield factor for each donated food, and any pricing information provided by the processor in addition to that required in paragraph (c)(4)(iii) of this section as requested by the contracting agency and a thorough explanation of what this additional pricing information represents. The yield factor is the percentage of the donated food which must be returned in the end product to be distributed to eligible recipient agencies. For substitutable donated foods, at least 100 percent of the donated food provided to the processor must be physically contained in the end products with no allowable tolerance;

(iii) The contract value of each donated food to be processed and, where processing is to be performed only on a fee-for-service basis as defined in § 250.3, the fee-for-service;

(iv) A provision for:

(A) Termination of the contract upon thirty days written notice by the contracting agency or the processor and

(B) Immediate termination of the contract when there has been noncompliance with its terms and conditions by the contracting agency or the processor;

(v) In the event of contract termination, a provision for disposition of donated foods and end products in the processor's inventories or payment of funds in accordance with paragraph (j) of this section;

(vi) A provision for inspection and certification during processing, where applicable, by the appropriate acceptance service in accordance with paragraphs (g) and (h) of this section;

(vii) A provision that end products containing donated foods that are not substitutable under paragraph (f) of this section shall be delivered only to eligible recipient agencies and that end products containing both substitutable and non-substitutable donated foods may be delivered and sold in accordance with the requirements of paragraph (d) and (e) of this section;

(viii) Provisions that the processor shall:

(A) Fully account for all donated foods delivered into its possession by production and delivery to the contracting agency or eligible recipient agencies of an appropriate number of units of end products meeting the contract specifications, and where end products are sold through a distributor, that the processor remains full accountable for the donated foods until refunds or any other credits equal to their contracted value have been made to eligible recipient agencies in accordance with paragraph (k) of this section or to distributing agencies in accordance with paragraph (n)(2) of this section;

(B) Furnish to the contracting agency prior to the delivery of any donated foods for processing documentation that a performance supply and surety bond from a surety company listed in the most recent U.S. Department of Treasury Circular 570, an irrevocable letter of credit or an escrow account has been obtained in an amount that is sufficient to protect the contract value of all donated foods. Since the distributing agency is held liable by FCS for any donated foods provided to a processor the distributing agency shall determine the dollar value of the performance supply and surety bond, irrevocable letter of credit or the escrow account taking into consideration the

(*1*) Value of donated foods on hand;

(*2*) Value of donated foods on order and

(*3*) Anticipated usage rate during the contract period;

(C) Use or dispose of the containers in which donated foods are received from the Department in accordance with the instructions of the contracting agency;

(D) Apply as credit against the processing fee or return to the contracting agency and identify:

(*1*) Any funds received from the sale of containers, and

(*2*) The market value or the price received from the sale of any by-products of donated foods or commercial foods which have been substituted for donated foods;

(E) Substitute donated foods with commercially purchased foods only in accordance with paragraph (f) of this section;

(F) Meet the requirements of paragraph (i) of this section for labeling end products;

(G) Maintain accurate and complete records pertaining to the receipt, disposal, and inventory of donated foods in accordance with § 250.16;

(H) Submit processing performance reports in accordance with paragraph (m) of this section; and

(I) Submit annual reconciliation reports and make payments to distributing agencies for any inventory remaining at the termination of the contract in accordance with paragraph (n)(3) of this section.

(ix) A provision that approval of the contract by distributing agency shall not obligate that agency or the Department to deliver donated foods for processing;

(x) A description of the processor's quality control system and assurance that an effective quality control system will be maintained for the duration of the contract;

(xi) In instances when the processor is a multi-State processor as defined in § 250.3, a provision that the processor agrees to obtain an independent audit by a certified public accountant in accordance with § 250.18(b);

(xii) A requirement that inventory drawdowns shall be limited to the actual amount of donated foods contained in the end product. Additional commodity required to account for production loss shall be obtained from non-donated foods;

(xiii) A provision that the fee-for-service or value pass-through system to be used for the sale of end products to recipient agencies shall be described and be consistent with paragraphs (d) and (e) of this section.

(xiv) In instances when the distributing agency has delegated the responsibility for sales verification for end products provided by a distributor to recipient agencies at a discount, assurance that the processor will submit sales verification data to the distributing agency in accordance with § 250.30(m)(l); and

(xv) A provision that the contracting agency shall give the processor a list of all recipient agencies eligible to purchase end products under the contract and provide updates for any changes which occur during the contract period.

(xvi) A provision that the processor shall not assign the processing contract or delegate any aspect of processing under a subcontract or other arrangement without the written consent of the contracting agency and the distributing agency.

(xvii) A provision that the processor shall provide pricing information summaries and updated pricing information summaries as required in paragraphs (d)(3) and (e)(2) of this section.

(xviii) A provision that the processor shall maintain documentation which demonstrates that the level of the processor's commercial production has not been reduced, as required in paragraph (f)(1)(iii) of this section.

(d) *End products sold by processors.* (1) When recipient agencies pay the processor for end products, such sales shall be under:

(i) A refund system as defined in § 250.3 and in accordance with paragraph (k) of this section; or

(ii) A discount system which provides the price of each unit of end product purchased by eligible recipient agencies to be discounted by the stated contract value of the donated foods contained therein; or

(iii) An alternative value pass-through system under which the value of the donated food contained in each unit of end product shall be passed to

the recipient agency and which has been approved by FCS at the request of the distributing agency. Any alternative value pass-through system approved under this paragraph must comply with the sales verification requirements specified in § 250.19(b) of this part, or an alternative verification system approved by FCS. The Department retains the authority to inspect and review all pertinent records including records pertaining to the verification of a statistically valid sample of sales. FCS may consider the paperwork and resource burden associated with alternative value pass-through systems when considering approval and reserves the right to deny the approval of systems which are labor-intensive and provide no greater accountability than those systems permitted under paragraphs (d) and (e) of this section.

(2) When a processor delivers end products produced under a fee-for-service contract, the processor shall separately identify on the bill for the recipient agency the agreed-upon fee-for-service and any delivery costs.

(3) Processors shall provide pricing information summaries to contracting agencies and contracting agencies shall provide this information to recipient agencies as soon as possible after contract approval. If this pricing information changes during the contract period, processors shall provide updated pricing information to the contracting agency 30 days prior to the effective date of the change, which, in turn, shall provide this updated information to eligible recipient agencies.

(e) *End products sold by distributors.*

(1) When a processor transfers end products to a distributor for delivery and sale to recipient agencies, such sales shall be under:

(i) A refund system as defined in § 250.3 and in accordance with paragraph (k) of this section; or

(ii) A hybrid system which provides a refund for the contract value of the donated food shall be provided to the distributor in accordance with paragraph (k) of this section and the price of each unit of end product purchased by eligible recipient agencies through a distributor shall be discounted by the contract value of the donated foods contained therein; or

(iii) An alternative value pass-through system under which the contract value of the donated food contained in each unit of end product shall be passed on to the recipient agency and which has been approved by FCS in accordance with paragraph (d)(1)(iii) of this section; or

(iv) When a processor arranges for delivery of processed end products produced under fee-for-service contracts by distributors, the products shall be delivered and invoiced using one of the following procedures:

(A) The recipient agency is billed by the processor for the fee-for-service and the distributor bills the recipient agency for the storage and delivery of the end products; or

(B) The processor arranges for the delivery of end products through a distributor on behalf of the recipient agency. In this system, the processor's invoice must include both the fee-for-service and the distributor's charges as separate, clearly identifiable charges.

(2) Processors shall provide pricing information summaries to contracting agencies and contracting agencies shall provide this information to recipient agencies as soon as possible after contract approval. If this pricing information changes during the contract period, the processor shall provide updated pricing information to the contracting agency, which, in turn, shall provide this information to the eligible recipient agencies.

(f) *Substitution of donated foods with commercial foods.* (1) The processing contract may provide for substitution of donated foods as defined in § 250.3. If the provision allowing substitution is included, the contract shall stipulate that:

(i) Only butter, cheese, corn grits, cornmeal, flour, macaroni, nonfat dry milk, peanut butter, peanut granules, roasted peanuts, rice, rolled oats, rolled wheat, shortening, vegetable oil, and spaghetti may be substitutable as defined in § 250.3 and such other food as FCS specifically approves as substitutable under paragraph (f)(4) of this section (substitution of meat and poultry items shall not be permitted),

(ii) All components of commercial foods substituted for those donated must be of U.S. origin and be identical

or superior in every particular of the donated-food specification as evidenced by certification performed by, or acceptable to, the applicable Federal acceptance service, and

(iii) Processors shall maintain documentation that they have not reduced their level of commercial production because of participation in the State processing program.

(2) Documentation must be maintained by both parties in accordance with § 250.16. Where commercial food is authorized to be substituted for any donated food specifically listed in paragraph (f)(1)(i) of this section, the processor shall maintain records to substantiate that it continues to acquire on the commercial market sufficient purchases of substitutable food for commercial production and any amounts necessary to meet the 100 percent yield requirement. When there is substitution, the donated foods shall be used by the processor and shall not otherwise be sold or disposed of in bulk form. The applicable Federal acceptance service shall, upon request by the Department, the contracting agency or the distributing agency determine if the quality analysis meets the requirements set forth by the Agricultural Stabilization and Conservation Service (ASCS) in the original inspection of donated foods and, in the case of concentrated skim milk replacing donated nonfat dry milk, determine if the concentrated skim milk contains the amount of milk solids as specified in the contract. When donated foods are nonsubstitutable, the applicable Federal acceptance service shall ensure against unauthorized substitutions, and verify that quantities of donated foods used are as specified in the contract.

(3) When concentrated skim milk is used to replace donated nonfat dry milk, the contract shall also specify (in addition to the requirements in paragraph (c) of this section):

(i) The percent of milk solids that, at a minimum, must be contained in the concentrated skim milk;

(ii) The weight ratio of concentrated skim milk to donated nonfat dry milk;

(A) The weight ratio is the weight of concentrated skim milk which equals one pound of donated nonfat dry milk, based on milk solids;

(B) In calculating this weight, nonfat dry milk shall be considered as containing 96.5 percent milk solids;

(C) If more than one concentration of concentrated skim milk is to be used, a separate weight ratio must be specified for each concentration;

(iii) The processor's method of verifying that the milk solids content of the concentrated skim milk is as stated in the contract;

(iv) A requirement that inventory drawdowns of donated nonfat dry milk shall be limited to an amount equal to the amount of concentrated skim milk, based on the weight ratio, used to produce the end product;

(v) A requirement that the contract value of donated food for a given amount of concentrated skim milk used to produce an end product is the value of the equivalent amount of nonfat dry milk, based on the weight ratio of the two foods;

(vi) A requirement that the concentrated skim milk shall be produced in a USDA approved plant or in a plant approved by the appropriate regulatory authority for the processing of Grade A milk products; and

(vii) A requirement that documentation sufficient to substantiate compliance with the contract provisions shall be maintained in accordance with § 250.16(a)(4).

(4) Processor may request approval to substitute commercial foods for donated foods not specifically listed in paragraph (f)(1)(i) of this section by submitting such request to FCS in writing and satisfying all requirements of paragraphs (f)(1)(ii) and (iii) of this section. FCS will notify the processor in writing of authorization to substitute commercial foods for donated foods not listed in paragraph (f)(1)(i) of this section and such authorization shall apply for the duration of all current contracts entered into by the processor pursuant to this section.

(5) Title to the substituted food shall transfer to the contracting agency upon the initiation of the processing of the end product containing the substituted food. Title to the equivalent amount of donated food shall transfer

to the processor at the same time (except when the substitution is necessary to meet the 100 percent yield requirement or to otherwise replace missing or out-of-condition donated food). Once title has transferred, the processor shall use the substituted food in accordance with the terms and conditions of this part.

(g) *Meat and poultry inspection programs.* When donated meat or poultry products are processed or when any commercial meat or poultry products are incorporated into an end product containing one or more donated foods, all of the processing shall be performed in plants under continuous Federal meat or poultry inspection, or continuous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection programs. In addition to FSIS inspection, all donated meat and poultry processing shall be performed under AMS acceptance service grading. The cost of this service shall be borne by the processor. In the event the processor can demonstrate that grading is impractical, exemptions in the use of acceptance services shall be approved by the distributing agency prior to processing each order. Exemptions in the use of acceptance service graders will be authorized on the basis of each order to be processed provided the processor can demonstrate:

(1) That even with ample notification time, the processor cannot secure the services of a grader,

(2) That the cost for a grader would be unduly excessive relative to the value of foods being processed and that production runs cannot be combined or scheduled to enable prorating of the costs of services among the purchasers of end products, or

(3) The documented urgency of the recipient agency's need for the end product precludes the use of acceptance services.

Prior to approving a processor's request to waive the acceptance service requirement the distributing agency shall ensure, based on the processor's past performance, that the quality of the end product produced will in no way be adversely affected as a result of waiving the requirement.

(h) *Certification by acceptance service.* (1) All processing activities of donated foods shall be subject to review and audit by the Department, including the applicable Federal acceptance service. The contracting agency may also require acceptance and certification by such acceptance service in addition to the requirements set forth in paragraph (g) of this section.

(2) In the case of substitutable donated foods, in deciding whether to require acceptance and certification, the contracting agency should consider the dollar value of the donated foods delivered to the processor.

(3) When contracting agencies require certification in accordance with paragraph (h) (1) or (2) of this section, the degree of acceptance and certification necessary under the processing contract shall be determined by the appropriate Federal acceptance service after consultation with the distributing agency concerning the type and volume of the donated foods and anticipated value of end products to be processed. The cost of this service shall also be borne by the processor.

(i) *Labeling end products.* (1) Except when end products contain donated foods that are substituted under paragraph (f) of this section, the exterior shipping containers of end products and, where practicable, the individual wrappings or containers of end products, shall be clearly labeled ''Contains Commodities Donated by the United States Department of Agriculture. This Product Shall Be Sold Only to Eligible Recipient Agencies.''

(2) Labels on all end products shall meet applicable Federal labeling requirements.

(3) When a processor makes any claim with regard to an end product's contribution toward meal requirements of any child nutrition program, the processor shall follow procedures established by FCS, the Food Safety and Inspection Service of the Department, the National Marine Fisheries Service of the U.S. Department of Commerce or other applicable Federal agencies for approval of such labels.

(j) *Termination of processing contracts.* (1) When contracts are terminated or completed and the processor has commodities remaining in inventory, the

processor shall be directed, at the option of the distributing agency and the FCSRO, to do the following:

(i) With respect to nonsubstitutable commodities, the processor shall:

(A) Return the commodities to the contracting agency;

(B) Pay the contracting agency for the commodities based on the Department's replacement costs, determined by using the most recent data provided by the Department; or

(C) Pay the contracting agency for the commodities based on the contract value stated in the processor's contract;

(D) Pay the contracting agency the CCC unrestricted sales price;

(ii) With respect to substitutable commodities, the processor shall:

(A) With the concurrence of any affected contracting agencies, transfer the donated foods to the accounts of other contracting agencies with which the processor has contracts;

(B) Return the foods donated to the contracting agency;

(C) Replace the commodities with the same foods of equal or better quality as certified in accordance with paragraph (f)(2) of this section and deliver such foods to the contracting agency;

(D) Pay the contracting agency for the commodities based on the Department's replacement costs, determined by using the most recent data provided by the Department; or

(E) Pay the contracting agency for the commodities based on the contract value stated in the processor's contract.

(F) Pay the contracting agency the CCC unrestricted sales price.

(2) When a processor's contract is terminated at the processor's request or due to noncompliance or negligence on the part of the processor and commodities remaining in the processor's inventory are transported pursuant to paragraph (j)(1)(i)(A), (j)(1)(ii)(B) or (j)(1)(ii)(C) of this section, the processor shall pay the transportation costs.

(3) Funds received by distributing agencies upon termination of contracts shall be used in accordance with FCS Instruction 410–1, Non-Audit Claims, Food Distribution Program.

(k) *Refund payments.* (1) When end products are sold to recipient agencies in accordance with the refund provisions of paragraph (d) or (e) of this section, each recipient agency shall submit refund applications to the processor within 30 days from the close of the month in which the sales were made, except that recipient agencies may submit refund applications to a single processor on a Federal fiscal quarterly basis if the total anticipated refund due for all purchases of product from that processor during the quarter is 25 dollars or less.

(2) In instances when refunds are to be provided to distributors which have sold end products to recipient agencies at a discount, distributors shall submit refund applications to processors within 30 days from the close of the month in which the sales were made of the date of sale to recipient agencies in order to receive benefits.

(3) Not later than 30 days after receipt of the application by the processor, the processor shall make a payment to the recipient agency or distributor equal to the stated contract value of the donated foods contained in the purchased end products covered by the refund application, except that processors may group together refund applications for a single recipient agency on a Federal fiscal quarterly basis if the total anticipated refund due that recipient agency during the quarter is 25 dollars or less. Copies of requests for refunds and payments to recipient agencies and/or distributors shall be forwarded to the appropriate distributing agency by the processor.

(l) *Contract approvals.* Distributing agencies shall review and approve processing contracts entered into or renewed by subdistributing and recipient agencies prior to the delivery of commodities for processing under such contracts. The distributing agency which enters into or approves a processing contract shall provide a copy of the contract and of these regulations to the processors, forward a copy of the contract to the appropriate FCSRO, and retain a copy for its files.

(m) *Performance reports.* (1) Processors shall be required to submit to distributing agencies monthly reports of performance under each processing contract with year-to-date totals. Processors contracting with agencies other than a distributing agency shall submit such reports to the distributing agency having authority over that particular contracting agency. Performance reports shall be postmarked no later than the final day of the month following the reporting period; however, the final performance report for the contract period shall be postmarked no later than 60 postmarked days from the close of the contract year. The report shall include:

(i) A list of all recipient agencies purchasing end products under the contract;

(ii) Donated-food inventory at the beginning of the reporting period;

(iii) Amount of donated foods received during the reporting period;

(iv) Amount of donated foods transferred to and/or from existing inventory;

(v) Number of units approved end products delivered to each eligible recipient agency during the reporting period and the number of pounds of each donated food represented by these delivered end products;

(vi) Donated food inventory at the end of the reporting period;

(vii) [Reserved].

(viii) In instances in which sales verification has been delegated to the processor pursuant to § 250.19(b)(2), sales verification findings shall be reported as an attachment to the December and June performance reports in whatever format the State distributing agency deems necessary.

(ix) A certification statement that sufficient donated foods are in inventory or on order to account for the quantities needed for production of end products for State processing contracts and that the processor has on hand or on order adequate quantities of foods purchased commercially to meet the processor's production requirements for commercial sales.

(2) In addition to reporting the information identified in paragraph (m)(1) of this section, processors which substitute concentrated skim milk for donated nonfat dry milk shall also report the following information for the reporting period:

(i) The number of pounds of nonfat dry milk used in commercial products sold to outlets which are not recipient agencies; and

(ii) The number of pounds of concentrated skim milk, and the percent of milk solids contained therein, used in end products sold to recipient agencies.

(3) Distributing agencies shall review and analyze reports submitted by processors to ensure that performance under each contract is in accordance with the provisions set forth in this section.

(n) *Inventory controls.* (1) Distributing agencies shall monitor processor inventories to ensure that the quantity of donated foods for which a processor is accountable is the lowest cost-efficient level but in no event more than a six-month supply based on the processor's average monthly usage, unless a higher level has been specifically approved by the distributing agency on the basis of a written justification submitted by the processor. Under no circumstances should the amount of donated foods ordered by the contracting agency for processing purposes be in excess of anticipated usage or beyond the processor's ability to accept and store the donated foods at any one time. Distributing agencies shall make no further distribution to processors whose inventories exceed these limits until such inventories have been reduced.

(2) For processors substituting concentrated skim milk for donated nonfat dry milk, distributing agencies shall review the processors' monthly performance reports to ensure that:

(i) Donated nonfat dry milk inventory is being drawn down based on the amount of milk solids contained in the concentrated skim milk which was used in end products sold to eligible recipient agencies;

(ii) An amount of milk solids equivalent to the amount in the donated nonfat dry milk is contained in end products sold to eligible recipient agencies; and

(iii) Donated nonfat dry milk is not being sold in bulk form.

(3) The last monthly performance report for the contract period, as required in paragraph (m)(1) of this section, shall serve as the annual reconciliation report. As a part of the annual reconciliation, a processor which has entered into a contract with the contracting agency for the next year shall pay the distributing agency, at the contract value, for any donated food inventory held which is in excess of the inventory level which has been approved by the State distributing agency. A processor whose contract has been completed or terminated shall return or pay for commodities as required by subsection (j).

(4) Distributing agencies shall certify the accuracy of the annual reconciliation report and forward it to the FCS Regional Office. Such report shall be postmarked no later than 90 days following the close of the contract year. All monies shall be used in accordance with FCS Instruction 410–1, Non-Audit Claims, Food Distribution Program.

(5) Distributing agencies shall not submit food requisitions for processors reporting no sales activity during the prior year's contract period unless documentation is submitted by the processor which outlines specific plans for product promotion or sales expansion.

(o) *Processing inventory reports.* (1) Distributing agencies shall forward to the FCS Regional Office the inventory summary portion of the monthly performance report submitted by the processors in accordance with paragraph (m)(1) of this section for the last month of each Federal fiscal quarter. Such reports shall be postmarked no later than 60 days following the close of each Federal fiscal quarter, except that such reports shall be postmarked no later than 90 days following the close of the contract year.

(2) In addition to the reporting requirements in paragraph (o)(1) of this section, for each processor which substitutes concentrated skim milk for donated nonfat dry milk the distributing agency shall also report the following information for the reporting period:

(i) The number of pounds of nonfat dry milk used in commercial products sold to nonprogram outlets; and

(ii) The number of pounds of concentrated skim milk and the percent of milk solids contained therein used in end products sold to recipient agencies.

(p) *Cooperation with administering agencies for child nutrition programs.* If the distributing agency which enters into or approves contracts for end products to be used in a child nutrition program does not also administer such program, it shall collaborate with the administering agency by;

(1) Giving that agency an opportunity to review all such contracts to determine whether end products to be provided contribute to required nutritional standards for reimbursement under the applicable regulations for such program (7 CFR parts 210, 225, and 226) or are otherwise suitable for use in such program;

(2) Consulting with the agency with regard to the labeling requirements for the end products; and

(3) Otherwise requesting technical assistance as needed from that agency.

(q) *FCSRO review of contracts and inventory reports.* The FCSRO shall:

(1) Review all processing contracts and provide guidance, including written recommendations for termination, where necessary, to distributing agencies concerning any contracts which do not meet the requirements of this section;

(2) Allow distributing agencies 30 days to respond to any recommendation concerning contracts not meeting the requirements of this section;

(3) Review and analyze the processing inventory reports required by paragraph (o) of this section to ensure that no additional donated foods shall be distributed to processors with excess inventories until such inventories have been reduced;

(4) Assist distributing agencies in reducing such inventories; and

(5) Review annual reconciliation reports required by paragraph (n) of this section and ensure that payments for commodities have been made.

(r) *Availability of copies of processing contracts.* Contracts entered into in accordance with this Section are public records and FCS will provide copies of such contracts to any person upon request. The FCSRO will retain copies of

processing contracts submitted by distributing agencies for a period of three years from the close of the Federal fiscal year to which they pertain.

(s) *Processing activity guidance.* Distributing agencies shall develop and provide a processing manual or similar procedural material for guidance to contracting agencies, recipient agencies, and processors. Distributing agencies must revise these materials as necessary to reflect policy and regulatory changes. This guidance material shall be provided to contracting agencies, recipient agencies and processors at the time of the approval of the initial agreement by the distributing agency, when there have been regulatory or policy changes which necessitate changes in the guidance materials, and upon request. The manual shall include, at a minimum, statements of the distributing agency's policies and procedures on (1) contract approval, (2) monitoring and review of processing activities, (3) recordkeeping and reporting requirements, (4) inventory controls, and (5) refund applications.

(t) *Waiver authority.* The Food and Consumer Service may waive any of the requirements contained in this part for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods.

(Approved by the Office of Management and Budget under control number 0584–0007)

[53 FR 20226, June 3, 1988, as amended at 53 FR 20598, June 6, 1988; 53 FR 27476, July 21, 1988; 53 FR 46080, Nov. 16, 1988; 54 FR 7525, Feb. 22, 1989; 54 FR 25564, June 16, 1989; 58 FR 39122, July 22, 1993; 59 FR 62984, Dec. 7, 1994; 61 FR 5272, Feb. 12, 1996]

## Subpart D—Eligible Recipient Agencies and Programs

### §250.40 Nonprofit summer camps for children.

(a) *Distribution.* (1) The distributing agency shall distribute donated food only to those summer camps which have entered into a written agreement for participation in the program with the distributing agency in accordance with §250.12(b). Prior to entering into a written agreement, the summer camp shall provide verification of its tax exempt status under the Internal Revenue Code. In addition to the terms and conditions set forth in §250.12(b), the written agreement shall, at a minimum, include:

(i) The name and location of the summer camp(s);

(ii) Number of camps or sites;

(iii) Number of sessions to be offered during camping season;

(iv) Number of adults and children participating in the activities of the summer camp at each session;

(v) Total number of days meals will be served;

(vi) Total number of meals to be served daily;

(vii) Assurance that tax exempt status will be maintained;

(viii) Indication of whether the summer camp(s) will employ the services of a food service management company;

(ix) Assurance that a brochure or public announcement of open admission policy will be provided and that the summer camp agrees to maintain racial/ethnic data;

(x) Assurance that a physical inventory will be conducted and reconciled at the end of the camping session; and

(xi) Assurance that any excess inventory will, at the distributing agency's option, be returned to the distributing agency for redonation or transferred in accordance with §250.13(a)(1).

(2) Distributing agencies shall distribute donated foods only after determining that the number of adults participating in camp activities, as compared with the number of children 18 years of age and under, is not unreasonable in light of the nature of the camp and the characteristics of the children in attendance. Persons 19 years of age and over, including program directors, counselors and others who engage in recreational, educational, and direct administrative functions, are to be considered as adults participating in the activities of a summer camp. Employees whose presence on camp premises is solely for the purpose of performing duties such as cooking, gardening, property maintenance or similar support functions

are not considered as adults participating in summer camp activities. In addition, persons such as nurses, therapists, and attendants who perform professional, supervisory, or custodial services are not considered as adults participating in the activities of a summer camp if they perform services essential to the participation of mentally, emotionally, or physically handicapped children.

(3) Distributing agencies shall authorize the transfer or redonation of all donated foods remaining in summer camps at the end of the camping season in accordance with § 250.13 (a) or (g) respectively.

(4) Nonprofit summer camps for children may employ food service management companies to conduct food service operations in accordance with § 250.12(d).

(b) *Quantities and value of donated foods.* Distribution of donated food to eligible summer camps shall be made on the basis of the average number of meals to be served daily to children as evidence by the most recent written caseload factor information contained in the agreement.

(c) *Types of donated foods authorized for donation.* Nonprofit summer camps for children are eligible to receive donated foods under section 416, section 32, section 709 and section 4(a).

[53 FR 20426, June 3, 1988, as amended at 62 FR 53729, Oct. 16, 1997]

### § 250.41 Charitable institutions.

(a) *Distribution.* (1) With the exception of section 110 commodities, which are to be distributed in accordance with the provisions of § 250.52, the distributing agency shall distribute donated food only to those charitable institutions which have entered into a written agreement for participation in the program with the distributing agency in accordance with § 250.12(b). Prior to entering into a written agreement, the charitable institution shall provide verification of the institution's tax exempt status under the Internal Revenue Code. In addition to the terms and conditions set forth in § 250.12(b), written agreements shall, at a minimum, include:

(i) The name and location of the charitable institution;

(ii) Total number of days meals will be served;

(iii) Average daily number of participants;

(iv) Total number of meals by type to be served daily to needy persons;

(v) Data that show the number of needy persons receiving benefits under another means-tested program or financial data that show the total annual amount of funds received by the institution that are derived, respectively, from (A) subsidized income and (B) nonsubsidized income. For the purpose of this section ''subsidized income'' shall mean income from public tax funds which are provided on behalf of participants that have been determined to be in need of financial assistance through a means-tested program such as Medicaid or income received through private federally tax exempt contributions which are provided for the care of participants which the institution had determined to be in need of financial assistance. ''Nonsubsidized income'' shall mean all other income, including payments made on behalf of participants by persons legally responsible for their support;

(vi) Indication of whether the charitable institution will employ the services of a food service management company to conduct its food service operations;

(vii) Assurance that proper inventory controls will be maintained; and

(viii) Assurance that all reports will be submitted as required by the distributing agency.

(2) Adult correctional institutions are eligible to receive donated foods as charitable institutions, to the extent that needy persons are served, if they conduct rehabilitation programs that are:

(i) Available to either a majority of the total inmate population (including inmates awaiting trial or sentencing) or to a majority of sentenced inmates; and

(ii) Of sufficient scope to permit participation for a minimum of 10 hours per week per inmate by either a majority of the total inmate population or a majority of sentenced inmates.

Prior to entering into an agreement for donation of foods to an adult correctional institution, the distributing

agency shall require the institution's director or other responsible official to provide a written statement certifying that the institution conducts such rehabilitation programs. The statement shall be reviewed annually and maintained as part of the agreement.

(3) Charitable institutions may employ food service management companies to conduct food service operations in accordance with §250.12(d).

(b) *Quantities of donated foods.* Distribution of donated foods to eligible charitable institutions shall be made on the basis of the average number of meals served daily to needy persons. To determine the number of needy persons being served, the distributing agency shall determine the proportion of subsidized income by dividing the subsidized income by the total subsidized and nonsubsidized income (as defined in paragraph (a)(1) of this section) and multiplying that number by the average daily number of participants as required in §250.41(a)(1)(v), or by simply counting the number of participants that receive benefits under another a means-tested program. The distributing agency shall use the income and average daily participation figures reflected in the agreement in determining the number of needy persons being served by the institution in accordance with the above formula. Income and participation figures shall be based on the institution's records for the previous year. The distributing agency shall obtain updated pertinent information by September 30 of each fiscal year.

(c) *Types of donated foods authorized for donation.* Charitable institutions are eligible to receive donated foods under section 416, section 32, section 4(a), and section 709.

(Approved by the Office of Management and Budget under control number 0584–0305)

[53 FR 20426, June 3, 1988, as amended at 59 FR 16972, Apr. 11, 1994; 62 FR 53729, Oct. 16, 1997]

### §250.42 Nutrition programs for the elderly.

(a) *Distribution.* Distributing agencies shall distribute donated foods only to nutrition programs for the elderly which have entered into an agreement for donation of commodities in accordance with §250.12(b). Food service management companies may be employed to conduct food service operations in accordance with §250.12(d).

(b) *Quantities and value of donated foods.* (1) *Quantities.* Distribution of donated foods to nutrition programs for the elderly shall be based on the level of assistance per meal as required by the Older Americans Act of 1965, as amended, and on the number of eligible meals served within the State as evidenced by written caseload factor information provided by the State Agency on Aging.

(2) *Value.* (i) For the fiscal years 1986 through 1991, the quantity of donated foods to be made available to each State Agency on Aging for distribution to nutrition programs for the elderly shall be valued at not less than 56.76 cents for each meal which such State Agency on Aging, in accordance with regulations and guidelines authorized by the Commissioner on Aging, United States Department of Health and Human Services, reports as having been served or, where necessary, estimates will be served within the State or to Indian Tribal Organizations during the year: *Provided, however,* That:

(A) This quantity will be reduced to the extent that a State Agency on Aging elects to receive cash in lieu of donated foods in accordance with paragraph (c) of this section and

(B) The quantity of donated foods to be provided to any State Agency on Aging for any fiscal year shall not be adjusted on the basis of meal reports or estimates submitted after July 1 of such fiscal year.

(ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, in any fiscal year in which compliance with paragraph (b)(2)(i) of this section costs more than the amounts authorized to be appropriated under the Older Americans Act of 1965, as amended for that fiscal year, the Secretary shall reduce the cents per meal level determined pursuant to paragraph (b)(2)(i) of this section for that fiscal year as necessary to meet the authorization of appropriations for that fiscal year. If such action is necessary, the per meal level will be reduced uniformly for

each meal served during that fiscal year.

(c) *Cash in lieu of donated foods.* (1) Any State Agency on Aging may, for the purposes of the programs authorized by titles III and VI of the Older Americans Act of 1965, as amended, elect to receive cash payments in lieu of all or any portion of the donated foods that it would otherwise receive under paragraph (b) of this section during any fiscal year.

(2) When a State Agency on Aging elects to receive cash payments in lieu of donated foods, that election shall be binding on the State Agency on Aging for the entire fiscal year to which it pertains, and FCS shall make cash payments to the State Agency on Aging equivalent in value to the donated foods that would otherwise have been provided. Cash payments shall be made for each fiscal quarter by means of Letters of Credit issued by FCS through the appropriate U.S. Treasury Regional Disbursing Office or, where applicable, by means of U.S. Treasury checks, based on the best data available to FCS as to the number of meals to be served by nutrition programs for the elderly administered by each State Agency on Aging during that fiscal quarter.

(3) In instances when it is necessary to reduce the annual level of assistance specified in paragraph (b)(2)(i) of this section, the level will be reduced in accordance with paragraph (b)(2)(ii) of this section. Once it has been established that the reduced per meal level will be sufficient to avoid any further adjustment, any remaining funds (up to the level of assistance specified in paragraph (b)(2)(i) of this section) will be disbursed so that each State will receive an equal amount on a per meal basis.

(4) To be eligible for reimbursement by FCS, claims for cash payment for meals served by nutrition programs for the elderly shall be submitted by State Agencies on Aging and Indian Tribal Organizations no later than 90 days following the close of the Federal fiscal quarter for which payment is claimed.

(5) The State Agency on Aging desiring to receive funds under this paragraph shall enter into a written agreement with FCS pursuant to § 250.12(a) to:

(i) Promptly and equitably disburse any cash it receives in lieu of donated foods to nutrition programs for the elderly after consideration of the needs of such programs and the availability of other resources, including any donated foods available under paragraph (b) of this section;

(ii) Establish such procedures as may be necessary to ensure that the cash disbursements are used by nutrition programs for the elderly solely for the purpose of purchasing U.S. agricultural commodities and other foods of U.S. origin for their food service operations;

(iii) Maintain and retain for 3 years from the close of the Federal fiscal year to which they pertain complete and accurate records of:

(A) All amounts received and disbursed under paragraph (c) of this section and

(B) The manner in which consideration was given to the needs and resources as required by paragraph (c)(5)(i) of this section; and

(iv) Permit representatives of the Department and of the General Accounting Office of the United States to inspect, audit, and copy such records at any reasonable time.

(6) Funds provided under paragraph (c) of this section shall be subject to the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

(d) *Types of donated foods authorized for donation.* Nutrition programs for the elderly are eligible to receive donated foods under section 416, section 32, section 311, section 709, and section 14.

[53 FR 20426, June 3, 1988, as amended at 62 FR 53729, Oct. 16, 1997]

### § 250.43 Disaster food assistance.

(a) *Organizational eligibility.* In instances in which the President has declared a disaster and FCS has determined that, as a result of the disaster, low-income households are unable to purchase adequate amounts of nutritious food, disaster organizations (including agencies of State and Federal government) may be eligible to receive donated foods for congregate meal service or household distribution to disaster victims. Applications submitted by disaster organizations to the distributing agency for the receipt and

distribution of donated foods in accordance with paragraphs (b)(2) and (c)(2) of this section shall be initially submitted in writing if circumstances permit and, if not, confirmed in writing in a timely manner. Both the applications and the written approval for the use of USDA commodities shall be maintained in accordance with the recordkeeping requirements of this part.

(b) *Congregate meal service*—(1) *Approval authority and duration.* Distributing agencies may review and approve applications submitted by disaster organizations for the donation of foods for use in preparing congregate meals for disaster victims. Distributing agencies also shall determine the length of such donations, taking into consideration the magnitude of the situation, and may extend the duration of such donations as developing circumstances dictate. Following approval of a request for donated foods, the distributing agency shall make appropriate donated foods available from any source within the State to the disaster organization(s) and within 24 hours of approving the application shall report the information listed in paragraph (b)(2) of this section to the appropriate FCSRO.

(2) *Applications.* (i) Disaster organizations wishing to receive donated foods for use in preparing meals for disaster victims shall submit applications to the distributing agency. Applications shall, to the extent possible, include the following information:

(A) Description of disaster situation;

(B) Number of people requiring meals;

(C) Period of time for which commodities are requested; and

(D) Quantity and types of food needed for congregate meal service.

(ii) In addition, organizations shall report to the distributing agency the number and location of sites providing congregate meal service as such sites are established.

(c) *Household distribution*—(1) *Approval authority and duration.* In instances in which the distributing agency has determined that the distribution of donated foods to households is appropriate, the distributing agency shall submit applications requesting approval for such distributions to the appropriate FCSRO for submission to FCS for prior approval. FCS will determine the length of time such donations will be made, taking into consideration the magnitude of the situation, and may extend the duration of such donations as developing circumstances dictate.

(2) *Applications.* (i) Disaster organizations wishing to receive and distribute donated foods to households shall submit applications to the distributing agency. Applications shall, to the extent possible, include the following information:

(A) Description of disaster situation;

(B) Identification of the specific area(s) included in the request;

(C) Number of households affected;

(D) Explanation as to why the distribution of commodities to households is warranted;

(E) Anticipated distribution period;

(F) Method(s) of distribution available;

(G) Quantity and types of food needed for distribution;

(H) Statement of assurance that simultaneous disaster food stamp benefits and commodity assistance will not be provided to individual households; and

(I) Description of the system that will be implemented to prevent dual participation.

(ii) In addition, information on the number and location of sites where commodities are to be distributed shall be provided to the distributing agency as such sites are established.

(3) *Collection of household information.* In instances in which the issuance of disaster food stamp benefits has been approved, any entity (i.e., Federal, State, or local) distributing donated foods to households shall, at a minimum, collect the information listed below in a format prescribed by the distributing agency. Such information shall be forwarded to the distributing agency and maintained by the distributing agency in accordance with the recordkeeping requirements contained in this part, except that such information may, at the discretion of the distributing agency, be maintained by the organization distributing commodities if such organization is an agency of the State government.

(i) Name of household member applying for assistance;

(ii) Address;

(iii) Number of household members; and

(iv) Statement signed by the household certifying that the household:

(A) Is in need of food assistance;

(B) Understands that misrepresentation of need, and the sale or exchange of the donated food, are prohibited and could result in a fine, imprisonment, or both;

(C) Is not residing in a shelter which provides food assistance; and

(D) Is not receiving disaster food stamp benefits.

(d) *Quantities and value of donated foods.* The distributing agency shall make donated foods available to approved disaster organizations based on the caseload factor information provided by the disaster organizations.

(e) *Types of donated foods authorized for donation.* Disaster organizations providing food assistance under this Section are eligible to receive donated foods under section 416, section 32, section 709, section 4(a), and sections 412 and 413 of the Stafford Act.

(f) *Summary report.* Within 45 days following termination of the disaster assistance, the distributing agency shall provide a summary report to the appropriate FCSRO using Form FCS–292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

(g) *Replacement.* Distributing agencies which decide to seek replacement of foods used from State and/or local inventories for disaster assistance shall file their request in writing to the FCSRO within 30 days following termination of the assistance. FCS will replace such foods in instances when a request for replacement is submitted within the required 30 days or sufficient justification exists to waive the 30-day requirement.

[62 FR 8365, Feb. 25, 1997]

### § 250.44 Food assistance in situations of distress.

(a) *Organizational eligibility.* In situations of distress in which needs for food assistance cannot be met under other provisions of this Part, organizations (including agencies of State and Federal government) may be eligible to receive donated foods for congregate meal service or household distribution to victims of the situation of distress. Applications submitted to the distributing agency for the receipt and distribution of donated foods in accordance with paragraphs (b)(2) and (c)(2) of this section shall be initially submitted in writing if circumstances permit and, if not, confirmed in writing in a timely manner. Both the applications and the written approval for the use of USDA commodities shall be maintained in accordance with the recordkeeping requirements of this Part.

(b) *Congregate meal service.* (1) *Approval authority and duration.* Distributing agencies may review and approve applications for the donation of foods for use in preparing congregate meals for a period not to exceed 30 days for victims of situations of distress in instances in which the need for such assistance meets the conditions of paragraph (a) of the definition of *situation of distress* in § 250.3. Following approval of a request, distributing agencies shall report the information listed in paragraph (b)(2) of this section to the appropriate FCSRO within 24 hours. In instances when the distributing agency extends the originally approved distribution period from less than 30 days to the 30-day limit, it shall notify the FCSRO of such extensions. Distributing agencies shall request approval from FCS, via the appropriate FCSRO, for donations to exceed 30 days. Upon determining that there is a need for the donation of foods for congregate meals in instances other than those that meet the criteria in paragraph (a) of the definition of *situation of distress* in § 250.3, the distributing agency shall forward applications to the appropriate FCSRO for submission to FCS for prior approval. FCS will determine the duration of such donations, taking into consideration the magnitude of the situation. Determinations as to the length of donations may be revised as developing circumstances dictate.

(2) *Applications.* (i) Organizations wishing to receive donated foods for use in preparing meals shall submit applications to the distributing agency. Applications shall, to the extent possible, include the following information:

(A) Description of the situation of distress;

(B) Number of people requiring meals and congregate meal service period; and

(C) Quantity and types of food needed.

(ii) In addition, information on the number and location of sites providing meals shall be submitted to the distributing agency as such sites are established.

(c) *Household distribution.*—(1) *Approval authority and duration.* In instances in which the distributing agency has determined that the distribution of donated foods to households is appropriate, the distributing agency shall submit applications requesting approval for such distributions to the appropriate FCSRO for submission to FCS for approval. FCS will determine the duration of the donations, taking into consideration the magnitude of the situation. Such determinations may be revised as developing circumstances dictate.

(2) *Applications.* (i) Organizations wishing to receive and distribute donated foods to households shall submit applications to the distributing agency. Applications shall, to the extent possible, include the following information:

(A) Description of the situation of distress;

(B) Explanation as to why the distribution of commodities to households is warranted;

(C) Identification of the specific area(s) included in the request;

(D) Anticipated distribution period;

(E) Number of households expected to participate;

(F) Quantity and types of food needed for distribution;

(G) Statement of assurance that simultaneous disaster food stamp benefits and commodity assistance will not be provided to individual households; and

(H) Description of the system that will be implemented to prevent dual participation.

(ii) In addition, information on the number and location of sites shall be provided to the distributing agency as such sites are established.

(3) *Collection of household information.* In a format prescribed by the distributing agency, any entity (i.e., Federal, State, or local) distributing donated foods to households in an area where the issuance of disaster food stamp benefits has been approved shall, at a minimum, collect the information listed below. Such information shall be forwarded to the distributing agency and maintained by the distributing agency in accordance with the recordkeeping requirements contained in this part, except that such information may, at the discretion of the distributing agency, be maintained by the organization distributing commodities if such organization is an agency of the State government.

(i) Name of household member applying for assistance;

(ii) Address;

(iii) Number of household members; and

(iv) Statement signed by the household certifying that the household:

(A) Is in need of food assistance;

(B) Understands that misrepresentation of need, and the sale or exchange of the donated food are prohibited and could result in a fine, imprisonment, or both;

(C) Is not residing in a shelter which provides food assistance; and

(D) Is not receiving disaster food stamp benefits.

(d) *Quantities and value of donated foods.* The distributing agency shall make donated foods available to eligible organizations based on the caseload factor information provided by the organizations.

(e) *Types of donated foods authorized for donation.* Organizations providing food assistance in situations of distress are eligible to receive donated foods under section 416, section 32, section 709, and section 4(a).

(f) *Summary report.* Within 45 days following termination of the assistance, the distributing agency shall provide a summary report to the appropriate FCSRO using Form FCS–292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

(g) *Replacement.* Distributing agencies which decide to seek replacement of foods used from State and/or local inventories for situations of distress

shall file their request in writing to the FCSRO within 30 days following termination of the assistance. FCS will replace such foods to the extent that foods are available.

[62 FR 8366, Feb. 25, 1997]

### § 250.45 Commodity Supplemental Food Program.

(a) *Distribution.* The distributing agency shall distribute donated foods to the State agency which is designated by the State to administer the Commodity Supplemental Food Program for that State and which has entered into a written agreement with the Department for the administration of that program in accordance with 7 CFR part 247, the regulations for that program. The State agency administering the Commodity Supplemental Food Program shall distribute donated foods to local agencies for use by eligible recipients in accordance with the provisions of 7 CFR part 247 and with the provisions of this part, and may enter into an agreement with the distributing agency for use of the distributing agency's facilities for distribution.

(b) *Quantities of donated foods.* Distribution of donated foods to the designated State agencies for the Commodity Supplemental Food Program shall be made on the basis of each State agency's quarterly estimate of need.

(c) *Types of donated foods authorized for donation.* State agencies distributing donated foods through the Commodity Supplemental Food Program are eligible to receive such foods under section 32, section 416, section 709 and section 4(a).

### § 250.46 Food Distribution Program in the Trust Territory of the Pacific Islands.

(a) *Distribution.* The distributing agency shall make donated foods available for distribution to households in the Trust Territory of the Pacific Islands by those welfare agencies which certify households in accordance with a plan of operation approved by FCS, as required by paragraph (d) of this section. Distribution of donated foods to households shall be made in accordance with the approved plan of operation.

(b) *Quantities and value of donated foods.* Distribution of donated foods shall be based on the actual number of households in need of food assistance.

(c) *Types of donated foods authorized for donation.* Agencies which make distribution to needy persons are eligible to receive foods under section 416, section 32, section 709 and section 4(a).

(d) *Plan of operation.* Prior to making distribution to agencies or households, the distributing agency shall submit a plan of operation for approval by the appropriate FCSRO. Such plans shall incorporate the procedures and methods to be used in certifying households in need of food assistance, in making distribution to households, and in providing a fair hearing to households whose claims for food assistance under the plan are denied or are not acted upon with reasonable promptness, or who are aggrieved by an agency's interpretation of any provision of the plan. No amendment to the plan of operation of the distributing agency shall be made without prior approval of FCS, and FCS may require amendment of any plan as a condition of continuing approval. The distributing agency shall require welfare agencies making distribution to households to conduct distribution programs in accordance with all provisions of the plan of operation. At a minimum, the plan shall include the following:

(1) The name of the public welfare agency or agencies which will be responsible for certification of households;

(2) The manner in which donated food will be distributed, including, but not limited to, the identity of the agency that will distribute donated foods, the storage and distribution facilities to be used and the method of financing;

(3) *The specific criteria to be used in certifying households as in need of food assistance.* The income and resource standards establishes by the distributing agency for use by welfare agencies in determining the eligibility of applicant households, after October 1979, shall continue to be those standards used as of that date which were incorporated in a plan of operation approved by FCS, unless an amendment to such standard is required or approved by FCS;

(4) The method or methods that will be used to verify the information upon which the certification of eligibility is based, including the kinds of documentary evidence that applicants are required to furnish to obtain certification;

(5) Provisions for periodically reviewing the certifications of households to discover any change in their status which would necessitate a change in the determination of eligibility. The eligibility of households shall be reviewed at least every three months, except that such reviews may be made at longer periods, not to exceed 12 months, provided that such longer periods are based upon a determination by the certifying agency that the income and resources available to such households will probably remain essentially unchanged during such period;

(6) Provisions for identifying each person who has been designated to receive donated foods for a household;

(7) Assurance that the distribution of donated foods shall not be used as a means to further the political interest of any individual or party, and that there shall be no discrimination against recipients of donated foods because of race, color, national origin, sex, age or handicap;

(8) Assurance that:

(i) Citizenship or durational residence requirements shall not be imposed as a condition of eligibility and

(ii) Recipients shall not be requiref to make any payments in money, materials or services, for or in connection with the receipt of donated foods, and that they shall not be solicited in connection with the receipt of donated foods for voluntary cash contributions for any purpose;

(9) The manner in which the distributing agency plans to supervise the program; and

(10) Definitions of any terms used which cannot be determined by reference to Webster's New International Dictionary (third edition).

(e) *Operating expense funds*—(1) *Application for funds.* To receive administrative funds, the distributing agency shall submit Form AD–623, ''Application for Federal Assistance,'' to the appropriate FCSRO at least three months prior to the beginning of the Federal fiscal year. Approval of the application by FCS shall be a prerequisite to payment of any funds to the distributing agency. The Department will make payments to the distributing agency to assist it in meeting operating expenses incurred in administering food distribution for needy persons.

(2) *Availability of funds.* FCS will review and evaluate the budget information submitted by the distributing agency in relationship to the distributing agency's plan of operation and any other factors which may be relevant to FCS' determination as to whether the estimated expenditures are reasonable and justified. FCS will give written notification to the distributing agency of:

(i) Its approval or disapproval of any or all of the estimated expenditures; and

(ii) The amount of funds which will be made available.

(3) *Payment of funds.* Payments shall be made to the distributing agency through a Letter of Credit or an advance by Treasury Check. These payments will be issued in accordance with Treasury Department procedures, Treasury Circular No. 1075 and through the appropriate Treasury Regional Disbursing Office (RDO).

(4) *Use of funds.* The distributing agency shall make every reasonable effort to ensure the availability of a food distribution program for needy persons in households and shall assign priority in the use of any funds received under this Section to accomplish that objective. Any remaining funds shall be used to expand and improve distribution to needy households. Such funds may be used for any costs which are not disallowed under Office of Management and Budget Circular A–87 (a copy of which may be obtained from FCS) and which are incurred in distributing donated foods to households, including determining eligibility of recipients, except for the purchase cost of land and buildings. In no event shall such funds be used to pay any portion of any expenses if reimbursement or payment therefore is claimed or made available from any other Federal source.

(5) *Accounting for funds.* The distributing agency which receives administrative funds under this Section shall establish and maintain an effective

system of fiscal control and accounting procedures. The accounting procedures maintained by the distributing agency shall be such as to accurately reflect the receipt, expenditure and current balance of funds provided by FCS. The accounting procedures shall also provide for segregation of costs specifically identifiable to the Food Distribution Program from any other costs incurred by the distributing agency. Any budget revisions by the distributing agency which require the transfer of funds from an FCS approved cost category to another shall be in accordance with the budget revision procedures set forth in 7 CFR part 3015 and shall be approved by FCS prior to any transfer of funds.

(6) *Return, reduction and reallocation of funds.* (i) FCS may require the distributing agency to return prior to the end of the Federal fiscal year any or all unobligated funds received under this section, and may reduce the amount it has apportioned or agreed to pay to the distributing agency if FCS determines that:

(A) The distributing agency is not administering the Food Distribution Program in accordance with its plan of operation approved by FCS and the provisions of this part;

(B) The amount of funds which the distributing agency requested from FCS is in excess of actual need, based on reports of expenditures and current projections of program needs; or

(C) Circumstances or conditions justify the return, reallocation or transfer of funds to accomplish the purposes of this part.

(ii) The distributing agency shall return to FCS within 90 days following the close of each Federal fiscal year any funds received under paragraph (e) of this section which are obligated at that time.

(7) *Financial reports.* The distributing agency shall submit quarterly and annual reports to FCS on Form SF–269 concerning the obligations, expenditure and status of funds received under this Section. In addition, the distributing agency receiving funds under paragraph (e) of this section shall submit any other reports in such form as may be required from time to time by the Department.

(f) *Records, reports and audits.* The distributing agency shall:

(1) Maintain and retain for three years from the close of the Federal fiscal year to which they pertain, complete and accurate records of all amounts received and disbursed under paragraph (e) of this section,

(2) Keep such accounts and records as may be necessary to enable FCS to determine whether there has been compliance with this section, and

(3) Permit representatives of the Department and of a General Accounting Office of the United States to inspect, audit and copy such records and accounts at any reasonable time.

### § 250.47 Food Distribution Program on Indian reservations.

(a) *Distribution.* Distributing agencies which operate a food distribution program on Indian reservations shall comply with the provisions set forth in §§ 250.1, 250.2, 250.3, 250.10, 250.11, 250.12, 250.13 (with the exception of paragraph (d)(2)), § 250.14, §§ 250.15 and 250.17(d) to the extent that these provisions are not inconsistent with the regulations cited in paragraph (b) of this section.

(b) In addition to complying with the provisions identified in paragraph (a) of this section, distributing agencies shall also comply with the provisions set forth in part 253, Food Distribution Program on Indian Reservations or part 254, Food Distribution Program in Oklahoma, as applicable.

[53 FR 20426, June 3, 1988, as amended at 53 FR 27476, July 21, 1988]

### § 250.48 School food authorities and commodity schools.

(a) *Distribution.* (1) School food authorities which participate in the National School Lunch Program or as commodity schools under part 210 of this chapter or the School Breakfast Program under part 220 of this chapter are eligible to receive donated foods. The distributing agency shall distribute donated foods only to those school food authorities whose eligibility for participation in the program has been confirmed in writing by the State agency or FCSRO administering the applicable program. Lists of participating school food authorities which have

been provided to the distributing agency by the administering State agency or FCSRO may serve as written confirmation of eligibility. School food authorities may employ food service management companies to conduct food service operations in accordance with § 250.12(d) and parts 210 and 220 of this chapter.

(2) School food authorities which do not participate in the National School Lunch Program or as commodity schools under part 210 of this chapter or in the School Breakfast Program under part 220 of this chapter may receive such commodities as the Secretary may designate, provided the schools are public schools or private schools determined by the Internal Revenue Service to be exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954 or, in the Commonwealth of Puerto Rico, certified as nonprofit by the Governor; and operate a nonprofit school food service. Such schools shall be eligible to receive only those commodities acquired under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) to the extent that such commodities become available and the Secretary has determined that surpluses of such commodities exist and surplus quantities are sufficient to distribute to nonprogram schools.

(b) *Quantities and Value of Donated Foods*—(1) *Quantities.* Distribution of donated food to a State for school food authorities shall be calculated by multiplying the number of lunches served in the preceding school year which meet the mealpattern requirements (reimbursable) prescribed in the regulations for the National School Lunch Program under part 210 of this chapter, by the national average value of donated food as described in paragraph (b)(2) of this section. The number of reimbursable lunches served shall be derived from the monthly claims submitted by school food authorities and States as required by regulations for the National School Lunch Program at § 210.8 of this chapter. After the end of each school year, FCS shall reconcile the number of reimbursable lunches served by schools in each State with the number served in the preceding school year and, based on such reconciliation, shall increase or reduce subsequent commodity assistance provided to each State. As early as practicable each school year, but not later than September 1, the estimated number of lunches served in the preceding school year and requests for adjustments shall be provided by the administering State agency or the FCSRO to the distributing agency. At the discretion of FCS, current year adjustments may be made for significant variations in the number of reimbursable lunches served. Such current year adjustments will not be routine and will only be made for unusual problems encountered in a State, such as a teachers' strike or a disaster that necessitates school closures for a prolonged period of time.

(2) *Value.* (i) For each school year, the national average value of donated foods to be made available to States for distribution to school food authorities participating in the National School Lunch Program (7 CFR part 210), or where applicable, cash payments in lieu thereof, shall not be less than 11 cents for each lunch and shall be adjusted on July 1, 1982, and on each July 1 thereafter, to reflect changes in the Price Index for food used in schools and institutions as prescribed by section 6(e) of the National School Lunch Act, as amended. These adjustments shall be computed to the nearest one-fourth cent and shall be made effective as of the beginning of each school year. Not less than 75 percent of the food distribution assistance shall be in the form of donated foods.

(ii) For each school year, the national average value of donated foods to be provided to States for distribution to commodity schools shall not be less than the amount specified in paragraph (b)(2)(i) of this section, plus an amount equal to the national average payment established under section 4 of the National School Lunch Act, as amended, for each lunch served by such schools: *Provided, however:* That this amount shall be reduced to the extent that FCS provides up to 5 cents per lunch of this value in cash in lieu of donated foods for donated food processing and handling expenses on behalf of such school food authorities in accordance with part 240 of this chapter.

(c) *Offering the per-meal value of donated foods*—(1) *Commodity offer value.* Distributing agencies shall offer each school food authority no less than the national average per-meal value of donated foods established by the Department on July 1 of each year, in accordance with paragraph (b)(2) of this section. This value shall be referred to as the commodity offer value. The total value of donated foods which must be offered to school food authorities shall be calculated by multiplying the per-meal value of donated foods times the number of reimbursable meals served by the school food authority during the preceding school year; or by another method which the distributing agency prefers and can justify as providing each school food authority an equitable share of donated food. Distributing agencies shall communicate to school food authorities and FCS regional offices the methods used to establish the commodity offer value. Distributing agencies shall document commodity offerings and refusals in order to verify that the per-meal value of commodities was offered to all school food authorities.

(2) *Commodity variety offered.* Distributing agencies shall offer and efficiently deliver to each school food authority the full range of all commodities equitably and consistently to the extent that quantities requested or made available are sufficient to make a statewide distribution. At least annually, distributing agencies shall develop and disseminate to school food authorities a procedure for the allocation of commodities when the amount received from the Department is not sufficient to make a statewide distribution to all school food authorities.

(3) *Bonus commodities.* Bonus commodities (i.e., commodities provided in addition to a State's authorized level of assistance) offered shall be distinguished from entitlement commodities (i.e., commodities provided as part of an authorized level of assistance) and shall not be included as a part of the per-meal value of donated foods which must be offered to school food authorities.

(d) *Cash in lieu of donated foods for schools.* Where a State has phased out its food distribution facilities prior to July 1, 1974, such State may, in accordance with part 240 of this chapter, elect to receive cash payments in lieu of donated foods for use in school lunch programs which participate in the National School Lunch Program under part 210 of this chapter.

(e) *Types of donated foods authorized for donation.* School food authorities which participate in the National School Lunch Program or as commodity schools under part 210 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14. School food authorities which participate in the School Breakfast Program under part 220 are eligible to receive donated foods under section 416, section 32, section 709 and section 14.

(f) *Refusal of donated foods by school food authorities.* (1) Any school food authority participating in food service programs under the National School Lunch Act, as amended, may refuse, at the time they are offered, donated foods and other foods offered for delivery for lunches in any school year if such foods cannot be used effectively. The school food authority may receive, in lieu of the refused donated foods, other donated foods to the extent that they are available during the school year: *Provided, however:* That not more than 20 percent of the value of the donated foods offered to a school food authority for lunches during the school year shall be subject to replacement with other available donated foods unless replacement based on the refusal of more than 20 percent of such value is feasible and practical. Prior to making distribution to school food authorities, distributing agencies shall notify each school food authority of its right to refuse delivery and to receive other donated foods, if available, in lieu of those refused. Notification of donated food refusal rights shall be provided by means of a letter or by an addendum to the agreement required by § 250.12(b) to each school food authority prior to the beginning of each school year.

(2) If the distributing agency demonstrates on the basis of existing records that it is maintaining an effective offer-and-acceptance system as defined in § 250.3, there can be no refusal

of donated foods as provided in paragraph (e)(1) of this section.

(g) *Use of donated foods in home economics courses.* School food authorities receiving donated foods under this part may use such foods for the purpose of training students in home economics, including college students if the same facilities and instructors are used for training both high school and college students in home economics courses. Home economics includes classes in general home economics, food purchases, nutrition, food preparation, cooking, child care and health.

[53 FR 20426, June 3, 1988, as amended at 53 FR 26219, July 12, 1988; 53 FR 27476, July 21, 1988; 58 FR 39122, July 22, 1993; 62 FR 53729, Oct. 16, 1997]

### §250.49 Nonresidential child and adult care institutions.

(a) *Distribution.* The distributing agency shall distribute donated foods only to those nonresidential child care institutions whose eligibility for participation in Child Care Food Program has been confirmed in writing by the State agency of FCSRO administering the program, where applicable. Lists of participating nonresidential child care institutions which have been prepared by the administering State agency or FCSRO may serve as written confirmation of eligibility. Nonresidential child care institutions may employ food service management companies to conduct food service operations in accordance with §250.12(d) and part 226 of this chapter.

(b) *Quantities and value of donated foods*—(1) *Quantities.* Distribution of donated food to a State for nonresidential child and adult care institutions shall be calculated by multiplying the number of lunches and suppers served in the preceding school year which meet the meal-pattern requirements (reimbursable) prescribed in the regulations for the Child and Adult Care Food Program under part 226 of this chapter by the national average value of donated food as described in paragraph (b)(2) of this section. The number of lunches and suppers served shall be derived from the monthly claims submitted by participating institutions as required by Child and Adult Care Food Program regulations at §226.11(b) of this chapter. After the end of the school year, FCS shall reconcile the number of reimbursable meals served in each State with the number served in the preceding school year and, based on such reconciliation, shall increase or reduce subsequent commodity assistance provided to each State. As early as practicable each year, but not later than September 1, the estimated number of lunches and suppers served in the preceding school year and requests for adjustments shall be provided by the administering State agency or the FCSRO to the distributing agency. At the discretion of FCS, current year adjustments may be made for significant variations in the number of meals served. Such current year adjustments will not be routine and will only be made for unusual problems encountered in a State, such as a disaster that necessitates institutional closures for a prolonged period of time.

(2) *Value.* For each school year, the national average value of donated foods to be made available to States for distribution to nonresidential child care institutions, or cash payments in lieu thereof, shall not be less than 11 cents for each lunch and supper and shall be adjusted on July 1, 1982, and on each July 1 thereafter, to reflect changes in the Price Index for food used in schools and institutions as prescribed by section 6(e) of the National School Lunch Act, as amended. These adjustments shall be computed to the nearest one-fourth cent and shall be made effective at the beginning of each school year.

(c) *Cash in lieu of donated foods.* In accordance with part 240 of this chapter, State agencies may elect to receive cash payments in lieu of donated foods for use by institutions which participate in the Child Care Food Program under part 226 of this chapter.

(d) *Types of donated foods authorized for donations.* Nonresidential child care institutions which participate in the Child Care Food Program under part 226 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14.

[53 FR 20426, June 3, 1988, as amended at 58 FR 39123, July 22, 1993; 62 FR 53729, Oct. 16, 1997]

**§ 250.50 Service institutions.**

(a) *Distribution.* The distributing agency shall distribute donated foods only to those service institutions whose eligibility to receive donated foods for use in the Summer Food Service Program for Children under part 225 of this chapter has been confirmed in writing by the State agency or FCSRO administering the program, where applicable. Lists of participating service institutions which have been prepared by the administering State agency or FCSRO may serve as written confirmation of eligibility.

(b) *Quantities and value of donated foods.* Distribution of donated foods to service institutions shall be made on the basis of the average daily number of meals by type to be served which meet the meal-type requirements prescribed in the regulations for the Summer Food Service Program for Children under part 225 of this chapter as evidenced by the most recent written caseload factor information which must be provided by the State agency or FCSRO administering the program to the distributing agency by June 1 of each year.

(c) *Types of donated foods authorized for donation.* Service institutions which participate in the Summer Food Service Program for Children under part 225 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, and section 14.

**§ 250.51 Special Supplemental Nutrition Program for Women, Infants and Children.**

(a) *Distribution.* At the request of the State agency responsible for administering the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program) under part 246 of this chapter and with approval of the Department, donated foods may be made available for distribution to program participants. In instances when donated foods are made available, State agencies shall pay the Department using funds allocated to the State for the WIC Program for those donated foods which are provided to participants as part of the food package. Donated foods which are provided to participants in addition to the quantities authorized for the food package will be made available to the State agency free of charge.

(b) *Quantities and value of donated foods.* Distribution of donated foods to State agencies for the WIC Program shall be made on the basis of each State agency's quarterly estimate of need.

(c) *Types of donated foods authorized for donation.* State agencies participating in the WIC Program under part 246 of this chapter are eligible to receive donated foods under section 416 and section 32.

**§ 250.52 Section 110 commodities.**

(a) *Donations.* Distributing agencies shall make commodities donated to the State under section 110 of the Hunger Prevention Act of 1988 available to soup kitchens and food banks, as defined in § 250.3. Such distributions shall be made on the following priority basis:

(1) *Soup kitchens.* The distributing agency shall offer, or otherwise make available, its full allocation of commodities to soup kitchens and other like organizations that prepare meals for the homeless and to food banks for distribution to such organizations.

(2) *Institutions that serve only low-income recipients.* If the distributing agency determines that it is not likely to exhaust its allocation of commodities under this section through distribution to institutions referred to in paragraph (a)(1) of this section, it shall make the remaining commodities available to food banks for distribution to institutions that exclusively serve the needy. When such institutions distribute commodities to individuals for home consumption, eligibility for such commodities shall be established through a means test as determined appropriate by the distributing agency.

(3) *Other institutions.* If a food bank determines that it is not likely to exhaust its allocation of commodities through distribution to institutions referred to in paragraphs (a)(1) and (a)(2) of this section, it may make the remaining commodities available to institutions that:

(i) Document, to the satisfaction of the food bank, that they serve meals predominantly to needy persons; and

(ii) Do not employ a means test to determine eligibility for such meals.

(b) *Tax-exempt status.* Prior to making section 110 donated food available, the distributing agency shall ensure that the soup kitchen/food bank has obtained recognition of tax-exempt status under the Internal Revenue Code, has made application for recognition of such status and is moving toward compliance with the requirements for recognition of tax-exempt status, or is currently operating another Federal program requiring such tax-exempt status. If the Internal Revenue Service (IRS) denies a participating organization's application for recognition of tax-exempt status, the organization shall immediately notify the distributing agency of such denial, and the distributing agency shall terminate the organization's agreement and participation immediately upon receipt of such notification. If documentation of IRS recognition of tax-exempt status has not been obtained and forwarded to the distributing agency within 12 months of the effective date of the organization's approval for participation, the distributing agency shall terminate the organization's agreement and participation until such time as documentation of IRS recognition of tax-exempt status is obtained, unless the organization documents to the distributing agency's satisfaction that it has made good faith efforts to obtain recognition of its tax-exempt status and that such recognition has not been provided due to no fault of the organization. It shall be the responsibility of the soup kitchen/food bank to document that it has complied with all IRS requirements and has provided all information requested by IRS in a timely manner.

(c) *Agreements.* The distributing agency shall distribute section 110 commodities only to those soup kitchens and food banks which have entered into an agreement for participation in the program with the distributing agency in accordance with § 250.12(b). In addition to the terms and conditions set forth in § 250.12(b), written agreements shall, at a minimum, include:

(1) The name and location of the organization;

(2) Total number of meals expected to be served or commodities provided to households for home consumption during the agreement period, to be determined as follows:

(i) The total number of meals to be served in a congregate meal setting shall be determined by projecting the average number of meals to be served daily and the number of days meals will be served during the agreement period; and

(ii) The number of needy households to be provided food for home consumption shall be determined by projecting the number of households to be served during the agreement period (in accordance with the method set by the distributing agency) which meet the eligibility criteria which the distributing agency has determined appropriate pursuant to paragraph (a)(2) of this section;

(3) For congregate meal service, indication of whether the organization will employ the services of a food service management company to conduct its food service operations;

(4) Assurance that proper inventory controls will be maintained;

(5) Assurance that all reports will be submitted as required by the distributing agency; and

(6) In instances in which the donated food will be made available to an institution for household distribution, assurance that the food bank will ensure that the institution distributing the commodities will:

(i) Comply with the limitation on unrelated activities established under § 251.10(f) of this chapter; and

(ii) Limit distribution of the donated food to those households which meet the eligibility criteria as determined appropriate by the distributing agency pursuant to paragraph (a)(2) of this section.

(d) *Quantities of donated foods.* (1) Donated food purchased under section 110 of the Hunger Prevention Act of 1988 will be allocated to States by the Department on the basis of a formula that compares each State's population of low-income and unemployed persons to the national statistics. Each State's share of commodities, as measured by their value, shall be based 60 percent on the number of persons in households

within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State. The Department will notify each State of the types and amounts of such commodities allotted to the State under the formula when funds have been appropriated for the purchase of such commodities. The Department will make annual adjustments to the commodity allocations for each State, based on updated unemployment statistics, which will be effective for the entire fiscal year, except that such allocations shall be subject to reallocation or transfer in accordance with paragraph (d)(4) of this section and § 250.13(a).

(2) The distributing agency shall notify the appropriate FCSRO of the amount of the donated food it will accept no later than 30 days prior to the beginning of the shipping period.

(3) The distributing agency shall accept or adjust the data reported in the agreement by soup kitchens and food banks to determine the number of meals to be served to needy persons and the number of needy households to be served in order to allocate the donated food in an equitable manner that ensures that commodities will not be made available in quantities in excess of anticipated use or the ability of the organization to accept and store the commodities.

(4) In instances in which a State determines that it will not accept its full allocation, the Department will reallocate these commodities in a fair and equitable manner among those States that accept the full amount of their allocations and request additional amounts.

(e) *Funding.* Soup kitchens and food banks receiving section 110 commodities shall be eligible to receive Emergency Food Assistance Program administrative funds for use in accordance with the provisions set forth in § 251.8(d)(1)(ii) of this chapter, provided that they have entered into an agreement in accordance with § 251.8(d)(2) of this chapter.

(f) *Maintenance of effort.* Prior to making donated food available, the distributing agency shall obtain written assurance from the soup kitchen or food bank that food donations from other sources will not be diminished as a result of donated foods being made available under section 110 of the Hunger Prevention Act of 1988. This assurance statement shall be maintained on file by the distributing agency.

(g) *Food service management companies.* Institutions preparing congregate meals with section 110 commodities may employ food service management companies to conduct food service operations in accordance with § 250.12(c).

[59 FR 16973, Apr. 11, 1994]

## Subpart E—Where To Obtain Information

### § 250.60 Program information.

Interested persons desiring information concerning the program may make written request to the following Regional Offices:

(a) Northeast Region, Food and Consumer Service, USDA, 10 Causeway Street, Boston, Massachusetts 02222–1065 for the following States: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont.

(b) Mid-Atlantic Region, Food and Consumer Service, USDA, Mercer Corporate Park, Corporate Blvd., CN 02150, Trenton, New Jersey 08650, for the following States: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands and West Virginia.

(c) Southeast Region, Food and Consumer Service, USDA, 1100 Spring Street, NW, Atlanta, Georgia 30367, for the following States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.

(d) Midwest Region, Food and Consumer Service, USDA, 50 East Washington Street, Chicago, Illinois 60602, for the following States: Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.

(e) Mountain Plains Region, Food and Consumer Service, USDA, 2420 West 26th Avenue, Room 430–D, Denver, Colorado 80211, for the following States: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.

(f) Southwest Region, Food and Consumer Service, USDA, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75242, for the following States: Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

(g) Western Region, Food and Consumer Service, USDA, 550 Kearney Street, Room 400, San Francisco, California 94108 for the following States: Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory and Washington.

# PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

Sec.

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251.2 Administration.
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251.10 Miscellaneous provisions.

AUTHORITY: 7 U.S.C. 7501–7516.

SOURCE: 51 FR 12823, Apr. 16, 1986, unless otherwise noted.

## §251.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out certain provisions of the Temporary Emergency Food Assistance Act of 1983, (7 U.S.C. 612c *note*).

## §251.2 Administration.

(a) Within the United States Department of Agriculture (the ''Department''), the Food and Consumer Service (FCS) shall have responsibility for the distribution of food commodities and allocation of funds under the part.

(b) Within the States, distribution to emergency feeding organizations and receipt of payments for storage and distribution shall be the responsibility of the State agency which has: (1) Been designated for such responsibility by the Governor or other appropriate State executive authority; and (2) entered into an agreement with the Department for such distribution and receipt in accordance with paragraph (c) of this section.

(c) Each State agency that distributes donated foods to emergency feeding organizations or receives payments for storage and distribution costs in accordance with §251.8 shall perform those functions pursuant to an agreement entered into with the Department. This agreement shall be considered permanent, with amendments initiated by distributing agencies, or submitted by them at the Department's request, all of which shall be subject to approval by the Department. Such State agencies shall enter into a written agreement with eligible emergency feeding organizations. This agreement shall provide that emergency feeding organizations agree to operate the program in accordance with the requirements of this part, and, as applicable, part 250 of this chapter. The agreement shall be considered permanent, with amendments to be made as necessary. State agencies shall ensure that emergency feeding organizations provide, on a timely basis, by amendment to the agreement, any information on changes in program administration, including, but not limited to, any changes resulting from amendments to Federal regulations or policy.

[51 FR 12823, Apr. 16, 1986, as amended at 51 FR 17933, May 13, 1987; 59 FR 16974, Apr. 11, 1994; 62 FR 53731, Oct. 16, 1997]

## §251.3 Definitions.

For the purposes of this part:

(a) The terms used in this part that are defined in part 250 of this chapter shall have the meanings ascribed to them therein.

(b) *Distribution site* means the location(s) where the emergency feeding organization actually distributes commodities to needy persons under this part.

(c) *Emergency feeding organization* means any public or nonprofit private organization which has entered into an agreement with the designated State agency to provide nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons, and which receives commodities under agreements

pursuant to § 251.2(c). Emergency feeding organizations include charitable institutions, food banks, hunger centers, soup kitchens, and similar public or private nonprofit eligible recipient agencies.

(d) *Formula* means the formula used by the Department to allocate among States the commodities and funding available under this part. The amount of such commodities and funds to be provided to each State will be based on each State's population of low-income and unemployed persons, as compared to national statistics. Each State's share of commodities and funds shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State. The surplus commodities will be allocated to States on the basis of their weight (pounds), and the commodities purchased under section 214 of the Emergency Food Assistance Act of 1983 will be allocated on the basis of their value (dollars). In instances in which a State determines that it will not accept the full amount of its allocation of commodities purchased under section 214 of the Emergency Food Assistance Act of 1983, the Department will reallocate the commodities to other States on the basis of the same formula used for the initial allocation.

(e) *State agency* means the State government unit designated by the Governor or other appropriate State executive authority which has entered into an agreement with the United States Department of Agriculture under § 251.2(c).

(f) *Value of commodities distributed* means the Department's cost of acquiring commodities for distribution under this part.

[51 FR 12823, Apr. 16, 1986, as amended at 59 FR 16974, Apr. 11, 1994]

### § 251.4 Availability of commodities.

(a) *General.* The Department shall make commodities available for distribution and use in accordance with the provisions of this part and also in accordance with the terms and conditions of part 250 of this chapter to the extent that the part 250 terms and conditions are not inconsistent with this part.

(b) *Displacement.* State agencies shall require that emergency feeding organizations receiving commodities under this part shall not diminish their normal expenditures for food because of receipt of commodities. Additionally, the Secretary shall withhold commodities from distribution if it is determined that the commodities would substitute for the same or a similar product that would otherwise be purchased in the market.

(c) *Allocations.* (1) Allocations of commodities shall be made to State agencies on the basis of the formula defined in § 251.3(d).

(2) FCS shall promptly notify State agencies regarding their allocation of commodities to be made available under this part.

(3) State agencies shall notify the appropriate FCSRO of the amount of the commodities they will accept not later than 30 days prior to the beginning of the shipping period.

(d) *Quantities requested.* State agencies shall:

(1) Request commodities only in quantities which can be utilized without waste in providing food assistance to needy persons under this part;

(2) Ensure that no emergency feeding organization receives commodities in excess of anticipated use, based on inventory records and controls, or in excess of its ability to accept and store such commodities; and

(3) Establish distribution rates, based on household size, to be used by emergency feeding organizations which provide commodities to needy persons in households.

(e) *Initial processing and packaging.* The Department will furnish commodities to be distributed to institutions and to needy persons in households in forms and units suitable for institutional and home use.

(f) *Bulk processing by States.* Commodities may be made available to a State agency or, at the direction of the State agency, directly to private companies for processing bulk commodities for use by emergency feeding organizations.

(1) The Department will reimburse the State agency at the current flat rate for such processing.

(2) Minimum yields and product specifications established by the Department shall be met by the processor.

(3) The State shall require the processor to meet State and local health standards.

(4) The external shipping containers of processed products shall be clearly labeled ''Donated by the U.S. Department of Agriculture—Not to be Sold or Exchanged''. Internal packaging shall be clearly marked ''Donated by the U.S. Department of Agriculture—Processed Under Agreement with the State of _____.'' FCS may grant waivers to the internal label requirement if the enforcement of this requirement precludes a State's participation in the program, or in cases where other processors are not available who are able to meet the labeling requirement within the allowed reimbursement.

(5) Processors and State agencies shall also meet the basic minimum requirements of § 250.15.

(g) *Availability and control of donated commodities.* Donated commodities shall be made available to State agencies only for distribution and use in accordance with this part. Except as otherwise provided in § 251.4(f), donated commodities not so distributed or used for any reason shall not be sold, exchanged, or otherwise disposed of without the approval of the Department. However, donated commodities made available under section 32 of Pub. L. 74–320 (7 U.S.C. 612c) may be transferred by emergency feeding organizations, as defined in § 251.3, or recipient agencies, as defined in § 250.3, to any other emergency feeding organization or recipient agency which agrees to use such donated foods to provide without cost or waste, nutrition assistance to individuals in low-income groups. Such transfers shall be effected only with prior authorization of the State agency and, as applicable, the distributing agency. Transfers of any donated commodities between emergency feeding organizations and recipient agencies shall be documented. Such documentation shall be maintained in accordance with §§ 251.10(a) and 250.6(r) by the distributing agency and the State agency responsible for administering TEFAP and made available for review upon request.

(h) *Distribution to emergency feeding organizations.* Emergency feeding organizations shall be eligible to receive commodities which are made available under sections 202 and 214 of the Emergency Food Assistance Act of 1983. State agencies may give priority in the distribution of these commodities to existing food bank networks and other organizations whose ongoing primary function is to facilitate the distribution of food to low-income households, including food from sources other than the Department.

(i) *Distribution of non-USDA foods.* Emergency feeding organizations may incorporate the distribution of foods which have been donated by charitable organizations or other entities with the distribution of USDA-donated commodities or distribute them separately.

(j) *Interstate cooperation.* State agencies may enter into interagency cooperative agreements to provide jointly or to transfer commodities to an emergency feeding organization when such organization serves needy persons in a contiguous area which crosses States' borders.

(k) *Distribution in rural areas.* State agencies shall encourage emergency feeding organizations to implement or expand commodity distribution activities to relieve situations of emergency and distress through the provision of commodities to needy households in rural areas of the State.

(l) *Commodity losses.* (1) The State agency shall be responsible for the loss of commodities:

(i) When the loss arises from the State agency's improper distribution or use of any commodities or failure to provide proper storage, care, or handling; and

(ii) When the State agency fails to pursue claims arising in its favor, fails to provide for the rights to assert such claims, or fails to require its emergency feeding organizations to provide for such rights.

Except as provided in paragraph (l)(4) of this section, the State agency shall begin claims action immediately upon receipt of information concerning the

improper distribution, loss of or damage to commodities, and shall make a claim determination within 30 days of the receipt of information, as described in further detail in FCS Instruction 410–1, *Non-Audit Claims—Food Distribution*. The funds received from the collection of claims shall be returned to FCS. In instances in which it has been determined by the Department that the collection of funds will have a significant adverse effect on the operation of the program, the Department may permit in-kind replacement of the donated foods in lieu of payment to FCS. Replacement in kind will only be permitted under such terms and conditions as agreed to by the Secretary.

(2) If the State agency itself causes the loss of commodities and the value exceeds $250, the State agency shall immediately transmit the claim determination to the FCS Regional Office, fully documented as to facts and findings. Except as provided in paragraph (l)(4) of this section, if the State agency itself causes the loss of commodities, and the value does not exceed $250, the State agency shall immediately return funds equal to the claim amount to FCS.

(3) If the State agency determines that a claim exists against an emergency feeding organization, warehouseman, carrier or any other entity and the value of the lost commodities exceeds $2500, the State agency shall immediately transmit the claim determination to the appropriate FCS Regional Office, fully documented as to facts and findings. If FCS determines from its review of the claim determination that a claim exists, the State agency shall make demand for restitution upon the entity liable immediately upon receipt of notice from the FCS Regional Office. Except as provided in paragraph (l)(4) of this section, if the State agency determines that a claim exists in favor of the State agency against an emergency feeding organization, warehouseman, carrier or any other entity and the value of the lost commodities does not exceed $2500, the State agency shall immediately proceed to collect the claim.

(4) No claim determination shall be required where the value of the lost commodities is $100 or less. However, no such claim shall be disregarded where:

(i) There is evidence of fraud or a violation of Federal, State or local criminal law; or

(ii) Program operations would be adversely affected.

(5) The State agency shall maintain records and substantiating documents, on all claims actions and adjustments including documentation of those cases in which no claim was asserted because of the minimal amount involved.

(6) In making final claim determinations for commodity losses incurred by emergency feeding organizations when there is no evidence of fraud or negligence, State agencies and FCS Regional Offices, as applicable, shall consider the special needs and circumstances of the emergency feeding organizations, and adjust the claim and/or conditions for claim collection as appropriate. These special needs and circumstances include but are not limited to the emergency feeding organization's use of volunteers and limited financial resources and the effect of the claim on the organization's ability to meet the food needs of low-income populations.

(Approved by the Office of Management and Budget under control number 0584–0313 and 0584–0341)

[51 FR 12823, Apr. 16, 1986, as amended at 52 FR 17933, May 13, 1987; 52 FR 42634, Nov. 6, 1987; 59 FR 16974, Apr. 11, 1994]

### § 251.5 Eligibility determinations.

(a) *Eligible emergency feeding organizations.* Prior to making distribution to these agencies, the State agency shall determine that they are eligible as emergency feeding organizations under this part and shall enter into agreements in accordance with § 251.2(b) of this chapter when such agreements have not already been entered into.

(b) *Criteria for determining recipient eligibility*. Each State agency shall establish criteria for determining the eligibility of households to receive commodities provided under this part for household use. The criteria must enable the State to ensure that only households who are in need of food assistance because of inadequate household income receive commodities. The

criteria shall include income-based standards and the methods by which households may demonstrate eligibility under such standards and may include a requirement that the household reside in the State, provided that length of residency is not used as an eligibility criterion.

### §251.6 Distribution plan.

(a) *Contents of the plan.* The State agency shall submit for approval by the appropriate FCS Regional Office a plan which contains:

(1) A description of the criteria established in accordance with §251.5(b) for determining that applicant households are in need of food assistance under this part;

(2) The rates for distributing commodities to households in accordance with §251.4(d)(3);

(3) A description of the program monitoring system including a detailed explanation of any factors which may contribute to the State requesting approval of exceptions to conducting the minimum number of reviews required by §251.10(e);

(4) A description of the State's formula for allocating administrative funds among State agencies and emergency feeding organizations, including, if applicable, soup kitchens and food banks receiving administrative funds in connection with commodities which are made available under section 110 of the Hunger Prevention Act of 1988 in accordance with §251.8(d)(1); and

(5) A description of the State's contribution toward the matching requirements as described under §251.9(e).

(b) *Plan submission.* For Fiscal Year 1986, the distribution plan must be submitted no later than the effective date of this part, and for subsequent fiscal years the plan must be submitted no later than October 1 of each year.

[51 FR 12823, Apr. 16, 1986, as amended at 51 FR 17934, May 13, 1987; 59 FR 16974, Apr. 11, 1994]

### §251.7 Formula adjustments.

(a) *Commodity adjustments.* The Department will make adjustments to the commodity allocation formula for each State, based on updated unemployment statistics, as follows:

(1) *Surplus commodities.* Adjustments will be made semi-annually effective on January 1 and July 1 of each fiscal year; and

(2) *Purchased commodities.* Adjustments will be made annually and will be effective for the entire fiscal year, subject to reallocation or transfer in accordance with this part.

(b) *Funds adjustments.* The Department will make annual adjustments of the funds allocation for each State based on updated unemployment statistics. These adjustments will be effective for the entire fiscal year unless recovered, withheld, or reallocated in accordance with §251.8(e).

[51 FR 12823, Apr. 16, 1986, as amended at 59 FR 16974, Apr. 11, 1994]

### §251.8 Payment of funds for administrative costs.

(a) *Availability and allocation of funds.* Funds made available to the Department for State and local costs associated with the distribution of commodities under this part shall, in any fiscal year, be distributed to each State agency on the basis of the funding formula defined in §251.3(d).

(b) *Uniform Federal Assistance Regulations.* Funds provided under this section shall be subject to the Department's regulations issued under 7 CFR part 3015.

(c) *Payment to States.* (1) Funds under this section shall be made available by means of U.S. Treasury Department checks or letters of credit in favor of the State agency. The State agency shall use any funds received without delay in accordance with paragraph (d) of this section.

(2) Upon notification by the FCS Regional Office that an agreement has been entered into in accordance with §251.2(c) of this part, FCS shall issue a grant award pursuant to FCS Instruction 407–3 (Grant Award Process), and promptly make funds available to each State agency within the State's allocation either through issuance of a letter of credit or a U.S. Treasury check pursuant to submission of the SF–270, Request for Advance or Reimbursement. State agencies shall receive funds through a letter of credit if program payments are more than $120,000 for the year. To the extent funds are available

and subject to the provisions of § 251.8(e), funds will be made available to State agencies on an advance basis.

(3) Each State agency shall return to FCS any funds made available under this section either through the original allocation or through subsequent reallocations which are unobligated as of the end of the fiscal year for which they were made available. Such return shall be made as soon as practicable but in no event later than 30 days following demand made by FCS.

(d) *Use of funds*—(1) *Allowable administrative costs.* Funds made available under this part shall be used by State agencies or emergency feeding organizations only for the following administrative costs:

(i) *USDA commodities.* Funds may be used for the direct costs associated with the intrastate distribution of commodities donated under this part and under section 110 of the Hunger Prevention Act of 1988 by emergency feeding organizations. In addition, emergency feeding organizations that also receive commodities under part 250 of this chapter may use the funds provided under this part for direct costs associated with the distribution of such commodities. These costs include the costs paid by an emergency feeding organization or paid by a State agency on behalf of an emergency feeding organization for:

(A) Transporting, storing, handling, repackaging, processing, and distributing commodities incurred after they are received by the organization;

(B) Costs associated with determinations of eligibility, verification, and documentation;

(C) Costs of providing information to persons receiving USDA commodities concerning the appropriate storage and preparation of such commodities;

(D) Costs involved in publishing announcements of times and locations of distribution; and

(E) Costs of recordkeeping, auditing, and other administrative procedures required for program participation.

(ii) *Non-USDA commodities.* Funds may also be used by emergency feeding organizations for the direct costs associated with the intrastate distribution of commodities donated by persons or entities other than USDA, provided, however, that these costs shall be limited to the costs of storing, handling and distributing such commodities. State-level costs shall be allowable only to the extent that the commodities are ultimately distributed by emergency feeding organizations which have entered into agreements with the State agency in accordance with paragraph (d)(2) of this section.

(2) *Agreements.* (i) In order to be eligible for funds under paragraph (d)(1) of this section, emergency feeding organizations shall have entered into an agreement pursuant to § 251.2(c) for the receipt of donated foods under this part or an agreement pursuant to paragraph (d)(2)(ii) of this section for the receipt of funds in connection with section 110 commodities.

(ii) In instances in which administrative funds are made available in connection with section 110 commodities and the State agency responsible for the distribution of TEFAP commodities and funds is not also responsible for the distribution of section 110 commodities, the State agency responsible for the administration of TEFAP shall enter into an agreement with the soup kitchens/food banks (as described in § 250.52(c) of this chapter) requesting the funds, or with the State agency responsible for the distribution of section 110 commodities, which will then enter into agreements with those soup kitchens and food banks. The agreement with the soup kitchen or food bank shall require compliance with the provisions of this section and § 251.10(a) and (e).

(3) *Local support.* (i) Not less than 40 percent of the Federal Emergency Food Assistance Program administrative funds allocated to the State in accordance with paragraph (a) of this section shall be:

(A) Provided by the State agency to emergency feeding organizations as either reimbursement or advance payment for administrative costs incurred by emergency feeding organizations in accordance with paragraph (d)(1) of this section, except that emergency feeding organizations may retain advance payments only to the extent that they actually incur such costs; or

(B) Directly expended by the State agency to cover administrative costs

incurred by, or on behalf of, emergency feeding organizations in accordance with paragraph (d)(1) of this section.

(ii) State agencies shall not charge for commodities made available under this part to emergency feeding organizations.

(e) *Recovery and reallocation.* If, during the course of the fiscal year, the Department determines that a State agency is unable to use all of the funds allocated to it during the fiscal year, the Department shall recover or withhold and reallocate such unused funds among other States.

[51 FR 12823, Apr. 16, 1986, as amended at 59 FR 16974, Apr. 11, 1994]

### §251.9 Matching of funds.

(a) *State matching requirement.* The State shall provide a cash or in-kind contribution equal to the amount of the Federal Emergency Food Assistance Program administrative funds received under §251.8 and retained by the State agency for State-level costs. Any portion of the Federal grant passed through for administrative costs incurred at the local level or directly expended by the State agency for such local-level costs (in accordance with §251.8(d)(3)) shall be exempt from the State match requirement.

(b) *Exceptions.* In accordance with the provisions of 48 U.S.C. 1469a, American Samoa, Guam, the Virgin Islands and the Northern Mariana Islands shall be exempt from the matching requirements of paragraph (a) of this section if their respective matching requirements are under $200,000.

(c) *Applicable contributions.* States shall meet the requirements of paragraph (a) of this section through cash or in-kind contributions from sources other than Federal funds which are prohibited by law from being used to meet a Federally mandated State matching requirement. Such contributions shall meet the requirements set forth in 7 CFR 3016.24. In accordance with 7 CFR 3016.24(b)(1), the matching requirement shall not be met by contributions for costs supported by another Federal grant, except as provided by Federal statute. Allowable contributions are only those contributions for costs which would otherwise be allowable as State or local-level administrative costs.

(1) *Cash.* An allowable cash contribution is any cash outlay of the State agency for a specifically identifiable allowable State- or local-level administrative cost, including the outlay of money contributed to the State agency by other public agencies and institutions, and private organizations and individuals. Examples of cash contributions include, but are not limited to, expenditures for office supplies, storage space, transportation, loading facilities and equipment, employees' salaries, and other goods and services specifically identifiable as State- or local-level administrative costs for which there has been a cash outlay by the State agency.

(2) *In-kind.* (i) Allowable in-kind contributions are any contributions, which are non-cash outlays, of real property and non-expendable personal property and the value of goods and services specifically identifiable with allowable State administrative costs or, when contributed by the State agency to an emergency feeding organization, allowable local-level administrative costs. Examples of in-kind contributions include, but are not limited to, the donation of office supplies, storage space, vehicles to transport the commodities, loading facilities and equipment such as pallets and forklifts, and other non-cash goods or services specifically identifiable with allowable State-level administrative costs or, when contributed by the State agency to an emergency feeding organization, allowable local-level administrative costs. In-kind contributions shall be valued in accordance with 7 CFR 3016.24(c) through 3016.24(f).

(ii) In order for a third-party in-kind contribution to qualify as a State-level administrative cost for purposes of meeting the match, all of the following criteria shall be met:

(A) In its administration of food assistance programs, the State has performed this type of function over a sustained period of time in the past;

(B) The function was not previously performed by the State on behalf of emergency feeding organizations; and

(C) The State would normally perform the function as part of its responsibility in administering TEFAP or related food assistance programs if it were not provided as an in-kind contribution.

(d) *Assessment fees.* States shall not assess any fees for the distribution of donated foods to emergency feeding organizations.

(e) *Plan requirements.* As a part of the State's Distribution Plan required under § 251.6, State agencies shall submit for FCS Regional office approval, the State's plan for meeting the match required under paragraph (a) of this section. Such plan shall identify the estimated amount of Federal funds to be retained at the State level for State level activities, the estimated dollar value of the State's contribution, and, if applicable, a description and valuation of in-kind contributions to be applied to the State's required match. This plan may be amended at any time during the fiscal year.

(f) *Reporting requirements.* State agencies shall identify their matching contribution on the SF–269, Financial Status Report, in accordance with § 251.10(d).

(g) *Failure to match.* If, during the course of the fiscal year, the quarterly SF–269 indicates that the State is or will be unable to meet the matching requirements in whole or in part, the Department shall suspend or disallow the unmatched portion of Federal funds subject to the provisions of paragraph (a) of this section. If, upon submission of the final SF–269 for the fiscal year, the Department determines that the State has not met the requirements of paragraph (a) of this section in whole or in part, the unmatched portion of Federal funds subject to the requirements of paragraph (a) of this section shall be subject to disallowance by FCS.

[52 FR 17934, May 13, 1987, as amended at 59 FR 16975, Apr. 11, 1994]

### § 251.10 Miscellaneous provisions.

(a) *Records.* (1) State agencies and emergency feeding organizations shall maintain records to document the receipt, disposal, and inventory of commodities received under this part in accordance with requirements of § 250.16 of this chapter.

(2) In addition to maintaining financial records in accordance with 7 CFR part 3016, State agencies which receive funds under this part shall maintain records to document the amount of funds paid to emergency feeding organizations for the actual storage and distribution costs incurred by any emergency feeding organization. State agencies shall ensure that emergency feeding organizations maintain records as required by this paragraph.

(3) Each distribution site shall keep accurate and complete records showing the data and method used to determine the number of eligible households served at that site.

(4) Each distribution site shall collect for each household participating in the program the name of the household member receiving commodities, the address of the household (to the extent practicable), the number of persons in the household, and the basis for determining that the household is eligible to receive commodities.

(5) All records required by this section shall be retained by the emergency feeding organization for a period of 3 years from the close of the Federal Fiscal Year to which they pertain.

(b) *Commodities not income.* In accordance with section 206 of Pub. L. 98–8, as amended, and notwithstanding any other provision of law, commodities distributed under this part shall not be considered income or resources for any purposes under any Federal, State, or local law.

(c) *Nondiscrimination.* There shall be no discrimination in the distribution of foods donated under this part because of race, color, national origin, sex, age, or handicap.

(d) *Reports.* (1) Designated State agencies shall identify funds obligated and disbursed to cover the costs associated with the program at the State and local level. State and local costs shall be identified separately. The data shall be identified on Form FCS–667, Report of Administrative Costs (TEFAP), and shall be submitted to the appropriate FCS Regional Office on a quarterly basis. The quarterly report shall be submitted no later than 30 calendar days after the end of the quarter to

which it pertains. The final report shall be submitted no later than 90 calendar days after the end of the fiscal year to which it pertains.

(2) Each State agency shall complete and submit to the FCSRO reports to ensure that excessive inventories of donated foods are not maintained, in accordance with the requirements of § 250.17(a) of this chapter. Such reports shall also include the total number of households served in the State since the previous report submittal, based upon current information received from emergency feeding organizations.

(e) *State monitoring system.* (1) Each State agency shall monitor the operation of the program. To comply with this requirement the State agency shall develop and submit, as part of the distribution plan required by § 251.6, a description of its monitoring system.

(2) Unless specific exceptions are approved in writing by the FCS Regional Office, the State monitoring system shall include:

(i) An annual review of at least 25 percent of all emergency feeding organizations and a review of all such organizations not less frequently than once every four years; and

(ii) An annual review of one-third or 50, whichever is fewer, of all distribution sites within the State, to be conducted, to the maximum extent feasible, simultaneously with actual distribution and/or eligibility determinations.

(3) In selecting distribution sites for review, the State shall rank all the sites according to the number of participating households during the previous Federal fiscal quarter and select for review the first 25 sites, or first one-sixth of all sites, whichever is fewer, which served the greatest number of households.

(4) Each review must encompass eligibility determinations, food ordering procedures, storage and warehousing practices, inventory controls, approval of distribution sites, and reporting and recordkeeping requirements.

(5) Upon concurrence by FCS, reviews of emergency feeding organizations or distribution sites which have been conducted by FCS Regional Office personnel may be incorporated into the minimum coverage required by paragraph (e)(2) of this section.

(6) The State agency shall submit a report of review findings to each emergency feeding organization. The report shall include: (i) A description of each deficiency found and factors contributing to each; (ii) requirements for corrective actions; and (iii) timetable for completion of corrective action. The State agency shall monitor each emergency feeding organization's implementation of corrective action identified in the report.

(7) State agencies shall ensure that emergency feeding organizations which receive administrative funds in connection with commodities made available under section 110 of the Hunger Prevention Act of 1988 are reviewed at the frequency stipulated in paragraph (e)(2)(i) of this section to ensure compliance with the provisions contained in § 251.8.

(f) *Limitation on unrelated activities.* (1) Activities unrelated to the distribution of TEFAP foods may be conducted at distribution sites as long as:

(i) The person(s) conducting the activity makes clear that the activity is not part of TEFAP and is not endorsed by the Department (impermissible activities include information not related to TEFAP placed in or printed on bags, boxes, or other containers in which commodities are distributed). Recipes or information about commodities, dates of future distributions, hours of operations, or other Federal, State, or local government programs or services for the needy may be distributed without a clarification that the information is not endorsed by the Department;

(ii) The person(s) conducting the activity makes clear that cooperation is not a condition of the receipt of TEFAP commodities (cooperation includes contributing money, signing petitions, or conversing with the person(s)); and

(iii) The activity is not conducted in a manner that disrupts the distribution of TEFAP commodities.

(2) Emergency feeding organizations and distribution sites shall ensure that activities unrelated to the distribution of TEFAP foods are conducted in a manner consistent with paragraph (f)(1) of this section.

(3) *Termination for violation.* Except as provided in paragraph (f)(4) of this section, State agencies shall immediately terminate from further participation in TEFAP operations any emergency feeding organization or distribution site that distributes or permits distribution of materials in a manner inconsistent with the provisions of paragraph (f)(1) of this section.

(4) *Termination exception.* The State agency may withhold termination of an emergency feeding organization's or distribution site's TEFAP participation if the State agency cannot find another emergency feeding organization or distribution site to operate the distribution in the area served by the violating organization. In such circumstances, the State agency shall monitor the distribution of commodities by the violating organization to ensure that no further violations occur.

(g) *Use of volunteer workers and non-USDA commodities.* In the operation of the Emergency Food Assistance Program, State agencies and emergency feeding organizations shall, to the maximum extent practicable, use volunteer workers and foods which have been donated by charitable and other types of organizations.

(h) *Maintenance of effort.* If the State uses its own funds to provide commodities or services to organizations receiving funds or services under section 214 of the Emergency Food Assistance Act of 1983, the State shall not diminish the level of support it provides to such organizations or reduce the amount of funds available for other nutrition programs in the State in each fiscal year.

(Approved by the Office of Management and Budget under control number 0584–0313)

[51 FR 12823, Apr. 16, 1986. Redesignated and amended at 51 FR 17934, May 13, 1987; 53 FR 15357, Apr. 29, 1988; 59 FR 16975, Apr. 11, 1994; 62 FR 53731, Oct. 16, 1997]

# PART 252—NATIONAL COMMODITY PROCESSING PROGRAM

Sec.

252.1 Purpose and scope.
252.2 Definitions.
252.3 Administration.
252.4 Application to participate and agreement.
252.5 Recipient agency responsibilities.
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252.7 OMB control number.

AUTHORITY: Sec. 416, Agricutural Act of 1949 (7 U.S.C. 1431).

SOURCE: 51 FR 23518, June 30, 1986, unless otherwise noted.

## § 252.1 Purpose and scope.

(a) *Purpose.* This part provides a program whereby the Food and Consumer Service (FCS) and private processors of food may enter into agreements under which the processor will process and distribute designated donated food to eligible recipient agencies. The intent of the program is to encourage private industry, acting in cooperation with the States and FCS, to develop new markets in which donated food may be utilized. It is expected that the processors will use their marketing abilities to encourage eligible recipient agencies to participate in the program. Additionally, recipient agencies will benefit by being able to purchase processed end products at a substantially reduced price.

(b) *Scope.* The terms and conditions set forth in this part are those under which processors may enter into agreements with FCS for the processing of commodities designated by the Secretary of Agriculture and the minimum requirements which NCP processors must meet. Also prescribed are distributing agency and recipient agency responsibilities.

(c) *Eligible recipient agencies.* Recipient agencies shall be eligible to participate in the NCP Program to the extent of their eligibility to receive the food involved in the NCP Program, pursuant to § 250.8 and part 251.

## § 252.2 Definitions.

The terms used in this part that are defined in §§ 250.3 and 251.3 shall have the meanings ascribed to them therein, except as set forth in this section.

*Agreement value of the donated commodity* means the price assigned by the Department to a donated food which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

*Distributing agencies* means State, Federal or private agencies which enter into agreements with the Department for the distribution of donated food to eligible recipient agencies and recipients; and FCS when it accepts title to commodities from the Commodity Credit Corporation (CCC) for distribution to eligible recipient agencies under the National Commodity Processing Program. A recipient agency may also be a distributing agency.

*Donated food value return system* means a system used by a processor or distributor to reduce the price of the end product by the agreement value of the donated commodity.

*NCP Program* means a program under which FCS and private processors of food may enter into agreements under which the processor will process and distribute designated donated food to eligible recipient agencies.

*Recipient agency* means disaster organizations, charitable institutions, nonprofit summer camps for children, school food service authorities, schools, service institutions, welfare agencies, nutrition programs for the elderly, nonresidential child care institutions and emergency feeding organizations.

*Refund* means (1) a credit or check issued to a distributor in an amount equal to the NCP contract value of donated foods contained in an end product sold by the distributor to a recipient agency at a discounted price or (2) a check issued to a recipient agency in an amount equal to the NCP contract value of donated foods contained in an end product sold to the recipient agency under a refund system.

*Substitution* means (1) the replacement of donated food with like quantities of domestically produced commercial food of the same generic identity and of equal or better quality (i.e., cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.); or (2) in the case of donated nonfat dry milk, substitution as defined under (1) of this paragraph or replacement with an equivalent amount, based on milk solids content, of domestically produced concentrated skim milk.

[51 FR 23518, June 30, 1986, as amended at 52 FR 24977, July 2, 1987; 53 FR 34014, Sept. 2, 1988]

**§252.3 Administration.**

(a) *Role of FCS.* The Secretary will designate those commodities which will be available under the NCP Program. Only commodities made available without charge or credit under any nutrition program administered by USDA will be available under NCP. FCS will act as the distributing agency and the contracting agency under the NCP Program. The Department will pay costs for delivering donated commodities to participating NCP Program processors.

(b) *Food orders.* When NCP Program processors request donated food, FCS will determine whether the quantities ordered are consistent with the processor's ability to sell end products and/or the processor's past demonstrated performance under the Program. If the quantities are appropriate, FCS will request from CCC the donated food for transfer of title to FCS and delivery to a mutually agreed upon location for use by the NCP Program processor. The title to these commodities transfers to FCS upon their acceptance by the processor. FCS retains title to such commodities until:

(1) They are distributed to eligible recipient agencies in processed form, at which time the recipient agency takes title;

(2) They are disposed of because they are damaged or out-of-condition; or

(3) Title is transferred to the NCP Program processor upon termination of the agreement.

(c) *Substituted food.* When the processor substitutes commercial food for donated food in accordance with §252.4(c)(7) of this part, title to the substituted food shall transfer to FCS upon the initiation of the processing of the end product containing the substituted food. Title to the equivalent amount of donated food shall transfer to the processor at the same time (except when the substitution is necessary to meet the 100 percent yield requirement or to otherwise replace missing or out-of-condition donated food). Once title has transferred, the processor shall use the substituted food in accordance with the terms and conditions of this part.

(d) *Inventory levels.* FCS will monitor the inventory of each food processor to

ensure that the quantity of donated food for which a processor is accountable is at the lowest cost-efficient level. In no event shall a processor hold in inventory more than a six-month supply, based on average monthly usage under the NCP Program, unless a higher level has been specifically approved by FCS on the basis of justification submitted by the processor. Under no circumstances should the amount of donated food requested by the processor be more than the processor can accept and store at any one time. FCS will make no further distribution to a processor whose inventory exceeds these limits until such time as the inventory is reduced.

(e) *Recipient agency registration.* FCS will register, upon request, eligible recipient agencies. FCS will make available to food processors a listing of registered eligible recipient agencies for marketing purposes. Any processor desiring additional listings will be charged a fee for the listing which is commensurate with the Department's policy on user fees.

[51 FR 23518, June 30, 1986, as amended at 52 FR 24978, July 2, 1987; 59 FR 62986, Dec. 7, 1994]

### § 252.4 Application to participate and agreement.

(a) *Application by processors to participate.* Any food processor is eligible to apply for participation in the NCP Program. Agreement applications may be filed with FCS at any time on an FCS-approved form. FCS will accept or reject the application of each individual food processor within 30 days from the date of receipt, except that FCS may, at its discretion, extend such period if it needs more information in order to make its determination. In determining whether to accept or reject an application, FCS shall take into consideration at least the following matters: the financial responsibility of the applicant; the ability of the applicant to meet the terms and conditions of the regulations and the NCP agreement; ability to accept and store commodities in minimum truckload quantities; historical performance under the State and NCP processing programs; anticipated new markets for NCP end products; geographic areas served by the processor; the ability of the applicant to distribute processed products to eligible recipient agencies; and a satisfactory record of integrity, business ethics and performance. In addition, the processors must demonstrate their ability to sell end products under NCP by submitting supporting documentation such as written intent to purchase, bids awarded, or historical sales performance. FCS will make a final determination based on all available documentation submitted.

(b) *Agreement between FCS and Participating Food Processors.* Upon approval of an application for participating in the NCP Program, FCS shall enter into an agreement with the applicant food processor. All agreements under the NCP Program will terminate on the June 30th following the agreement approval date. However, FCS may extend processing contracts for two 1-year periods, provided that any changed information must be updated before any contract extension is granted, including the information in paragraphs (c)(1) and (c)(5) of this section.

(c) *Processor requirements and responsibilities.* In accordance with the following provisions and the NCP agreement, any processor participating in the NCP Program may sell to any eligible recipient agency nationwide a processed product containing the donated food received from FCS.

(1) The processor shall submit to FCS end product data schedules which include a description of each end product to be processed, the quantity of each donated food and any other ingredient which is needed to yield a specific number of units of each end product. FCS may permit processors to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of seasonings or flavorings. The end product data schedule shall provide pricing information supplied by the processor as requested by FCS and a thorough explanation of what this pricing information represents. The end product data schedule shall be made a part of the NCP agreement.

(2) When determining the value of the donated food, the processor shall use the agreement value of the donated

food which shall be the price assigned by the Department to a donated food which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

(3) The processor shall demonstrate to the satisfaction of FCS that internal controls are in place to insure that duplicate reporting of sales under the NCP Program and any other food distribution program does not occur.

(4) The processor shall use a method of selling end products to recipient agencies which ensures that the price of each case of end product is reduced by the agreement value of the donated commodity and ensures proper accountability. In line with FCS guidelines and subject to FCS approval, the processor shall select one or more of the following donated food value return systems to use during the term of the agreement. Regardless of the method used, processors shall provide pricing information summaries to recipient agencies as soon as possible after contract approval by FCS. If the pricing information changes during the contract period, processors shall provide updated pricing information to FCS and the recipient agencies 30 days prior to the effective date. Regardless of the method chosen for selling end products, the processor shall reduce his inventory only by the amount of donated food represented by the discount or refund placed on the end product.

(i) *Direct sale.* A direct sale is a sale by the processor directly to the eligible recipient agency. The following two methods of direct sales are allowed:

(A) *Discount system.* When the recipient agency pays the processor directly for an end product purchased, the processor shall invoice the recipient agency at the net case price which shall reflect the value of the discount established in the agreement.

(B) *Refund system.* The processor shall invoice the recipient agency for the commercial/gross price of the end product. The recipient agency shall submit a refund application to the processor within 30 days of receipt of the processed end product, except that recipient agencies may submit refund applications to a single processor on a Federal fiscal quarterly basis if the total anticipated refund due for all purchases of end product from that processor during the quarter is 25 dollars or less. The processor shall pay directly to the eligible recipient agency within 30 days of receipt of the refund application from the recipient agency, an amount equal to the established agreement value of donated food per case of end product multiplied by the number of cases delivered to and accepted by the recipient agency, except that processors may group together refund applications for a single recipient agency on a Federal fiscal quarterly basis if the total anticipated refund due that recipient agency during the quarter is 25 dollars or less. In no event shall refund applications for purchases during the period of agreement be accepted by the processor later than 60 days after the close of the agreement period.

(ii) *Indirect sale.* An indirect sale is a sale by the processor through a distributor to an eligible recipient agency. Indirect sales can be made with or without dual billing. Dual billing involves the processor billing the recipient agency for the end product and the distributor billing the recipient agency for the cost of services rendered in the handling and delivery of the end product. The following three methods of indirect sales are allowed:

(A) *Sale through distributor with dual billing.* When end products are sold to recipient agencies through a distributor under a system utilizing dual billing, the processor shall invoice the recipient agencies directly for the end products purchased at the net case price which reflects the value of the discount established in the agreement. The processor shall ensure that the distributor bills the recipient agencies only for the services rendered in the handling and delivery of the end product. The processor shall maintain delivery and/or billing invoices to substantiate the quantity of end product delivered to each recipient agency and the net case price charged by the processor which reflects the discount established by the agreement.

(B) *Sale through distributor without dual billing.* When end products are sold

to recipient agencies through a distributor without dual billing, processors shall provide refunds to the distributor and ensure that the distributor provides discounts of equal value to recipient agencies. Under this system, the processor shall sell end products to a distributor at the processor's commercial/gross price for the end product. The processor's invoice shall reflect the value of commodities contained in the end product as established by the agreement. The processor shall ensure that the distributor submits a refund application to the processor within 30 days after the eligible recipient agency receives the processed end product. The processor shall ensure that the refund application includes documentation of the purchase of end products by the eligible recipient agency through substantiating invoices and that the recipient agency has purchased the end product at the net case price which reflects the value of the discount established by the agreement. Within 30 days of the receipt of the refund application, the processor shall issue payment directly to the distributor in an amount equal to the stated agreement value of the donated food contained in the purchased end products covered by the application. In no event shall refund applications for purchases during the period of agreement be accepted by the processors later than 60 days after the close of the agreement period. The processor shall verify a statistically valid sample of discount sales made by distributors without dual billing in a manner which ensures a 95 percent confidence level. All such sales reported during a quarter shall be verified at the end of that quarter. Processors shall verify that sales were made only to eligible recipient agencies and that the value of donated commodities was passed through to those recipient agencies. The processor shall report to FCS the level of invalid or inaccurate sales identified in each quarter within 60 days after the close of each quarter. At the same time such report is submitted, the processor shall submit to FCS a corrective action plan designed to correct problems identified in the verification effort. The processor shall adjust performance reports to reflect the invalid sales identified during the verification effort required by this paragraph. If, as a result of this verification, FCS determines that the value of donated food has not been passed on the recipient agencies or that end products have been improperly distributed, FCS may assert a claim against the processor.

(C) *Sale through distributor with a refund.* Under the refund system, processors shall sell end products to distributors at the commercial/gross price of the end product. Distributors shall sell end products to recipient agencies at the commercial/gross price of the end products. Processors shall ensure that their invoices and the invoices of distributors identify the discount established by the agreement. Recipient agencies shall submit refund applications to processors within 30 days of receipt of the processed end product. Within 30 days of the receipt of the refund application from the recipient agency certifying actual purchases of end product from substantiating invoices maintained by the recipient agency, the processor shall compute the amount and issue payment of the refund directly to the recipient agency. In no event shall refund applications for purchases during the period of the agreement be accepted by the processor later than 60 days after the close of the agreement period.

(iii) *Other value pass-through systems.* Processors may submit to FCS for approval any proposed value pass-through (VPT) system not identified in this section. The ''other'' VPT system must, in the judgment of FCS, be verifiable and easily monitored. Any VPT system approved under this part must comply with the sales verification requirements specified in paragraph (c)(4)(ii)(B) of this section or an alternative system approved by FCS. If an alternative system is approved, FCS will notify the States in which the system will be used. The Department retains the authority to inspect and review all pertinent records under all VPT systems, including the verification of a required statistically valid sample of sales. FCS may consider the paperwork and resource burden associated with alternative value pass-through systems when considering approval and reserves the right to deny

approval of systems which are labor-intensive and provide no greater accountability than those systems permitted under paragraph (c)(4) of this section.

(5) The processor shall furnish to FCS prior to the ordering of any donated food for processing, a performance supply and surety bond obtained from surety companies listed in the current Department of Treasury Circular 570 or an irrevocable letter of credit to cover the amount of inventory on hand and on order.

(6) The processor shall draw down inventory only for the amount of donated food used to produce the end product. In instances in which concentrated skim milk is substituted for nonfat dry milk, the processor shall draw down donated nonfat dry milk inventory only in an amount equal to the amount of concentrated skim milk, based on milk solids content, used to produce the end product. Processors shall ensure that an amount equivalent to 100 percent of the donated food provided to the processor under the NCP Program is physically contained in end products. Additional commodities required to account for loss of donated food during production shall be obtained from non-donated food.

(7)(i) Only butter, cheese, corn grits, cornmeal, flour, macaroni, nonfat dry milk, peanut butter, peanut granules, roasted peanuts, rice, rolled oats, rolled wheat, shortening, vegetable oil, and spaghetti may be substituted as defined in § 252.2 and such other food as FCS specifically approves as substitutable under paragraph (c)(7)(i)(A) of this section (substitution of meat and poultry items shall not be permitted).

(A) Processors may request approval to substitute commercial foods for donated foods not listed in paragraph (c)(7)(i) of this section by submitting such request to FCS in writing and satisfying the requirements of paragraph (c)(7) of this section. FCS will notify the processor in writing of authorization to substitute commercial foods for donated foods not listed in paragraph (c)(7)(i) of this section and such authorization shall apply for the duration of all current contracts entered into by the processor pursuant to this section.

(B) The processor shall maintain records to substantiate that it continues to acquire on the commercial market amounts of substitutable food consistent with their levels of non-NCP Program production and to document the receipt and disposition of the donated food.

(C) FCS shall withhold deliveries of donated food from processors that FCS determines have reduced their level of non-NCP Program production because of participation in the NCP Program.

(ii) When the processor seeks FCS approval to substitute donated nonfat dry milk with concentrated skim milk under paragraph (c)(7)(i)(A) of this section, an addendum must be added to the request which states:

(A) The percent of milk solids that, at a minimum, must be contained in the concentrated skim milk;

(B) The weight ratio of concentrated skim milk to donated nonfat dry milk:

(*1*) The weight ratio is the weight of concentrated skim milk which equals one pound of donated nonfat dry milk, based on milk solids;

(*2*) In calculating this weight, nonfat dry milk shall be considered as containing 96.5 percent milk solids;

(*3*) If more than one concentration of concentrated skim milk is to be used, a separate weight ratio must be specified for each concentration;

(C) The processor's method of verifying that the milk solids content in the concentrated skim milk is as stated in the request;

(D) A requirement that the concentrated skim milk shall be produced in a USDA approved plant or in a plant approved by an appropriate regulatory authority for the processing of Grade A milk products; and

(E) A requirement that the contact value of donated food for a given amount of concentrated skim milk used to produce an end product is the value of the equivalent amount of donated nonfat dry milk, based on the weight ratio of the two foods.

(iii) Substitution must not be made solely for the purpose of selling or disposing of the donated commodity in commercial channels for profit.

(8) The processor shall be liable for all donated food provided under the agreement. The processor shall immediately report to FCS any loss or damage to donated food and shall dispose of

damaged or out-of-condition food in accordance with § 250.7.

(9) The processor shall submit to FCS monthly performance reports reflecting the sale and delivery of end products during the month.

(i) The processor shall ensure that the monthly performance report is postmarked no later than the last day of the month following the month being reported. The processor shall identify the month of delivery for each sale reported. The sale and delivery of end products for any prior month may be included on the monthly performance report. The processor monthly performance report shall include:

(A) The donated food inventory at the beginning of the reporting month;

(B) Amount of donated food received from the Department during the reporting month;

(C) Amount of donated food transferred to and/or from existing inventory;

(D) A list of all recipient agencies purchasing end products and the number of units of end products delivered to each during the report month;

(E) The net price paid for each unit of end product and whether the sale was made under a discount or refund system;

(F) When the sale is made through a distributor, the name of the distributor;

(G) The amount of inventory drawdown represented by reported sales; and

(H) the donated food inventory at the end of the reporting month.

(ii) In addition to reporting the information identified in paragraph (c)(9)(i) of this section, processors substituting concentrated skim milk for donated nonfat dry milk shall report the following information for the reporting period:

(A) The number of pounds of nonfat dry milk used in commercial products sold to outlets which are not recipient agencies; and

(B) The number of pounds of concentrated skim milk and the percent of milk solids contained therein, used in end products sold to recipient agencies.

(iii) At the end of each agreement period, there will be a final 90 day reconciliation period in which processors may adjust NCP sales for any month.

(10) The processor shall maintain complete and accurate records of the receipt, disposal and inventory of donated food including end products processed from donated food.

(i) The processor shall keep production records, formulae, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use of the donated food and the subsequent redelivery to an eligible recipient agency.

(ii) The processor shall document that sales reported on monthly performance reports, specified in paragraph (c)(9) of this section were made only to eligible recipient agencies and that the normal wholesale price of the product was discounted or a refund payment made for the agreement value of the donated commodity.

(iii) When donated food is commingled with commercial food, the processor shall maintain records which will permit an accurate determination of the donated commodity inventory.

(iv) The processor shall make all pertinent records available for inspection and review upon request by FCS, its representatives and the General Accounting Office (GAO). All records must be retained for a period of three years from the close of the Federal fiscal year to which they pertain. Longer retention may be required for resolution of an audit or of any litigation.

(11) The processor shall obtain, upon FCS request, Federal acceptance service grading and review of processing activities and shall be bound by the terms and conditions of the grading and/or review.

(12) The processor shall indemnify and save FCS and the recipient agency free and harmless from any claims, damages, judgments, expenses, attorney's fees, and compensation arising out of physical injury, death, and/or property damage sustained or alleged to have been sustained in whole or in part by any and all persons whatsoever as a result of or arising out of any act or omission of the processor, his/her agents or employees, or caused or resulting from any deleterious substance,

including bacteria, in any of the products produced from donated food.

(13) The processor shall be liable for payment for all uncommitted food inventory remaining at agreement termination.

(i) When agreements are terminated at the request of the processor or at FCS' request because there has been noncompliance on the part of the processor with the terms and conditions of the agreement, or if any right of FCS is threatened or jeopardized by the processor, the processor shall pay FCS an amount equal to the CCC unrestricted sales price, the cost CCC of replacement on the date the agreement is terminated, or the agreement value of donated commodities, whichever is highest, for the inventory, plus any expenses incurred by FCS.

(ii) When the agreements are terminated at FCS' request where there has been no fault or negligence on the part of the processor, the processor shall pay FCS an amount equal to the CCC unrestricted sales price, the cost to CCC of replacement on the date the agreement is terminated, or the agreement value of the donated commodities, whichever is highest, for the inventory, unless FCS and the processor mutually agree on another value.

(14) The processor shall not assign the processing contract or delegate any aspect of processing under a subcontract or other arrangement without the written consent of FCS. The subcontractor shall be required to become a party to the processing contract and conform to all conditions contained in that contract.

(15) The processor shall comply fully with the provisions of the NCP agreement and all Federal regulations and instructions relevant to the NCP Program.

(16) The processor shall label end products in accordance with §250.15(j) and, when end products contain vegetable protein products, in accordance with 7 CFR part 210, 225, or 226 appendix A.

(17) The processor shall return to FCS any funds received from the sale of donated food containers and the market value or the price received from the sale of any by-products of donated food or commercial food which has been substituted for donated food.

(18) For any year in which a processor receives more than $250,000 in donated food, the processor shall obtain an independent audit conducted by a Certified Public Accountant (CPA) for that year. Processors receiving $75,000 to $250,000 in donated food each year shall obtain an independent audit conducted by a CPA every two years and those receiving less than $75,000 in donated food each year shall obtain an independent audit conducted by a CPA every three years. Processors in the three year audit cycle shall move into the two year audit cycle when the value of donated food received reaches $75,000. If the Department determines that the audit is not acceptable or that the audit has disclosed serious deficiencies, the processor shall be subject to additional audits by OIG at the request of FCS.

(i) Audits shall be conducted in accordance with the auditing provisions set forth under the *Standards for Audit of Government Organizations, Programs, Activities and Functions,* and the FCS Audit Guide for Multi-State Processors.

(ii) The costs of the audits shall be borne by the processor.

(iii) Audit findings shall be submitted by the processors to FCS.

(iv) Noncompliance with the audit requirement contained in this part will render the processor ineligible to enter into another processing contract until the required audit has been conducted and deficiencies corrected.

[51 FR 23518, June 30, 1986, as amended at 52 FR 16369, May 5, 1987; 52 FR 24978, July 2, 1987; 53 FR 16379, May 9, 1988; 53 FR 34014, Sept. 2, 1988; 59 FR 62986, Dec. 7, 1994]

### §252.5 Recipient agency responsibilities.

(a) *Registration.* Recipient agencies that have approved agreements with State distributing agencies to receive donated food may register with FCS on an FCS approved form to participate in the NCP Program. Upon request, FCS will provide recipient agencies with registration forms. Recipient agencies shall notify FCS when they are no longer eligible to receive donated food

under an agreement. Failure to notify FCS shall result in claim action.

(b) *Recipient agency records.* Each recipient agency shall maintain accurate and complete records with respect to the receipt, disposal, and inventory of donated food, including products processed from donated food, and with respect to any funds which arise from the operation of the distribution program.

(c) *Refunds.* A recipient agency purchasing end products under the NCP Program from a processor utilizing a refund system shall submit a refund application supplied by the processor to the processor within 30 days of receipt of the end products, except that recipient agencies may submit refund applications to a single processor on a Federal fiscal quarterly basis if the total anticipated refund due for all purchases of end product from that processor during the quarter is 25 dollars or less. Recipient agencies must insure that any funds received as a result of refund payments be designated for use by the food service department.

(d) *Verification.* If requested by FCS, each recipient agency shall cooperate in the verification of end product sales reported by processors under the NCP Program. The recipient agency may be requested to verify actual purchases of end products as substantiated by the recipient agency's invoices and may also be requested to verify that the invoice correctly identifies the discount included or refund due for the value of the donated ingredient contained in the end product.

[51 FR 23518, June 30, 1986, as amended at 59 FR 62987, Dec. 7, 1994]

### § 252.6 Miscellaneous provisions.

(a) *Improper distribution or loss of or damage to donated food.* If a processor improperly distributes or uses any donated food, or causes loss of or damage to a donated food through its failure to provide proper storage, care, or handling, FCS shall require the processor to pay to the Department the value of the donated food as determined by the Department.

(b) *Disposition of damaged or out-of-condition food.* Donated food which is found to be damaged or out-of-condition and is declared unfit for human consumption by Federal, State, or local health officials, or by any other inspection services or persons deemed competent by the Department, shall be disposed of in accordance with instructions of the Department. This instruction shall direct that unfit donated food be sold in a manner prescribed by the Department with the net proceeds thereof remitted to the Department. Upon a finding by the Department that donated food is unfit for human consumption at the time of delivery to a recipient agency and when the Department or appropriate health officials require that such donated food be destroyed, the processor shall pay for any expenses incurred in connection with such donated food as determined by the Department. The Department may, in any event, repossess damaged or out-of-condition donated food.

(c) *FCS sales verification.* FCS may conduct a verification of processor reported sales utilizing a statistically valid sampling technique. If, as a result of this verification, FCS determines that the value of the donated food has not been passed on to recipient agencies or if end products have been improperly distributed, FCS may assert a claim against the processor. This claim may include a projection of the verification sample to the total NCP sales reported by the processor.

(d) *Sanctions.* Any processor or recipient agency which has failed to comply with the provisions of this part or any instructions or procedures issued in connection herewith, or any agreements entered into pursuant hereto, may, at the discretion of the Department, be disqualified from further participation in the NCP Program. Reinstatement may be made at the option of the Department. Disqualification shall not prevent the Department from taking other action through other available means when considered necessary, including prosecution under applicable Federal statutes.

(e) *Embezzlement, misuse, theft, or obtainment by fraud of commodities and commodity related funds, assets, or property in child nutrition programs.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud commodities donated for use in the NCP Program, or any funds, assets, or property deriving

from such donations, or whoever receives, conceals, or retains such commodities, funds, assets, or property for his own use or gain, knowing such commodities, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to Federal criminal prosecution under section 12(g) of the National School Lunch Act, as amended, or section 4(c) of the Agriculture and Consumer Protection Act of 1973, as amended. For the purpose of this paragraph ''funds, assets, or property'' include, but are not limited to, commodities which have been processed into different end products as provided for by this part, and the containers in which commodities have been received from the Department.

### §252.7 OMB control number.

The information collection and reporting requirements contained in this part have been approved by the Office of Management and Budget under control number 0584–0325.

## PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

Sec.

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AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011–2027), unless otherwise noted.

SOURCE: 44 FR 35928, June 19, 1979, unless otherwise noted. Redesignated by Amdt. 1, 47 FR 14137, Apr. 2, 1982.

### §253.1 General purpose and scope.

This part describes the terms and conditions under which: commodities (available under part 250 of this chapter) may be distributed to households on or near all or any part of any Indian reservation, the program may be administered by capable Indian tribal organizations, and funds may be obtained from the Department for the costs incurred in administering the program. This part also provides for the concurrent operation of the Food Distribution Program and the Food Stamp Program on Indian reservations when such concurrent operation is requested by an ITO.

### §253.2 Definitions.

(a) *Exercises governmental jurisdiction* means the active exercise of the legislative, executive or judicial powers of government by an Indian tribal organization.

(b) *Food distribution program* means a food distribution program for households on Indian reservations operated pursuant to sections 4(b) and 1304(a) of Pub. L. 95–113.

(c) *Indian tribal household* means a household in which at least one household member is recognized as a tribal member by any Indian tribe, as defined in paragraph (d) of this section.

(d) *Indian tribe* means (1) any Indian tribe, Band, or other organized Indian group, for example, a Rancheria, Pueblo, or colony, and including any Alaska Native village or regional or village corporation (established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688)), and that is on a reservation and recognized as eligible for Federal programs and services provided to Indians because of their status as Indians; or (2) any Indian tribe or Band on a reservation holding a treaty with a State government.

(e) *Indian tribal organization (ITO)* means: (1) The recognized governing body of any Indian tribe on a reservation; or (2) the tribally recognized intertribal organization which the recognized governing bodies of two or more Indian tribes on a reservation authorize to operate the Food Stamp Program or a Food Distribution Program on their behalf.

(f) *Reservation* means the geographically defined area or areas over which an ITO exercises governmental jurisdiction so long as such area or areas are legally recognized by the Federal or a State government as being set aside for the use of Indians.

(g) *State* means any one of the fifty States, the District of Columbia, and

the reservation of an Indian tribe whose ITO meets the requirements of the Food Stamp Act of 1977 for participation as a State agency.

(h) *State agency* means:

(1) The agency of State government, including the local offices thereof, which enters into an agreement with FCS for the distribution of commodities on all or part of an Indian reservation, and

(2) The ITO of any Indian tribe, determined by the Department to be capable of effectively administering a Food Distribution Program, which enters into an agreement with FCS for the distribution of commodities on all or part of an Indian reservation.

(i) *Urban place* means a town or city with a population of 10,000 or more.

[44 FR 35928, June 19, 1979. Redesignated and amended by Amdt. 1, 47 FR 14137, Apr. 2, 1982; 59 FR 1449, Jan. 11, 1994]

### § 253.3 Availability of commodities.

(a) *Conditions for distribution.* In jurisdictions where the Food Stamp Program is in operation, there shall be no distribution of commodities to households under the authority of any law, except that distribution may be made (1) on a temporary basis under programs authorized by law to meet disaster relief needs, (2) for the purpose of the Commodity Supplemental Food Program, and (3) whenever a request for concurrent or separate Food Distribution Program on a reservation is made by an ITO.

(b) *Concurrent or separate food program operation.* Distribution of commodities, with or without the Food Stamp Program, shall be made whenever an ITO submits to FCS a completed application for the Food Distribution Program on all or part of a reservation and the application is approved by FCS.

(1) Except as provided in paragraph (b)(2) of this section, when the Food Distribution Program is operating on all or part of a reservation, all eligible households within those boundaries may participate in the Food Distribution Program, or, if the ITO has elected concurrent operation of the Food Stamp Program, may elect to participate in either program, without regard to whether the household is an Indian tribal household.

(2) FCS may determine, based on the number of non-Indian tribal households located on all or part of a reservation, that concurrent operation is necessary. When such a determination has been made all households residing in such areas may apply to participate in either the Food Stamp or the Food Distribution Program.

(c) *Household distribution.* Commodities acquired under section 416 of the Agricultural Act of 1949, as amended; section 32 of Pub. L. 320, 74th Congress, as amended; section 709 of the Food and Agricultural Act of 1963, as amended; and section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended, by section 1304 of the Food and Agriculture Act of 1977, may be made available under part 250 of this chapter for distribution to households in accordance with the provisions of that part and the additional provisions and requirements of this part.

(d) *Food distribution program benefits.* Households eligible under this part shall receive a monthly food package based on the number of household members. The food package offered to each household shall consist of a quantity and variety of commodities made available by the Department to provide eligible households with an opportunity to obtain a more nutritious diet and shall represent an acceptable nutritional alternative to Food Stamp Program benefits. The food package offered to each household by the State agency shall contain a variety of foods from each of the four food groups: Meat, Vegetable-Fruit, Milk, and Bread-Cereal. FCS shall periodically notify State agencies of the kinds of commodities it proposes to make available based, insofar as practicable, on the preferences of eligible households as determined by the State agency. In the event one or more of the proposed commodities cannot be delivered, the Department shall arrange for delivery of a similar commodity within the same food group.

### § 253.4 Administration.

(a) *Federal administration.* Within the Department of Agriculture, the Food and Consumer Service (FCS) shall be

responsible for the Food Distribution Program. FCS shall have the power to determine the amount of any claim and to settle and adjust any claim.

(b) *State agency administration.* (1) If FCS determines that the ITO is capable of effective and efficient administration, the ITO shall administer the Food Distribution Program on all or part of the reservation. If FCS determines that the ITO is not capable of effective and efficient administration of the Food Distribution Program, the appropriate agency of the State government shall be responsible for the Food Distribution Program on all or part of the Indian reservation. In addition, the appropriate agency of the State government may administer the Program on behalf of an otherwise capable tribe if agreed to in writing by both parties.

(2) In the case where the Indian reservation boundaries cross State lines, the ITO and appropriate State agencies may jointly request FCS approval that a single State agency administer the Food Distribution Program on all or part of the Indian reservation.

(3) An agency of State government responsible for administering the Food Distribution Program may contract Program functions to an ITO. These functions include, but are not limited to, outreach, preparation of bilingual materials, commodity issuance, determination of food preferences of households, publicizing uses of commodities, and transportation and on-site delivery services. The State agency may also use the ITO in prescreening translations, interpretive services and other noncertification functions. The State agency shall not contract responsibility for certification activities such as interviews or eligibility determinations with an ITO that has been determined incapable of administering the Food Distribution Program. In all cases the State agency shall retain full responsibility for program administration.

(c) *Qualification as a reservation.* (1) The appropriate ITO of an established Indian reservation will qualify for participation under the provisions of this part, when that ITO files an application which demonstrates the status of an area as an established reservation, unless FCS determines that such area(s) does not qualify as a reservation as that term is defined in these regulations. For purposes of this part, established reservation means the geographically defined area(s) currently recognized and established by Federal or State treaty or by Federal statute whereby such geographically defined area(s) is set aside for the use of Indians. Where such established areas exist, the appropriate ITO is presumed to exercise governmental jurisdiction, unless otherwise determined by FCS.

(2) The appropriate ITO for other areas, in order to qualify as reservations for the provisions of this part, must show to FCS:

(i) That the ITO exercises governmental jurisdiction over a geographic area(s) which enjoys legal recognition from the Federal or a State government and is set aside for the use of Indians;

(ii) A clear and precise description of the boundaries of such geographic area(s).

(d) *Application by an ITO.* Any ITO which desires to participate in the Food Distribution Program shall file an application with the FCS Regional Office serving the State or States in which the reservation is located. The ITO shall specify if it is requesting the Food Distribution Program alone or concurrently with the Food Stamp Program. The ITO shall also specify whether it wants either or both programs on all or part of the reservation, and if on part, shall describe the geographic boundaries of the relevant part(s). Additionally, if the ITO wishes to serve areas near the reservation, the ITO shall describe the geographic boundaries of the near area(s) for FCS review and approval. Any urban place inside a reservation can be served by the Food Distribution Program. Any urban place outside reservation boundaries may not be served. However, an ITO or State agency can request the Department to change those limitations with justification. The ITO application shall also provide other information requested by FCS, including but not limited to, that the ITO serves an established reservation or a reservation otherwise qualified as described in paragraph (c) of this section. Properly

addressed applications shall be acknowledged by the FCS Regional Office in writing within five working days of receipt.

(e) *Tribal capability*. (1) In determining whether the ITO on a given reservation is potentially capable of effectively and efficiently administering a Food Distribution Program, allowing for fulfillment of that potential through training and technical assistance, FCS shall consult with other sources, such as the BIA, and shall consider the ITO's experience, if any, in operating other government programs and its management and fiscal capabilities. Other factors for evaluation include, but are not limited to, the ITO's ability to:

(i) Order and properly store commodities,

(ii) Certify eligible households,

(iii) Arrange for physical issuance of commodities,

(iv) Keep appropriate records and submit required reports,

(v) Budget and account for administrative funds,

(vi) Determine the food preferences of households, and

(vii) Conduct on-site reviews of certification and distribution procedures and practices.

(2) The Food and Consumer Service (FCS) shall make a determination of potential Indian Tribal Organization (ITO) capability within 30 days of receipt of a completed application for the Food Distribution Program. FCS shall promptly advise ITOs of the need for additional information if an incomplete application is received.

(3) FCS shall, if requested by an ITO which has been determined by FCS to be potentially capable of administering a Food Distribution Program, provide the ITO's designees with appropriate training and technical assistance to prepare the ITO to take over program administration. In determining what training and technical assistance are necessary, FCS shall consult with the ITO and other sources, such as the BIA.

[44 FR 35928, June 19, 1979, as amended by Amdt. 163, 45 FR 14006, Mar. 4, 1980. Redesignated and amended by Amdt. 1, 47 FR 14137, Apr. 2, 1982]

**§ 253.5 State agency requirements.**

(a) *Plan of operation*. (1) The State agency that assumes responsibility for the Food Distribution Program shall submit a plan of operation for approval by FCS. Approval of the plan shall be a prerequisite to the donation of commodities available for use by households under § 253.9. The approved plan shall be considered permanent, with amendments to be added as changes in State agency administration or management of the program, as described in the plan, are made, or at the request of FCS. No amendment to the plan of operation of any State agency shall be effective without prior approval of FCS, and FCS may require amendment of any plan as a condition of continuing approval. If the agency is not an ITO, the appropriate agency of the State government shall also:

(i) Consult in good faith with the ITO on the reservation where the appropriate agency of the State government is responsible for administering the Food Distribution Program.

(ii) A State agency which is not an ITO shall submit its plan of operation, budget and any substantive subsequent amendments to the ITO for comment at least 45 days prior to submission of the plan, budget or amendment to FCS. Comments by the ITO shall be attached to the plan, budget or amendment which is submitted to FCS. This paragraph does not apply to amendments required by FCS under § 253.7(a)(1).

(2) The plan of operation shall describe the manner in which commodities will be distributed, including, but not limited to, the storage and distribution facilities to be used, the procedures to assure ongoing consultation with the ITO where the appropriate agency of the State government administers the Program, the method by which the food preferences of households shall be determined, the manner in which the State agency plans to supervise the Food Distribution Program, and plans by which the State agency will control dual participation. The plan shall also include by reference or otherwise the following assurances:

(i) No household on any Indian reservation shall be permitted to participate simultaneously in the Food Stamp

Program and the Food Distribution Program.

(ii) The value of the commodities provided to any eligible household shall not be considered income or resources for any purposes under any Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs; and no State agency shall decrease any assistance otherwise provided to a household because of the receipt of commodities.

(iii) The distribution of commodities shall not be used as a means for furthering the political interest of any individual or party.

(iv) There shall be no discrimination in the certification of applicant households or in the distribution of commodities because of sex, race, color, age, political beliefs, religion, handicap or national origin.

(v) Households shall not be required to make any payments in money, materials or services for, or in connection with, the receipt of commodities; and they shall not be solicited in connection with the receipt of commodities for voluntary cash contributions for any purpose.

(vi) Adequate personnel, including supervisory personnel, to review the Food Distribution Program shall be provided to ensure compliance with the requirements of this part.

(vii) Use of disclosure of information obtained from food distribution applicant households, exclusively for the Food Distribution Program, shall be restricted to persons directly connected with the administration or enforcement of the provisions of the Food Distribution Programs as defined in part 283 of this subchapter, the Food Stamp Act or regulations, or with other Federal or federally aided, means-tested assistance programs such as title IV–A (AFDC), XIX (Medicaid), or XVI (SSI), or with general assistance programs that are subject to the joint processing requirements specified in § 273.2(j)(2).

(b) *Operating manuals.* The State agency shall maintain ongoing consultation with the ITO in developing the State agency's written internal policies, instructions, and forms which are necessary to carry out the Food Distribution Program and shall submit them to FCS for approval prior to their use. The State agency shall file any comments or recommendations offered by the ITO, for review by FCS.

(c) *Staffing.* Personnel used in the certification process shall be employed in accordance with (1) the current standards for a Merit System of Personnel Administration or any standards later prescribed by the Office of Personnel Management under section 208 of the Intergovernmental Personnel Act of 1970 or (2) when appropriate, the ITO's personnel system if it incorporates the basic elements of a merit system.

(d) *Bilingual requirements.* (1) The State agency shall provide bilingual staff, certification forms, including the application form and certification notices as specified in § 283.7(a)(2) and (b)(3), respectively, and any form developed by the State agency for reporting changes in household composition and income, pursuant to § 283.7(c), and outreach materials, when either an estimated 100 or more low income households or the majority of low-income households on the reservation are a single language minority. Single-language minority refers to households which speak the same non-English language and which do not contain adults(s) fluent in English as a second language. If the non-English language is spoken but not written, the State agency shall provide bilingual staff, if required, but not bilingual material.

(2) The State agency shall ensure that offices serving reservations subject to the criteria in paragraph (d)(1) of this section provide sufficient bilingual staff for the timely processing of non-English speaking applicants.

(3) The State agency shall develop estimates of the numbers of low-income, single-language minority households by using census data (including the Census Bureau's Current Population Report: Population Estimates and Projections, Series P–25, No. 627) and knowledge of the reservation. Local Bureau of Census offices, Community Services Administration offices, Community Action agencies, Bureau of Indian Affairs, Indian Health Services, planning agencies, the ITO and school officials may be important sources of

information in determining the need for bilingual services.

(e) *Outreach and referral.* The State agency shall inform potentially eligible households of the availability of the Food Distribution Program. The State agency shall develop and distribute printed information in the appropriate languages about the Program and eligibility requirements. Outreach material shall contain information about a household's right to file an application on the same date it contacts the certification office. The State agency shall be sufficiently familiar with general eligibility requirements for the Supplemental Food Program for Women, Infants and Children (WIC) or the Commodity Supplemental Food Program, if available to reservation residents, the Supplemental Security Income Program (SSI), and appropriate public and general assistance programs, to identify those applicants whose households contain persons who may be eligible for these programs, to inform the applicants of their potential eligibility, and to provide the applicants with the addresses and telephone numbers for these programs. For example, the State agency should provide information on the WIC program to applicants whose households contain pregnant women, nursing or postpartum women, or children up to the fifth birthday.

(f) *Training requirements.* The State agency shall institute a training program for all personnel who are assigned responsibility for the certification of applicant households, for fair hearing officers, for field supervisors who review local Food Distribution Programs, for those involved in outreach and those responsibile for ordering, storing, and distributing commodities.

(1) State agency training programs shall cover eligibility criteria, certification procedures, commodity ordering, storage and distribution practices, household rights and responsibilities and other job-related responsibilities. The content of the training material shall be reviewed and revised periodically to correct deficiencies in program operations or reflect changes in policy and procedures.

(2) The State agency shall allow public attendance at formal certification training sessions in accordance with § 274.2(e)(1)(iv).

(3) FCS shall review the effectiveness of State agency training based on information obtained from field reviews, administrative analyses and other sources.

(g) *Nutrition education.* The State agency shall publicize how commodities may be used to contribute to a nutritious diet and how commodities may be properly stored by means of visual displays, and printed material. The State agency shall encourage appropriate organizations, county extension home economists, expanded Food and Nutrition Program aides, and qualified volunteers to provide food and nutrition information, menus, or cooking demonstrations, as appropriate for participating households. The State agency shall encourage the dissemination of food and nutrition information designed to improve the nutrition of households on reservations.

(h) *Records and reports.* The State agency shall keep records and submit reports and other information as required by FCS. Records required under this part shall be retained for a period of three years from the date of the submission of the annual financial status report, SF–269; except that, if any litigation, claim or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

(i) *Monitoring.* In accordance with its responsibility for efficient and effective program administration the State agency shall monitor and review its operations under this part to ensure compliance with the provisions of this part and with any applicable instructions of FCS.

(1) The State agency shall review program operations at least annually, document program deficiencies and establish and implement specific plans of corrective action for deficiencies noted.

(2) Reviews of operations shall include, but not be limited to, certification of households, determination of food preferences, distribution of commodities, fair hearing procedures, commodity inventories and timeliness and accuracy of reports to FCS.

(3) Program reviews and corrective action plans shall be available to FCS upon request.

(j) *Investigations and complaints.* The State agency shall promptly investigate complaints received of irregularities in the handling, distribution, receipt or use of commodities, other than use of commodities by eligible households in the preparation of meals for home consumption, and shall take appropriate action to correct any irregularities. The State agency shall also promptly investigate complaints of irregularities relating to certification procedures or the delivery of services and shall take appropriate action to correct any irregularities or noncompliance with provisions relating to certification procedures, provision of services or household rights. The State agency shall document each investigation and action in sufficient detail to allow for FCS review of all State agency actions and information. The Department shall make investigations at the request of the State agency and ITO or when the Department determines an investigation is necessary.

(k) *Sanctions.* If the State agency fails to comply with the provisions of this part or its plan of operation, FCS may:

(1) Take action against any State agency under § 283.9(g) of this part with respect to administrative funds available from FCS for use by the State agency or (2) disqualify the State agency from further distribution of commodities to households. Disqualification of the State agency shall not prevent FCS or the Department from taking other actions, including prosecution under applicable Federal statutes, when deemed necessary. Reinstatement shall be contingent upon approval by FCS of the State agency's plan for corrective action or determination by FCS that the State agency has complied with any other requirements for reinstatement which FCS may set forth. These provisions apply to all State agencies, regardless of whether the Program is administered by an agency of the State government or an ITO. If the ITO is disqualified as a State agency, an appropriate agency of State government shall administer the Food Distribution Program on the reservation. If an agency of State government is disqualified as the State agency for the Food Distribution Program on the reservation, the ITO may request in writing a capability determination for program administration in accordance with § 283.4.

(l) *Appeals.* (1) The agency of the State government or an ITO may appeal an initial determination by FCS on:

(i) Whether or not the reservation definition is met;

(ii) The capability of an ITO to administer the Food Distribution Program;

(iii) Sanctions taken under § 283.5(k) or § 283.9(g); or

(iv) The Federal matching percentage level of administrative funding made available by FCS.

(2) At the time FCS advises the State agency or ITO of its determination, FCS shall also advise the State agency or ITO of its right to appeal and, except for appeals of funding determinations, shall advise the State agency or ITO of its right to request either a meeting to present its position in person or a review of the record. On appeals of funding determinations, FCS shall advise the State agency or ITO that it may indicate if it wishes a meeting, however, FCS need schedule a meeting only if FCS determines a meeting is warranted to reach a proper adjudication of the matter. Otherwise, FCS shall review supportive information submitted by the State agency or ITO in paragraph (l)(3)(ii) of this section.

(3) *Procedure*—(i) *Time limit.* Any State agency or ITO that wants to appeal an initial FCS determination under paragraph (l) of this section must notify the Administrator of FCS, in writing, within 15 days from the date of the determination. If the appeal concerns either paragraph (l)(1) (i) or (ii) of this section, the implementation timeframes as specified in § 283.4(d)(2) and the timeframe for determining an ITO's capability as specified in § 283.5 are suspended from the date the appeal is requested to the date of the final determination.

(ii) *Acknowledgment.* Within five days of receipt by the Administrator, of FCS, of a request for review, FCS shall

provide the State agency or ITO with a written acknowledgment of the request by certified mail, return receipt requested. The acknowledgment shall include the name and address of the official designated by the Administrator, FCS, to review the appeal. The acknowledgment shall also notify the State agency or ITO that within ten days of receipt of the acknowledgment, the State agency or ITO shall submit written information in support of its position.

(4) *Scheduling a meeting.* If the Administrator, FCS, grants a meeting FCS shall advise the State agency or ITO of the time, date and location of the meeting by certified mail, return receipt requested at least ten days in advance of the meeting. FCS shall schedule and conduct the meeting and make a decision within 60 days of the receipt of the information submitted in response to paragraph (l)(3)(ii) of this section.

(5) *Review.* If no meeting is conducted the official designated by the Administrator, FCS, shall review information presented by a State agency or ITO which requests a review and shall make a final determination in writing within 45 days of the receipt of the State agency's or ITO's information submitted in response to paragraph (l)(3)(ii) of this section setting forth in full the reasons for the determination.

(6) *Final decision.* The official's decision after a meeting or a review shall be final.

(m) *Implementation.* The State agency shall implement changes required by amendments to these regulations in accordance with schedules specified in the amendment.

(1) *Amendment 2.* (i) If an ITO currently participates in, but does not administer, the Food Distribution Program on Indian Reservations:

(A) FCS shall determine tribal eligibility and capability to administer the Food Distribution Program on Indian Reservations within 60 days of receipt of a completed application. If an incomplete application is received, FCS shall within 15 days, notify the ITO of what additional information is required. The processing time for the capability determination shall start from the date the additional information is received by FCS.

(B) Upon FCS' determination that the ITO will administer the Food Distribution Program on Indian Reservations, FCS shall expeditiously plan for and provide needed training and technical assistance to facilitate timely commencement of tribal administrative responsibilities. The ITO shall have 120 days from FCS' determination in paragraph (m)(1)(i)(A) of this section to submit and have approved a plan of operation, operating manuals, and to commence program operations under the regulations as specified in this part. Extensions may be granted by FCS to ITOs if good cause is shown.

(C) If FCS determines that an ITO is not capable of administering the Food Distribution Program on Indian Reservations, FCS shall direct the State to continue program operations and submit a new plan of operation and to commence program operations under the regulations as specified in this part within 120 days from FCS' determination in paragraph (m)(1)(i)(A) of this section.

(ii) If an ITO currently administers the Food Distribution Program on Indian Reservations, the timeframes specified in paragraph (m)(1)(i) of this section apply except that:

(A) FCS shall determine tribal eligibility and capability to administer the Food Distribution Program on Indian Reservations within 30 days of receipt of a completed application.

(B) If FCS determines that the ITO will not administer the Food Distribution Program on Indian Reservations, FCS shall direct the ITO to continue program operations until the State government can commence program operations. The State government shall have 120 days from FCS' determination in paragraph (m)(1)(i)(A) of this section to submit and have approved a plan of operation and to commence program operations under the regulations as specified in this part.

(iii) If an ITO does not currently participate in a Food Distribution Program on Indian Reservations, the timeframes in paragraph (m)(1)(i) of this section apply except that if FCS determines that an ITO cannot administer the program, FCS shall direct the

State to submit a plan of operation and to commence program operations under the regulations as specified in this part within 180 days from the determination.

(iv) Extensions to the above implementation timeframe (except for those timeframes set forth in paragraphs (m)(1) (i)(A) and (ii)(A) of this section) may be granted by FCS to ITOs or State government agencies if there is compelling justification involving circumstances which were not reasonably foreseeable and which are not the fault of the ITO or the State agency and which circumstances present extraordinary problems that would render earlier implementation impossible.

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

(44 U.S.C. 3506; E.O. 12372, July 14, 1982, 47 FR 30959, sec. 401(b) of the Intergovernmental Cooperation Act of 1968, 31 U.S.C. 6506(c))

[44 FR 35928, June 19, 1979, as amended at 47 FR 746, Jan. 7, 1982. Redesignated and amended by Amdt. 1, 47 FR 14137, Apr, 2, 1982; Amdt. 2, 47 FR 19665, May 7, 1982; 48 FR 29123, June 24, 1983; 62 FR 53731, Oct. 16, 1997]

### §253.6 Eligibility of households.

(a) *Household concept.* (1) The State agency shall determine eligibility for the Food Distribution Program on a household basis. Household means any of the following individuals or groups of individuals, provided that such individuals or groups are not boarders or residents of an institution and provided that separate household or boarder status shall not be granted to a spouse of a member of the household, or to children under 18 years of age under the parental control of a member of the household.

(i) An individual living alone.

(ii) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others.

(iii) A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption.

(2) *Nonhousehold members.* The following individuals residing with a household shall not be considered household members in determining the household's eligibility. Nonhousehold members specified in paragraphs (a)(2) (i) and (v) who are otherwise eligible may participate in the Program as separate households.

(i) *Roomers.* Individuals to whom a household furnishes lodging, but not meals, for compensation.

(ii) *SSI recipients in ''cash-out'' States.* Recipients of SSI benefits who reside in a State designated by the Secretary of Health, Education, and Welfare to have specifically included the value of the coupon allotment in its State supplemental payments. These persons are not eligible for Food Distribution Program benefits.

(iii) *Disqualified individuals.* Individuals disqualified from the Food Stamp Program for fraud, as set forth in §273.16.

(iv) *Illegal residents.* Individuals who are not legal residents of the United States. While U.S. citizenship is not required for participation in the Food Distribution Program, persons receiving food distribution benefits must be lawfully living in the United States.

(v) *Others.* Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent, but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant household.

(3) *Authorized representatives.* The head of the household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in making application for commodities and/or obtaining commodities as provided in §283.7(a)(10)(i) and §283.7(a)(10)(ii) respectively.

(b) *Residency or citizenship.* (1) All households residing on a reservation on which the FDPIR operates shall be eligible to apply for program benefits on that reservation regardless of whether they include an Indian member. All Indian tribal households as defined in §253.2(c) of this part which reside in near areas established under §253.4(d) of this part shall be eligible to apply for program benefits. The ITO or State

agency shall serve all income-eligible applicant households residing on reservations who apply for benefits, and all income-eligible applicant Indian tribal households residing in near areas. The ITO or State agency administering the program in a near area shall, for purposes of determining program eligibility, accept documentation from a household member's tribe of origin as proof of tribal membership. Residency shall not mean domicile nor shall the State agency impose any durational residency requirement. However, persons on the reservation solely for vacations shall not be considered residents. No household may participate in the Food Stamp Program or in the Food Distribution Program in more than one geographical area at the same time.

(2) No person shall participate in the Food Distribution Program on an Indian reservation unless the person is legally a resident of the United States. A further discussion of ''legal residency'' is provided in § 283.6(a)(3)(iv).

(c) *Income and resource eligibility standards of public assistance, supplemental security income, and certain general assistance households.* (1) Households in which all members are included in a federally aided public assistance or supplemental security income grant, except as provided for in § 283.6(a)(2)(ii), shall, if otherwise eligible under this part, be determined to be eligible to participate in the Food Distribution Program while receiving such grants without regard to the income and resources of the household members.

(2) If FCS determines that a State or local general assistance program applies criteria of need the same as or similar to, those applied under any of the federally aided public assistance programs, households in which all members are included in such a general assistance grant, shall, if otherwise eligible under this part, be determined to be eligible to participate in the Food Distribution Program while receiving such grants without regard to the income and resources of household members.

(d) *Resource eligibility standards*—(1) *Uniform household standards for non-assistance households.* The State agency shall apply uniform national resource standards of eligibility to all applicant households, except those in which all members are recipients of federally aided public assistance, supplemental security income, or certain general assistance program benefits as provided in paragraph (c)(2) of this section. The maximum allowable resources shall not exceed $1,750 for the household; except that, for households of two or more members which include a member or members age 60 or over, such resources shall not exceed $3,000.

(2) *Resources.* In determining the resources of a household, only cash on hand, money in checking or savings accounts, savings certificates, stocks, or bonds, or other readily negotiable and accessible certificates or instruments shall be counted; except that the following resources shall be entirely excluded:

(i) The cash value of life insurance policies and pension funds, including funds in pension plans with interest penalties for early withdrawals, such as a Keogh plan or an Individual Retirement Account (IRA), as long as the funds remain in the pension plans.

(ii) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended, for example payments made by the Department of Housing and Urban Development through the individual and family grant program of disaster loans or grants made by the Small Business Administration.

(iii) Resources, such as those of students or self-employed persons, which have been prorated as income. The treatment of self-employment income is explained in § 283.7(b)(1)(iii).

(iv) Resources which are excluded by express provision of Federal statute. The following is the current listing of resources excluded by Federal statute:

(A) Payment received under the Alaska Native Claims Settlement Act (Pub. L. 92–203, section 21(a) or the Sac and Fox Indian claims agreement Pub. L. 94–189);

(B) Payments received by certain Indian tribal members under Pub. L. 94–114, section 6, regarding submarginal land held in trust by the United States;

(C) Payments received by certain Indian tribal members under Pub. L. 94–540 regarding the Grand River Bank of Ottawa Indians;

(D) Reimbursements from the Uniform Relocation Assistance and Real Property Acquistion Policy Act of 1970 (Pub. L. 91–646, section 216);

(E) Earned income tax credits received before January 1, 1980, as a result of Pub. L. 95–600, the Revenue Act of 1978.

(F) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects and the youth employment and training programs under title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95–524).

(3) *Jointly owned resources.* Resources owned jointly by separate households shall be prorated between or among those households unless the applicant can demonstrate that such resources are inaccessible to it because access to the value of the resource is dependent upon the agreement of a joint owner who refuses to comply.

(4) *Resources of disqualified members.* Resources of individuals disqualified from participation in the Food Stamp Program for fraud shall continue to count in their entirety to the remaining household members when determining the household's eligibility for the Food Distribution Program.

(e) *Income*—(1) *Income eligibility standards for nonassistance households.* (i) The State agency shall apply uniform national income eligibility standards for the Food Distribution Program except for households in which all members are recipients of public assistance, supplemental security income except as provided for in § 283.6(a)(2)(ii) or certain general assistance program payments as provided in § 283.6(c). The income eligibility standards shall be the monthly income eligibility standards for the Food Stamp Program in the State, increased by the amount of the standard deduction for that State, as published in the appendix to § 273.9.

(ii) The income eligibility standards for the Food Distribution Program shall be adjusted each January 1 and July 1, as necessary, to reflect changes in the Food Stamp Program income eligibility limits and standard deductions.

(2) *Definition of income.* Household income shall mean all income from whatever source, excluding only items specified in paragraph (e)(3) of this section.

(i) Earned income shall include:

(A) All wages and salaries of an employee.

(B) The total gross income from a self-employment enterprise, including the net profit from the sale of any capital goods or equipment related to the business. Ownership of rental property shall be considered a self-employment enterprise. Payments from a roomer and returns on rental property shall be considered self-employment income.

(C) Training allowances from vocational and rehabilitative programs recognized by Federal, State or local governments, such as the Work Incentive Program, and programs authorized by the Comprehensive Employment and Training Act, to the extent they are not a reimbursement.

(ii) Unearned income shall include, but not be limited to:

(A) Assistance payments from Federal or Federally aided public assistance programs, such as Supplemental Security Income (SSI) or Aid to Families with Dependent Children (AFDC), General Assistance (GA) programs, or other assistance programs based on need.

(B) Annuities; pensions; retirement; veteran's or disability benefits; worker's or unemployment compensation; old-age, survivors, or social security benefits; strike benefits; foster care payments for children or adults.

(C) Support or alimony payments made directly to the household from nonhousehold members.

(D) Scholarships, education grants, fellowships, deferred payment loans for education, veteran's education benefit and the like in excess of amounts excluded under paragraph (e)(3)(iii) of this section.

(E) Payments from Government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

(F) The earned or unearned income of an individual disqualified from participation in the Food Stamp Program for fraud shall continue to be counted as income, less the pro rata share for the disqualified member. Procedures for calculating this pro rata share are described in § 283.7.

(iii) Income shall not include the following:

(A) Monies withheld from an assistance payment, earned income or other income source, or monies received from any income source which are voluntarily or involuntarily returned to repay a prior overpayment received from that income source.

(B) Child support payments received by AFDC recipients which must be transferred to the agency administering title IV–D of the Social Security Act of 1935, as amended, to maintain AFDC eligibility.

(3) *Income exclusions.* Only the following items shall be excluded from household income and no other income shall be disregarded:

(i) Any gain or benefit which is not in the form of money payable directly to the household, including:

(A) *In-kind income.* Nonmonetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden.

(B) *Vendor payments.* A payment made in money on behalf of a household shall be considered a vendor payment whenever a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. For example, if a relative, who is not a household member, pays out of its own resources the household's rent directly to the landlord, the payment is considered a vendor payment and is not counted as income to the household. Also, payments specified by a court order or other written support or alimony agreement to go directly to a third party rather than the household and support payments which are paid to a third party are excluded as vendor payments. Wages garnished or diverted by employers, or money deducted or otherwise diverted from a household's public assistance grant by a State for purposes such as managing the household's expenses, shall not be considered a vendor payment, since the person or organization making the payment is using money payable to the household rather than its own funds.

(ii) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter.

(iii) Education loans on which payment is deferred, grants scholarships, fellowships, veterans' educational benefits, and the like to the extent that they are used for tuition and mandatory school fees. Mandatory fees are those charged to all students or those charged to all students within a certain curriculum. For example, uniforms, lab fees, or equipment charged to all students to enroll in a chemistry course would be excluded. However, transportation, supplies, and textbook expenses are not uniformly charged to all students and, therefore, would not be excluded as mandatory fees.

(iv) All loans, including loans from private individuals as well as commercial institutions, other than education loans on which repayment is deferred.

(v) Reimbursements for past or future expenses to the extent they do not exceed actual expenses. For example, reimbursements of flat allowances for job or training related expenses such as travel per diem, uniforms, and transportation to and from the job or training site are excluded as income.

(vi) Monies received and used for care and maintenance of a third party beneficiary who is not a household member.

(vii) The earned income (as defined in paragraph (e)(2)(i) of this section) of children who are members of the household, who are students at least half time and who have not attained their eighteenth birthday. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vaction breaks, provided the child's enrollment will resume following the break. Individuals are considered children for purposes of this provision if they are under the parental control of another household member.

(viii) Money received in the form of a nonrecurring lump sum payment, including but not limited to, income tax refunds, rebates, or credits; retroactive lump-sum social security, SSI, public assistance, railroad retirement benefits or other payments, or retroactive lump-sum insurance settlements; refunds of security deposits on rental properties or utilities or lump-sum payments arising from land interests held in trust for, or by, a tribe. These payments shall be counted as resources in the month received unless specifically excluded from consideration as a resource by other Federal law.

(ix) The cost of producing self-employment income. The procedures for computing the cost of producing self-employment income are described in §283.7(b)(1)(iii).

(x) Any income that is specifically excluded by any other Federal statute from consideration as income. The following Federal statutes provide such an exclusion.

(A) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91–646, section 216).

(B) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92–203, section 21(a)).

(C) Any payment to volunteers under Title II (RSVP, foster grandparents, and others) and title III (SCORE and ACE) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93–113), as amended. Payments under title I (VISTA) to volunteers shall be excluded for those individuals receiving federally donated commodities, food stamps, or public assistance at the time they joined the title I program, except that households which are receiving an income exclusion for a VISTA or other title I subsistence allowance at the time of implementation of these rules shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of implementation of these rules. Temporary interruptions in food distribution shall not alter the exclusion once an initial determination has been made. New applicants who are not receiving federally donated commodities, food stamps or public assistance at the time they joined VISTA shall have these volunteer payments included as earned income.

(D) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94–114, section 6).

(E) Payments received by certain Indian tribal members under Pub. L. 94–540 regarding the Grand River Band of Ottawa Indians.

(F) Payments from the Crisis Intervention Program (CIP) administered by the Community Services Administration (CSA).

(G) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects and the youth employment and training programs under title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95–524).

(f) *Income deductions.* (1) Households with earned income, as defined in paragraph (e)(2)(i) of this section, shall be allowed a deduction of twenty percent of their earned income. Earned income excluded under paragraph (e)(3) of this section shall not be considered earned income for the purpose of computing this deduction.

(2) Households shall also receive a deduction for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment or attend training or pursue education which is preparatory to employment. This deduction shall not exceed the maximum allowable deduction for dependent care costs allowable under the Food Stamp Program in the 48 States and the District of Columbia.

[44 FR 35928, June 19, 1979. Redesignated by Amdt. 1, 47 FR 14137, Apr. 2, 1982, and amended at 59 FR 1449, Jan. 11, 1994]

### §253.7 Certification of households.

(a) *Application processing*—(1) *General purpose.* The application process includes filing and completing an application form, being interviewed, and having certain information verified. The State agency shall act promptly on all applications. Expedited service shall be available to household in immediate need. When the State agency is other than the ITO, the ITO, when

appropriate, may receive copies of certification and/or termination notices to the extent requested or agreed upon by the household. State agencies and ITOs may develop formalized mechanisms to ensure ITO receipt of notices.

(2) *Food Distribution Program application form.* The State agency shall use an application form acceptable to FCS. The State agency shall consult with the ITO in developing the application form. The State agency shall make application forms readily accessible to potentially eligible households and those groups or organizations involved in outreach efforts. The State agency shall also provide an application form to anyone who requests the form. State agencies which elect joint PA or GA/Food Distribution Program procedures shall follow the requirements of § 283.7(f) for the application form. State agencies may also use an abbreviated recertification form.

(3) *Filing an application.* Households must file an application for the Food Distribution Program by submitting the form to a certification office in person, through an authorized representative or by mail. The State agency shall document the date the application was received. Each household has the right to file an application form the same day it contacts the certification office during office hours on the reservation where the household resides. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the application contains the applicant's name and address and is signed by a responsible member of the household or the household's authorized representative.

(4) *Household cooperation.* To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate with the State agency in completing this process, the application shall be denied upon a determination of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed and not merely fail to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied solely for this reason. The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates.

(5) *Interviews.* All applicant households, including those submitting applications by mail, shall have an interview with a qualified eligibility worker prior to initial certification and all recertifications. At State agency discretion, applicants may be interviewed by telephone or in the home. No household shall be interviewed by telephone for any two consecutive certifications without a face-to-face interview. State agencies must attempt to schedule home visits in advance. Home visits cannot extend required processing standards set forth in § 283.7(a)(7) or § 283.7(a)(9). The individual interviewed may be the head of household, spouse, any other responsible member of the household or an authorized representative. The household, if it wishes, may be accompanied to the interview by anyone of its choice. The interviewer shall not only review the information that appears on the application, but shall explore and resolve with the household unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview. The interview shall be conducted as an official and confidential discussion of household circumstances. The applicant's right to privacy shall be protected during the interview. Facilities shall be adequate to preserve the privacy and confidentiality of the interview.

(6) *Verification.* Verification is the use of third party information or documentation to establish the accuracy of statements on the application in order to determine eligibility or ineligibility of the household.

(i) *Mandatory verification.* Gross nonexempt income shall be verified for all households prior to certification. Income verification need not be to the exact dollar amount unless the household's eligibility would be affected since benefits are not reduced as income rises in the Food Distribution Program. However, where all attempts to verify the income have been unsuccessful either because the person or organization providing the income has failed to cooperate with the household and the State agency or because the other sources of verification are unavailable, the eligibility worker shall determine an amount to be used for certification purposes based on the best available information.

(ii) *Verification of questionable information.* Eligibility criteria other than income, including residency on or near the reservation, shall be verified prior to certification only if they are questionable. To be considered questionable, the information on the application must be inconsistent with statements by the applicant, inconsistent with other information on the application or previous applications, or inconsistent with other information received by the State agency. However, due to the difficulty in verifying whether a group of individuals is a household, State agencies shall generally accept the household's statement regarding food preparation and consumption.

(iii) *Responsibility for obtaining verification.* The household has primary responsibility for providing documentary evidence or an acceptable collateral contact to support its income statements and to resolve any questionable information. However, the State agency shall assist the household in obtaining the needed verification. The State agency shall accept any reasonable documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application. The State agency shall also accept verification from collateral contacts so long as the collateral contacts can provide accurate third party verification. The State agency shall rely on the household to provide the name of the collateral contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide accurate third party verification. If the collateral contact designated by the household is unacceptable to the State agency, the State agency shall ask the household to designate another collateral contact, and the State agency shall document the casefile as to the reason the collateral contact was rejected and an alternate was requested. The State agency shall use collateral contacts, rather than documentary evidence, for verification if such verification is acceptable, and would result in better service to the household. For example, the household may be able to obtain a wage stub from the employer, but the State agency could call the employer the same day to provide the verification of income. Home visits shall be used as verification only if documentary evidence and collateral contacts cannot be obtained, and the State agency attempts to schedule the visit in advance with the household.

(iv) *Documentation.* Casefiles must be documented to support a determination of eligibility or denial. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

(v) *Verification for recertification.* At recertification, the State agency shall verify a change in income if the source has changed or the amount has changed by more than $50 per month since the last time the income was verified. State agencies may verify income which is unchanged or has changed by $50 per month or less, provided verification is, at a minimum, required when information is questionable as defined in paragraph (a)(6)(ii) of this section. All other changes reported at the time of recertification shall be subject to the same verification procedures as apply at initial certification. Unchanged information, other than income, shall not be verified at recertification unless the information is questionable as defined in paragraph (a)(6)(ii) of this section.

(7) *Processing standards.* The State agency shall provide eligible households that complete the initial application process an opportunity to participate as soon as possible, but not later than seven calendar days excluding weekends and holidays after the application was filed. An application is filed the day the State agency receives an application containing the applicant's name and address and which is signed by either a responsible member of the household or the household's authorized representative.

(8) *Delays in processing.* If the State agency cannot determine a household's eligibility within seven calendar days excluding weekends and holidays of the date the application was filed due to lack of verification as required in paragraph (a)(6) of this section, the State agency shall authorize the distribution of commodities to the household for one month pending verification. In order to certify the household pending verification, the information on the application form must be complete and indicate that the household will likely be eligible. No further distribution of commodities shall be made without completing the eligibility determination.

(9) *Expedited service.* The State agency shall provide an opportunity to obtain commodities within one calendar day excluding weekends and holidays after the date the application was filed for those households with no income in the current month and also for those households which, in the judgment of the certifying agency, would likely be eligible and would otherwise suffer a hardship. The basis for this determination shall be recorded in the casefile. State agencies shall provide same day service, if possible, to households eligible for expedited service which would likely suffer a hardship if required to return to the office the next day. Warehouses or other distribution points need not be open during all certification hours to meet this need. However, accessibility to federally donated commodities by appropriate certification or other personnel should be established for households in immediate need. When State agencies can demonstrate a need, FCS may approve other expedited timeframes based on circumstances such as distance to warehouses or other distribution points. To expedite the certification of households in immediate need the State agency shall postpone the verification required under paragraph (a)(6) of this section. However, the State agency shall verify the household's identity and address through a collateral contact or readily available documentary evidence. If possible, the household's income statements should be verified at the same time. The State agency shall complete the verification for households certified on an expedited basis prior to the distribution of commodities to the household for any subsequent month.

(10) *Authorized representatives.* The head of the household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in one or all of the following capacities:

(i) *Making application for commodities.* When the head of the household or the spouse cannot make application, another household member may apply or an adult nonhousehold member may be designated in writing as the authorized representative for that purpose. The head of the household or the spouse should prepare or review the application whenever possible, even though another household member or the authorized representative will actually be interviewed. Adults who are nonhousehold members may be designated as authorized representatives for certification purposes only if they are sufficiently aware of relevant household circumstances.

(ii) *Obtaining commodities.* An authorized representative of the household may be designated to obtain commodities. Designation shall be made at the time the application is completed except that the household may be permitted to designate an emergency authorized representative in the event that illness or other unforeseen circumstances prevent the household from otherwise obtaining commodities. Designation of an emergency authorized representative must be made in writing by a responsible member of the

household. State agencies may distribute commodities to household members or authorized representatives presenting an identification card or other appropriate identification that satisfactorily identifies the member obtaining commodities.

(b) *Eligibility determinations*—(1) *Determining income.* (i) The State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that is anticipated is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These monies shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, and the household's income is close to the income eligibility limit the State agency may elect to average income provided that such averaging does not disadvantage the household. Such averaging shall be based on income that is anticipated to be available to the household during the certification period. The State agency shall use income received in the past 30 days as an indicator of future income during the certification period unless changes in income have occurred or can be anticipated.

(ii) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged.

(iii)(A) Self-employment income which represents a household's annual support including the net profit from the sale of any capital goods or equipment related to the business shall be annualized over a 12-month period, even if the income is received in only a short period of time. For example, self-employment income received by farmers shall be averaged over a 12-month period if the income represents the farmer's annual support.

(B) Self-employment income which represents only a part of a household's annual support, including the net profit from the sale of any capital goods or equipment related to the business, shall be averaged over the period of time the income is intended to cover. For example, self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year shall have their self-employment income averaged over the summer months rather than a 12-month period.

(C) For the period of time over which self-employment income is determined, the State agency shall add all gross self-employment income, exclude the cost of producing the self-employment income and divide the net self-employment income by the number of months over which the income will be averaged. The allowable costs of producing self-employment income include but are not limited to, the identifiable costs of labor, stock, raw materials, seed and fertilizer, interest paid to purchase income producing property, insurance premiums, and taxes paid on income producing property.

(D) In determining net self-employment income, payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods, net losses from previous periods, Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work) will not be allowable costs of doing business.

(iv) The monthly net self-employment income shall be added to any other earned income received by the household. The total monthly earned income, less the 20 percent earned income deduction, shall then be added to all monthly unearned income received by the household.

(v) Allowable costs for dependent care shall be subtracted from the household's total monthly income to determine net monthly income.

(vi) The total net monthly income shall be compared to the income eligibility standard for the appropriate household size to determine the household's eligibility.

(2) *Certification periods.* (i) The State agency shall establish definite periods of time within which households shall be eligible to receive benefits. Further eligibility shall be established upon a recertification based upon a newly completed application, an interview, and such verification as required by paragraph (a)(6)(v) of this section.

(ii) Certification periods shall conform to calendar months. The first month in the certification period of initial applicants shall be the month in which eligibility is determined. For example, if a household submits an application in late January and the household is determined eligible on the fifth working day which falls in February, a six-month certification period would include February through July. Upon recertification, the certification period will begin with the month following the last month of the previous certification period.

(iii) A household shall be assigned a certification period for as long a period as the household's circumstances are expected to remain sufficiently stable such that the household is expected to continue to meet the program's eligibility standards. In no event shall a certification period exceed one year.

(3) *Certification notices*—(i) *Notice of eligibility*. If an application is approved, the State agency shall provide the household a written notice of eligibility and the beginning and ending dates of the certification period. Households certified on an expedited basis shall be advised that the subsequent month's eligibility will depend upon completion of the postponed verification.

(ii) *Notice of denial.* If the application is denied, the State agency shall provide the household written notice explaining the basis for the denial, the household's right to request a fair hearing, and the telephone number and address of the person to contact for additional information. If there is an individual or organization available which provides free legal representation, the notice shall also advise the household of the availability of the service.

(iii) *Notice of adverse action*. (A) Prior to any action to reduce or terminate a household's benefits within the certification period, except for households voluntarily switching program participation from the Food Distribution Program to the Food Stamp Program, State agencies shall provide the household timely and adequate advance notice before the adverse action is taken.

(B) In State agencies that have elected joint public assistance or general assistance and Food Distribution processing, the notice of adverse action shall be considered timely if the advance notice period conforms to that period of time defined by the State agency as an adequate notice period for its public or general assistance caseload, provided that the period includes at least 10 days from the date the notice is mailed to the date upon which the action becomes effective. In circumstances other than joint processing, the advance notice shall be considered timely if the advance notice period includes at least 10 and no more than 20 days from the date the notice is mailed to the date upon which the action becomes effective.

(C) The notice of adverse action shall be considered adequate if it explains in easily understandable language: The reason for the proposed action, the household's right to request a fair hearing, when the proposed action will take effect, the telephone number and address of someone to contact for additional information and the availability of continued benefits. If there is an individual or organization available which provides free legal representation, the notice shall also advise the household of the availability of the service. The State agency shall consult with the ITO in developing the notice of adverse action.

(D) The State agency shall continue distribution of commodities to the household after the end of the adverse notice period if the household requests a fair hearing during the advance notice period.

(c) *Reporting changes.* (1) Certified households are required to report changes in household composition and income which would necessitate a change in the determination of eligibility. To facilitate reporting changes in income each certified household shall be advised at the time of certification what the maximum monthly income limit, as defined in § 283.6(e)(1), is for its size household, and shall be required to report any change in income that goes above that limit to the certification office within ten days after the change becomes known to the household. Households must also report within ten days when cash on hand, money in checking or savings accounts, savings certificates, stocks, or bonds, or other readily negotiable instruments exceeds $1,750. The State agency shall develop the procedures for when and how changes in household circumstances are reported. Changes reported over the telephone or in person shall be acted on in the same manner as those reported in writing.

(2) If the State agency determines that the household is no longer eligible or reduces the amount of commodities due the household because the household has lost a member or members, the State agency shall provide the household with a notice of adverse action not later than ten days after the change is reported. If the reported change increases the amount of commodities due the household, the household shall be notified that the increase shall be effective not later than the month following the date the change was reported.

(d) *Recertification.* (1) The State agency shall develop a procedure for notifying the household prior to or shortly after the end of its certification period that the household must reapply and be recertified for continued participation. Households shall also be notified of the date upon which termination from participation will be effective should the household fail to reapply before the expiration of the certification period.

(2) The State agency shall approve or deny a household's application for recertification and notify the household of that determination prior to the expiration of the household's current certification period. Households applying for recertification in the last month of the current certification period must be provided an opportunity to obtain commodity distribution on an uninterrupted basis.

(3) The State agency shall continue distribution of commodities to the household denied at the point of recertification if the household timely requests a fair hearing.

(e) *Controls for dual participation*—(1) *Prohibition on dual participation.* No household shall be allowed to participate simultaneously in the Food Stamp Program and Food Distribution Program. The State agency shall inform each applicant household of this prohibition and shall develop a method to detect dual participation. The method developed by the State agency shall, at a minimum, employ lists of currently certified households provided by and provided to the appropriate food stamp agency on a monthly basis. The State agency may also employ computer checks, address checks and telephone calls to prevent dual participation. The State agency shall coordinate with the appropriate food stamp agency or agencies in developing controls for dual participation.

(2) *Choice of programs.* Households eligible for either the Food Stamp Program or Food Distribution Program on reservations on which both programs are available may elect to participate in either program. Such households may elect to participate in one program, and subsequently elect the other at the end of the certification period. Households may also elect to switch from one program to the other program within a certification period only by terminating their participation, and notifying the State agency of their intention to switch programs. Households certified in either the Food Distribution or Food Stamp Program on the first day of the month can only receive benefits in the program for which they are currently certified during that month. At the point the household elects to change programs the household should notify the State agency of its intent to switch programs, and should file an application for the program in which it wishes to participate. Households voluntarily withdrawing

from one program with the intent of switching to the other shall have their eligibility terminated for the program in which they are currently certified on the last day of the month in which the household notifies the State agency of its intent to change programs. Entitlement in the program for which a household is now filing an application, if all eligibility criteria are met, would begin in the month following the month of termination in the previous program.

(3) *Disqualification.* (i) No individual disqualified from participation in the Food Stamp Program for fraud may participate in the Food Distribution Program until the period of disqualification expires. The State agency in cooperation with the appropriate food stamp agency must develop a procedure to identify these individuals.

(ii) During the time a household member is disqualified, the eligibility and food distribution benefits of any remaining household members shall be determined as follows:

(A) *Resources.* The resources of the disqualified member shall continue to count in their entirety to the remaining household members.

(B) *Income.* A pro rata share of the income of the disqualified member shall be counted as income to the remaining members. This pro rata share is calculated by dividing the disqualified member's earned (less the 20 percent earned income deduction) and unearned income evenly among all household members, including the disqualified member. All but the disqualified member's share is counted as income to the remaining household members.

(C) *Eligibility and benefits.* The disqualified member shall not be included when determining the household's size for purposes of assigning food distribution benefits to the household or for purposes of comparing the household's net monthly income with the income eligibility standards.

(f) *Joint processing PA/GA.* (1) State agencies which are responsible for and administer both the Food Distribution and public assistance (PA) or general assistance (GA) programs on Indian reservations may allow a household to apply for the Food Distribution Program at the same time the household applies for PA or GA benefits. However, while PA households are categorically eligible, GA households except for those households in GA programs which have been determined by FCS to have criteria of need the same as, or similiar to those under federally aided public assistance programs as provided for in § 283.6(c)(2) shall have their eligibility for commodities based solely on Food Distribution eligibility criteria. All criteria provided in this paragraph (f), are applicable to State agencies which administer both the Food Distribution and assistance programs and which elect joint processing. Under joint processing, the State agency shall use joint application forms that contain all the information needed to determine eligibility for commodities or shall attach a form for the other needed information.

(2) The State agency shall process all applications for PA or GA as applications for the Food Distribution Program as well, unless the household clearly indicates on a space on the application that the household does not want commodities. The State agency shall conduct a single interview for PA or GA and Food Distribution Program eligibility, unless the State agency is unable to do so within the Food Distribution Program processing standards specified in § 283.7(a)(7) and § 283.7(a)(9). In such cases the State agency shall provide separate certification for PA or GA and Food Distribution Program eligibility.

(3) The State agency may verify those factors of eligibility which must be verified for PA or GA, under PA or GA rules, but must follow the Food Distribution Program rules for all other factors.

(4) PA households have the same reporting requirements as any other food distribution household. PA households which report a change in circumstances to the PA worker shall be considered to have reported the change for food distribution purposes. All of the requirements pertaining to reporting changes for PA households shall be applied to GA households in project areas where GA and food distribution cases are processed jointly.

(5) The State agency must follow all Food Distribution Program timeliness

rules for certification of households for the Food Distribution Program.

(g) *Fair hearing*—(1) *Availability of hearings.* The State agency shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Food Distribution Program.

(2) *Timely action on hearings*—(i) *Receipt of request.* Within 60 days of receipt of a request for a fair hearing, the State agency shall conduct the hearing, arrive at a decision and either issue or not issue commodities to the household.

(ii) *Household requests for postponement.* The household may request and is entitled to receive, a postponement of the scheduled hearing. The postponement shall not exceed 30 days and, the time limit for action on the decision may be extended for as many days as the hearing is postponed.

(3) *Notification of right to request hearing.* At the time of application, each household shall be informed of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or a representative, such as a legal counsel, a relative, a friend or other spokesperson. If there is an individual or organization available which provides free legal representation, the household shall also be informed of the availability of that service. Hearing procedures shall be published by the State agency and made available to any interested party.

(4) *Time period for requesting hearing.* A household shall be allowed to request a hearing on any action by the State agency which occurred in the prior 90 days or which affects current benefits.

(5) *Request for hearing.* A request for a hearing is any clear expression, oral or written, by the household or its representative to the State agency that it wishes to present its case to a higher authority. The freedom to make such a request shall not be limited or interfered with in any way. Upon request, the State agency shall make available without charge the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing.

(6) *Denial or dismissal of request for hearing.* The State agency shall not deny or dismiss a request for a hearing unless:

(i) The request is not received within the time period specified in paragraph (g)(4) of this section;

(ii) The request is withdrawn in writing by the household or its representative; or

(iii) The household or its representative fails, without good cause, to appear at the scheduled hearing.

(7) *Notification of time and place of hearing.* The time, date and place of the hearing shall be convenient to the household. At least 15 days prior to the hearing, advance written notice shall be provided to all parties involved to permit adequate preparation of the case. The notice shall:

(i) Advise the household or its representative of the name, address, and the phone number of the person to notify in the event it is not possible for the household to attend the scheduled hearing.

(ii) Specify that the State agency will dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause.

(iii) Include the State agency hearing procedures and any other information that would provide the household with an understanding of the proceedings, and that would contribute to the effective presentation of the household's case.

(iv) Explain that the household or representative may examine the casefile prior to the hearing.

(8) *Hearing official.* Hearings shall be conducted by an impartial official(s), designated by the State agency, who does not have any personal interest or involvement in the case and who was not directly involved in the initial determination of the action which is being contested. The hearing official shall:

(i) Administer oaths or affirmations if required by the State;

(ii) Ensure that all relevant issues are considered;

(iii) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(iv) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing; and

(v) Render a hearing decision in the name of the State agency, in accordance with paragraph (g)(11) of this section, which will resolve the dispute.

(9) *Attendance at hearing.* The hearing shall be attended by a representative of the State agency which initiated the action being contested and by the household and/or its representative. The hearing may also be attended by friends or relatives of the household upon household consent.

(10) *Conduct of hearing.* The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a manner that makes the household feel most at ease. The household or its representative must be given adequate opportunity to:

(i) Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing, as well as during the hearing. The contents of the casefile, including the application forms and documents of verification used by the State agency shall be made available, provided the confidential information is protected from release. The State agency shall provide a free copy of the relevant portions of the casefile if requested by the household or its representative. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

(ii) Present the case or have it presented by a legal counsel or other person.

(iii) Bring witnesses.

(iv) Advance arguments without undue interference.

(v) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

(vi) Submit evidence to establish all pertinent facts and circumstances in the case.

(11) *Hearing decisions.* (i) Decisions of the hearing officials shall comply with Federal law or regulations and shall be based on the hearing record. The verbatim transcript or recording of testimony and exhibits or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for a final decision by the hearing official.

(ii) A decision by the hearing official shall be binding on the State agency and shall summarize the facts of the case, specify the reasons for the decision and identify the supporting evidence and the pertinent FCS regulations. The decision shall become a part of the record.

(iii) The household shall be advised of the decision of the hearing official and of the right to pursue judicial review.

(12) *Agency conferences.* (i) The State agency shall offer agency conferences to households which request an immediate resolution by a higher authority of a denial of eligibility for food distribution benefits. The State agency may also offer agency conferences to households adversely affected by any agency action. The State agency shall advise households that use of an agency conference is optional and that such use shall in no way delay or replace the fair hearing process. The agency conferences may be attended by the eligibility worker responsible for the agency action, and shall be attended by an eligibility supevisor and/or the agency director, as well as the household and/or its representative. An agency conference may lead to an informal resolution of the dispute. However, a fair hearing must still be held if requested by the household.

(ii) An agency conference for households requesting an immediate resolution by a higher authority of an eligibility issue shall be scheduled within four working days of the request unless the household requests that it be scheduled later or states that it does not wish to have an agency conference.

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(44 U.S.C. 3506)

[44 FR 35928, June 19, 1979, as amended at 47 FR 746, Jan. 7, 1982. Redesignated and amended by Amdt. 1, 47 FR 14137, Apr. 2, 1982]

**§253.8 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 FCS 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 §283.7(b)(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 the State agency's agreement with the Department under § 250.6(b) of part 250 of this chapter and the requirements of § 250.6(l) of this same chapter.

(f) *Damaged or out-of-condition commodities.* The State agency shall immediately notify the appropriate Food and Consumer Service Regional Office (FCSRO) 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. FCSRO 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 § 250.7 of part 250 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 FCSRO 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 FCSRO. 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.

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(44 U.S.C. 3506)

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### § 253.9 Administrative funds for State agencies.

(a) *Payments.* Within the limitation of funds available to carry out the provisions of this part, FCS shall, beginning with fiscal year 1980, make available to each State agency 75 percent of approved administrative costs. Any approval for payment of funds in excess of 75 percent shall be based on compelling justification that such additional amounts are necessary for the effective operation of the Food Distribution Program on an Indian reservation. Compelling justification may include, but not be limited to, such factors as the need for a larger Federal contribution during a State agency's first year of operation of the program, and the need to assure that no State agency currently operating the program receives a level of funding that would cause a diminution of program services. Administrative costs must be included in annual or revised budget information submitted by the State agency to FCS for approval prior to the contribution of Federal funds. Administrative costs must be allowable under part 277 of this chapter.

(b) *Use of funds by State agencies.* Any funds received under this section shall be used for any costs which are allowable under part 277 of this chapter and which are incurred in operating the Food Distribution Program for households on a reservation. The value of services rendered by volunteers, part 277 notwithstanding, shall be allowable to meet the matching administrative costs requirements for the Food Distribution Program. In no event shall such funds be used to pay any portion of such expenses if reimbursement or payment therefor is claimed or made available from any other Federal source. State agencies shall also adhere to the provisions of part 277 of this chapter, as apply to the Food Distribution Program, which establish:

(1) Uniform requirements for the adminstration of funds to State agencies; and

(2) Principles for determining costs applicable to activities assisted by the Food Stamp Program funds provided to State agencies. The provisions of part 277 are generally adaptable to this section and the appropriate provisions shall be used in complying with paragraphs (b) and (f) of this section.

(c) *Application for funds.* (1) Any State agency administering a Food Distribution Program that desires to receive

administrative funds under this section shall submit form SF–424, ''Application for Federal Assistance,'' to the appropriate FCS Regional Office at least three months prior to the beginning of a Federal fiscal year. The application shall include budget information, reflecting by category of expenditure the State agency's best estimate of the total amount to be expended in the administration of the program during the fiscal year. FCS may require that detailed information be submitted by the State agency to support or explain the total estimated amounts shown for each budget cost category. As required by 7 CFR part 3015, Subpart V, agencies of State government shall submit the application for Federal assistance to the State clearinghouse before submitting it to the FCSRO. ITOs shall not be subject to this requirement.

(2) Approval of the application by FCS shall be a prerequisite to the payment of any funds to State agencies.

(d) *Availability of funds.* (1) FCS shall review and evaluate the budget information submitted by the State agency in relationship to the State agency's plan of operation and any other factors which may be relevant to FCS' determination as to whether the estimated expenditures itemized by budget category are reasonable and justified. FCS shall give written notification to the State agency of (i) its approval or disapproval of any or all of the itemized expenditures, (ii) the amount of funds which will be made available, and (iii) the period for which funds are available.

(2) FCS shall review and evaluate applications submitted by State agencies for administrative funds available under this section in the following order of priority and shall give preference in making payments of funds under this section in the same order of priority:

(i) Applications from State agencies which desire to continue a Food Distribution Program now in operation,

(ii) Applications from State agencies, in the order received, which FCS determines are immediately capable of effectively and efficiently administering the Program, and

(iii) Applications from other States agencies, in the order received.

(e) *Method of payment to State agencies.* (1) Payments are made to State agencies through a Letter of Credit or an advance by Treasury check. The Letter of Credit funding method shall be used by FCS except when the advances to be made within a 12 month period are estimated to be less than $120,000. However, FCS may, at its option, reimburse a State agency by Treasury check regardless of the amount in response to a valid claim submitted by the State agency.

(2) The Letter of Credit funding method shall be done in conjunction with Treasury Department procedures, Treasury Circular No. 1075 and through an appropriate Treasury Regional Disbursing Office (RDO). The Standard Form 183, ''Request for Payment on Letter of Credit and Status of Funds Report,'' shall be correctly prepared and certified by a duly appointed official of the State for requesting payment from an RDO.

(3) The advance by Treasury check method shall be done by use of the Standard Form 270, ''Request for Advance or Reimbursement,'' and procedures associated with its use. State agencies receiving payments under this method may request payments before cash outlays are made.

(4) Any State agency receiving payment under the Letter of Credit method or the advance by Treasury check method shall have in place and in operation, a financial management system which meets the standards for fund control and accountability prescribed in part 277 of this chapter, as amended. The State agency shall demonstrate on a continuing basis its willingness and ability to have and to function within procedures that will minimize the time lapse between the transfer of funds and its disbursement to meet obligations. For any State agency which does not meet the requirement of this paragraph, the reimbursement by Treasury check method shall be the preferred method for FCS to make payments to that State agency.

(f) *Accounting for funds.* Each State agency which receives administrative funds under this section shall establish and maintain an effective system of fiscal control and accounting procedures. Expenditures and accountability

of such funds shall be in accordance with the appropriate provisions of part 277. The accounting procedures maintained by the State agency shall be such as to accurately reflect the receipt, expenditure and current balance of funds provided by FCS and to facilitate the prompt preparation of reports required by FCS. The accounting procedures shall also provide for segregation of costs specifically identifiable to the Food Distribution Program from any other costs incurred by the State agency. Any budget revisions by a State agency which require the transfer of funds from an approved cost category to another shall be in accordance with the budget revision procedures set forth in OMB Circular No. A–102, Attachment K, and shall be approved by FCS prior to any transfer of funds.

(g) *Return, reduction, and reallocation of funds.* (1) FCS may require State agencies to return prior to the end of the fiscal year any or all unobligated funds received under this section, and may reduce the amount it has apportioned or agreed to pay to any State agency if FCS determines that:

(i) The State agency is not administering the Food Distribution Program in accordance with its plan of operation approved by FCS and the provisions of this part, or

(ii) The amount of funds which the State agency requested from FCS is in excess of actual need, based on reports of expenditures and current projections of Program needs.

(iii) Circumstances or conditions justify the return reallocation or transfer of funds to accomplish the purpose of this part.

(2) The State agency shall return to FCS within 90 days following the close of each Federal fiscal year any funds received under this section which are unobligated at that time.

(h) *Records, reports, audits.* (1) The State agency shall:

(i) Keep such accounts and records as may be necessary to enable FCS to determine whether there has been compliance with this section, and

(ii) Adhere to the retention and custodial requirements for records set forth in §277.4 of this chapter.

(2) The State agency receiving funds either through a Treasury RDO Letter of Credit system or Treasury check shall submit quarterly reports to FCS on Form SF–269, ''Financial Status Report,'' by the 30th day after close of the reporting quarter and shall submit such other reports as may be required by FCS.

(3) The appropriate provisions of part 277 are adaptable to this section for additional guidance.

(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 and amended by Amdt. 1, 47 FR 14137, Apr. 2, 1982, as amended at 62 FR 53731, Oct. 16, 1997]

## PART 254—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR INDIAN HOUSEHOLDS IN OKLAHOMA

Sec.

254.1 General purpose.
254.2 Definitions.
254.3 Administration by an ITO.
254.4 Application by an ITO.
254.5 Household eligibility.

AUTHORITY: Pub. L. 97–98, sec. 1338; Pub. L. 95–113.

SOURCE: 49 FR 32756, Aug. 16, 1984, unless otherwise noted.

### §254.1 General purpose.

This part sets the requirement under which commodities (available under part 250 of this chapter) may be distributed to households residing in FCS service areas in Oklahoma. This part also sets the conditions for administration of the Food Distribution Program by eligible Oklahoma tribes determined capable by the Department.

### §254.2 Definitions.

(a) *Exercises governmental jurisdiction* means the exercise of authorities granted to ITOs under the Oklahoma Indian Welfare Act of 1936 or by BIA regulations (25 CFR part 81 et. seq.).

(b) *FCS service area* means the areas over which FCS has approved the food distribution program in Oklahoma, excluding urban places unless approved by FCS under 254.5(b).

(c) *Food Distribution Program* means a food distribution program for households on Indian reservations administered pursuant to section 4(b) of the Food Stamp Act and 1304(a) of Pub. L. 97–98.

(d) *Indian tribal household* means a household in which at least one household member is recognized as a tribal member by any Indian tribe, as defined in §253.2(d) of this title.

(e) *Indian tribal organization (ITO)* means (1) any Indian tribe, band, or group organized under the Oklahoma Indian Welfare Act of 1936, and which has a tribal organization approved by the Bureau of Indian Affairs; (2) a tribal organization established and approved under Federal regulations issued by the Bureau of Indian Affairs; or (3) an intertribal council authorized by eligible tribes to act in behalf of the tribes to operate the program.

(f) *State agency* means the ITO of an Indian tribe, determined by the Department to be capable of effectively administering a Food Distribution Program, or an agency of State government, which enters into an agreement with FCS for the distribution of commodities on an Indian reservation.

(g) *Urban place* means a town or city with a population of 10,000 or more.

[49 FR 32756, Aug. 16, 1984, as amended at 59 FR 1449, Jan. 11, 1994]

### §254.3 Administration by an ITO.

(a) *Applicability of part 253.* All of the provisions of part 253 are herein incorporated and apply to part 254, except as specifically modified by part 254.

(b) Section 253.4 Administration, does not apply and is replaced by §254.3.

(c) *Federal administration.* Within the Department of Agriculture, the Food and Consumer Service (FCS), shall be responsible for the Food Distribution Program. FCS shall have the power to determine the amount of any claim and to settle and adjust any claim against an ITO.

(d) *ITO administration.* The ITO, acting as State agency, shall be responsible for the Food Distribution Program within the approved FCS service areas if FCS determines the ITO capable of effective and efficient administration.

(e) *Qualification as an ITO.* The ITO of a tribe in Oklahoma must document to the satisfaction of FCS that the ITO meets the definition of an ITO in §254.2, is organized under the provisions of the Oklahoma Indian Welfare Act of 1936 or has a tribal organization established and approved under BIA regulations.

(The information collection requirements contained in paragraph (e) were approved by the Office of Management and Budget under control number 0584–0316)

### §254.4 Application by an ITO.

(a) *Application to FCS Regional Office.* An ITO which desires to participate in the Food Distribution Program shall file an application with the FCS Regional Office. The application shall also provide other information requested by FCS, including but not limited to, the tribe's qualification as a reservation as described in §254.2, paragraph (f). Properly addressed applications shall be acknowledged by the FCS Regional Office in writing within five working days of receipt. FCS shall promptly advise ITOs of the need for additional information if an incomplete application is received.

(b) *Tribal capability.* (1) In determining whether the ITO is potentially capable of effectively and efficiently administering a Food Distribution Program in an FCS Service area, allowing for fulfillment of that potential through training and technical assistance, FCS shall consult with other sources such as the BIA, and shall consider the ITO experience, if any, in operating other government programs, as well as its management and fiscal capabilities. Other factors for evaluation include, but are not limited to, the ITO's ability to:

(i) Order and properly store commodities,

(ii) Certify eligible households,

(iii) Arrange for physical issuance of commodities,

(iv) Keep appropriate records and submit required reports,

(v) Budget and account for administrative funds,

(vi) Determine the food preferences of households, and

(vii) Conduct on-site reviews of certification and distribution procedures and practices.

(2) FCS shall make a determination of potential ITO capability within 60 days of receipt of a completed application for the Food Distribution Program. FCS may, however, extend the period for determination of ITO capability if FCS finds that a given ITO's eligibility under § 254.3 is difficult to establish.

(3) FCS shall, if requested by an ITO which has been determined by FCS to be potentially capable of administering a Food Distribution Program, provide the ITO's designees with appropriate training and technical assistance to prepare the ITO to take over program administration. In determining what training and technical assistance are necessary, FCS shall consult with the ITO and other sources, such as the BIA.

(c) *Most capable tribe.* In cases where two or more applicant tribe(s) have overlapping boundaries, FCS shall select the tribe most capable of administering a FDP within that service area.

(The information collection requirements contained in paragaph (a) were approved by the Office of Management and Budget under control number 0584–0316)

### § 254.5 Household eligibility.

(a) *Certification procedures.* All applicant households shall be certified in accordance with the eligibility and certification provisions in § 253.6 and § 253.7.

(b) *Urban places.* No household living in an urban place in Oklahoma shall be eligible for the Food Distribution Program on Indian Reservations. However, an ITO can request the Department to grant individual exemptions from this limitation upon proper justification submitted by the ITO as determined by FCS. Such exceptions shall be available until September 30, 1985.

(c) *Eligible households.* Only Indian tribal households, as defined in § 254.2, may be eligible for the Food Distribution Program in FCS service areas.

(The information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 0584–0316)

# SUBCHAPTER C—FOOD STAMP AND FOOD DISTRIBUTION PROGRAM

## PART 271—GENERAL INFORMATION AND DEFINITIONS

Sec.
271.1 General purpose and scope.
271.2 Definitions.
271.3 Delegations to FCS for administration.
271.4 Delegations to State agencies for administration.
271.5 Coupons as obligations of the United States, crimes and offenses.
271.6 Complaint procedure.
271.7 Allotment reduction procedures.
271.8 Information collection/recordkeeping—OMB assigned control numbers.

AUTHORITY: 7 U.S.C. 2011–2032.

### § 271.1 General purpose and scope.

(a) *Purpose of the food stamp program.* The food stamp program is designed to promote the general welfare and to safeguard the health and well being of the Nation's population by raising the levels of nutrition among low-income households. Section 2 of the Food Stamp Act of 1977 states, in part:

> Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation's agricultural abundance and will strengthen the Nation's agricultural economy, as well as result in more orderly marketing and distribution of foods. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.

(b) *Scope of the regulations.* Part 271 contains general information, definitions, and other material applicable to all parts of this subchapter. Part 272 sets forth policies and procedures governing State agencies which participate in the program. Part 273 describes the eligibility criteria to be applied by State agencies and related processing requirements and standards. Part 274 provides requirements for the issuance of coupons to eligible households and establishes related issuance responsibilities. Part 275 sets forth guidelines for monitoring the food stamp program, analyzing the results and formulating corrective action. Part 276 establishes State agency liability and certain Federal sanctions. Part 277 outlines procedures for payment of administrative costs of State agencies. Part 278 delineates the terms and conditions for the participation of retail food stores, wholesale food concerns, meal services, and insured financial institutions. Part 279 establishes the procedures for administrative and judicial reviews requested by food retailers, food wholesalers, and meal services. Part 280 explains procedures for issuing emergency coupon allotments to certain victims of disasters unable to purchase adequate amounts of food. Part 281 sets forth guidelines for designating Indian tribes as State agencies. Part 282 provides guidelines for initiation, selection, and operation of demonstration, research, and evaluation projects. Part 284 provides for a nutrition assistance program for the Commonwealth of the Northern Mariana Islands (CNMI). Part 285 describes the general terms and conditions under which grant funds are provided to the Commonwealth of Puerto Rico.

[Amdt. 132, 43 FR 47882, Oct. 17, 1982, as amended by Amdt. 216, 47 FR 23461, May 28, 1982; Amdt. 248, 48 FR 16832, Apr. 19, 1983; Amdt. 356, 59 FR 29713, June 9, 1994]

### § 271.2 Definitions.

*Access device* means any card, plate, code, account number, or other means of access that can be used alone, or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value, or that can be used to initiate a transfer of funds under the Food Stamp Act of 1977, as amended.

*Active case* means a household which was certified prior to, or during, the

sample month and issued food stamp benefits for the sample month.

*Active case error rate* means an estimate of the proportion of cases with an error in the determination of eligibility or basis of issuance. This estimate will be expressed as a percentage of the completed active quality control reviews excluding all results from cases processed by SSA personnel or participating in a demonstration project identified by FCS as having certification rules that are significantly different from standard requirements.

*Adequate notice* in a periodic reporting system such as monthly reporting or quarterly reporting means a written notice that includes a statement of the action the agency has taken or intends to take; the reason for the intended action; the household's right to request a fair hearing; the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. Depending on the timing of a State's system and the timeliness of report submission by participating households, such notice may be received prior to agency action, at the time reduced benefits are received, or, if benefits are terminated, at the time benefits would have been received if they had not been terminated. In all cases, however, participants will be allowed ten days from the mailing date of the notice to contest the agency action and to have benefits restored to their previous level. If the 10-day period ends on a weekend or a holiday and a request is received the day after the weekend or holiday, the State agency shall consider the request to be timely.

*Alien Status Verification Index (ASVI)* means the automated database maintained by the Immigration and Naturalization Service which may be accessed by State agencies to verify immigration status.

*Allotment* means the total value of coupons a household is authorized to receive during each month or other time period.

*Application form* means: (1) The application form designed or approved by FCS, which is completed by a household member or authorized representative; or

(2) For households consisting solely of public assistance or general assistance recipients, it may also mean the application form used to apply for public assistance or general assistance, including attachments approved by FCS, which is completed by a household member or authorized represen- tative.

*Assessment* an in-depth evaluation of employability skills coupled with counseling on how and where to search for employment. If combined with work experience, employment search or training, an assessment of this nature could constitute part of an approvable employment and training component.

*Authorization document* means an intermediary document issued by the State agency and used in an issuance system to authorize a specific benefit amount for a household.

*Authorization to participate card (ATP)* means a document which is issued by the State agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

*Base of eligibles* Employment and training mandatory participants plus persons who volunteer for employment and training participation.

*Base period* means the first 6-month reporting period of each fiscal year.

*Beginning month(s)* in a Monthly Reporting and Retrospective Budgeting system means either the first month for which the household is certified for food stamps (where the State agency has adopted a one month accounting system) or the first month for which the household is certified for food stamps and the month thereafter (where the State agency has adopted a two month accounting system). Except for beginning months in sequence as described in the preceding sentences, a beginning month cannot be any month which immediately follows a month in which a household is certified. The month following the month of termination resulting from a one-month temporary change in household circumstances shall not be considered a beginning month.

*Budget month* in a Monthly Reporting and Retrospective Budgeting system

means the fiscal or calendar month from which the State agency uses income and other circumstances of the household to calculate the household's food stamp allotment to be provided for the corresponding issuance month.

*Bulk storage point* means an office of the State agency or any person, partnership, corporation, organization, political subdivision, or other entity with which a State agency has contracted for, or to which it has assigned responsibility for, the security and storage of food coupons.

*Claims collection point* means any office of the State agency or any person, partnership, corporation, organization, political subdivision or other entity with which a State agency has contracted, or to which it has assigned responsibility for the collection of claims.

*Communal dining facility* means a public or nonprofit private establishment, approved by FCS, which prepares and serves meals for elderly persons, or for supplemental security income (SSI) recipients, and their spouses, a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients, and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate State or local agency to offer meals at concessional prices to elderly persons or SSI recipients, and their spouses.

*Coupon* means any coupon, stamp, access device or type of certification provided pursuant to the provisions of this subchapter for the purchase of eligible food.

*Coupon issuer* means any office of the State agency or any person, partnership, corporation, organization, political subdivision, or other entity with which a State agency has contracted for, or to which it has assigned responsibility for, the issuance of coupons to households.

*Deficiency* means any aspect of a State's program operations determined to be out of compliance with the Food Stamp Act, FCS Regulations, or program requirements as contained in the State agency's manual, the State agency's approved Plan of Operation or other State agency plans.

*Department* means the U.S. Department of Agriculture.

*Direct access system* means an issuance system in which benefits are issued directly to the household, without the use of an intermediary document, based on the issuance agent's direct access to information in the household's individual record on the master issuance file, which may be a card document or an on-line computer system.

*Drug addiction or alcoholic treatment and rehabilitation program* means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center, under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.). Under part B of title XIX of the Public Health Service Act is defined as meeting the criteria which would make it eligible to receive funds, even if it does not actually receive funding under part B of title XIX.

*Elderly or disabled member* means a member of a household who: (1) Is 60 years of age or older;

(2) Receives supplemental security income benefits under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act;

(3) Receives federally or State-administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act;

(4) Receives federally or State-administered supplemental benefits under section 212(a) of Pub. L. 93–66;

(5) Receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act.

(6) Is a veteran with a service-connected or non-service-connected disability rated by the Veteran's Administration (VA) as total or paid as total

by the VA under title 38 of the United States Code;

(7) Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under title 38 of the United States Code;

(8) Is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States Code;

(9) Is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death under title 38 of the United States Code *and* has a disability considered permanent under section 221(i) of the Social Security Act. ''Entitled'' as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them; or

(10) Receives an annuity payment under: section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 *and* is determined to be eligible to receive Medicare by the Railroad Retirement Board; or section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under title XVI of the Social Security Act.

(11) Is a recipient of interim assistance benefits pending the receipt of Supplemented Security Income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or a recipient of disability-based State general assistance benefits *provided* that the eligibility to receive any of these benefits is based upon disability or blindness criteria established by the State agency which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).

*Eligible foods* means: (1) Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption;

(2) Seeds and plants to grow foods for the personal consumption of eligible households;

(3) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals; or meals served by an authorized communal dining facility for the elderly, for SSI households or both, to households eligible to use coupons for communal dining;

(4) Meals prepared and served by a drug addict or alcoholic treatment and rehabilitation center to narcotic addicts or alcoholics and their children who live with them;

(5) Meals prepared and served by a group living arrangement facility to residents who are blind or disabled as defined in paragraphs (2) through (11) of the definition of ''Elderly or disabled member'' contained in this section;

(6) Meals prepared by and served by a shelter for battered women and children to its eligible residents;

(7) In the case of certain eligible households living in areas of Alaska where access to food stores is extremely difficult and the households rely on hunting and fishing for subsistence, equipment for the purpose of procuring food for eligible households, including nets, lines, hooks, fishing rods, harpoons, knives, and other equipment necessary for subsistence hunting and fishing but not equipment for the purpose of transportation, clothing or shelter, nor firearms, ammunition or other explosives;

(8) In the case of homeless food stamp households, meals prepared for and served by an authorized public or private nonprofit establishment (e.g. soup kitchen, temporary shelter), approved by an appropriate State or local agency, that feeds homeless persons; and

(9) In the case of homeless food stamp households, meals prepared by a restaurant which contracts with an appropriate State agency to serve meals to homeless persons at concessional (low or reduced) prices.

*Employment and training (E&T) component* a work experience, work training or job search program, as described in

section 6(d)(4)(B)(iv) of the Food Stamp Act of 1977 (7 U.S.C. 2014(2)(4)(B)) designed to help food stamp recipients move promptly into unsubsidized employment.

*Employment and training (E&T) mandatory participant* a Food Stamp Program applicant or participant who is required to work register under 7 U.S.C. 2014(d)(1) or (2) and who the State determines should not be exempted from participation in an employment and training program.

*Employment and training (E&T) program* a program operated by each State agency consisting of one or more work, training, education or job search components.

*Error* for active cases results when a determination is made by a quality control reviewer that a household which received food coupons during the sample month is ineligible or received an incorrect allotment. Thus, errors in active cases involve dollar loss to either the participant or the government. For negative cases, an ''error'' means that the reviewer determines that the decision to deny or terminate a household was incorrect.

*Exempted* for purposes of § 273.7 excluding paragraphs (a) and (b)—this term refers to a work registered person or persons excused by the State, under the conditions in § 273.7(f) from participation in an employment and training program.

*Exercises governmental jurisdiction* means the active exercise of the legislative, executive or judicial powers of government by an Indian tribal organization.

*Federal fiscal year* means a period of 12 calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

*Firm's practice* means the usual manner in which personnel of a firm or store accept food coupons as shown by the actions of the personnel at the time of the investigation.

*FCS* means the Food and Consumer Service of the U.S. Department of Agriculture.

*Food Stamp Act* means the Food Stamp Act of 1977 (Pub. L. 95–113), including any subsequent amendments thereto.

*General assistance (GA)* means cash or another form of assistance, excluding in-kind assistance, financed by State or local funds as part of a program which provides assistance to cover living expenses or other basic needs intended to promote the health or well-being of recipients.

*Group living arrangement* means a public or private nonprofit residential setting that serves no more than sixteen residents that is certified by the appropriate agency or agencies of the State under regulations issued under section 1616(e) of the Social Security Act or under standards determined by the Secretary to be comparable to standards implemented byappropriate State agencies under section 1616(e) of the Social Security Act. To be eligible for food stamp benefits, a resident of such a group living arrangement must be blind or disabled as defined in paragraphs (2) through (11) of the definition of ''Elderly or disabled member'' contained in this section.

*Homeless individual* means an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is:

(1) A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter);

(2) A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized;

(3) A temporary accommodation in the residence of another individual; or

(4) A place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).

*Homeless meal provider* means:

(1) A public or private nonprofit establishment (e.g., soup kitchens, temporary shelters) that feeds homeless persons; or

(2) A restaurant which contracts with an appropriate State agency to offer meals at concessional (low or reduced) prices to homeless persons.

*House-to-house trade route* means any retail food business operated from a truck, bus, pushcart, or other mobile vehicle.

*Identification (ID) card* means a card which identifies the bearer as eligible to receive and use food coupons.

*Immigration and Naturalization Service (INS)* means the Immigration and Naturalization Service, U.S. Department of Justice.

*Indian tribe* means: (1) Any Indian tribe, Band, Nation, or other organized Indian group on a reservation for example, a Rancheria, Pueblo or Colony, and including any Alaska Native Village or regional or village corporation (established pursuant to the Alaska Native Claims Settlement Act(85 Stat. 688)), that is on a reservation and is recognized as eligible for Federal programs and services provided to Indians because of their status as Indians; or (2) any Indian tribe or Band on a reservation holding a treaty with a State government.

*Indian tribal organization (ITO)* means: (1) The recognized governing body of any Indian tribe on a reservation; or (2) the tribally recognized intertribal organization which the recognized governing bodies of two or more Indian tribes on a reservation authorizes to operate the Food Stamp Program or a Food Distribution Program on their behalf.

*Insured financial institution* means a financial institution insured by the Federal Deposit Insurance Corporation (FDIC) or financial institutions which are insured under the Federal Credit Union Act and which have retail food stores or wholesale food concerns in their field of membership.

*Issuance month* in a Monthly Reporting and Retrospective Budgeting system means the fiscal or calendar month for which the State agency shall issue a food stamp allotment. Issuance is based upon income and circumstances in the corresponding budget month. In prospective budgeting, the budget month and issuance month are the same. In retrospective budgeting, the issuance month follows the budget month and the issuance month shall begin within 32 days after the end of the budget month.

*Large project area* means those project areas/management units with monthly active caseloads of more than 15,000 households based on the most current information available at the time the large project area review schedule is developed.

*Low-income household* means a household whose annual income does not exceed 125 percent of the Office of Management and Budget poverty guidelines.

*Management Evaluation (ME) reviews* means reviews conducted by States at the project area level to determine if State agencies are administering and operating the Food Stamp Program in accordance with program requirements.

*Management unit* means an area based on a welfare district, region, or other administrative structure designated by the State agency and approved by FCS to be reviewed for ME review purposes.

*Master issuance file* means a cumulative file containing the individual records and status of households, and the amount of benefits, if any, each household is authorized to receive.

*Meal delivery service* means a political subdivision, a private nonprofit organization, or a private establishment with which a State or local agency has contracted for the preparation and delivery of meals at concessional prices to elderly persons, and their spouses, and to the physically or mentally handicapped and persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

*Medicaid* means medical assistance under title XIX of the Social Security Act, as amended.

*Medium project area* means those project areas/management units with monthly active caseloads of 2,001 to 15,000 households based on the most current information available at the time the medium project area review schedule is developed.

*Minimum benefit* means the minimum monthly amount of food stamps that one- and two-person households receive. The amount of the minimum benefit will be reviewed annually and adjusted to the nearest $5 each October 1 based upon the percentage change in the Thrifty Food Plan for the twelve month period ending the preceding June.

*National standard payment error rate* means the weighted mean of all States'

payment error rates during a base period.

*Negative case* means a household which was denied certification or whose food stamp benefits were terminated effective for the sample month.

*Negative case error rate* means an estimate of the proportion of denied or terminated cases where the household was incorrectly denied or terminated. This estimate will be expressed as a percentage of completed negative QC reviews excluding those cases denied based upon processing by SSA personnel or denied/terminated based upon the rules of certain demonstration projects.

*Newly work registered* food stamp participants work registered at the point of application.

*Nonprofit cooperative food purchasing venture* means any private nonprofit association of consumers whose members pool their resources to buy food.

*Offset year* means the calendar year during which offsets may be made to collect certain recipient claims from individuals' Federal income tax refunds.

*Overissuance* means the amount by which coupons issued to a household exceeds the amount it was eligible to receive.

*Overpayment error rate* means the percentage of the value of all allotments issued in a fiscal year that are either: (1) Issued to households that fail to meet basic program eligibility requirements, or

(2) Overissued to eligible households.

*Payment error rate* means the sum of the point estimates of two component error rates: an overpayment error rate and an underpayment error rate. Each component error rate is the value of allotments either overissued or underissued expressed as a percentage of all allotments issued to completed active sample cases, excluding those cases processed by SSA personnel or participating in certain demonstration projects designated by FCS.

*Placed in an employment and training (E&T) program* a State agency may count a person as ''placed'' in an employment and training program when the individual commences a component or is sent a Notice of Adverse Action (NOAA) for noncompliance with a food stamp employment and training requirement. Persons who refuse to work register or who voluntarily quit a job and are sent a NOAA may not be considered ''placed''.

*Program* means the food stamp program conducted under the Food Stamp Act and regulations.

*Project area* means the county or similar political subdivision designated by a State as the administrative unit for program operations. Upon prior FCS approval, a city, Indian reservation, welfare district, or any other entity with clearly defined geographic boundaries, or any combination of such entities, may be designated as a project area, or a State as a whole may be designated as a single project area.

*Prospective budgeting* in a Monthly Reporting and Retrospective Budgeting system means the computation of a household's food stamp allotment for an issuance month based on an estimate of income and circumstances which will exist in that month.

*Public assistance (PA)* means any of the following programs authorized by the Social Security Act of 1935, as amended: Old-age assistance, aid to families with dependent children (AFDC), including AFDC for children of unemployed fathers, aid to the blind, aid to the permanently and totally disabled and aid to aged, blind, or disabled.

*Quality control review* means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to ensure that negative cases are not incorrectly denied or terminated.

*Record-for-issuance file* means a file which is created monthly from the master issuance file, which shows the amount of benefits each eligible household is to receive for the issuance month, and the amount actually issued to the household.

*Regulations* means the provisions of this subchapter. Regulatory citations refer to provisions of this subchapter unless otherwise specified.

*Reservation* means the geographically defined area or areas over which an ITO exercises governmental jurisdiction so long as such area or areas are legally recognized by the Federal

or a State government as being set aside for the use of Indians.

*Retail food store* means: (1) An establishment or recognized department of an establishment, or a house-to-house trade route, whose eligible food sales volume as determined by visual inspection, sales records, purchase records, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry is more than 50 percent staple food items for home preparation and consumption;

(2) Public or private communal dining facilities and meal delivery services; private nonprofit drug addict or alcoholic treatment and rehabilitation programs; publicly operated community mental health centers which conduct residential programs for drug addicts and/or alcoholics; public or private nonprofit group living arrangements; public or private nonprofit shelters for battered women and children; public or private nonprofit establishments, approved by an appropriate State or local agency, that feed homeless persons; or a restaurant that contracts with an appropriate State agency to provide meals at concessional (low or reduced) prices to homeless food stamp households;

(3) Any stores selling equipment for procuring food by hunting and fishing to eligible households in Alaska, as specified in the definition of eligible foods;

(4) Any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; and

(5) A farmers' market.

*Retrospective budgeting* in a Monthly Reporting and Retrospective Budgeting system means the computation of a household's food stamp allotment for an issuance month based on actual income and circumstances which existed in a previous month, the ''budget month.''

*Review date* for quality control active cases means a day within the sample month, either the first day of the calendar or fiscal month or the day the household was certified, whichever is later. The ''review date'' for negative cases is the date of the agency's decision to deny or terminate program benefits. For no case is the ''review date'' the day the QC review is conducted.

*Review period* means the 12-month period from October 1 of each calendar year through September 30 of the following calendar year.

*Sample frame* means a list of all units from which a sample is actually selected.

*Sample month* means the month of the sample frame from which a case is selected (e.g., for all cases selected from a frame consisting of households participating in January, the sample month is January).

*Screening* an evaluation by the eligibility worker as to whether a person should or should not be referred for participation in an employment and training program. This activity would not be considered an approvable E&T component.

*Secretary* means the Secretary of the U.S. Department of Agriculture.

*Shelter for battered women and children* means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

*Small project area* means those project areas/management units with monthly active caseloads of 2,000 households or fewer based on the most current information available at the time the small project area review schedule is developed.

*Spouse* refers to either of two individuals: (1) Who would be defined as married to each other under applicable State law; or

(2) Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople.

*SSA processed/demonstration case* means a case that is participating or has been denied based upon processing by SSA personnel or is participating or has been denied/terminated based upon the rules of a demonstration project with significantly different certification rules (as identified by FCS).

*Staple food* means those food items intended for home preparation and consumption, which include meat, poultry,

fish, bread and breadstuffs, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products. Accessory food items, such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices are not staple foods for the purpose of qualifying a firm to participate in the program as a retail food store or as a wholesale food concern.

*State* means any one of the fifty States, the District of Columbia, Guam, the Virgin Islands of the United States, and the reservation of an Indian tribe whose ITO meets the requirements of the Food Stamp Act for participation as a State agency.

*State agency* means: (1) The agency of State government, including the local offices thereof, which is responsible for the administration of the federally aided public assistance programs within the State, and in those States where such assistance programs are operated on a decentralized basis, it includes the counterpart local agencies which administer such assistance programs for the State agency, and (2) the Indiantribal organization of any Indian tribe determined by the Department to be capable of effectively administering a Food Stamp Program or a Food Distribution Program in accordance with provisions of the Food Stamp Act of 1977.

*State Income and Eligibility Verification System (IEVS)* means a system of information acquisition and exchange for purposes of income and eligibility verification which meets the requirements of section 1137 of the Social Security Act, generally referred to as the IEVS.

*State Wage Information Collection Agency (SWICA)* means the State agency administering the State unemployment compensation law, another agency administering a quarterly wage reporting system, or a State agency administering an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility data as the two just mentioned agencies.

*Sub-units* means the physical location of an organizational entity within a project area/management unit involved in the operation of the Food Stamp Program, excluding Post Offices.

*Supplemental Security Income (SSI)* means monthly cash payments made under the authority of: (1) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled; (2) section 1616(a) of the Social Security Act; or (3) section 212(a) of Pub. L. 93–66.

*Systematic Alien Verification for Entitlements (SAVE)* means the INS program whereby State agencies may verify the validity of documents provided by aliens applying for food stamp benefits by obtaining information from a central data file.

*Thrifty food plan* means the diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child 6 through 8, and a child 9 through 11 years of age, determined in accordance with the Secretary's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition. In order to develop maximum food stamp allotments, the Secretary shall make household size and other adjustments in the Thrifty Food Plan taking into account economies of scale and other adjustments as required by law.

*Trafficking* means the buying or selling of coupons, ATP cards or other benefit instruments for cash or consideration other than eligible food; or the exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for coupons.

*Underissuance* means the amount by which the allotment to which the household was entitled exceeds the allotment which the household received.

*Underissuance error rate.* (See *Underpayment error rate.*)

*Underpayment error rate* means the ratio of the value of allotments underissued to recipient households to the total value of allotments issued in a fiscal year by a State agency.

*Universe* means all units for which information is desired.

*Variance* means the incorrect application of policy and/or a deviation between the information that was used to authorize the sample month issuance and the verified information that

should have been used to calculate the sample month issuance.

*Wholesale food concern* means an establishment which sells eligible food to retail food stores or to meal services for resale to households.

[Amdt. 132, 43 FR 47882, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 271.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### § 271.3 Delegations to FCS for administration.

(a) *Delegation.* Within the Department, FCS acts on behalf of the Department in the administration of the Food Stamp Program with the exception of those functions, which may be delegated to other agencies within the Department. The right is reserved at any time to withdraw, modify, or amend any delegation of authority. When authority is delegated to FCS, the responsibilities may be carried out by the Administrator or by another official of FCS, or by State agencies with respect to claims against households, as designated.

(b) *Claims settlement.* FCS shall have the power to determine the amount of and to settle and adjust any claim arising under the provisions of the act or this subchapter, and to compromise or deny all or part of any claim.

(c) *Demonstration authority.* FCS is authorized to undertake demonstration projects which test new methods designed to improve program administration and benefit delivery. FCS is authorized to initiate program research and evaluation efforts for the purposes of improving and assessing program administration and effectiveness. The procedure for initiating and conducting these projects is established in part 282.

[Amdt. 132, 43 FR 47882, Oct. 17, 1982]

### § 271.4 Delegations to State agencies for administration.

(a) *General delegation.* The State agency shall be responsible for the administration of the program within the State, including, but not limited to:

(1) Certification of applicant households;

(2) Issuance, control, and accountability of coupons;

(3) Developing and maintaining complaint procedures;

(4) Developing, conducting, and evaluating training;

(5) Conducting performance reporting reviews;

(6) Keeping records necessary to determine whether the program is being conducted in compliance with these regulations; and

(7) Submitting accurate and timely financial and program reports.

(b) *Claims delegation.* FCS delegates to the State agency, subject to the standards in § 273.18, the authority to determine the amount of, and settle, adjust, compromise or deny all or part of any claim which results from fraudulent or nonfraudulent overissuances to participating households.

[Amdt. 132, 43 FR 47882, Oct. 17, 1978, as amended by Amdt. 207, 47 FR 52333, Nov. 19, 1982]

### § 271.5 Coupons as obligations of the United States, crimes and offenses.

(a) *Coupons as obligations.* Pursuant to section 15(d) of the Food Stamp Act, coupons are an obligation of the United States within the meaning of 18 United States Code (U.S.C.) 8. The provisions of Title 18 of the United States Code, ''Crimes and Criminal Procedure,'' relative to counterfeiting, misuse and alteration of obligations of the United States are applicable to coupons.

(b) *Penalties.* Any unauthorized issuance, redemption, use, transfer, acquisition, alteration, or possession of coupons, ATP cards, or other program access device may subject an individual, partnership, corporation, or other legal entity to prosecution under sections 15 (b) and (c) of the Food Stamp Act or under any other applicable Federal, State or local law, regulation or ordinance.

(1) Section 15(b)(1) of the Food Stamp Act reads as follows:

> Subject to the provisions of paragraph (2) of this subsection, whoever knowingly uses, transfers, acquires, alters, or possesses coupons, authorization cards, or access devices in any manner contrary to this Act or the regulations issued pursuant to this Act shall,

if such coupons, authorization cards, or access devices are of a value of $5000 or more, be guilty of a felony and shall be fined not more than $250,000 or imprisoned for not more than twenty years, or both, and shall, if such coupons or authorization cards are of a value of $100 or more but less than $5000 or if the item used, transferred, acquired, altered or possessed is an access device that has a value of $100 or more but less than $5000 be guilty of a felony and shall upon the first conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not less than six months nor more than five years and may also be fined not more than $10,000 or, if such coupons or authorization cards are of a value of less than $100, or if the item used, transferred, acquired, altered, or possessed is an access device that has a value of less than $100, shall be guilty of a misdemeanor, and upon the first conviction thereof, shall be fined not more than $1000 or imprisoned for not more than one year or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than $1000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

(2) Section 15(b)(2) of the Food Stamp Act reads as follows:

In the case of any individual convicted of an offense under paragraph (b)(1) of this section, the court may permit such individual to perform work approved by the court for the purpose of providing restitution for losses incurred by the United States and the State agency as a result of the offense for which such individual was convicted. If the court permits such individual to perform such work and such individual agrees thereto, the court shall withhold the imposition of the sentence on the condition that such individual perform the assigned work. Upon the successful completion of the assigned work the court may suspend such sentence.

(3) Section 15(c) of the Food Stamp Act reads as follows:

Whoever presents, or causes to be presented, coupons for payment or redemption of the value of $100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Act or the regulations issued pursuant to this Act, shall be guilty of a felony and, upon the first conviction thereof, shall be fined not more than $20,000 or imprisoned for not more than five years, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not less than one year nor more than five years and may also be fined not more than $20,000 or if such coupons are of a value of less than $100, shall be guilty of a misdemeanor and, upon the first conviction thereof, shall be fined not more than $1,000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than $1,000. In addition to such penalties, any persons convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

(c) *Security for coupons and ATP's.* All individuals, partnerships, corporations, or other legal entities including State agencies and their delegatees (referred to in this paragraph as ''persons'') having custody, care and control of coupons and ATP's shall, at all times, take all precautions necessary to avoid acceptance, transfer, negotiation, or use of spurious, altered, or counterfeit coupons and ATP's and to avoid any unauthorized use, transfer, acquisition, alteration or possession of coupons and ATP's. These persons shall safeguard coupons and ATP's from theft, embezzlement, loss, damage, or destruction.

(d) *Coupon issuers.* (1) Any coupon issuer or any officer, employee or agent, thereof convicted of failing to provide the monthly reports required in §274.5 or convicted of violating part 274 shall be subject to a fine of not more than $1,000, or imprisoned for not more than 1 year, or both.

(2) Any coupon issuer or any officer, employee or agent, thereof convicted of knowingly providing false information in the reports required under §274.5 shall be subject to a fine of not more than $10,000, or imprisoned not more than 5 years, or both.

(e) *Forfeiture and denial of property rights.*

(1) General.

(i) Any nonfood items, moneys, negotiable instruments, securities, or other

things of value furnished or intended to be furnished by any person in exchange for food coupons, authorization cards, or other program benefit instruments or access devices in any manner not authorized by the Food Stamp Act or regulations issued pursuant to the Act, shall be subject to forfeiture and denial of property rights. Such property is deemed forfeited to the United States Department of Agriculture (USDA) at the time it is either exchanged or offered in exchange.

(ii) These forfeiture and denial of property rights provisions shall apply to property exchanged or offered in exchange during investigations conducted by the Inspector General, USDA, and by other authorized Federal law enforcement agencies.

(iii) These forfeiture and denial of property rights provisions shall not apply to property exchanged or intended to be exchanged during the course of internal investigations by retail firms, during investigations conducted solely by State and local law enforcement agencies and without the participation of an authorized Federal law enforcement agency, or during compliance investigations conducted by the Food and Consumer Service.

(2) Custodians and their responsibilities.

(i) The Inspector General, USDA, the Inspector General's designee, and other authorized Federal law enforcement officials shall be custodians of property acquired during investigations.

(ii) Upon receiving property subject to forfeiture the custodian shall:

(A) Place the property in an appropriate location for storage and safekeeping, or

(B) Request that the General Services Administration (GSA) take possession of the property and remove it to an appropriate location for storage and safekeeping.

(iii) The custodian shall store property received at a location in the judicial district where the property was acquired unless good cause exists to store the property elsewhere.

(iv) Custodians shall not dispose of property prior to the fulfillment of the notice requirements set out in paragraph 3, or prior to the conclusion of any related administrative, civil, or criminal proceeding, without reasonable cause. Reasonable cause to dispense with notice requirements might exist, for example, where explosive materials are being stored which may present a danger to persons or property.

(v) Custodians may dispose of any property in accordance with applicable statutes or regulations relative to disposition. The custodian may:

(A) Retain the property for official use;

(B) Donate the property to Federal, State, or local government facilities such as hospitals or to any nonprofit charitable organizations recognized as such under section 501(c)(3) of the Internal Revenue Code; or

(C) Request that GSA take custody of the property and remove it for disposition or sale.

(vi) Proceeds from the sale of forfeited property and any moneys forfeited shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, transportation costs, and any recording fees. Moneys remaining after payment of such expenses shall be deposited into the general fund of the United States Treasury.

(3) Notice requirements.

(i) The custodian shall make reasonable efforts to notify the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture except for the good cause exception if the owner cannot be notified.

(ii) The notice shall:

(A) Include a brief description of the property;

(B) Inform the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture of the opportunity to request an administrative review of the forfeiture;

(C) Inform the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture of the requirements for requesting administrative review of the forfeiture; and

(D) State the title and address of the official to whom a request for administrative review of the forfeiture may be addressed.

(iii) Except as provided in paragraphs (e)(3) (iv) and (v) of this section, notice shall be given within 45 days from the date the United States convicts, acquits, or declines to act against the person who exchanged the property.

(iv) Notice may be delayed if it is determined that such action is likely to endanger the safety of a law enforcement official or compromise another ongoing criminal investigation conducted by OIG, the United States Secret Service, the United States Postal Inspection Service, or other authorized Federal law enforcement agency.

(v) Notice need not be given to the general public.

(4) Administrative review.

(i) The actual or apparent owner(s) of or person(s) with possessory interests in the property shall have 30 days from the date of the delivery of the notice of forfeiture to make a request for an administrative review of the forfeiture.

(ii) The request shall be made in writing to the Assistant Inspector General for Investigations, Office of Inspector General, USDA, or to his/her designee, hereinafter referred to as the reviewing official.

(iii) A request for an administrative review of the forfeiture of property shall include the following:

(A) A complete description of the property, including serial numbers, if any;

(B) Proof of the person's property interest in the property; and,

(C) The reason(s) the property should not be forfeited.

(iv) The requestor may, at the time of his/her written request for administrative review, also request an oral hearing of the reasons the property should not be forfeited.

(v) The burden of proof will rest upon the requestor, who shall be required to demonstrate, by a preponderance of the evidence, that the property should not be forfeited.

(vi) Should the administrative determination be in their favor, the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture may request that forfeited items be returned or that compensation be made if the custodian has already disposed of the property.

(vii) The reviewing official shall not remit or mitigate a forfeiture unless the requestor:

(A) Establishes a valid, good faith property interest in the property as owner or otherwise; and

(B) Establishes that the requestor at no time had any knowledge or reason to believe that the property was being or would be used in violation of the law; and

(C) Establishes that the requestor at no time had any knowledge or reason to believe that the owner had any record or reputation for violating laws of the United States or of any State for related crimes.

(viii) The reviewing official may postpone any decision until the conclusion of any related administrative, civil, or criminal proceeding.

(ix) The decision of the reviewing official as to the disposition of the property shall be the final agency determination for purposes of judicial review.

[Amdt. 132, 43 FR 47882, Oct. 17, 1978, as amended by Amdt. 221, 47 FR 35168, Aug. 13, 1982; Amdt. 269, 51 FR 10782, Mar. 28, 1986; Amdt. 334, 57 FR 3911, Feb. 3, 1992; 59 FR 51354, Oct. 11, 1994]

### §271.6 Complaint procedure.

(a) *State agency responsibility*—(1) *General scope.* The State agency shall maintain a system of its choosing for handling program complaints filed by participants, potential participants, or other concerned individuals or groups. This shall not include complaints alleging discrimination on the basis of race, sex, age, religious creed, national origin, political beliefs or handicap; such complaints shall be handled in accordance with §272.6. This procedure also need not include complaints that can be pursued through a fair hearing. Complaints regarding such areas as processing standards and service to participants and potential participants would generally be handled under this complaint procedure.

(2) *Minimum requirements.* The State agency shall follow up on complaints, resolve complaints and take corrective action where warranted, and respond to the complainant on the State agency's disposition of the complaint. The State

agency shall make information on the complaint system and how to file a complaint available to participants, potential participants and other interested persons. The State agency may make the information available through written materials or posters at certification offices or other appropriate means.

(3) *Complaint analysis.* The State agency shall maintain records of complaints received and their disposition, and shall review records at least annually to assess whether patterns of problems may be present in local offices, project areas, or throughout the State. The results of this review shall be provided to the Performance Reporting System coordinator for appropriate action, and for inclusion, if appropriate, in the State Corrective Action Plan in accordance with § 275.16 of this chapter. The information provided to the Performance Reporting System Coordinator shall include the identification, if any, of potential or actual patterns of deficiencies in local offices, project areas, or throughout the State, and any identification of causes of these problems.

(4) *Monitoring.* FCS shall monitor State compliance with these requirements through the Performance Reporting System.

(b) *Regional office responsibility.* (1) Persons or agencies desiring program information or wishing to file a complaint may contact the appropriate FCS Regional Office.

(i) For Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, the Virgin Islands of the United States, and West Virginia: Mid-Atlantic Regional Office, U.S. Department of Agriculture, Food and Consumer Service, CN 02150, Trenton, NJ 08650.

(ii) For Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, U.S. Department of Agriculture, Food and Consumer Service, 77 Forsyth Street SW., suite 112, Atlanta, GA 30303-3427.

(iii) For Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, U.S. Department of Agriculture, Food and Consumer Service, 77 West Jackson Blvd., 20th Floor, Chicago, IL 60604-3507.

(iv) For Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, U.S. Department of Agriculture, Food and Consumer Service, 1100 Commerce Street, suite 5–C–30, Dallas, TX 75242.

(v) For Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon and Washington: Western Regional Office, U.S. Department of Agriculture, Food and Consumer Service, 550 Kearny Street, room 400, San Francisco, CA 94108.

(vi) For Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, U.S. Department of Agriculture, Food and Consumer Service, 10 Causeway St., Boston, MA 02222-1069.

(vii) For Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, U.S. Department of Agriculture, Food and Consumer Service, 1244 Speer Blvd., suite 903, Denver, CO 80204-3581.

(2) Complainants shall be advised of the appropriate State complaint handling and fair hearing procedures. Upon household request, other complaints shall be pursued by the Department rather than the State agency, unless the complaint is one upon which the complainant wishes to request a fair hearing.

[Amdt. 132, 43 FR 47882, Oct. 17, 1978, as amended at 45 FR 71350, Oct. 28, 1980; Amdt. 187, 45 FR 85699, Dec. 30, 1980; Amdt. 211, 47 FR 53315, Nov. 26, 1982; Amdt. 237, 47 FR 57668, Dec. 28, 1982; Amdt. 250, 48 FR 22130, May 17, 1983; Amdt. 269, 51 FR 10782, Mar. 28, 1986; Amdt. 356, 59 FR 29713, June 9, 1994]

### § 271.7 Allotment reduction procedures.

(a) *General purpose.* This section sets forth the procedures to be followed if the monthly food stamp allotments determined in accordance with the provisions of § 273.10 must be reduced, suspended, or cancelled to comply with section 18 of the Food Stamp Act of 1977, as amended. The best available data pertaining to the number of people participating in the program and the amounts of benefits being issued

shall be used in deciding whether such action is necessary.

(b) *Nature of reduction action.* Action to comply with section 18 of the Food Stamp Act of 1977, as amended, may be a suspension or cancellation of allotments for one or more months, a reduction in allotment levels for one or more months or a combination of these three actions. If a reduction in allotments is deemed necessary, allotments shall be reduced by reducing maximum food stamp allotments amounts for each household size by the same percentage. This results in all households of a given size having their benefits reduced by the same dollar amount. The dollar reduction would be smallest for one-person households and greatest for the largest households. Since the dollar amount would be the same for all households of the same size, the rate of reduction would be lowest for zero net income households and greatest for the highest net income households. All one- and two-person households affected by a reduction action shall be guaranteed the minimum benefit unless the action is a cancellation of benefits, a suspension of benefits, or a reduction of benefits of 90 percent or more of the total amount of benefits projected to be issued in the affected month.

(c) *Reduction method.* If a reduction in allotments is deemed necessary, the maximum food stamp allotments amounts for all household sizes shall be reduced by a percentage specified by FCS. For example, if it is determined that a 25 per cent reduction in the maximum food stamp allotments amount is to be made, the reduction for all four-person households would be calculated as follows: The maximum food stamp allotments amount for a four-person household ($209 in November 1980) would be reduced by 25% to $157. Then 30 percent of the household's net food stamp income would be deducted from the reduced maximum food stamp allotments amount. For example, 30 per cent of a net food stamp income of $200, $60, would be deducted from the reduced maximum food stamp allotments amount ($157), resulting in a reduced allotment of $97.

(d) *Implementation of allotment reductions*—(1) *Reductions.* (i) If a decision is made to reduce monthly food stamp allotments, FCS shall notify State agencies of the date the reduction is to take effect and by what percentage maximum food stamp allotments amounts are to be reduced.

(ii) Upon receiving notification that a reduction is to be made in an upcoming month's allotment, State agencies shall act immediately to implement the reduction. Such action could differ from State to State depending on the nature of the issuance system in use. Where there are computerized issuance systems, the program used for calculating allotments shall be altered to reflect the appropriate percentage reduction in the maximum food stamp allotments for each household size and the computer program shall be adjusted to allow for the minimum benefit for one- and two-person households. The computer program shall also be adjusted to provide for the rounding of benefit levels of $1, $3 and $5 to $2, $4 and $6, respectively. FCS will provide State agencies with revised issuance tables reflecting the percentage reductions to be made in the maximum food stamp allotments amounts and reduce maximum food stamp allotments levels. In States where manual issuance is used, State agencies shall reproduce the issuance tables provided by FCS and distribute them to issuance personnel. State agencies shall ensure that the revised issuance tables are distributed to issuance agents and personnel in time to allow benefit reductions during the month ordered by FCS. In an HIR card system State agencies have the option of enacting the reduction in benefits either by changing all HIR cards before issuance activity for the affected month begins or by adjusting allotments at the point of issuance as each household appears at the issuance office.

(2) *Suspensions and cancellations.* (i) If a decision is made to suspend or cancel the distribution of food stamp benefits in a given month, FCS shall notify State agencies of the date the suspension or cancellation is to take effect. In the event of a suspension or cancellation of benefits, the provision for the minimum benefit for households with one or two members only shall be disregarded and all households shall have

their benefits suspended or cancelled. Upon receiving notification that an upcoming month's issuance is to be suspended or cancelled, State agencies shall take immediate action to effect the suspension or cancellation. This action would involve making necessary computer adjustments, and notifying issuance agents and personnel.

(ii) Upon being notified by FCS that a suspension of benefits is over, State agencies shall act immediately to resume issuing benefits to certified households and shall resume benefit issuance as soon as practicable.

(3) *Affected allotments.* Whenever a reduction of allotments is ordered for a particular month, reduced benefits shall be calculated for all households for the designated month. However, any household with one or two members whose reduced benefits would be less than the minimum benefit shall receive the minimum benefit except as provided in § 273.10(e)(2). Allotments or portions of allotments representing restored or retroactive benefits for a prior unaffected month would not be reduced, suspended, or cancelled even though they are issued during an affected month.

(4) *Notification of eligible households.* Reductions, suspensions and cancellations of allotments shall be considered to be Federal adjustments to allotments. As such, State agencies shall notify households of reductions, suspensions and cancellations of allotments in accordance with the notice provisions of § 273.12(e)(1), except that State agencies shall not provide notices of adverse action to households affected by reductions, suspensions or cancellations of allotments.

(5) *Restoration of benefits.* Households whose allotments are reduced or cancelled as a result of the enactment of these procedures are not *entitled* to the restoration of the lost benefits at a future date. However, if there is a surplus of funds as a result of the reduction or cancellation, FCS shall direct State agencies to provide affected households with restored benefits unless the Secretary determines that the amount of surplus funds is too small to make this practicable. The procedures implemented by State agencies for reducing and cancelling benefits shall be designed so that in the event FCS directs the restoration of benefits, such benefits are issued promptly.

(e) *Effects of reductions, suspensions and cancellations on the certification of eligible households.* (1) Except as provided in paragraph (e)(2) of this section, determinations of the eligibility of applicant households shall not be affected by reductions, suspensions or cancellations of allotments. State agencies shall accept and process applications during a month(s) in which a reduction, suspension or cancellation is in effect in accordance with the requirements of part 273. Determinations of eligibility shall also be made according to the provisions of part 273. If an applicant is found to be eligible for benefits and a reduction is in effect, the amount of benefits shall be calculated by reducing the maximum food stamp allotments amount by the appropriate percentage for the applicant's household size and then deducting 30 percent of the household's net food stamp income from the reduced maximum food stamp allotments amount. If an applicant is found to be eligible for benefits while a suspension or cancellation is in effect, no benefits shall be issued to the applicant until issuance is again authorized by FCS.

(2) *Expedited service.* (i) Households eligible to receive expedited processing who apply for program benefits during months in which reductions or suspensions are in effect, shall have their cases processed in accordance with the expedited processing provisions of § 273.2(i).

(A) Those households that receive expedited service in months in which reductions are in effect and that are determined to be eligible shall be issued allotments that are reduced in accordance with the reduction in effect. These reduced allotments shall be made available to the households within the benefit delivery timeframe specified in § 273.2(i).

(B) Those households that receive expedited service in months in which suspensions are in effect and that are determined to be eligible shall have benefits issued to them within the timeframe specified in § 273.2(i). However, if the suspension is still in effect at the time issuance is to be made, the

issuance shall be suspended until the suspension is ended.

(ii) Households eligible to receive expedited processing who apply for Program benefits during months in which cancellations are in effect shall receive expedited service. However, the deadline for completing the processing of such cases shall be five calendar days or the end of the month of application, whichever date is later. All other rules pertaining to expedited service, contained in § 273.2(i), shall be applicable to these cases.

(3) The reduction, suspension or cancellation of allotments in a given month shall have no effect on the certification periods assigned to households. Those participating households whose certification periods expire during a month in which allotments have been reduced, suspended or cancelled shall be recertified according to the provisions of § 273.14. Households found eligible to participate during a month in which allotments have been reduced, suspended or cancelled shall have certification periods assigned in accordance with the provisions of § 273.10.

(f) *Fair hearings.* Any household that has its allotment reduced, suspended or cancelled as a result of an order issued by FCS in accordance with these rules may request a fair hearing if it disagrees with the action, subject to the following conditions. State agencies shall not be required to hold fair hearings unless the request for a fair hearing is based on a household's belief that its benefit level was computed incorrectly under these rules or that the rules were misapplied or misinterpreted. State agencies shall be allowed to deny fair hearings to those households who are merely disputing the fact that a reduction, suspension or cancellation was ordered. Furthermore, since the reduction, suspension or cancellation would be necessary to avoid an expenditure of funds beyond those appropriated by Congress, households do not have a right to a continuation of benefits pending the fair hearing. A household may receive retroactive benefits in an appropriate amount if it is determined that its benefits were reduced by more than the amount by which the State agency was directed to reduce benefits.

(g) *Issuance services.* State agencies must have issuance services available to serve housholds receiving restored or retroactive benefits for a prior, unaffected month.

(h) *Penalties.* Notwithstanding any other provision of this subchapter, FCS may take one or more of the following actions against a State agency that fails to comply with a directive to reduce, suspend or cancel allotments in a particular month.

(1) If FCS ascertains that a State agency does not plan to comply with a directive to reduce, suspend or cancel allotments for a particular month, a warning will be issued advising the State agency that if it does not comply, FCS may cancel 100 percent of the Federal share of the State agency's administrative costs for the affected month(s). If, after receiving such a warning, a State agency does not comply with a directive to reduce, suspend or cancel allotments, FCS may cancel 100 percent of the Federal share of the State agency's administrative costs for the affected month(s).

(2) If FCS ascertains after warning a State agency as provided in paragraph (h)(1) of this section, that the State agency does not plan to comply with a directive to reduce, suspend or cancel allotments, a court injunction may be sought to compel compliance.

(3) If a State agency fails to reduce, suspend or cancel allotments as directed, FCS will bill the State agency for all over issuances that result. If a State agency fails to remit the billed amount to FCS within a prescribed period of time the funds will be recovered through offsets against the Federal share of the State agency's administrative costs, or any other means available under law.

[Amdt. 146, 46 FR 1426, Jan. 6, 1981, as amended by Amdt. 207, 47 FR 52333, Nov. 19, 1982; Amdt. 211, 47 FR 53315, Nov. 26, 1982; Amdt. 233, 47 FR 53830, Nov. 30, 1982; Amdt. 269, 51 FR 10782, Mar. 28, 1986; 54 FR 24154, June 6, 1989; 56 FR 63596, Dec. 4, 1991; Amdt. 356, 59 FR 29713, June 9, 1994]

## § 271.8 Information collection/recordkeeping—OMB assigned control numbers.

| 7 CFR section where requirements are described | Current OMB control no. |
|---|---|
| 271.7 (d) | 0584–0064 |
| 272.1 (d) | 0584–0274 |
| 272.1 (f) | 0584–0009<br>0584–0010<br>0584–0015<br>0584–0022<br>0584–0025<br>0584–0034<br>0584–0037<br>0584–0052<br>0584–0053<br>0584–0064<br>0584–0069<br>0584–0074<br>0584–0080<br>0584–0081<br>0584–0083<br>0584–0124<br>0584–0274<br>0584–0285<br>0584–0299<br>0584–0301<br>0584–0303<br>0584–0333<br>0584–0334<br>0584–0336<br>0584–0339 |
| 272.2 (a), (c), (d), (e), (f) | 0584–0083 |
| 272.5 (c) | 0584–0083 |
| 272.3 (a), (b), (c) | 0584–0083 |
| 272.6 (g), (h) | 0584–0025 |
| 272.7 (f), (g), (h), (i), (j), (k), (m) | 0584–0064 |
| 273.1 (f), (g) | 0584–0064 |
| 273.2 (b), (c), (f), (g), (h), (i), (j), (k) | 0584–0064 |
| 273.4 (e) | 0584–0274 |
| 273.5 (b) | 0584–0064 |
| 273.6 (a), (b), (g) | 0584–0064 |
| 273.7 (a), (d), (f) | 0584–0339 |
| 273.7 (c) | 0584–0064<br>0584–0083<br>0584–0339 |
| 273.7 (g) | 0584–0064 |
| 273.8 (b), (c), (e), (g), (h), (i) | 0584–0064 |
| 273.9 (d) | 0584–0064 |
| 273.10 (a), (c), (e), (f), (g)(1) | 0584–0064 |
| 273.10 (g)(3) | 0584–0124 |
| 273.11 (a), (b), (c), (d), (e), (f), (h) | 0584–0064 |
| 273.11 (g) | 0584–0334 |
| 273.11 (i) (1)–(4) | 0584–0080<br>0584–0081 |
| 273.11 (i)(5) | 0584–0009<br>0584–0081 |
| 273.11 (i)(6) | 0584–0009<br>0584–0080<br>0584–0081 |
| 273.12 (a), (b), (c), (d), (e), (f) | 0584–0064 |
| 273.13 (a) | 0584–0064 |
| 273.14 (a), (b), (c) | 0584–0064 |
| 273.15 (a), (c), (d), (f), (i), (k), (l), (m), (q) | 0584–0064 |
| 273.16 (a), (b), (d), (e), (f), (g), (h), (i) | 0584–0064 |
| 273.17 (h) | 0584–0301 |
| 273.18 (a), (c), (d), (e), (f), (g), (k) | 0584–0064 |
| 273.18 (h) | 0584–0069 |
| 273.18 (i) | 0584–0053 |
| 273.21 (a), (c), (e), (f), (g), (h), (i), (j), (m), (p), (q) | 0584–0064 |
| 273.22 (b), (c), (d), (e), (f), (g) | 0584–0285 |
| 274.1 (c) | 0584–0009. |
| 274.3 (d) | 0584–0009,<br>0584–0069,<br>0584–0080. |
| 274.4 (a) | 0584–0080. |
| 274.4 (b) | 0584–0009,<br>0584–0015,<br>0584–0080,<br>0584–0081. |
| 274.4 (f) | 0584–0009,<br>0584–0053. |
| 274.6 (a), (b) and (e) | 0584–0080,<br>0584–0081. |
| 274.7 (a) | 0584–0009. |
| 274.7 (c) | 0584–0022. |
| 274.8 (a)–(c) | 0584–0009. |
| 274.8 (e) | 0584–0053. |
| 274.9 (a)–(d) | 0584–0009. |
| 274.11 | 0584–0009. |
| 275.2 (a) | 0584–0010<br>0584–0303 |
| 275.4 (a) | 0584–0010<br>0584–0303 |
| 275.4 (b) | 0584–0010 |
| 275.4 (c) | 0584–0034<br>0584–0074<br>0584–0299 |
| 275.5 (a), (b) | 0584–0010 |
| 275.6 (b) | 0584–0010 |
| 275.8 (a) | 0584–0010 |
| 275.9 (b), (g) | 0584–0010 |
| 275.10 (a) | 0584–0074<br>0584–0299<br>0584–0303 |
| 275.11 (a) | 0584–0303 |
| 275.12 (b), (c), (d), (e) | 0584–0074 |
| 275.12 (f), (g) | 0584–0299 |
| 275.13 (b), (d), (e) | 0584–0034 |
| 275.14 (c), (d) | 0584–0034<br>0584–0074<br>0584–0299 |
| 275.16 (b), (c), (d) | 0584–0010 |
| 275.17 (a), (b) | 0584–0010 |
| 275.18 (a), (b) | 0584–0010 |
| 275.19 (a), (b), (c) | 0584–0010 |
| 275.20 (a) | 0584–0010 |
| 275.21 (b) | 0584–0034<br>0584–0074<br>0584–0299 |
| 275.21 (c), (d), (e) | 0584–0034 |
| 275.22 (a), (b) | 0584–0010 |
| 275.23 | 0584–0010<br>0584–0034<br>0584–0074<br>0584–0299 |
| 276.2 (b) | 0584–0015. |
| 277.12 (a) | 0584–0341 |
| 277.14 (b), (c), (d), (h), (i), (j), (k) | 0584–0341 |
| 277.15 (c) | 0584–0064 |
| 277.17 (a), (b), (c), (d), (e), (f), (g) | 0584–0341 |
| 277.18 (a), (c), (d), (e), (g), (h) | 0584–0083 |
| 278.1 (a), (b), (l) | 0584–0008 |
| 278.1 (e), (f) | 0584–0064 |
| 278.4 (b), (c) | 0584–0085 |
| 278.5 (a) | 0584–0085<br>0584–0314 |
| 278.5 (c), (d), (f) | 0584–0008 |
| 278.6 (b) | 0584–0008 |
| 278.7 (b), (c) | 0584–0008 |
| 278.8 (a) | 0584–0008 |
| 280.7 (c), (d), (g) | 0584–0336 |
| 280.9 (b) | 0584–0009<br>0584–0037 |

| 7 CFR section where requirements are described | Current OMB control no. |
|---|---|
| 280.10 (a) | 0584–0336 |

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# PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

Sec.

272.1 General terms and conditions.
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272.12 Intercept of unemployment compensation benefits.

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EDITORIAL NOTE: OMB control numbers relating to this part 272 are contained in §271.8.

## §272.1 General terms and conditions.

(a) *Coupons do not reduce benefits.* The coupon allotment provided any eligible household shall not be considered income or resources for any purpose under any Federal, State, or local laws including, but not limited to, laws on taxation, welfare, and public assistance programs. No participating State or political subdivision shall decrease any assistance otherwise provided an individual or individuals because of the receipt of a coupon allotment.

(b) *No sales taxes on food stamp purchases.* (1) A State shall not participate in the Food Stamp Program if State or local sales taxes or other taxes or fees, including but not limited to excise taxes, are collected within the State on purchases made with food stamp coupons. ''Purchases made with food coupons'' for purposes of this provision shall refer to purchases of ''eligible foods'' as defined in §271.2. Where the total value of groceries being bought by the recipient is larger than the amount of coupons being presented by the recipient, only the portion of the sale made in exchange for food stamps must be exempt from taxation in order for a State to satisfy the requirements of this provision. Although a food stamp recipient may use a combination of cash and food stamps in making a food purchase, only the dollar amount represented by the food coupons needs to be exempt from taxation.

(2) State and/or local law shall not permit the imposition of tax on food paid for with coupons. FCS may terminate the issuance of coupons and disallow administrative funds otherwise payable pursuant to part 277 in any State where such taxes are charged. Action to disallow administrative funds shall be taken in accordance with the procedures set forth in §276.4.

(3) A State or local area which taxes some, but not all, eligible food items shall ensure that retail food stores in that locale sequence purchases of eligible foods paid for with a combination of coupons and cash so as to not directly or indirectly charge or assign a tax to food stamp recipients on eligible food items purchased with coupons. Prohibited methods include, but are not limited to, the allocation of coupons first to non-taxable eligible items, and the application of cash, rather than coupons, to taxable eligible food.

(c) *Disclosure.* (1) Use or disclosure of information obtained from food stamp applicant or recipient households shall be restricted to:

(i) Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other Federal assistance programs, federally-assisted State programs providing assistance on a means-tested basis to low income individuals, or general assistance programs which are subject to the joint processing requirements in §273.2(j)(2).

(ii) Persons directly connected with the administration or enforcement of the programs which are required to participate in the State income and eligibility verification system (IEVS) as specified in §272.8(a)(2), to the extent the food stamp information is useful in establishing or verifying eligibility or benefit amounts under those programs;

(iii) Persons directly connected with the verification of immigration status of aliens applying for food stamp benefits, through the Systematic Alien Verification for Entitlements (SAVE) Program, to the extent the information is necessary to identify the individual for verification purposes.

(iv) Persons directly connected with the administration of the Child Support Program under part D, title IV of the Social Security Act in order to assist in the administration of that program, and employees of the Secretary of Health and Human Services as necessary to assist in establishing or verifying eligibility or benefits under titles II and XVI of the Social Security Act;

(v) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provison of law; and

(vi) Local, State, or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulation. The written request shall include the identity of the individual requesting the information and his authority to do so, violation being investigated, and the identity of the person on whom the information is requested.

(2) Recipients of information released under paragraph (c)(1) of this section must adequately protect the information against unauthorized disclosure to persons or for purposes not specified in this section. In addition, information received through the IEVS must be protected from unauthorized disclosure as required by regulations established by the information provider. Information released to the State agency pursuant to section 6103(l) of the Internal Revenue Code of 1954 shall be subject to the safeguards established by the Secretary of the Treasury in section 6103(l) of the Internal Revenue Code and implemented by the Internal Revenue Service in its publication, *Tax Information and Security Guidelines*.

(3) If there is a written request by a responsible member of the household, its currently authorized representative, or a person acting on its behalf to review material and information contained in its casefile, the material and information contained in the casefile shall be made available for inspection during normal business hours. However, the State agency may withhold confidential information, such as the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.

(d) *Information available to the public.* (1) Federal regulations, Federal procedures embodied in FCS notices and policy memos, State Plans of Operation, and corrective action plans shall be available upon request for examination by members of the public during office hours at the State agency headquarters as well as at FCS regional and national offices. State agency handbooks shall be available for examination upon request at each local certification office within each project area as well as at the State agency headquarters and FCS Regional offices. State agencies, at their option, may require other offices within the State to maintain a copy of Federal regulations.

(2) Copies of regulations, plans of operation, State manuals, State corrective action plans, and Federal procedures may be obtained from FCS in accordance with part 295 of this chapter.

(e) *Records and reports.* Each State agency shall keep such records and submit such reports and other information as required by FCS.

(f) *Retention of records.* Each State agency shall retain all program records in an orderly fashion, for audit and review purposes, for a period of 3 years from the month of origin of each record. The State agency shall retain fiscal records and accountable documents for 3 years from the date of fiscal or administrative closure. Fiscal closure means that obligations for or against the Federal government have been liquidated. Administrative closure means that the State agency has determined and documented that no further action to liquidate the obligation is appropriate. Fiscal records and accountable documents include, but are not limited to claims and documentation of lost benefits. Retention methods for ATP cards are provided in part 274.

(g) *Implementation.* The implementation schedule for any amendment to

the regulations shall be specified in the amendment.

(1) *Amendment 132.* Program changes required by Amendment 132 to the food stamp regulations shall be implemented as follows:

(i) State agencies shall eliminate the purchase requirement for all households on or before January 1, 1979. The State agency shall designate the month the purchase requirement is to be eliminated. If the month designated is other than January 1979, the State agency shall obtain prior approval of FCS. FCS shall approve the designation of months prior to January 1979, if the State agency demonstrates that an accounting procedure for the new issuance system will be in place. The submission dates for the forms FCS–250 and FCS–256, stipulated in § 274.8(a), shall be effective with the reports for the first month of issuance without a purchase requirement. For example, if EPR is implemented in January, the FCS–250 and FCS–256 for January would be due by March 17, 1979. The FCS–259 shall be submitted in accordance with § 274.8(a)(3) starting with the quarter beginning January 1979.

(ii) State agencies may implement all eligibility rules contained in part 273 and all issuance rules contained in part 274 at the same time the purchase requirement is eliminated, but in no case shall eligibility and issuance rules be implemented prior to elimination of the purchase requirement. State agencies may also implement portions of part 273 and part 274 separately after the purchase requirement is eliminated, provided that the eligibility rules setting the income standards, the income deductions and the household allotment calculation are implemented at the same time, and all rules are implemented no later than 3 months after the purchase requirement is eliminated. However, if a State agency implements EPR after December 1, 1978, it shall implement the certification and other issuance regulations for all new applications and recertifications no later than March 1, 1979.

(iii) State agencies shall have up to 4 months following the first day that applications are taken under the new rules, to convert the current caseload to the new program. Households coming due for recertification during this time will be converted to the new program at recertification. Remaining households shall be converted by a desk review during that 4-month period. The new income definition, deductions, and allotment calculation shall be completed for all households which are converted through a desk review. To the extent that the case file and other information available to the State agency permit, other eligibility criteria, such as work registration, resources, tax dependency, and alien status, shall be considered during the desk review. Otherwise, nonincome eligibility factors shall be deferred until the household's scheduled recertification. In no event shall a household's certification period be extended as a result of the desk review. Until recertified or converted by a desk review, a household shall continue to receive the bonus portion of the allotment, calculated in accordance with the income, deduction, and basis of issuance provisons of the Food Stamp Act of 1964. During the case file conversion period, some households may be participating on the basis of the old program rules and some on the new rules. Claims against households and restoration of benefits shall not be assessed provided that whichever program rules are in use for a particular case are correctly applied during the conversion period. However, errors caused by miscalculations based on the old or new program rules which result in an entitlement to restoration of lost benefits or an overissuance shall be assessed in accordance with §§ 273.17 and 273.18 of these regulations. The procedures for calculating lost benefits or overissuances as specified in §§ 273.17 and 273.18 shall be applied to any case found to be in error after the implementation of these procedures, even though the action which caused the error may have occurred prior to the date of implementation. Notwithstanding anything to the contrary in the preceding provisions of this paragraph, State agencies shall have up to four months following the first day that applications are taken under the new rules, to convert the current caseload to the new program. Households coming due for recertification during this

time shall be converted to the new Program at recertification. However, if the State agency elects to schedule a desk review for these households earlier in the four-month period, conversion shall take place after the desk review. Further, State agencies may elect to do a point-in-time computer conversion in lieu of individual desk reviews. Such a computer conversion must cover entire categories of households, such as public assistance households, all households in a particular project area, all households currently in the computer files, etc., and the State agency may not elect to postpone the conversion of certain cases until recertification.

(iv) State agencies shall implement § 273.17 on the restoration of lost benefits on or before March 1, 1979. State agencies are encouraged to implement restoration of lost benefits concurrent with the elimination of the purchase requirement, especially as they relate to households which are entitled to lost benefits but which have been unable to receive them because the households are currently ineligible. State agencies shall notify currently ineligible households of the availability of their lost benefits by using one of the following procedures:

(A) State agencies which can readily identify the ineligible households which are entitled to lost benefits shall notify these households and restore the lost benefits within 4 months of the date restoration of lost benefits is implemented.

(B) Other State agencies shall issue a one-time-only press release notifying ineligible households that benefits can be restored. The press release shall advise households to contact the local food stamp office for more information. In addition, State agencies issuing the press release shall request the assistance of local Community Action Programs, general assistance agencies, legal services programs funded by the Legal Services Corporation, State employment service and unemployment compensation offices and other State and Federal governmental agencies providing services to low-income households, such as the Social Security Administration or the Community Services Administration. FCS shall provide the State agency with copies of the letter to be used to request assistance from outreach organizations and governmental agencies, and the fliers and posters which will be distributed upon request to such organizations and agencies. The language of the request for assistance, the notice to households and the poster is contained in the appendix to this rulemaking. State agencies shall mail the request for assistance and display posters in all local agency food stamp certification and issuance offices and welfare offices within 30 days of receipt from FCS. In project areas subject to the bilingual requirements of § 272.4(c), State agencies shall provide translations of the posters and fliers. Upon request, FCS shall provide Spanish posters and fliers. FCS shall reimburse State agencies for all costs of providing translations of the posters and fliers in languages other than Spanish. The State agency shall display the posters in its offices for six months. Households whose entitlement to benefits has been clearly established may apply for restoration of lost benefits under this paragraph for an indefinite period. Households whose entitlement to restoration of lost benefits was established more than three years prior to application for retroactive benefits under this paragraph shall be permitted to document entitlement if entitlement cannot be verified from State agency records. Such households shall sign an affidavit under penalty of perjury explaining their entitlement. In lieu of the requirements of this paragraph, State agencies may elect to provide notice pursuant to paragraph (g)(1)(iv)(A) of this section, in any or all project areas within the State.

(v) State agencies shall assume the authority to settle or adjust recipient claims delegated under § 271.4(b) on or before July 1, 1979.

(vi) State agencies without a currently approved utility standard required in § 273.9(d)(5) shall develop and implement an FCS approved utility standard on or before October 1, 1979. The State agency shall notify households certified at the time the utility standard is implemented of the availability of the standard and the conditions for its use in lieu of actual expenses. Households qualified to use the

standard and which elect to do so shall have the standard applied as any other change in circumstances. Otherwise, actual utility expenses shall continue to be used for households qualified for the standard until their next recertification.

(vii) State agencies shall advise FCS of their determination of the need for bilingual services as required by § 272.4(c) on or before December 1, 1978. If the State agency cannot determine, based on available information sources, whether or not bilingual services are required in particular project areas, it shall so advise FCS on or before December 1, 1978. The State agency shall then develop procedures to record the number of non-English-speaking low-income households which make contact with its offices in these project areas as required by § 272.4(c)(6). These procedures shall be implemented on or before March 1, 1979, and shall continue for 6 months. The State agency shall submit to FCS its determination(s) of the need for bilingual services not later than 60 days following the end of the 6-month period. Bilingual outreach materials shall be available for distribution within 90 days of the State agency's determination that such materials are required. When the State agency determines that bilingual staff and certification materials are required, it shall also make a determination of whether volunteers or paid staff will be used. When volunteers are to be used, the State agency shall provide the materials and arrange for volunteers within 90 days. Paid staff and materials shall be provided within 180 days.

(viii) Prior to the certification of households under these regulations, State agencies shall implement staff training for the transition as required in § 272.4(e)(3), and training for outreach workers, receptionists, and others, as required in § 272.4(e)(1) (v) and (vi). Beginning with these training sessions for the transition, State agencies shall implement the requirements for public participation at training sessions, as specified in § 272.4(e)(1)(iv). State agencies shall designate a training coordinator and develop and implement the ongoing training program required by § 272.4(e) on or before July 1, 1979.

(ix) Elimination of the purchase requirement and the implementation of the basic financial and nonfinancial eligibility criteria and other coupon issuance criteria shall not be extended for any reason. FCS may grant extensions for other provisions contained in these rules, provided that the State agency presents compelling justification for a delay and establishes an acceptable alternative schedule in advance of the implementation deadline. In no event will FCS grant an extension in excess of 120 days from the specified implementation date. In those cases where extensions are granted, the relevant Department regulations under the Food Stamp Act of 1964 shall remain in effect until superseded by implementation of the new rules.

(2) *Amendment 137.* Program changes required by Amendment 137 to the food stamp regulations shall be implemented for all households initially applying for food stamp benefits no later than 90 days following the publication of this amendment.

(3) *Amendment 146.* The procedures contained in Amendment 146 shall be implemented by State agencies in time to be able to issue reduced food stamp allotments or to suspend or cancel allotments within 60 days after the date of publication of this amendment in the FEDERAL REGISTER.

(4) *Amendment 141.* State agencies shall begin planning for and conducting ongoing consultations with the Indian tribal organizations of the reservations within their jurisdiction as soon as possible after the effective date of this amendment. Portions of the State Plan of Operation to be submitted for fiscal year 1980 shall be subject to ITO comment as required by § 281.2(a). The funding authority in § 281.9 shall apply to budgets beginning with the fourth quarter of fiscal year 1979.

(5) *Amendment 211.* State agencies shall implement the new Social Security Number (SSN) provisions for new applicants no later than February 1, 1983 and convert the current caseload at recertification or when the case is otherwise reviewed, whichever occurs first. The citizenship provisions must be implemented on or before April 1, 1983. All other provisions shall be implemented at State agency discretion.

(6) *Amendment 149.* Changes to States' Quality Control systems as required by this amendment shall be implemented as follows:

(i) *All* State agencies shall continue conducting modified QC reviews [in accordance with regulations published February 9, 1979 (43 FR 8548)] through August 31, 1979 and submit Form FCS–133 to FCS by September 15.

(ii) State agencies shall implement the requirements in subpart C of part 275 for conducting QC reviews no later than October 1, 1979. A quality control sampling plan (as specified in § 275.11(a) of these regulations) must be submitted by each State to the appropriate FCS Regional Office no later than September 1, 1979 (30 days prior to implementation). This will allow time necessary for approval of the plans prior to the October 1 implementation date.

(iii) State agencies are encouraged to implement QC September 1, if possible. States opting to implement early would not be required to operate *for this month* under an approved sampling plan. These States must, however, submit sampling plans in accordance with paragraph (g)(6)(ii) of this section. The month of September (sampling month) would serve as a test phase. Therefore, data collected for the sample month would not be required to be submitted to FCS or used in determining a State's cumulative allotment error rate.

(iv) Regulations published October 17, 1978 (43 FR 47846) which implement major aspects of the Food Stamp Act of 1977 provide for the conversion of cases via a desk review (§ 272.1(g)(1)(iii)). Desk converted cases would be converted to the new eligibility criteria for income and deductions but may not have been converted to the new criteria for resources, work registration, tax dependency, etc. Therefore, States will have households participating in the program based on some of the eligibility criteria of the 1964 Food Stamp Act. Desk converted cases as provided in § 272.1(g)(1)(iii) and cases which should have been converted via desk review (some cases may not undergo the conversion process as required), shall be subject to standard QC review procedures. When the QC reviewer detects a variance in one of these cases which results from an element of eligibility which was not converted and was not required to have been converted, the reviewer shall disregard the variance. When the reviewer detects a variance in a case when an element of eligibility was, or should have been converted, the reviewer shall handle the variance like any other QC variance as identified in § 275.12 of these regulations. It is possible that desk converted cases may continue to show up in QC samples through February 1980.

(v) State agencies shall submit reports of QC review activity (one copy to the appropriate FCS Regional Office and one copy to the Deputy Administrator for Family Nutrition Programs, Washington, DC) as follows:

(A) Each State agency shall report the monthly progress of sample selection and completion on a form provided by FCS. This report shall be submitted to FCS so that it is received no later than 10 days after the end of each month, beginning December 10, 1979. Each report shall reflect sampling and review activity for the previous month.

(B) Each State agency shall report the results of QC review activity on a form provided by FCS. This report shall be submitted to FCS so that it is received no later than 90 days from the end of the reporting period.

(C) Corrections to information on the above reports requested by FCS must be submitted within 10 days of the request.

(7) *Amendment 151.* (i) State agencies shall implement the program changes required by amendment for all new applications and recertifications no later than January 1, 1980. Currently eligible households shall be converted at recertification or when they request conversion to the new deduction system by responding to the notice required in paragraph (g)(7)(iii) of this section or by otherwise requesting recomputation.

(ii) State agencies may but are not required to convert the current caseload to the shelter deduction system provided for in § 273.9(d)(5) through desk reviews or by computer search. State agencies are encouraged to convert eligible households to the new shelter deduction as soon as possible to

allow these households to benefit during the winter months.

(iii) Notices explaining the changes and their applicability shall be available at all food stamp certification offices and shall also be mailed or otherwise provided individually to all currently certified households at least once prior to implementation. At a minimum, these notices shall be distributed in the month prior to implementation either with the ATP card or separately but no later than the 15th of the month. The notice shall advise the household of the availability of the new deductions and the procedures for reporting medical and shelter expenses. If the State agency can identify those households to which this amendment would apply, only these households need to receive the notice.

(iv) Fliers advising of the changes contained in this amendment shall be made available to public and general assistance offices, local Social Security offices, and any interested organizations, particularly those dealing with the elderly or disabled or those places where the elderly or disabled congregate, such as housing units. Also, posters explaining the changes shall be displayed in food stamp certification offices and shall be made available to public and general assistance offices, local Social Security offices and any other interested groups. State agencies shall notify all organizations on its outreach contact list of the changes and of the availability of posters and fliers. State agencies shall issue press releases to the news media advising of the impending program changes.

(v) For the first two months of implementation, State agencies shall have up to 30 days to process changes in medical and shelter costs reported in conjunction with this amendment. The change shall be effective for the first issuance following that 30-day period with restoration of lost benefits to the point at which the change would normally become effective under §273.12. The State agency may request an extension of processing time of up to 60 days to act on these changes. The State agency shall submit appropriate documentation to FCS for the State or any part of the State for which such an extension is requested. After the first two months the State agency shall act on these changes in accordance with the normal processing standards in §273.12(c). For changes reported during a period of two months following a State agency's implementation of this amendment, verification of shelter and medical expenses required by §273.2(f) must be obtained prior to the issuance of the third normal monthly allotment after the change is reported. If the household does not provide verification, the household's benefits will revert to the original level. State agencies are encouraged to complete such verification and, if needed, conduct an interview prior to processing the change. After this initial period, State agencies will verify these expenses in accordance with the normal timeliness standards.

(vi) Medical expenses shall be subject to the same rounding procedures used for shelter expenses in §273.10(e)(1)(ii). This procedure shall be in effect until implementation of amendments to §273.10(e)(1)(ii).

(vii) No household shall be entitled to restoration of lost benefits under this amendment for any period prior to the time the State agency has implemented its provisions. For the initial months after implementation, during which the longer processing time allowed under this amendment is in effect, a household shall be entitled to restoration of lost benefits back to the month the change would have become effective under the normal processing standards in §273.12(c). After this initial period, no household shall be entitled to restoration of lost benefits unless the State agency does not act on reported changes in accordance with the timeliness standards in §273.12(c) or the household is otherwise entitled under the provisions of §273.17.

(viii) Implementation of these program changes falls in the last three months of the October 1979 to March 1980 reporting period for quality control. For the months of January, February and March 1980, all cases in which a household member is either 60 years of age or over, receives SSI, or disability benefits under title II of the Social Security Act will be subject to

standard quality control review procedures, except that any varying information regarding medical deductions and/or shelter deductions in excess of the cap found in the review shall be disregarded in determining errors. Such information shall be noted on the Face Sheet of Form FCS–245 under part VII, Discrepancies and Other Information, and reported to the State agency for appropriate action on an individual case basis. Starting with the April–September 1980 reporting period, when the reviewer detects a variance in the medical deduction and/or the shelter deduction in excess of the cap, and these expenses were reported at application, recertification or during the certification period, the reviewer shall handle the variance like any other QC variance as identified in § 275.12 of the Performance Reporting System regulations.

(8) *Amendment 152.* The rounding procedure set forth in § 273.10(e) shall be in effect for new applications and recertifications no later than July 1, 1980. The State agency shall have up to 12 months following the implementation date of final regulations to convert the current caseload to the rounding procedure that is chosen under § 273.10(e)(1)(ii). The State agency shall have a choice of the following three options in converting households that are already participating at the time the new rounding procedure goes into effect:

(i) Convert households at recertification; (ii) convert households by conducting a desk review; or (iii) convert all households, or all households in a certain category, at a point-in-time. For example, the State agency may convert all public assistance households or all households in a project area by computer. Point-in-time mass conversions shall be conducted no later than July 1, 1980. In any case, the State agency shall advise FCS regarding which rounding and caseload conversion procedures are chosen and when the conversion will be completed.

(9) *Amendment 154.* State agencies shall implement the program changes required by Amendment 154 as follows:

(i) State agencies shall begin requiring social security numbers for all new applications and recertifications no later than the first day of the first month which commences 120 days from the date of publication of final rules. Participating households shall be requested to provide or apply for social security numbers (SSN) for appropriate household members at recertification, or at the time of office contact for any other reason. The State agency shall provide advance notification of this requirement and the consequences of noncompliance by sending an individual notice to all participating households and by providing press releases for dissemination through the media. The individual notices may be sent as either a one-time notice prior to implementation and/or with the notices of expiration of a certification period.

(ii) If any affected member(s) of a household does not have his or her SSN readily available at the time of application, recertification, or any office contact, he or she shall follow the procedures for furnishing an SSN in accordance with § 273.6 as amended.

(iii) State agencies shall implement the fraud claims procedures contained in § 273.16 and § 273.18. Implementation shall be no later than the first of the month following the 120th day from the date of publication of final rules. By implementation the State agency shall also have an approved system for handling claims, including a method for accounting for the fifty percent retention of the value of funds collected from fraud claims. Any collection action on fraud claims after implementation is subject to the fifty percent retention including claims established under the Food Stamp Act of 1964 as amended and under the Food Stamp Act of 1977, as amended. However, only individuals found guilty of fraud through an administrative fraud hearing or through a court of law under regulations promulgating the Food Stamp Act of 1977, as amended, are subject to the recovery provisions in §§ 273.16 and 273.18 retroactive to implementation of fraud claim provisions under the 1977 Act.

(10) *Amendment 207.* State agencies shall implement the changes in the rules required by Amendment 207 no later than January 1, 1983. Disabled parents who requested and were denied separate household status on or after

September 8, 1982, will be entitled to benefits retroactive to the dates of their applications for separate household status.

(11) *Amendment 160.* State agencies shall implement the provisions of this amendment as follows:

(i) State agencies shall submit the initial State corrective action plans so they are received by FCS within 90 days of publication of these regulations as required in § 275.22(a) of this chapter. This initial plan shall contain all known deficiencies in the State which meet the criteria set forth in § 275.16(b) of this chapter and shall identify, for each such deficiency, the items required in § 275.17(b) of this chapter. Project areas also shall prepare and submit to the State corrective action plans for all identified deficiencies. These plans shall be submitted within 60 days of identification of a deficiency and shall include any deficiencies known to the project area prior to publication of these regulations for which corrective action has not been completed. Ninety days after publication of these regulations, all provisions of §§ 275.15, 275.16, 275.17, 275.18, 275.19 and 275.22 of this chapter shall be implemented.

(ii) State agencies shall have submitted management evaluation (ME) review schedules within 90 days of publication of these regulations as required by § 275.20 of this chapter. These review schedules shall contain all information required by § 275.20 of this chapter and shall be adhered to unless a change is necessary. If a modification to an ME review schedule is necessary at any time in the review period, the State shall notify the appropriate FCS Regional Office of the modification.

(iii) State agencies shall implement ME reviews within 90 days of publication of these regulations, following the provisions of §§ 275.5, 275.6, 275.7, 275.8, and 275.9 of this chapter. Any waiver from the requirements of § 275.7 or § 275.9 must be requested 60 days prior to its implementation as identified in § 275.5(c). Development or submission of requests for a deviation shall not delay implementation of the ME review subsystem past the required implementation date.

(iv) All provisions of these regulations which are not addressed in paragraphs (g)(11) (i) and (ii) of this section shall be implemented within 90 days of publication of these regulations. While this includes the requirements for a Performance Reporting System Coordinator and designation of an organizational entity for effecting corrective action as identified in § 275.2(a) of this chapter, this position and designation may be established on an interim basis; provided that the provisions of § 275.2(a) of this chapter are fully implemented by October 1, 1980. During this interim period States shall ensure that all responsibilities of the coordinator or entity are adhered to.

(12) [Reserved]

(13) *Amendment 162.* Program changes required by Amendment 162 of the Food Stamp Program regulations shall be implemented as follows:

(i) The fee agent system for conducting interviews is currently in use and its continuing use is approved.

(ii) All other rules except paragraph (p) of § 272.8 shall be implemented as soon as practical but no later than 90 days following the date of final rulemaking. A fee agent training plan must be submitted within 45 days of the date of final rulemaking. Paragraph (p) of § 272.8 concerning points and hours shall be implemented following the time standards contained therein.

(14) *Amendment 142.* (i) State agencies shall restore lost benefits to households who had their eligibility or benefit levels adversely affected because Federal energy assistance payments were counted as income and/or resources. Entitlement to restoration of lost benefits shall be retroactive to October 1, 1979 for payments received under CSA's ECAP; to November 27, 1979 for payments received under DHEW's EAP; and to January 7, 1980 for the one-time-only energy assistance payments to SSI households in accordance with Pub. L. 96–126.

(ii) State agencies shall use the following procedures for notifying households of entitlement to restoration of benefits under Amendment 142:

(A) State agencies which can readily identify those SSI households who received the one-time payment and those households who received payments

under the Energy Crisis Assistance or Energy Allowance Programs which lost benefits because their energy assistance payment was counted as income and/or resources must notify such households of entitlement to restoration of lost benefits.

(B) State agencies which cannot readily identify households entitled to restoration of lost benefits due to the circumstances described in §272.1(g)(14)(i) must issue a one-time-only press release to notify households which have participated since October 1, 1979 of possible entitlement to restoration of lost benefits. State agencies may, at their option, use additional means of notification such as posters.

(15) *Amendment 163.* State agencies shall implement the provisions in this amendment no later than July 1, 1980.

(16) *Amendment 174.* State agencies shall implement the program changes required by Amendment *174* as follows:

(i) State agencies shall implement the income/resource disregard provision for Federal, State, and local energy assistance payments (§§273.8 and 273.9 of this subchapter) no later than October 1, 1981.

(ii) State agencies shall implement the new maximum resource limit and the exemption of vehicles for the physically disabled (§273.12 of this subchapter) no later than October 1, 1981 for all new applicants. State agencies shall convert the current caseload to the new resource limit at the time of recertification, or at any other time the casefile is reviewed prior to recertification.

(iii) State agencies shall implement the student participation provisions of this amendment (§§273.1, 273.2, 273.5, 273.7 and 273.11 of this subchapter) no later than October 1, 1981 for all new applicants. Current caseload shall be converted at the time of recertification or any time the casefile is reviewed prior to recertification.

(17) *Amendment 158.* (i) The procedures contained in part 273 regarding SSI food stamp joint application processing shall become effective on August 1, 1980 for all State agencies except that:

(A) In those areas designated as SSI/Elderly Cash-out Demonstration Project Sites or Demonstration Project Comparison Sites, implementation of these provisions will be delayed. In addition, Social Security office service areas which contain either demonstration projects sites or demonstration comparison sites will be temporarily exempted, in their entirety, from implementation of these provisions whether or not their boundaries are coterminous with demonstration project sites and/or demonstration comparison site boundaries. This temporary exemption removes the administrative problem of the same SSA office simultaneously operating under both joint processing and cash-out regulations. The procedures contained in this rulemaking shall become effective for these project areas on the first day of the month following the ninetieth day after the termination of the demonstration project.

(B) State agencies in SSI cash-out States as defined in §273.20 shall not implement the provisions of this rulemaking. In the event an SSI cash-out State loses that status, the State agency shall implement the provisions of this rulemaking on the first day of the month following the ninetieth day after the Secretary of Health and Human Services determines that the State no longer qualifies for cash-out status.

(ii) State agencies shall distribute fliers advising of the changes contained in this amendment to public and general assistance offices, local Social Security offices, any interested organizations, particularly those dealing with the elderly or disabled, and those places where the elderly or disabled congregate, such as housing units senior citizens centers, and elderly feeding programs. Also, posters explaining the changes shall be displayed in food stamp certification offices and shall be made available to public and general assistance offices, local Social Security offices and any other interested groups. State agencies shall notify all organizations on their outreach contact lists of the changes and of the availability of posters and fliers. State agencies shall issue press releases to the news media advising of the impending program changes. FCS will supply State agencies with model language describing the changes which State agencies may use in their publications.

(18) *Amendment 168.* The provisions of Amendment 168 shall be effective on the thirtieth day following their publication. Any claims filed against State agencies for incidents that occur after the publication of this amendment shall be filed in accordance with the provisions of this amendment. Any claims filed against State agencies for incidents that occurred prior to the publication of this amendment shall be filed in accordance with the rules in effect at the time they occurred. However, the administrative review procedures contained in this amendment shall be applicable to all claims that are filed after the effective date of this amendment.

(19)—(20) [Reserved]

(21) *Amendment 178.* State agencies shall implement the provisions of § 273.8 and § 273.9 of this amendment for all new applicants no later than February 1, 1981. States shall convert the current caseload to the new rules at recertification or at the time the case is otherwise reviewed, whichever comes first.

(22) *Amendment 179.* State agencies shall implement those verification procedures mandated in § 273.2 and § 273.8 no later than the first of the month 120 days following publication of final regulations. State agencies may implement those provisions allowed at State agency option in § 273.2 and § 273.12, once the options have been approved by FCS and the State certification manuals have been revised to incorporate the options.

(23) *Amendment 171.* (i) All States operating an ATP issuance system shall submit the first Form FCS–46, Food Stamp Reconciliation Report, in accordance with Amendment No. 171, for the month of February 1981. This report shall be submitted to the FCS Regional Office within 90 days from the end of the report month.

(ii) All States shall submit the Form FCS–388, State Coupon Issuance and Particpation Estimates, for February 1981 and each month thereafter. Those States that have not submitted procedures for estimating program participation, shall submit them to the FCS Regional Office on or before February 9, 1981.

(24) *Amendment 186.* The procedures of part 275 regarding SSA/food stamp joint processing and demonstration cases shall become effective on August 1, 1980 for all applicable State agencies. These procedures must be implemented by October 1, 1980.

(25) *Amendment 187.* State agencies shall implement the complaint procedures required by § 271.6(a) no later than 180 days following publication of final regulations.

(26) *Amendment 165.* State welfare agencies and State employment agencies shall implement the provisions of Amendment 165 no later than the first of the month following 120 days from publication of amendment 165 in the FEDERAL REGISTER as follows:

(i) Both agencies shall begin immediately to develop the work registration plan and agreements discussed in § 273.7(c) and (d) of Amendment 165. The plan and agreements must be approved and implemented within the 120 day timeframe established for implementation of all provisions of the final rule.

(ii) The provisions of amendment 165 shall be applied to households at the time of initial application, recertification, or reregistration, beginning no later than the first of the month following 120 days from publication of the amendment.

(27) *Amendment 189.* State agencies shall implement the provisions of Amendment No. 189 no later than July 1, 1982.

(28) *Amendment 156.* State agencies shall implement the program changes required by Amendment 156 within 120 days after publication of these regulations, meeting the submittal deadlines outlined in § 272.2 and § 272.3.

(29) *Amendment 190.* State agencies shall implement these regulations no later than January 1, 1982. The rules are effective November 9, 1981.

(30) *Amendment 191.* Areas subject to the photo ID card requirement must have issued photo ID cards (or cards annotated to indicate that the card is valid without a photograph, in accordance with § 273.10(g)(4)(ii)(C)) to all participating households, and shall require presentation of photo ID cards (or the annotated cards) at issuance points as a precondition of issuing coupons to households, no later than the first of

the month that is 12 months after the publication of final regulations. Any areas that become subject to the photo ID card requirement at a later date shall also come into full compliance no later than the first of the month that occurs 12 months after FCS notifies the State agency that the area is subject to the requirement.

(31) *Amendment 169.* The provisions of Amendment 169 shall be effective March 30, 1981. These provisions shall apply to the period beginning October 1, 1980, except that the provisions of § 277.4(b)(2) shall apply to the period October 1, 1978 through October 1, 1980. No State shall be subject to sanctions based upon quality control error rates for any period prior to October 1, 1980. No State shall receive enhanced funding based upon quality control data for a period prior to the date upon which its quality control system was in operation.

(32)—(33) [Reserved]

(34) *Amendment 198.* State agencies opting to match earnings data provided by applicants and participants with information maintained by the Social Security Administration shall first execute data exchange agreements with the Social Security Administration. After the effective date of this rule and after execution of this agreement, State agencies may implement wage match provisions at their discretion.

(35) *Amendment 202.* State agencies shall implement the provisions of Amendment No. 202 as follows:

(i) The rules shall be implemented no later than October 1, 1981, including the provisions for a medical deduction, separate dependent care deduction, and uncapped shelter expense deduction for the elderly and disabled in Puerto Rico, Guam, and the Virgin Islands. All households who apply October 1 or later and those households who are recertified October 1, 1981 or later shall be processed in accordance with these provisions. The proration of initial month benefits shall begin no later than October 1, 1981.

(ii) Conversion of the current caseload to the new gross income test and earned income deduction amount shall be completed no later than 90 days from October 1, 1981, or 90 days from the date of implementation approved through waiver requests in accordance with paragraph (g)(35)(vi) of this section.

(iii) Conversion of the current caseload to the new household definition; ineligibility of strikers and boarders; and, in Puerto Rico, Guam, and the Virgin Islands, a medical deduction, separate dependent care deduction, and uncapped excess shelter expense deduction shall be completed at or before recertification. In no event shall the new medical, dependent care, and excess shelter provisions for Guam, Puerto Rico and the Virgin Islands be implemented prior to October 1, 1981.

(iv) Notification to affected households of these changes shall be done, at a minimum, in the same manner required for mass changes in public assistance grants prescribed in § 273.12(e)(2)(ii).

(v) Beginning October 1,1981, outreach activities engaged in by State agencies shall be ineligible for Federal matching funds.

(vi) FCS will consider requests for waivers to these timeframes, except for the timeframe in paragraph (g)(35)(v) of this section, on a state-by-state basis, if good cause can be established and justified, in writing, for the need for a longer timeframe.

(36) *Amendment 259.* State agencies may implement this Monthly Reporting and Retrospective Budgeting rule at any time, but shall implement this rule no later than January 1, 1984. Prior to January 1, 1984, this rule may be implemented Statewide, in only part of a State (such as in certain project areas), or for only certain reasonable classifications of households (such as for only households receiving Aid to Families with Dependent Children) so long as the implementation is completed by January 1, 1984. State agencies shall have begun to send monthly reports to households so that they can report their January 1984 circumstances in accordance with § 273.21(h). However, the changes in the interim provisions made by this final rule need not be implemented on January 1, 1984. The changes made by this final rule shall be implemented no later than May 1, 1984. Unless otherwise specified in § 273.21 of this chapter,

all other food stamp regulations shall apply to State agencies and to applying or participating households.

(37) *Amendment 205.* The procedures extending eligibility to otherwise eligible residents of shelters for battered women and children contained in Amendment 205 shall be implemented by State agencies no later than April 1, 1982.

(38)–(39) [Reserved]

(40) *Amendment 213.* All State agencies shall execute the appropriate data exchange agreements and implement the provisions of this amendment not later than January 1, 1983. State agencies may opt to match earnings data with information maintained by the Social Security Administration upon publication of final regulations provided they have executed data exchange agreements with the Social Security Administration. State agencies which are not prohibited by State law from wage matching with agencies administering unemployment compensation may do so upon publication of final regulations, provided they have executed the appropriate data exchange agreements.

(41) State agencies shall implement the provisions of Amendment 215 upon publication.

(42) *Amendment 217.* The regulations concerning the optional workfare program contained in Amendment 217 shall be in effect November 8, 1982. Workfare programs may be implemented after this date provided FCS has approved the workfare plan.

(43) *Amendment 220.* State agencies shall implement Amendment 220 on October 1, 1982.

(44) *Amendment 221.* State agencies shall implement on a case by case basis the provisions of this rule, excluding the provision which revises the application form, beginning the first of the month 30 days from the date of publication. The provision requiring a notice of verification on the application form shall be implemented on or before the first day of the month beginning at least 90 days from the date of publication. If the State agency has not depleted its existing supply of application forms, the State agency may opt to implement this provision by providing an insert to the application form containing the notice of verification.

(45) *Amendment 222.* This amendment shall be implemented by the first day of the month following the 30th day after publication. As of that date prior approval of forms, manuals, instructions, or any other type of operating guidelines will no longer be required and waivers will be granted or denied based on the new criteria contained herein. Additionally, as of that date State agencies shall inform FCS of changes, as they occur, in their organizational outline and agreements with other agencies. The submission requirement for the Budget Projection Statement, Form FCS–366A, as set forth in § 272.2(e) shall become effective on August 15, 1983, for the 1984 Federal fiscal year beginning October 1, 1983 through September 30, 1984.

(46) *Amendment 225.* The State agency shall obtain FCS approval for the exclusion of energy assistance provided under any State or local program, in accordance with the criteria set forth in §§ 273.8(e)(14) and 273.9(c)(11), within six months of the date of publication of the final rule. State or local energy assistance which is not approved during this six month period shall cease to be excluded at the end of the period. The new provisions concerning restoration of lost benefits in § 273.17 (a) and (e) shall be implemented no later than 120 days following publication of the final rule.

(47) *Amendment 227.* (i) In accordance with § 276.2(b)(3) (iii), FCS will hold State agencies strictly liable for losses by issuance agents where reconciliation shows noncompliance with photographic identification (photo ID) card requirements beginning with the fiscal quarter that begins January 1, 1983.

(ii) State agencies shall include provisions establishing the liability to the State agency of an issuing agent for the issuance losses covered in § 274.1(b)(6) in the next contract or agreement between the State agency and the issuing agent that is entered into or renewed after publication of this rule. Not later than one year following such publication, all contracts or agreements shall contain the required provision establishing the liability. However, failure of State agencies

to include this language in contracts will not absolve the State agencies of the liability referred to in paragraph (g)(47)(i) of this section.

(48) *Amendment 228.* FCS will consider requests for waivers to monthly reporting requirements beginning November 5, 1982.

(49) *Amendment 245.* The mail issuance loss rates of 0.75 percent and $2,250 are effective January 1, 1983. The mail issuance loss rate of 0.5 percent and $1,500 are effective October 1, 1983. For the second quarter of fiscal year 1983 only, FCS will look at Statewide loss rates and the loss rates of individual reporting units within the State. Where the loss rate for individual reporting units within the State is over the tolerance in that quarter and the Statewide loss rate is also over tolerance, FCS will assess liability for losses exceeding the tolerance reported for the second quarter of 1983. Where the loss rate for individual reporting units within a State are over tolerance for the second quarter, but the Statewide loss rate is under tolerance, State agencies shall have one additional quarter (the third Fiscal Year 1983 quarter) to bring such individual reporting units' loss rates into compliance with the tolerance levels. Thus for these reporting units, FCS will assess liability beginning with the fourth quarter of fiscal year 1983 and each quarter thereafter for losses which exceed the tolerance levels, regardless of Statewide loss rate. FCS will bill State agencies for losses on a semiannual basis.

(50) *Amendment 230.* State agencies shall implement the provisions of Amendment 230 no later than January 1, 1983.

(51)–(52) [Reserved]

(53) *Amendment 233.* State agencies shall implement these regulations no later than February 1, 1983.

(54) *Amendment 234.* The provisions of Amendment 234 shall apply to those sponsored aliens on behalf of whom the sponsor signed an affidavit of support or similar statement (as a condition of the alien's entry into the United States as a lawful permanent resident) on or after February 1, 1983.

(55) *Amendment 235.* Except for the provisions which simply extend options to State agencies, State agencies shall implement the changes made by Amendment 235 no later than February 1, 1983. Elderly/disabled persons who requested and were denied separate household status or other considerations granted disabled persons on or after September 8, 1982, will be entitled to benefits retroactive to the dates of their applications for separate household status or other special considerations.

(56) [Reserved]

(57) *Amendment 240.* The provisions of Amendment 240 shall be effective on January 11, 1983. The enhanced funding, which the amendment implements, is available to political subdivisions retroactive to October 1, 1982. The enhanced funding is available to a political subdivision for a workfare participant who begins working on or after October 1, 1982.

(58) *Amendment 242.* State agencies shall implement the disqualification penalties for intentional Program violation, and the improved recovery of overpayments provisions contained in Amendment 242 no later than April 1, 1983.

(i) The provision in § 273.11(c) for handling the income and resources of an individual disqualified for intentional Program violation shall apply to any individual disqualified for such a violation since the implementation of the fraud disqualification provisions of the Food Stamp Act of 1977. The disqualification procedures for intentional Program violation in § 273.16 shall apply to any individual alleged to have committed one or more acts of intentional Program violation since the implementation of the fraud disqualification provisions under the Food Stamp Act of 1977. However, the disqualification penalties in § 273.16(b) shall apply only to individuals disqualified for acts of intentional Program violation which occur after implementation of this amendment. In addition, the disqualification penalties in § 273.16(b) shall apply only to individuals disqualified for acts of intentional Program violation which occurred either during a certification period based on an application form containing these penalties or after receipt of written notification

from the State agency of these penalties. Recurring acts of intentional Program violation which occur over a period of time prior to and after implementation of this final rule shall not be separated. Only one penalty can be imposed for such recurring violations and the household member shall be disqualified in accordance with the disqualification penalties specified in this amendment. The reporting requirements of § 273.16(i) shall become effective upon implementation, however, the State agency shall have until October 1, 1983, to submit such reports on individuals disqualified under previous regulations implementing the Food Stamp Act of 1977.

(ii) The recovery provisions for claims against households in § 273.18 shall apply to any overissuance caused by an action which occurred after implementation of regulations promulgating the Food Stamp Act of 1977, as amended. And, the procedures for calculating the amount of overissuances as specified in § 273.18(c) shall apply to any month in which an overissuance occurred retroactive to March 1, 1979. However, State agency retention of 50 percent of the value of collected intentional Program violation claims and 25 percent of the value of collected inadvertent household error claims as provided in § 273.18(h) shall apply to any collection action retroactive to January 1, 1982. The State agency shall have the option of reinstating any claim previously suspended, but not terminated, under the recovery provisions of regulations implementing the Food Stamp Act of 1977 and, once reinstated, such claims shall be subject to the recovery provisions contained in this amendment. However, the State agency shall not reinstate any amount of a claim compromised or any claim terminated under previous regulations implementing the Food Stamp Act of 1977, as amended. The submission requirements for the Form FCS–209, Status of Claims Against Households, as set forth in § 273.18(h) shall become effective with the quarter ending March 31, 1983.

(59) *Amendment 243.* (i) State agencies shall implement the provisions contained in § 274.1(d) statewide no later than October 1, 1983. FCS will consider requests for waivers to this timeframe on a State-by-State basis if the State agency establishes good cause through submission of written justification of the need for a longer timeframe and submits a plan that shows when the system will be implemented.

(ii) State agencies shall implement the correction made to § 273.1(a)(1)(iv) retroactive to September 8, 1982.

(iii) The Commonwealth of Puerto Rico shall implement the changes to part 285 on January 1, 1984, as published in the FEDERAL REGISTER for December 21, 1984.

(60) *Amendment 244.* State agencies shall implement the provisions regarding joint food stamp/public assistance case processing at State agency discretion. The provisions regarding certification periods must be implemented at time of application or at recertification no later than July 1, 1983.

(61) [Reserved]

(62) *Amendment 247.* State agencies must implement the provisions relative to noncompliance with other programs no later than April 1, 1985. The provisions relative to disclosure of information must be implemented no later than February 1, 1985.

(63) *Amendment 251.* State agencies shall implement the program changes required by this amendment as follows:

(i) State agencies shall apply the work registration, job search, and voluntary quit provisions of this rule, amending portions of § 273.7, to new applicants no later than January 2, 1985. The provisions shall apply to participating households at recertification or at the time of office contact for any other reason.

(64) *Amendment 252.* (i) The sanction/incentive provisions of § 275.25 were effective October 1, 1982. The previous provisions of § 275.25 shall continue to apply to the review periods prior to October 1982.

(ii) The funding provisions of § 277.4(b)(2) were effective on October 1, 1982, and shall apply to the October 1982, through September 1983, review period and every review period thereafter.

(iii) The revised funding provisions of § 277.4(b)(7) shall apply to the 6-month review periods October 1, 1981 through

March 1982 and April through September 1982.

(65) *Amendment 253.* The provisions of § 274.8(a)(6) (i), (ii), and (iii) shall be implemented the first month beginning on or after the 90th day following publication of this final rule. In that month, the FCS–388 report shall provide the actual second preceding month data. The initial semiannual coupon issuance and NA/PA household and person participation data shall be provided in September 1985 for the month of July 1985. State agencies will cease submission of the FCS–256 report as of July 1985.

(66) *Amendment 254.* State agencies shall implement the provisions of Amendment 254 no later than October 19, 1983.

(67) [Reserved]

(68) *Amendment 260.* (i) The quality control review provisions contained in Amendment 260 are effective starting with the beginning of Fiscal Year 1984, except as provided in the following sentences. All cases sampled for the six months October 1983 through March 1984 shall be disposed of and reported within 95 days of March 31, 1984. Cases sampled for April 1984 and for months thereafter shall be disposed of and reported according to § 275.21. For example, 90 percent of April cases are due within 75 days of April 30, and 100 percent are due within 95 days of that date. The structure of sample frames specified in § 275.11(e) must be implemented no later than the sample month of October 1984.

(ii) Starting with the October 1983 sample month, cases must be determined complete, not complete, or not subject to review according to §§ 275.12(g) and 275.13(e). As of the beginning of Fiscal Year 1984 the sample sizes stated in § 275.11(b) and related sampling plan requirements are effective, and State agencies are required to meet the completion standard stated in § 275.11(d). State agencies currently sampling at the levels provided in § 275.11(b)(1)(iii) must submit to their respective FCS Regional Offices the reliability statement required by § 275.11(a)(2) within 30 days of the publication of this rule, or no later than the second month after publication of this rule begin sampling at the levels specified in § 275.11(b)(1)(ii).

(69) *Amendment 261.* State agencies shall implement this amendment establishing the Alaska urban and rural allotment levels and the new cap for Guam no later than August 1, 1984. Households in rural Alaska which request retroactive benefits by February 1, 1985 will be entitled to retroactive benefits for the period after September 8, 1982, during which they lived in rural Alaska and participated in the Food Stamp Program in that area. These retroacive benefits will be provided over a period of time not to exceed one year. The amount provided each month will be the higher of $50 or one-twelfth of the total amount due. Households in Guam which request retroactive benefits by February 1, 1985 will be entitled to retroactive benefits for the period October 1, 1982, through September 30, 1983, during which they lived in Guam, participated in the Food Stamp Program in that area, and were in household sizes two, five, or eight or more.

(70) *Amendment 264.* These rules are effective on May 29, 1986. No later than that date State agencies are required to submit the attachment to their State Plan of Operation specified in § 272.2 and in § 272.8(i), documenting either full implementation of these rules or good faith efforts to implement them. The documentation of full implementation or of good faith efforts shall show either that the State agency is routinely requesting and using, or shall show the dates when it will begin routinely to request the use, information from the various data sources specified in § 272.8(a) according to the frequencies for requests, timeframes and other requirements of § 272.8(e), (f) and (g). Full implementation shall include requests for available information from the Social Security Administration for all recipients for which such information has not been previously requested. The 30-day timeframe specified in § 272.8(g) is effective for applicant households which become recipients as discussed in § 272.8(e)(1) as soon as a State agency begin receiving information from particular data sources.

(i) A Plan describing good faith efforts shall at a minimum document that the State agency is currently in

compliance with wage match criteria as specified in the final rulemaking of November 5, 1982 (47 FR 50180), assure that such compliance will continue at current levels until such time as these provisions are implemented, and provide an implementation schedule that reflects full compliance in the minimum amount of additional time. Requests for delays of implementation beyond May 29, 1986 shall identify the applicable regulation part, the date for implementation, justification for the delay, and the implementation plan.

(ii) The Secretary shall consult with the Secretary of the Department of Health and Human Services and with the Secretary of the Department of Labor prior to the approval of Plans of Operation documenting good faith efforts. In no event shall the Secretary approve a delay of the provisions of individual notification in §273.2(f)(9) beyond the initial implementation date of any of these new provisions.

(iii) Implementation schedules beyond September 30, 1986 are not approvable, with the following exception: If on April 1, 1985 no SWICA exists in a particular State, the provisions of the rule as they relate to SWICAs shall be effective upon the designation of a SWICA. Implementation of a SWICA after April 1, 1985 shall take place as soon thereafter as possible but in no event later than September 30, 1988. All SWICAs with delayed implementation shall be in operation so that wage information is reported to them starting with the month of October 1988.

(71) *Amendment No. 266.* The provisions contained in Amendment No. 266 shall be implemented by March 6, 1987.

(i) All Fiscal Year 1987 review schedules shall continue in force despite the implementation of these provisions. However, a State agency may, at its option, seek a change in that schedule.

(ii) Waivers shall remain in force until their expiration. If a State agency wishes to cancel a waiver it should contact its Regional Office and negotiate whatever change it needs.

(iii) The first periodic Corrective Action Plan update required by this amendment shall be submitted by May 1, 1987.

(72) *Amendment 267.* State agencies shall implement the eligibility requirements of this rulemaking as they apply to offsetting farm self-employment losses and publicly operated community mental health centers not later than March 27, 1986. State agencies must begin taking applications from residents of publicly operated community mental health centers (as defined in §271.2) not later than March 27, 1986. FCS field offices may authorize these centers to act as retail food stores on February 25, 1986.

(73) *Amendment 269.* The correction to §273.7(n)(1)(v) outlined in amendment 269 is effective retroactively to October 3, 1984. State agencies which may have implemented the voluntary quit error prior to receiving FCS notification not to effectuate the change, shall issue lost benefits to affected households, but not prior to November 2, 1984 (the effective date of the October 3, 1984 final rule). State agencies shall implement the revisions to the rules outlined in amendment 269 for all new applicants no later than the first day of the month following June 26, 1986. Any conversion of the current caseload necessitated by this amendment shall be done at recertification or at the time the case is next reviewed, whichever occurs first.

(74) *Amendment 270.* (i) State agencies shall implement the earned income and dependent care deduction amounts and the resource limit provisions of Amendment 270 on May 1, 1986. If, for any reason, a State agency fails to implement these provisions on that date, households shall be provided the lost benefits which they would have received if the State agency had implemented these provisions as required.

(ii) The provisions of §272.1(b) regarding the prohibiton of State or local sales taxes on foods purchased with food stamp coupons shall be implemented on October 1 of the calender year during which the first regular session of each State's Legislature is convened following enactment of Pub. L. 99–198 (enacted December 23, 1985). A ''regular session'' means a scheduled session of a State's legislature convened to address the usual range of statutory and budgetary issues. A ''budgetary'' session of a legislature shall be considered a ''regular session'' if State rules allow for statutory issues

to be introduced at these ''budgetary'' sessions even if rules governing these special procedures are stringent.

(A) FCS may approve a delay in the above implementation date if a State provides FCS a request documenting that such date would either:

(*1*) Have an adverse and disruptive effect on the administration of the Food Stamp Program in such State; or

(*2*) would provide inadequate time for retail stores to implement required changes in sales tax policy.

(B) FCS has no authority to approve any State implementation schedule with an effective date later than October 1, 1987.

(75) *Amendment 273.* The State agency shall implement this amendment establishing Alaska urban, Rural I, and Rural II allotment levels by April 1, 1986.

(76) *Amendment 274.* (i) The provisions of this amendment at §§271.2, 273.2, 273.5, 273.9, 273.10(d)(6), and 273.21(b) shall be implemented for all new applications and the current caseload no later than August 1, 1986. If, for any reason, a State agency fails to implement these provisions on this date, households shall be provided lost benefits which they would have received if the State agency had implemented these provisions as required.

(ii) The provisions of this amendment at §273.18 and part 285 shall be implemented June 20, 1986.

(iii) The provisions of this amendment at §273.21(a)(4)(i)(A) and the second sentence in §273.10(f)(7) are effective retroactive to August 31, 1981. Section §273.21(a)(4)(ii)(A) and the first two sentences of §273.21(a)(4)(ii)(B) described in this amendment are retroactive to September 8, 1982. The provisions of this amendment at §§272.3, 273.21(a), 273.21(a)(3), 273.21(a)(4)(i)(B), the third sentence at §273.10(f)(7), and the last two sentences of §273.21(a)(4)(ii)(B) are effective retroactive to December 2, 1983. The provision of this amendment at §276.7(j) is effective retroactive to December 23, 1985.

(77) *Amendment 275.* The program change in §273.2(l) of Amendment 275 shall be effective October 1, 1986.

(78) *Amendment 276.* (i) This rule is effective retroactively to December 23, 1985. Any household that applied and was denied benefits from that date until implementation of this rule is entitled to restored benefits if it:

(A) Was categorically eligible as defined in this rule;

(B) Is otherwise entitled to benefits; and

(C) Requests a review of its case or if the State agency otherwise becomes aware that a review is needed.

Restored benefits for these households shall be made available, if appropriate, in accordance with §273.17 back to the date of the food stamp application or December 23, 1985, whichever is later. The State agency shall implement the changes in this rule immediately upon publication and any eligibility determination or issuance made on or after that date shall be made in accordance with this rule.

(ii) For quality control (QC) purposes only, QC reviewers shall not identify variances resulting solely from either implementation or nonimplementation of this rule in cases with review dates between December 23, 1985 and October 31, 1986, inclusive.

(79) *Amendment 277.* State agencies shall implement the provisions of Amendment 277 on August 22, 1986. If, for any reason, a State agency fails to implement the provisions, affected households shall be entitled to restored benefits but not prior to August 22, 1986.

(80) [Reserved]

(81) *Amendment 279.* (i) For State agencies which elected to implement a $160 dependent care deduction limit for all households prior to October 18, 1986, the dependent care deduction provision of Amendment No. 279 is effective retroactive to May 1, 1986 in accordance with section 638 of Pub. L. 99–500. In such States, for QC purposes only, QC reviewers shall not include in the error determination variances which resulted from early implementation by these States of the deduction limit provided the implementation occurred during the period beginning May 1, 1986 through October 1986.

(ii) For all other State agencies, the $160 dependent care deduction provision of Amendment No. 279 shall be implemented for elderly and disabled applicant and participating households

on December 1, 1986. State agencies shall implement the provision as a mass change in accordance with § 273.12(e), except that affected households in Alaska, Hawaii and Guam shall be issued an individual notice which, at a minimum, informs the households of the general nature of the mass change, the effect of the deduction limit on the household's allotment, and the month the change will take effect. If for any reason the State agency fails to implement the provision on the required date, affected households shall be provided restored benefits, back to December 1, 1986. For QC purposes only in such States, QC reviewers shall not include in the error determination variances which resulted solely from a State agency's implementation or nonimplementation of the deduction limit between December 1, 1986 and January 1, 1987.

(82) *Amendment 281.* State agencies shall implement the provisions of this amendment no later than April 1, 1987.

(83) *Amendment 282.* The changes to § 273.2(i)(3)(i) contained in Amendment No. 282 are effective January 12, 1987 and shall be implemented no later than February 11, 1987.

(84) *Amendment 285.* (i) The provisions of Amendment No. 285 at §§ 273.9(d)(6)(i), 273.9(d)(6)(ii), 273.9(d)(6)(v)(B), 273.10(d)(1)(i) and 273.10(d)(6) are retroactively effective to October 1, 1986. The State agency shall implement the provisions immediately upon publication and any eligibility determination made on or after that date shall be made in accordance with this rule. The State agency shall review a case to determine if the household was denied benefits under these amendments whenever the household requests a review or the State agency becomes aware that such a denial may have occurred. Any household that was denied benefits as a result of an eligibility or benefit calculation (e.g., processed change report) made on or after October 1, 1986 is entitled to restored benefits. Restored benefits for these households shall be made available, if approporiate, in accordance with § 273.17 back to: (A) October 1, 1986 or the date of application whichever is later for new applications; or (B) October 1, 1986 or the first month in which the application of these amendments would have affected the household's benefits, whichever is later, for certified households.

(ii) For quality control (QC) purposes only, a variance resulting solely from either the implementation or non-implementation of this rule shall not be identified between October 1, 1986 and April 1, 1987.

(85) *Amendment No. 286.* (i) The provisions of Amendment No. 286 which permit homeless meal providers to apply for authorization to accept food stamps were effective March 11, 1987.

(ii) All other provisions of this amendment were effective April 1, 1987.

(86) *Amendment No. 287.* The provisions of this amendment are effective April 7, 1987.

(87) *Amendment No. 288.* The removal of the word ''funded'' from the last sentence in § 273.11(e)(1), the amendments to the first and fourth sentences in § 278.1(e), and the revision of paragraph (a)(2)(iii) in § 273.11 are effective February 25, 1986 and shall be implemented not later than March 27, 1986.

(88) *Amendment No. 292.* (i) The effective date of the provisions of this amendment is retroactive to November 6, 1986.

(ii) The actual dates upon which aliens may become eligible under § 273.4(a) (8), (9), (10), and (11) are specified in those paragraphs. State agencies must inform their staff of the respective dates as they pertain to the eligibility or ineligibility of applicant aliens.

(89) *Amendment No. 293.* The provisions of Amendment No. 293 are effective retroactively to October 17, 1986 and shall be implemented as follows:

(i) State agencies shall implement the provisions of this amendment for new applicant households which apply for program benefits on or after June 1, 1987.

(ii) State agencies shall convert their affected current caseload to the provisions of this amendment at household request, at recertification, or when the case is next reviewed, whichever occurs first and provide restored benefits, if appropriate, back to the date of application of October 17, 1986, whichever occurred later.

(iii) Any affected household that applied for Program benefits from October 17, 1986 until implementation of this rule and was denied benefits is entitled to restored benefits back to the date of application or October 17, 1986, whichever occurred later, if the household:

(A) Is otherwise entitled to benefits, and

(B) Requests a review of its case or the State agency otherwise becomes aware that review is needed.

(iv) For quality control (QC) purposes only, QC shall not identify variances resulting solely from either implementation or nonimplementation of the provisions of this amendment for cases with review dates between October 17, 1986 (the date of enactment of Pub. L. 99–498) and August 31, 1987.

(90) *Amendment No. 294.* State agencies shall implement the Title IV–D child support income exclusion provision of Amendment No. 294 at its own option, provided it has procedures in place, at the time of implementation, for applying the provision to all affected households and for calculating and reimbursing FCS as required under the provision. State agencies shall implement the remaining provisions of Amendment No. 294 retroactively to April 1, 1987. State agencies shall provide restored benefits, if appropriate, back to the date of application or April 1, 1987, whichever occurred later. Any affected household that applied for Program benefits from April 1, 1987 until implementation of this rule and was denied benefits is entitled to restored benefits back to the date of application or April 1, 1987, whichever occurred later, if the household is otherwise entitled to benefits and requests a review of its case or the State agency otherwise becomes aware that a review is needed. The provision at 7 CFR 273.17, limiting restored benefits to 12 months, shall not apply to households entitled to resorted benefits under the provisions of *Amendment No. 294.* For QC purposes, implementation variances shall not be identified unless a case meets all four of the following conditions: the case's review date is after August 31, 1987; the State agency certified or recertified the case (or was required to recertify the case) after August 31, 1987; the certification or recertification was effective for the review date (or the required recertification should have been effective for the review date); and in a retrospective budget system, the household's budget month was September 1987 or later or in a prospective budget system, the household's issuance month was September 1987 or later. For the purpose of this amendment, State agencies shall not establish a claim against any household which received overissued benefits resulting solely from retroactive implementation of the JTPA income provision in § 273.9(b)(1)(v).

(91) *Amendment No. 295*—(i) *Automated Federal information exchange systems.* States' QC liability exemption for errors resulting from proper use of a Federal automatic information exchange system is effective beginning with the Fiscal Year 1986 reporting period.

(ii) *FCS timeframes.* The timeframes for notifying States of their payment error rates and payment error rate liabilities, if any, and the timeframe by which FCS must initiate collection action on claims for such liabilities are effective beginning with the Fiscal Year 1986 reporting period.

(92) *Amendment No. 284.* State agencies shall submit their ADP/CIS plans to FCS for approval no later than October 1, 1987. Portions of ADP/CIS plans may be submitted no later than January 1, 1988. Plans must be approvable within 60 days of State agency receipt of FCS comments but no later than March 1, 1988. State agencies must begin to implement provisions contained in their approved plans by October 1, 1988.

(93) *Amendment No. 298.* The provisions of Amendment No. 298 are effective, and shall be implemented, as follows:

(i) The provision in § 271.2 of this amendment which defines ''General assistance'' and the provisions contained in § 273.9(b)(2)(i), § 273.9(c)(1)(ii)(A), (c)(1)(ii)(B), and (c)(1)(ii)(C), regarding exclusion of certain PA/GA vendor payments are effective retroactively to April 1, 1987. The provision in § 273.9(c)(1)(iv)(B), exclusion of emergency/special PA/GA vendor payments, is also effective retroactive to April 1, 1987, however, this provision reflects

current policy and requires no implementation efforts by State agencies. State agencies shall immediately implement the other provisions listed above. Affected households shall be entitled to restored benefits back to the date of application or April 1, 1987, whichever occured later.

(ii) The technical amendment to part 277 is effective September 29, 1987, and does not require implementation efforts by State agencies. The remaining provisions of Amendment No. 298 are effective, and must be implemented, as follows:

(A) Section 271.2, definition of ''Homeless individual,'' effective July 22, 1987. State agencies shall immediately inform caseworkers of the new definition. No other implementation efforts are required to the State agencies.

(B) Section 273.9(c)(1)(ii)(D), the income exclusion of certain PA/GA vendor payments, is effective and shall be implemented for new applicant households which apply for benefits during the period beginning October 20, 1987 and ending September 30, 1989. This provision does not apply to allotments issued to any household for any month beginning before the effective period of the provision. State agencies shall convert their affected current caseload to this provision, if otherwise eligible, at recertification, when the household requests a review of its case, or when the State agency otherwise becomes aware that a review is needed but not prior to October 20, 1987.

(C) Section 272.5, the financial reimbursement for Program informational activities for the homeless, is effective July 22, 1987.

(D) Section 273.1(a)(2)(i)(C), § 273.1(a)(2)(i)(D), § 273.10(f)(2), the exception to certain household composition requirements, and the rule regarding recertification of households subject to the exception, are effective and must be implemented on October 1, 1987. Households which apply for benefits on or after October 1, 1987 may be granted separate household status under this provision. Current participants which may be eligible for separate household status under this provision, may be granted separate status, but not prior to October 1, 1987, if the household requests separate status and the State agency determines that the household meets the requirements of this provision.

(E) Section 273.2(i), the expansion of expedited service, is effective, and must be implemented, for affected households applying for Program benefits on or after December 1, 1987.

(F) Section 273.9(a)(3), regarding the date of making the annual adjustment to the income standards, is effective with the 1988 annual adjustment. The July 1, 1987 income limits will remain in effect until October 1, 1988.

(G) The first three sentences of § 273.9(d)(8)(i), the raising of the shelter deduction limit for the 48 States and DC., Alaska, Hawaii, Guam and Virgin Islands, are effective October 1, 1987. State agencies shall implement the higher deduction limits appearing in the first sentence of § 273.9(d)(8)(i) on October 1, 1987 only for households whose certification periods begin on or after October 1, 1987. State agencies shall implement the lower deduction limits appearing in the second sentence of § 273.9(d)(8)(i) on October 1, 1987 only for households whose certification periods begin before October 1, 1987. The State agency shall implement the higher deduction limits for households whose certification periods begin before October 1, 1987 beginning with the month in which such household is recertified after October 1, 1987.

(H) Section 273.9(d)(7)(i), the change in the standard deduction methodology, is effective October 1, 1987.

(I) The last sentence of § 273.9(d)(8)(i), the change in the excess shelter deduction methodology, is effective, October 1, 1988.

(J) Section 273.18(c)(2)(ii), the earned income deduction penalty, is effective on September 5, 1987. State agencies which issue on a calendar month basis, shall apply this provision to allotments issued for October 1987 and all allotments for subsequent months. State agencies which issue on other than a calendar month basis shall apply the provision to the issuance for the first issuance month beginning after September 5, 1987.

(iii) State agencies must implement the provisions as outlined in paragraph (g)(93)(ii) of this section on the specific

dates required for each provision. If, for any reason, the State agency fails to implement the provisions on the required date, affected households, if appropriate, shall be entitled to restored benefits back to the date of application or the effective date of the provision involved, whichever occurred later.

(iv) *Quality control variance exclusion.*

(A) For QC purposes only, QC reviewers shall not identify variances resulting solely from implementation or nonimplementation of the following provisions in cases with review dates during the periods indicated:

(*1*) Sections 273.9(b)(2)(i), 273.9(c)(1)(ii)(A), 273.9(c)(1)(ii)(B), 273.9(c)(1)(ii)(C) and 273.9(c)(1)(iv)(B), concerning PA/GA vendor payments, from April 1, 1987 to December 31, 1987;

(*2*) Section 271.2, concerning the definition of ''Homeless individual'', from July 22, 1987 to December 31, 1987;

(*3*) Section 273.9(c)(1)(ii)(D), concerning PA/GA vendor payments for certain housing assistance provided on behalf of households residing in temporary housing, from October 20, 1987 to December 31, 1987;

(*4*) Sections 273.1(a)(2)(i) (C) and (D), concerning household composition, from October 1, 1987 to December 31, 1987;

(*5*) Section 273.2(i), concerning entitlement to expedited service, from December 1, 1987 to December 31, 1987;

(*6*) Section 273.9(d)(8)(i), the first three sentences only, concerning the shelter deduction limit, from October 1, 1987 to December 31, 1987.

(B) State agencies may choose to exclude these variances in Federal subsample reviews; State agencies are not required to do so. To exclude the variances, they shall provide FCS with the following information by April 1, 1994: The review number of each affected Federal subsample review, the sample month, the reason and justification for excluding the variance, and the revised finding.

(94) *Amendment No. 299.* The changes to § 273.2(i)(3)(ii) are effective January 12, 1987 and shall be implemented no later than February 11, 1987.

(95) *Amendment No. 268.* The QC arbitration provisions shall be implemented by State agencies on February 22, 1988, for all cases for which the regional case findings or the regional arbitrator's decision are received on or after February 22, 1988.

(96) *Amendment 301.* This rule pertains to the Income and Eligibility Verification System (IEVS). It is effective March 18, 1988, except for paragraphs 272.8(i) (3) and (4) and 272.8(j)(1) which will be effective upon publication in the FEDERAL REGISTER of the approval of the information collection burden by the Office of Management and Budget (OMB).

(97) *Amendment No. 278.* State agencies shall implement the provisions of this amendment no later than October 18, 1988.

(98) *Amendment No. 303.* The income exclusion provision § 273.9(c) of *Amendment No. 303* shall be implemented immediately upon publication of the Amendment as follows:

(i) State agencies must apply the provision of this amendment for any eligibility or benefit calculation made on or after February 1, 1988.

(ii) Affected households which were denied benefits because the household's eligibility or benefit calculation during the second Federal fiscal year quarter of 1988 (but not prior to February 1, 1988) did not include the income exclusion provision of this amendment shall be entitled to restored benefits at the time of recertification, whenever the household requests a review of its case, or when the State agency otherwise becomes aware that a review of a particular case is needed.

(iii) Benefits shall be restored back to February 1, 1988 or the date of the food stamp application, whichever occured later. Restoration shall be made in accordance with § 273.17 except that the twelve-month limit for restoring benefits shall not apply.

(iv) For Quality Control (QC) purposes only, QC reviewers shall not identify variances resulting solely from implementation or nonimplementation of *Amendment No. 303* for cases with review dates between February 1, 1988 and August 31, 1988. For retrospectively budgeted cases, QC reviewers shall begin identifying variances when September becomes the budget month. Variances shall not be identified in cases where *Amendment No. 303* was not implemented prior to the QC review

when the State agency correctly followed the implementation provisions of this section.

(99) [Reserved]

(100) *Amendment 289.*

(i) This rule is effective August 11, 1988.

(ii) State agency Work Plans setting forth proposals for conducting Simplified Application/Standardized Benefit Projects must be postmarked no later than November 9, 1988. Local agency Work Plans must be postmarked no later than December 9, 1988.

(101) *Amendment No. 291.* The provisions of Amendment No. 291 are effective September 19, 1988.

(102) *Amendment No. 307.* The provisions of this amendment are effective immediately and shall be implemented as follows:

(i) No later than October 1, 1988, for all new applicants, and no later than the first recertification on or after October 1, 1988, for the participating caseload, State agencies shall implement the provisions of § 272.2(b) relating to the alien/citizenship statement and notification of verification with INS; the provisions of § 273.1(b) relating to nonhousehold members; the provisions of § 273.2(f)(1)(ii) relating to the mandatory verification of alien status; the provisions of § 273.2(h)(3) relating to delays in application processing; and the provisions of § 272.11(c) relating to the treatment of income and resources of nonhousehold members; and

(ii) Unless a waiver has been approved by FCS by October 1, 1988, State agencies shall implement all other provisions of this rule no later than October 1, 1988. Implementation by October 1, 1988 shall be accomplished either by obtaining FCS approval to a Plan of Operation as required in the rule at § 272.11(e) or by submitting to FCS a substantially approvable Plan of Operation as described in material which FCS Regional Offices provided State agencies on or about September 2, 1988. That material provided points for State agencies to consider relative to requesting waivers. State agencies should contact FCS Regional Offices if they need further guidance on waivers.

(103) *Amendment No. 308.* The quality control changes to § 275.12(d)(2) shall be implemented for the quality control review period beginning October 1, 1988.

(104) *Amendment No. 300.* State agencies shall implement the requirements of this rulemaking no later than May 1, 1989.

(105) *Amendment No. 271.* This rule becomes effective April 1, 1989, and the State agencies shall implement all provisions on that date, with the exception of the following provisions: the new provisions on replacement issuances shall be implemented *by* October 1, 1989; the new liabilities for State agencies using authorization document issuance systems shall be implemented *on* October 1, 1989; the new mail issuance reporting and liability assessments shall be implemented *on* October 1, 1989; State agencies wanting to change their current unit-level of mail issuance loss reporting must submit their initial plans *by* May 15, 1989; the new provision on quality control case reviews shall be implemented for federal Fiscal Year 1990; State agencies shall begin to use the revised Form *FCS–46,* Issuance Reconciliation Report, to report figures for the month of October 1989; and, provisions pertaining to staggered issuance contained in any currently-approved waivers will automatically be cancelled April 1, 1989.

(106) *Amendment No. 310.* (i) The provisions of this amendment which adopt, as final, interim provisions published July 17, 1987 and those which redesignate or otherwise slightly modify the July 17 interim provisions for clarity only are effective retroactively to April 1, 1987. The conforming amendment at § 273.11(e)(7) is effective retroactively to February 25, 1986. The remaining technical amendments contained in this amendment at § 273.2(e)(2), § 273.7(b)(1)(vii), § 273.9(b)(1)(iii), § 276.2(d) and § 278.1(e) are effective April 24, 1989. These provisions do not alter or change current policy or procedures under which State agency are operating or do not require special implementation efforts by State agencies.

(ii) The provision in § 273.9(b)(1)(v) which limits application of the provision to on-the-job training programs under section 204(5), Title II, of the Job Training Partnership Act is effective

retroactively to April 1, 1987 and shall be implemented as follows:

(A) State agencies shall implement the provision for all new applicant households no later than June 1, 1989. Affected applicant households which applied for Program benefits during the period April 1, 1987 and the date the State agency implemented this change and were denied benefits shall be provided restored benefits, if applicable, back to April 1, 1987 or the date of the food stamp application, whichever occurs later, if the household is otherwise entitled to benefits and requests a review of its case or the State agency otherwise becomes aware that a review is needed.

(B) All other households shall be converted to the provision at household request, at recertification, or when the case is next reviewed, whichever occurs first. Restored benefits shall be provided, if applicable, for such households back to April 1, 1987 or the date of the food stamp application, whichever occurs later.

(C) The provision at 7 CFR 273.17, limiting restored benefits to 12 months, does not apply for households entitled to restored benefits under *Amendment No. 310.*

(107) *Amendment No. 313.* The performance-based funding provisions for Employment and Training programs shall be effective October 1, 1989.

(108) *Amendment No. 314.* (i) The provision of *Amendment No. 314* which adds five sentences to § 273.2(j)(1)(iv) and the provisions which add a new paragraph § 273.2(j)(2)(iii)(B) and amend §§ 273.17 and 273.18 are effective July 7, 1989 and shall be implemented no later than September 1, 1989.

(ii) All remaining provisions of *Amendment No. 314,* which adopt the interim provisions of August 5, 1986 as final without change or modify the interim provisions for clarity only, are effective retroactively to December 23, 1985 (the effective date of the interim rulemaking). These provision do not reflect a change in intended policy and, therefore, do not require special implementation efforts by State agencies.

(109) *Amendment No. 315.* Program changes required by Amendment No. 315 to the food stamp regulations shall be implemented as follows:

(i) The provisions relating to migrant and seasonal farmworkers (7 CFR 273.9(c)(1)(ii)(E) and 273.10(a)(1)(ii)) are effective September 1, 1988 for all households applying or certified subsequent to August 31, 1988. Changes affecting currently participating households are to be implemented at recertification or when it is necessary to implement other changes affecting the household.

(ii) State agencies were required to implement the provision of this rule regarding a technical correction concerning energy assistance payments (7 CFR 273.9(c)(11)) on September 19, 1988.

(iii) State agencies were required to implement revised food stamp allotments on October 1, 1988 (7 CFR 271.2, 271.7, 273.10(e)(2), 273.10(e)(4)(ii), and 273.12(e)). Revised allotments were implemented as mass changes in accordance with 7 CFR 273.12(e).

(iv) State agencies were required to implement the provision relating to the dependent care deduction, 7 CFR 273.9(d)(4), 273.10(d)(1)(i), and 273.10(e)(1)(i)(E), and monthly reporting and retrospective budgeting, 7 CFR 273.21(a) and (b), on October 1, 1988. These provisions were immediately effective for all households certified subsequent to September 30, 1988. Changes affecting currently participating households were to be implemented upon recertification, at the household's request, or when it was necessary to implement other changes affecting the household. (For example, a change reported by a nonmonthly reporting retrospectively budgeted household was to be implemented in accordance with 7 CFR 273.12.) The Department was not requiring State agencies to conduct a casefile review to implement monthly reporting and retrospective budgeting changes for currently participating households. Monthly reports submitted by households which became exempt from MRRB as a result of the Hunger Prevention Act, such as non-migrant seasonal farmworkers or the homeless, were to be treated as change reports and processed prospectively in accordance with 7 CFR 273.12(c).

(v) State agencies were required to implement the provisions of this rule concerning the exclusion of advance payment of earned income tax credits,

7 CFR 273.8(c)(1) and 273.9(c)(14), on January 1, 1989. Households applying subsequent to December 31, 1988 should have had this provision applied to them as of their date of application. Changes affecting households participating as of December 31, 1988 were to be implemented upon recertification, at the household's request, or when it was necessary to implement other changes affecting the household.

(vi) All other provisions of this rule, relating to technical corrections concerning the urban Alaska TFP (7 CFR 272.7(c)), Alaska proration (7 CFR 272.7(f)(3)(iii)), and the dependent care deduction (7 CFR 273.11(c)(2)(iii) and 273.12(e)(1)(i)(C)), are to be implemented August 1, 1989.

(vii) Quality control errors made as a result of this rule's changes to §§ 273.9, 273.10, and 273.21 during the required implementation time frame established by this rulemaking shall be handled in accordance with interim regulations published at 53 *FR* 44171, dated November 2, 1988. Food stamp allotment changes are not covered by the interim regulation because this is a mass change.

(viii) State agencies which failed to implement any of these provisions by the required dates shall provide affected households with the lost benefits they would have received if the State agency had implemented these provisions as required.

(110) *Amendment No. 316.* State welfare agencies shall implement the provisions of *Amendment No. 316* as follows:

(i) The provisions contained in § 274.2(b) of *Amendment No. 316* are effective retroactively to January 1, 1989 and shall be implemented by State welfare agencies no later than January 1, 1990 for all households which newly apply for Program benefits or apply for recertification on or after that date.

(ii) The remaining provisions are effective July 1, 1989 and must be implemented on that date for all households which newly apply for Program benefits or apply for recertification on or after that date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first and restored benefits shall be provided, if appropriate, back to July 1, 1989 or the date of the application, whichever is later. Additionally, households which applied for Program benefits between July 1, 1989 and the date the State agency implemented these provisions, and were denied benefits, shall be entitled to restored benefits back to July 1, 1989 or the date of the application, whichever occurred later, if the household:

(A) Is otherwise entitled to benefits, and

(B) Requests a review of its case or the State agency otherwise becomes aware that a review is needed.

(111) *Amendment No. 296.* The provisions of Amendment 296 are effective July 5, 1989.

(112) *Amendment No. 309.* (i) The State agency shall have until June 18, 1990, to request regional arbitration of regional office case findings which the State received before February 22, 1988.

(ii) The State agency shall have until June 18, 1990, to request national office arbitration of regional arbitration decisions which the State agency received before February 22, 1988.

(113) *Amendment (320).* (i) The provisions of this rule are effective April 2, 1990.

(ii) The provisions relating to the Expanded Food and Nutrition Education Program (§ 272.5(b)(1)(iv)), the collection of fraud claims § 273.18, the monitoring of claims against households (§ 273.18(k)(5)), adverse action notice on claim demand letters (§ 273.18(d)(3)), notices of fair hearings (§ 273.18(d)(3)), and the results of geographic error prone profiles (§ 275.15(g)) shall be implemented no later than July 2, 1990. The provision relating to fraud detection units (§ 272.4(h)) shall be implemented no later than September 4, 1990. State agencies shall complete the first review of food stamp office hours (§ 272.4(g)) during Federal Fiscal Year 1990.

(iii) State agencies may submit attachments to their Plans of Operation pertaining to the intercept of unemployment compensation benefits to repay intentional Program violations claims as specified in § 272.2 (a) and (d) and § 272.12(a) of this amendment as of February 22, 1990.

(114) *Amendment No. 322.* The changes contained in this amendment are effective October 15, 1990 and shall be implemented no later than that date. The changes to 7 CFR 273.11 contained in this amendment will apply only to disqualifications imposed after the effective date of this rulemaking.

(115) *Amendment No. 324.* The quality control changes to § 275.12 that are made by Amendment No. 324 shall be implemented for the quality control review period beginning January 1, 1991.

(116) *Amendment No. 330.* The provisions of Amendment No. 330 are effective and must be implemented on August 1, 1991. Any variance resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 90 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii). The provisions must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits back to the required implemention date. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application, whichever is later.

(117) *Amendment No. 332.* The provision of *Amendment No. 332* regarding the resource exemption for PA and SSI recipients is effective and must be implemented no later than February 1, 1992. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 90 days from this required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be implemented for all households that newly applied for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits back to the required implementation date. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later.

(118) *Amendment No. 321.* (i) The provisions contained in § 273.7(d)(1)(ii)(A) and 273.9(c)(5)(i) (A) and (F) of Amendment No. 321, which implement section 404(c) of the Hunger Prevention Act of 1988, are effective and must be implemented retroactively to July 1, 1989.

(ii) The remaining provisions of Amendment No. 321 are effective October 1, 1988 and must be implemented no later than March 1, 1992. State agencies may implement the conciliation procedure provisions contained in § 273.7(g)(1)(ii) immediately upon publication of Amendment No. 321. However, in no case shall the conciliation procedures be implemented any later than March 1, 1992. By implemented, the Department means that the State agency shall begin to use conciliation procedures in all cases where the State agency has determined on or after the above implementation date that an individual has refused or failed to comply with an E&T requirement under § 273.7(f).

(119) *Amendment No. 328.* (i) The requirements for State agencies to begin implementation or corrective action for deficiencies which are the cause for non-entitlement to enhanced funding for the Fiscal Year 1986 review period, and review periods thereafter were effective as of October 1, 1985, pursuant to section 604 of Public Law 100–435.

(ii) The requirements for State agencies to begin the implementation of corrective action for deficiencies which result in underissuances, improper denials or improper terminations of benefits to eligible households where such errors are caused by State agency rules, practices or procedures were effective July 1, 1989, pursuant to section 320 of Public Law 100–435. The corrective action must address all such deficiencies which occurred on or after July 1, 1989.

(iii) The State agency shall have until December 27, 1991, to implement changes in the development of quality

control sampling plans, such that only those State agencies proposing nonproportional integrated, or other alternative sampling plan designs must:

(A) Demonstrate that the alternative design provides payment error rate estimates with equal-or-better predicted precision than would be obtained had the State agency reviewed simple random samples of the sizes specified in § 275.11(b)(1) of the regulations,

(B) Describe all weighting, and estimation procedures if the sample design is non-self-weighted, or uses a sampling technique other than systematic sampling,

(C) Demonstrate that self-weighting is actually achieved in sample designs claimed to be self-weighting.

(iv) The State agency shall have until January 27, 1992, to request regional arbitration of any federally subsampled underissuance cases for which the State agency received FCS regional office QC findings on or after February 22, 1988.

(v) The State agency shall have until January 27, 1992, to request national arbitration of any regional arbitration decisions involving underissuance cases for which the State agency received FCS regional arbitration findings on or after February 22, 1988.

(120) *Amendment No. 335.* The provisions contained in *Amendment No. 335* are effective and shall be implemented as follows:

(i) The provisions contained in §§ 271.2, 271.7, 273.1(e)(1)(iii), 273.2(k)(1)(i)(H), 273.2(m), 273.10, 273.18 and 278.1 of Amendment No. 335 are effective on February 1, 1992 and shall be implemented on that date as follows:

(A) The Guam and Virgin Islands State agencies shall communicate the two new group home provisions (§§ 271.2, 273.1(e)(1)(iii) and 278.1) to group homes in their areas by this date so that they can apply for the appropriate certification and residents can apply for food stamps without delay. All State agencies shall implement the expanded group home provisions for applicants newly applying for program benefits on or after February 1, 1992 for approved group homes.

(B) No special implementation efforts are required with regard to the provisions in §§ 273.2(k)(1)(i)(H) and 273.2(m) about informing SSI applicants about the Food Stamp Program and the availability of an application at the social security office.

(C) State agencies are not required to adjust their computers or train their caseworkers immediately in order to implement the provisions in §§ 271.2, 271.7, 273.10 and 273.18 relative to the minimum benefit for one- and two-person households because the methodology for annually adjusting the minimum benefit will not result in an increase in the minimum benefit for some time. However, State agencies are expected to have the capability of implementing a change in the minimum benefit in a timely manner when such a change in announced and, therefore, shall not wait until an actual change in the minimum benefit to adjust computers and train caseworkers.

(ii) The remaining provisions of Amendment No. 335 are effective February 1, 1992. The provisions which reflect that a joint application is no longer required for SSI applicants §§ 273.2 (c)(1), 273.2(i)(3)(i), and 273.2(k)(1)(i)(D) do not require implementation efforts by State agencies. The remaining provisions (§§ 273.4, 273.9(b) and 273.9(c)) also do not require special implementation efforts by State agencies as the provisions reflect current policy.

(iii) Any variance resulting from implementation of the provisions of this amendment shall be excluded from quality control error analysis for 90 days from the required implementation date which shall be handled in accordance with 7 CFR 275.12(d)(2)(vii).

(121) *Amendment No. 336.* The provisions of Amendment No. 336 are effective and must be implemented as follows:

(i) The provision that gives State agencies the option of using retrospective budgeting for nonmonthly reporting households other than those exempt from monthly reports (7 CFR 273.21(b) introductory text) was effective as of November 28, 1990, the date of enactment of the Leland Act.

(ii) The delegation of the responsibility for design of the monthly report form (§ 273.21(h)(3) and § 273.21(j)(1)(ii) of this chapter) must be implemented by February 1, 1992.

(iii) The remaining provisions are effective January 3, 1992 and must be implemented by July 1, 1992.

(iv) Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 90 days from the required implementation dates in accordance with 7 CFR 275.12(d)(2)(vii).

(122) *Amendment No. 337.* The provisions of Amendment No. 337 are effective and must be implemented as follows:

(i) State agencies shall implement the provisions of *Amendment No. 337* on February 1, 1992, except as provided in paragraph (g)(122)(ii) of this section.

(ii) The amendments to revise the introductory text of § 273.2(j) and § 273.2(j)(3) as they relate to categorical eligibility and the amendment adding § 273.2(j)(4) are effective and must be implemented February 1, 1992 for recipients of GA from a State program. They are effective and must be implemented August 1, 1992 for recipients of GA from a local program.

(iii) Any variance resulting from implementation of the provisions of this amendment shall be excluded from error analysis in accordance with 7 CFR 275.12(d)(2)(vii) for 90 days from the required implementation date. The provisions must be implemented for all households that newly apply for Program benefits on or after the required implementation date. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date, the date of the food stamp application or the date the household was determined categorically eligible in accordance with § 273.2(j)(4), whichever is later.

(iv) The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits back to the required implementation date.

(123) *Amendment No. 338.* The provisions of *Amendment No. 338* are effective and must be implemented on February 1, 1992. The provisions must be implemented for all households that newly apply for Program benefits on or after the required implementation date of February 1, 1992. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first. If, for any reason, a State agency fails to implement by the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of the food stamp application, whichever is later. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 90 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii).

(124) *Amendment No. 325.* The quality control changes to § 275.23 that are made by Amendment No. 325 shall be implemented effective January 24, 1992.

(125) *Amendment No. 345.* The provisions of Amendment No. 345 are effective on April 1, 1992, and shall be implemented as follows:

(i) Currently operating demonstration projects shall submit to FCS for approval a plan no later than June 30, 1992, to satisfy the requirements of this regulation. The plan shall address the areas in which the State EBT demonstration project does not comply with the provisions of this rule and how the State agency plans to bring its system into compliance. The State agency shall submit a schedule of any actions it proposes to take and when they are to be completed. Compliance with the provisions of this final regulation shall occur within two years from the effective date unless approved by FCS to continue operations under the authority of section 17 of the Act (7 U.S.C. 2026) as a demonstration project. In seeking FCS approval to continue under Section 17 authority, the State agency shall state what research value would be obtained in continuing the demonstration.

(ii) For State agencies that have proposals or planning documents currently under review by the Department, the State agencies and the Department shall establish at what point the State agency is in the planning process and how the State agency will fit into the approval process of these

rules. All such State agencies will be expected to comply with the standards of these rules.

(iii) A State agency that wishes to obtain approval for an EBT system shall submit a Planning Advanced Planning Document for FCS approval as prescribed herein.

(126) *Amendment No. 327.* (i) The statutory provision reflected in §275.23(e)(6)(v) of Amendment No. 327 was effective October 1, 1985 pursuant to Public Law 100–435.

(ii) The remaining provisions are effective October 28, 1992.

(127) *Amendment No. 340.* (i) The provisions at §273.7(d)(1)(i)(A) and §273.7(d)(1)(i)(B) are effective retroactive to October 1, 1991.

(ii) The provision at §273.7(c)(4)(viii) is effective and must be implemented by August 15, 1993, the date E&T plans must be submitted to FCS.

(iii) The provision at §273.10(d)(1)(i) is effective January 19, 1993 and must be implemented by March 1, 1993.

(iv) The remaining provisions of Amendment No. 340 are effective and must be implemented retroactively to February 1, 1992.

(v) Any variances resulting from implementation of the provision at §273.10(d)(1)(i) shall be excluded from error analysis for 90 days from the required implementation date in accordance with 7 CFR 273.12(d)(2)(vii).

(128) *Amendment No. 326.* The provisions of this amendment are effective and must be implemented no later than December 1, 1993. Any variance resulting from implementation of the provisions of this amendment shall be excluded from quality control error analysis for 60 days from the required implementation date which shall be handled in accordance with 7 CFR 275.12(d)(2)(vii).

(129) *Amendment No. 349.* The provisions of *Amendment No. 349* are effective, and shall be implemented, as follows:

(i) §273.1(a)(2)(i)(C), §273.1(a)(2)(i)(D) and §273.10(f)(2) are effective as of October 1, 1987; §273.2(i)(1) (iii) and (iv) are effective as of December 1, 1987; the new §273.9(c)(1)(ii)(G) is effective as of April 1, 1987. However, application of §273.9(c)(1)(ii)G) in conjunction with the provisions at §273.9 (c)(1)(ii) (A) through (F) and (c)(5)(i)(F) is effective as of the date the individual provisions at 7 CFR 273.9 (c)(1)(ii) (A) through (F) and (c)(5)(i)(F) became effective. Those dates are: §273.9(c)(1)(ii) (A), (B), and (C), April 1, 1987; §273.9(c)(1)(ii)(D), October 20, 1987; §273.9(c)(1)(ii)(E), September 1, 1988, and §273.9(c)(1)(ii)(F), August 1, 1991. The amendment to the first sentence of §273.9(c)(1)(iv)(B) to include a regulatory reference to 7 CFR 273.9(c)(5)(i)(F) is effective as of August 1, 1991 (the date the individual provision at 7 CFR 273.9(c)(5)(i)(F) became effective), and §273.18(c)(2)(ii) is effective as of September 5, 1987. To the extent that these provisions represent new or different policy from that under which the State agency is currently operating, the State agency shall implement the provisions not later than April 1, 1994 for households newly applying for Program benefits on or after such implementation date. State agencies shall convert their affected current caseload to these provisions (except for §273.18(c)(2)(ii)) at recertification, when the household requests a review of its case, or when the State agency otherwise becomes aware that a review is needed, whichever occurs first. To the extent that the provisions will result in restored benefits for affected households, such benefits shall be provided back to the effective date of the provision or the date of the household's first initial application, whichever occurs later;

(ii) The remaining provisions of *Amendment No. 349* adopt as final, without change, interim provisions published September 29, 1987 and are effective as of the date the corresponding interim provision became effective as established at 7 CFR 272.1(g)(93). These provisions and the effective dates are: §271.2, definition of ''Homeless individual,'' July 22, 1987; §272.5, July 22, 1987; §273.9(a)(3), October 1, 1988; §271.2, definition of ''General assistance,'' April 1, 1987; §273.9(b)(2)(i), April 1, 1987; §273.9(c)(1) (ii)(A), (ii)(B) and (ii)(C), April 1, 1987; §273.9(d)(7)(i), October 1, 1987; §273.9(d)(8)(i), October 1, 1987 (except for the last sentence, which is effective October 1, 1988). The provisions do not change policy or procedures under which State agencies are currently operating and, therefore, do not

require specific implementation efforts by State agencies.

(130) *Amendment No. 342.* The provision relating to household election of repayment method for IPV claims at § 273.18(d)(4)(ii) is effective retroactive to November 28, 1990. The provision relating to household election of repayment method for IHE claims at § 273.18(d)(4)(i) is effective December 13, 1991. The provisions for State agency retention rates on claim collections at § 273.18(h)(2) and (i) are effective retroactive to October 1, 1990. The provisions at § 277.18 which reduce the enhanced funding level for ADP is effective October 1, 1991, for costs incurred on that date and thereafter and does not apply to ADP funding approved prior to November 28, 1990.

(131) *Amendment No. 347.* The provisions of this amendment are effective as specified in paragraphs (g)(131)(ii)(A), (B), and (C) of this section. State agencies are not required to do file searches for cases relating to PASS households unless the question on an income exclusion for PASS had been raised with the State agency prior to December 13, 1991.

(i) The provisions at § 271.2, § 273.1, and § 273.11 were effective and had to be implemented no later than February 1, 1992.

(ii) The provision at § 273.9(c)(17) is effective the earlier of:

(A) December 13, 1991, the date of enactment of Pub. L. 102–237;

(B) October 1, 1990, for food stamp households for which the State agency knew, or had notice, that a household member had a PASS; or

(C) Beginning on the date that a fair hearing was requested contesting the denial of an income exclusion for amounts provided for a PASS.

(132) *Amendment No. 316.* The provisions of this final rule that amend 7 CFR 273.2(b)(3), 273.2(c)(5), 273.2(f)(8)(i)(A) and (ii), and paragraph (11) of the ''Elderly or disabled member'' definition in 7 CFR 271.2 are effective as of May 6, 1994. The State agency shall implement the provisions not later than September 5, 1994 for all households newly applying for Program benefits on or after such implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits back to the required implementation date. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 90 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii).

(133) *Amendment No. 352.* The provisions of this amendment are effective April 11, 1994.

(134) *Amendment No. 355.* The provisions of Amendment No. 355 are effective and must be implemented on August 1, 1994. Any variance resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii) as modified by section 13951(c)(2) of Pub. L. 103–66. The provisions must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits back to the required implementation date. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application, whichever is later.

(135) *Amendment No. 348.* The provisions of Amendment No. 348 are effective August 5, 1994 and must be implemented for all QC billing actions beginning with Fiscal Year 1986.

(136) *Amendment No. 346.* The provision of Amendment No. 346 regarding an income exclusion for homeless

households living in transitional housing is effective and must be implemented no later than September 1, 1994. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to such households back to the required implementation date or the date of application whichever is later. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application, whichever is later.

(137) *Amendment No. 350.* The provisions of Amendment No. 350 are effective and must be implemented as follows:

(i) The provision at § 273.8(e)(12)(i) of this chapter is effective and must be implemented according to statute retroactive to January 1, 1991.

(ii) The provision at § 273.8(e)(12)(ii) of this chapter will be effective and must be implemented on September 1, 1994.

(iii) The provision at § 273.21(b) of this chapter against establishing new monthly reporting requirements for households residing on Indian reservations if no monthly reporting system was in place on March 25, 1994 is effective and must be implemented according to statute retroactive to March 25, 1994.

(iv) The provision in § 273.2(j) of this chapter concerning categorical eligibility for GA recipients is effective and must be implemented according to statute retroactive to February 1, 1992.

(v) The remaining provisions are effective and must be implemented October 28, 1994.

(138) *Amendment No. 359.* The provision of *Amendment No. 359* regarding the medical expense deduction is effective and must be implemented no later than October 1, 1994. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 275.12(d)(2)(vii) of this chapter. The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. State agencies must notify households eligible for the deduction of the change in medical deduction reporting requirements and the right of the household to be converted to those new procedures immediately. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first.

(139) *Amendment No. 351.* The provisions of Amendment No. 351 to amend 7 CFR 273.7(d) are effective October 1, 1993. State agencies are not required to take any action to implement these provisions.

(140) *Amendment No. 333.* The provisions of Amendment No. 333 are effective and must be implemented as follows:

(i) The provisions relating to aggregated (combined) allotments to households applying after the 15th of the month and mail issuance in rural areas where households experience transportation difficulties in obtaining benefits are effective and must be implemented by statute retroactive to February 1, 1992.

(ii) The provision relating to staggered issuance on Indian reservations was in place on March 25, 1994, is effective and must be implemented according to statute retroactive to March 25, 1994.

(iii) The remaining provisions are effective and must be implemented September 1, 1995.

(141) *Amendment No. 360.* This provision is effective September 20, 1995, and must be implemented no later than the first day of the first month beginning December 19, 1995.

(142) *Amendment No. 357.* The provisions of Amendment No. 357 are effective and must be implemented as follows:

(i) The provision relating to the increased penalties at 7 CFR 273.16(b) is effective and must be implemented retroactive to September 1, 1994. This includes providing notification of the increased penalties on the application form.

(ii) The remaining provisions are effective and must be implemented October 23, 1995.

(143) *Amendment 367.* The provisions of Amendment 367 must be implemented no later than October 2, 1995 except that State agencies currently participating in the Federal Income Tax Refund Offset Program (FTROP) must implement section 272.2(d)(1)(xii), which relates to the submission of the Plan of Operations, within November 30, 1995.

(144) *Amendment No. (370).* The provisions of Amendment No. (370) are effective and must be implemented as follows:

(i) Sections 273.5(b)(1), (b)(4), and (b)(9) are effective February 1, 1992. The introductory paragraph of 273.5(b)(6) is effective February 1, 1992. The introductory paragraph of 273.5(b)(10) is effective February 1, 1992. Sections 273.5(b)(11)(ii), (b)(11)(iii), and (b)(11)(iv) are effective February 1, 1992.

(ii) Sections 273.5(b)(6)(i) and (b)(6)(ii) and sections 273.5(b)(10)(i) and (b)(10)(ii) and the remaining provisions of this regulation are effective November 1, 1995 and shall be implemented no later than February 1, 1996.

(iii) The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency shall provide restored benefits back to the effective date.

(iv) Any variance resulting from implementation of a provision in this rule shall be excluded from error analysis for 120 days from the required implementation date of that provision.

(145) *Amendment No. 369.* The provisions of *Amendment No. 369* are effective May 31, 1996. State agencies must implement no later than November 27, 1996. The provisions of this amendment are applicable for determinations of intentional failure to comply made on or after the effective date of the amendment.

(146) *Amendment No. 368.* The provisions of Amendment No. 368 are effective on July 29, 1996.

(147) *Amendment No. 364.* Except for the provisions of § 273.14(b)(2), the provisions of *Amendment No. 364* are effective November 18, 1996 and must be implemented no later than May 1, 1997. The effective date and implementation date of the provisions of § 273.14(b)(2) will be announced in a document in the FEDERAL REGISTER. The provisions must be implemented for all households that newly apply for Program benefits on or after either the required implementation date or the date the State agency implements the provision prior to the required implementation date. The current caseload shall be converted to these provisions following implementation at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to required implementation date or the date the State agency implemented the provision prior to the required implementation date. If for any reason a State agency fails to implement by the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later, but for no more than 12 months in accordance with § 273.17(a) of this chapter. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with § 275.12(d)(2)(vii) of this chapter and 7 U.S.C. 2025(c)(3)(A).

(148) *Amendment No. 362.* The provision of section 13921 of Public Law 103–66 establishing a child support deduction was effective September 1, 1994, and was required to be implemented no later than October 1, 1995. The provisions of Amendment No. 362 are effective December 16, 1996 and must be implemented no later than May 1, 1997. State agencies shall implement the provisions no later than the required implementation date. The provisions must be implemented for all households that newly apply for Program benefits on or after either the required

implementation date or the date the State agency implemented the provision prior to the required implementation date, whichever is earlier. State agencies are required to adjust the cases of participating households at the next recertification, at household request, or when the case is next reviewed, whichever comes first. State agencies which fail to implement or adjust cases by the required implementation date shall provide restored benefits as appropriate. For quality control purposes, any variances resulting from implementation of the provisions are excluded from error analysis for 120 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii) and 7 U.S.C. 2025(c)(3)(A). State agencies which implement prior to the required implementation date must notify the appropriate regional office prior to implementation that they wish the variance exclusion period to begin with actual implementation, as provided in 7 CFR 275.12(d)(2)(vii)(A). Absent such notification, the exclusionary period will begin with the required implementation date.

(149) *Amendment No. 374.* The Higher Education Act Amendments of 1986, as amended in 1987, were effective and required to be implemented for the 1988–89 school year; the Perkins Act was effective and required to be implemented on July 1, 1991; the Mickey Leland Act (as amended by the 1991 Technical Amendments to the Food Stamp Act) was effective and required to be implemented on February 1, 1992, and the exclusions contained in the Higher Education Act Amendments of 1992 for the Tribal Development Student Assistance Revolving Loan Program were effective and required to be implemented on October 1, 1992, and for Title IV and BIA student assistance on July 1, 1993. The provisions of Amendment No. 374 are effective December 16, 1996 and must be implemented by March 1, 1997. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. If implementation of the acts referenced in this paragraph or this amendment is delayed, benefits shall be restored, as appropriate, in accordance with the Food Stamp Act. Any variance resulting from implementation of this amendment shall be excluded from error analysis for 120 days from March 1, 1997.

(150) *Amendment No. 365.* This provision is effective December 16, 1996 and must be implemented no later than March 1, 1997. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with § 275.12(d)(2)(vii) of this chapter.

(151) *Amendment No. 375.* Public Law 103–66, the Mickey Leland Childhood Hunger Relief Act, was effective and required to be implemented on September 1, 1994. The provisions of Amendment No. 375 are effective December 16, 1996, and must be implemented by March 1, 1997. The State agency shall implement the provisions of this amendment no later than the appropriate required implementation date for all households newly applying for Program benefits on or after such implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits, as may be appropriate under the Food Stamp Act, back to the appropriate required implementation date. If for any reason a State agency fails to implement on the appropriate implementation date, restored benefits shall be provided, if appropriate, back to the appropriate required implementation date or the date of application, whichever is later. Any variances resulting from implementation of this amendment shall be excluded from quality control error analysis for 120 days from March 1, 1997.

(152) *Amendment No. 361* The provisions of *Amendment No. 361* are effective December 26, 1996, and must be implemented May 27, 1997. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be

implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to such households back to the required implementation date or the date of application whichever is later.

If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later, but for no more than 12 months in accordance with § 273.17(a) of this chapter.

(153) *Amendment No. 366.* (i) With the exception of the changes to § 275.3(c)(4) [Arbitration], § 275.23(e)(5) [State agencies' liabilities for payment error-Fiscal Year 1992 and beyond], § 275.23(e)(7) [Good Cause], and § 275.23(e)(9) [timeframes], all quality control changes that are made by Amendment No. 366 shall be implemented July 2, 1997.

(ii) The quality control changes to § 275.3(c)(4) [Arbitration], § 275.23(e)(5) [State agencies' liabilities for payment error-Fiscal Year 1992 and beyond], § 275.23(e)(7) [Good Cause], and § 275.23(e)(9) [Timeframes], shall be implemented after approval of the provisions at § 275.3(c)(4) [Arbitration], and § 275.23(e)(7) [Good Cause] by the Office of Management and Budget under the Paperwork Reduction Act of 1995. FCS will publish a notice in the Federal Register announcing the implementation date. It shall be a date occurring after the publication date of the notice.

[Amdt. 132, 43 FR 47884, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 272.1, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

### § 272.2 Plan of operation.

(a) *General purpose and content*—(1) *Purpose.* State agencies shall periodically plan and budget program operations and establish objectives. When planning and budgeting for program operations for the next year, State agencies shall consider major corrective action objectives, existing program strengths and deficiencies, and other factors anticipated to impact on the operation of the State's Food Stamp Program and on projected expenditures.

(2) *Content.* The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement, and the Program Activity Statement. In addition, certain attachments to the Plan are specified in this section and in § 272.3. The requirements for the basic components and attachments are specified in § 272.2(c) and § 272.2(d) respectively. The Federal/State Agreement is the legal agreement between the State and the Department of Agriculture. This Agreement is the means by which the State elects to operate the Food Stamp Program and to administer the program in accordance with the Food Stamp Act of 1977, as amended, regulations issued pursuant to the Act and the FCS-approved State Plan of Operation. The Budget Projection Statement and Program Activity Statement provide information on the number of actions and amounts budgeted for various functional areas such as certification and issuance. The Plan's attachments include the Quality Control Sample Plan, the Disaster Plan (currently reserved), the Employment and Training Plan, the optional Nutrition Education Plan, the optional plan for Program informational activities directed to low-income households, the optional plan for intercepting Unemployment Compensation (UC) benefits for collecting claims for intentional Program violations, the Systematic Alien Verification for Entitlements (SAVE) Plan, and the plan for the State Income and Eligibility Verification System. The State agency shall either include the Workfare Plan in its State Plan of Operation or append the Workfare Plan to the State Plan of Operation, as appropriate, in accordance with § 273.22(b)(3) of this chapter. The Workfare Plan shall be submitted separately, in accordance with § 273.22(b)(1) of this chapter. The ADP/CIS Plan is considered part of the State Plan of Operation but is submitted separately as prescribed under § 272.2(e)(8). State agencies and/or political subdivisions

selected to operate a Simplified Application/Standardized Benefit Project shall include that Project's Work Plan in the State Plan of Operation. The Plan's attachments shall also include the Mail Issuance Loss Reporting Level Plan. The Plan's attachments shall describe the State agency's review of direct-mail issuance requirements in rural areas. The Plan's attachments shall also include the commitment to conduct the optional Federal Income Tax Refund Offset Program and the Federal Salary Offset Program.

(b) *Federal/State Agreement.* (1) The wording of the pre-printed Federal/State Agreement is as follows:

The State of _____ and the Food and Consumer Service (FCS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food Stamp Act of 1977, as amended, implementing regulations and the FCS-approved State Plan of Operation. The State and FCS (USDA) further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to: 1. Administer the program in accordance with the provisions contained in the Food Stamp Act of 1977, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FCS-approved State Plan of Operation.

2. Comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), section 11(c) of the Food Stamp Act of 1977, as amended, the Age Discrimination Act of 1975 (Pub. L. 94–135) and the Rehabilitation Act of 1973 (Pub. L. 93–112, sec. 504) and all requirements imposed by the regulations issued pursuant to these Acts by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, race, color, age, political belief, religion, handicap, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under the Food Stamp Program.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FCS agrees to: 1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food Stamp Act of 1977, as amended.

Date _____

Signature _____

(Governor or Authorized Designee)

Date _____

Signature _____

(Regional Administrator, FCS)

(2) The State agency may propose alternative language to any or all the provisions listed in paragraph (b)(1) of this section. The alternative language is subject to approval by both parties before signature.

(c) *Budget Projection Statement and Program Activity Statement.* (1) The State agency shall submit to FCS for approval a Budget Projection Statement and Program Activity Statement in accordance with the submittal dates in § 272.2(e).

(i) The Budget Projection Statement solicits projections of the total costs for major areas of program operations. The Budget Projection Statement shall be submitted annually and updated as necessary through the year. The Budget Projection Statement shall contain projections for each quarter of the next Federal fiscal year. The State agency shall submit with the Budget Projection Statement a narrative justification documenting and explaining the assumptions used to arrive at the projections. The narrative shall cover such subjects as: The number and salary level of employees; other factors affecting personnel costs including anticipated increases in pay rates or benefits, and reallocations of staff among units or functions, insofar as these might result in cost increases or decreases; costs for purchasing, leasing, and maintaining equipment and space, especially as concerns any upcoming, one-time-only purchases of new capital assets such as ADP equipment, renegotiation of leases, changes in depreciation rates or procedures, relocation of offices, maintenance and renovation work, and inflation; issuance system costs, including renegotiation of issuing agent fees and plans to change issuance systems; changes in caseload and factors contributing to increases

or decreases in the number of participants; recertifications, including the anticipated impact of economic conditions (and in particular unemployment) and seasonality; cost implications of corrective action plans; anticipated changes in program regulations and operating guidelines and instructions; training needs; travel costs; and adjustments in insurance premiums. The narrative should cover as many of the items listed above, and any other items deemed relevant by the State agency, that will have a significant impact on costs. The State agency is not required to discuss every item in the list in every submission of a Budget Projection Statement. The narrative should concentrate on items that account for increases or decreases in costs from the preceding submissions.

(ii) The Program Activity Statement, to be submitted annually, solicits a summary of program activity for the State agency's operations during the preceding fiscal year.

(2) The organizational outline submitted in 1982 as an attachment to the Program Activity Statement shall be considered the basic outline. Henceforth, changes to this outline shall be provided to FCS as they occur. The outline contains the following information:

(i) The position of the head of the State agency responsible for administering the Food Stamp Program in relation to the overall State organizational structure, i.e., the Program Director in relation to the Commissioner of Welfare;

(ii) A description of the organizational structure through which the State agency will administer and operate the Food Stamp Program, including whether the Program is State, county, locally, or regionally-administered; whether the workers have single Food Stamp Program or multi-program functions; and the title and position of the individual or panel designated as the hearing authority and whether officials conduct both fair and fraud hearings.

(iii) A description of the funding arrangement by which State, county, and local jurisdictions will contribute to the State agency portion of administrative costs;

(iv) The position within the State organizational structure of the Performance Reporting System (PRS) coordinator, including whether the PRS coordinator is full or part-time, and is responsible for direct supervision over Quality Control or Management Evaluation or if these functions are handled separately, and whether quality control reviewers have single Food Stamp Program or multi-program review responsibilities;

(v) The position of the training coordinator and whether this is a full or part-time position; and

(vi) The organizational entity responsible for corrective action.

(3) *Additional attachments.* The following shall be attachments or addenda to the Program Activity Statement and shall be submitted as required in § 272.2(e)(3):

(i) The special plan required by § 277.15 when requesting Federal funding at the present 75 percent level for investigation and prosecution activities; and

(ii) For informational purposes (not subject to approval as part of the plan submission procedures), the agreements between the State agency and the United States Postal Service for coupon issuance, between the State agency and the Social Security Administration for supplemental security income/food stamp joint application processing and for routine user status.

(d) *Planning documents.* (1) The following planning documents shall be submitted:

(i) Quality Control Sampling Plan as required by § 275.11(a)(4);

(ii) Disaster Plan as required by § 280.6 (currently reserved), or certification that a previously submitted Disaster Plan has been reviewed and remains current;

(iii) Nutrition Education Plan if the State agency elects to request Federal Food Stamp Program administrative matching funds to conduct nutrition education programs as discussed in paragraph (d)(2) of this section.

(iv) A plan for the State Income and Eligibility Verification System required by § 272.8.

(v) Employment and Training Plan as required in §273.7 (c)(4) and (5).

(vi) ADP/CIS Plan as required by § 272.10.

(vii) A plan for the Systematic Alien Verification for Entitlements (SAVE) Program as required by § 272.11(e).

(viii) Mail Issuance Loss Reporting Level Plan required by § 276.2(b)(4), for the State agency using mail issuance, shall contain the unit level of reporting mail issuance losses for the upcoming fiscal year as elected by the State agency. If a State agency does not revise its Plan by August 15 in any given year, FCS shall continue to require reporting and to assess liabilities for the next fiscal year at the level last indicated by the State agency. If the agency has selected the unit provided for in § 276.2(b)(4)(ii), a listing of the issuance sites or counties comprising each administrative unit within the State agency shall also be included in the Plan.

(ix) A plan for Program informational activities as specified in § 272.5(c).

(x) A plan for intercepting UC benefits for collecting claims for intentional program violations as specified in § 272.12 if the State agency elects to use that procedure.

(xi) A plan to review direct-mail issuance requirements in rural areas. State agencies using direct-mail issuance throughout the State with exceptions only for individual households, shall simply state this fact. State agencies which use methods of benefit issuance other than direct-mail issuance in any part of the State shall submit an attachment to their State Plan of Operation which includes the State agency's procedure for reviewing direct-mail issuance requirements in rural areas, and the results of applying that procedure for designating parts of, or entire, project areas as requiring direct-mail issuance because they are rural, and are areas in which benefit-eligible households face substantial difficulties in obtaining transportation. The requirements for this attachment to the State Plan of Operation are described in § 274.2(g) of this chapter.

(xii) If the State agency chooses to implement the Federal Income Tax Refund Offset Program and the Federal Salary Offset Program, the Plan's attachments shall include a statement in which the State agency states that it will comply with the provisions of Sections 273.18 (g)(5) and (g)(6) of this chapter.

(2) *Nutrition Education Plan.* If submitted, the Nutrition Education Plan shall contain:

(i) The number and positions of staff that will be conducting nutrition education;

(ii) Description of activities in the nutrition education program; and

(iii) Assurance that nutrition education programs for which USDA provides Food Stamp Program administrative matching funds are conducted exclusively for the benefit of Food Stamp Program applicants and participants and do not duplicate USDA's Expanded Food and Nutrition Education Program's efforts in the State.

(e) *Submittal requirements.* States shall submit to the appropriate FCS Regional Office for approval each of the components of the Plan of Operation for approval within the timeframes established by this paragraph. Approval or denial of the document may be withheld pending review by FCS. However, if FCS fails to either approve, deny, or request additional information within 30 days, the document is approved. If additional information is requested, the State agency shall provide this as soon as possible, and FCS shall approve or deny the Plan within 30 days after receiving the information.

(1) The Federal/State agreement shall be signed by the Governor of the State or authorized designee and shall be submitted to FCS within 120 days after publication of these regulations in final form and shall remain in effect until terminated.

(2) The Budget Projection Statement and Program Activity Statement shall be signed by the head of the State agency or its chief financial officer and submitted as follows:

(i) The Budget Projection Statement shall be submitted annually, no later than August 15 of each year.

(ii) The Program Activity Statement shall be submitted annually, not later than 45 days after the end of the State agency's fiscal year. The first report is due 45 days after the end of the State's 1981 fiscal year. The first report is not

required to contain information that is not currently captured by the State agency's information system. State agencies shall amend their data gathering systems so that all items can be completed on the second report, due for the 1982 fiscal year.

(3) Changes to the organizational outline required by § 272.2(c)(2) and the agreements with other agencies outlined in § 272.2(c)(3)(ii) shall be provided to FCS as changes occur. The attachments outlined in § 272.2(c)(3)(i) shall be submitted annually with the Program Activity Statement.

(4) The Quality Control Sampling Plan shall be signed by the head of the State agency and submitted to FCS prior to implementation as follows:

(i) According to the timeframes specified in paragraph (e)(4)(ii) of this section, prior to each annual review period each State agency shall submit any changes in their sampling plan for FCS approval or submit a statement that there are no such changes. These submittals shall include the statement required by § 275.11(a)(2), if appropriate. The Quality Control Sampling Plan in effect for each State agency as of the beginning of Fiscal Year 1984 shall be considered submitted and approved for purposes of this section, provided that the State agency has obtained prior FCS approval of its sampling plan.

(ii) Initial submissions of and major changes to sampling plans and changes in sampling plans resulting from general changes in procedure shall be submitted to FCS for approval at least 60 days prior to implementation. Minor changes to approved sampling plans shall be submitted at least 30 days prior to implementation.

(5) Disaster Plan. [Reserved]

(6) The Nutrition Education Plan shall be signed by the head of the State agency and submitted prior to funding of nutrition education activities when the State agency elects to request Federal administrative matching funds to conduct Nutrition Education Programs. The plan shall then be submitted annually no later than August 15. The initial submission may be for a period of less than or more than a year in order to meet the August 15 deadline.

(7) Where applicable, State agencies shall consult (on an ongoing basis) with the tribal organization of an Indian reservation about those portions of the State Plan of Operation pertaining to the special needs of the members of the tribe.

(8) *ADP/CIS Plan.* The ADP/CIS Plan shall be signed by the head of the State agency and submitted to FCS by October 1, 1987. State agencies which require additional time to complete their ADP/CIS plan may submit their plan in two phases as described in § 272.10(a)(2), with the first part of the plan being submitted October 1, 1987. State agencies requiring additional time shall submit the second part of their plans by January 1, 1988. If FCS requests additional information to be provided in the State agency ADP/CIS Plan or if FCS requests that changes be made in the State agency ADP/CIS Plan, State agencies must comply with FCS comments and submit an approvable ADP/CIS Plan within 60 days of their receipt of the FCS comments but in no event later than March 1, 1988. Requirements for the ADP/CIS plan are specified in § 272.10.

(9) The Employment and Training Plan shall be submitted as specified under § 273.7(c)(5).

(f) *Revisions.* Revisions to any of the planning documents or the Program and Budget Summary Statement shall be prepared and submitted for approval to the appropriate FCS Regional Office in the same manner as the original document. However, revisions to the budget portion of the Budget Projection Statement and Program Activity Statement shall be submitted as follows:

(1) *Program funds.* (i) For program funds, State agencies shall request prior approvals promptly from FCS for budget revisions whenever:

(A) The revision indicates the need for additional Federal funding;

(B) The program budget exceeds $100,000, and the cumulative amount of transfers among program functions exceeds or is expected to exceed five percent of the program budget. The same criteria apply to the cumulative amount of transfers among functions and activities when budgeted separately for program funds provided to a subagency, except that FCS shall permit no transfer which would cause any

Federal appropriation, or part thereof, to be used for purposes other than those intended;

(C) The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs; or

(D) The revisions pertain to the addition of items requiring prior approval by FCS in accordance with the provisions of the applicable cost principles specified in part 277 appendix A of the regulations.

(ii) No other changes to the Program fund budget require approval from FCS. Examples of changes which do not require Federal approval are: The use of State agency funds to accomplish program objectives over and above the State agency minimum share included in the approved Program budget; and the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

(iii) The requirements of paragraph (f)(1)(i)(B) of this section may be waived by FCS provided that:

(A) No different limitation or approval requirement may be imposed; and,

(B) FCS shall not permit a transfer which would cause any Federal appropriation, or part, thereof, to be used for purpose other than those intended.

(2) *Authorized funds exceeding State agency needs.* When it becomes apparent that the funds authorized by the Letter of Credit will exceed the needs of the State agency, FCS will make appropriate adjustments in the Letter of Credit in accordance with part 277.

(3) *Method of requesting approvals.* When requesting approval for budget revisions, State agencies shall use the same format as the Budget Projection Statement used in the previous submission. However, State agencies may request by letter the approvals required by paragraph (f)(1)(i)(D) of this section.

(4) *Notification of approval or disapproval.* Within 30 days from the date of receipt of the request for budget revisions, FCS shall review the request and notify the State agency whether or not the budget revisions have been approved. If the revision is still under consideration at the end of 30 days, FCS shall inform the State agency in writing as to when the decision will be made.

[Amdt. 156, 46 FR 6315, Jan. 21, 1981]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §272.2, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

### §272.3 Operating guidelines and forms.

(a) *Coverage of operating guidelines.* State agencies shall prepare and provide to staff responsible for administering the Program written operating procedures. In those States which have State regulations that outline these Operating Procedures, these are equivalent to Operating Guidelines. Other examples of Operating Guidelines are manuals, instructions, directives or transmittal memos. The following categories shall be included in the Operating Guidelines:

(1) Certification of households, including but not limited to:

(i) Application processing;

(ii) Nonfinancial eligibility standards;

(iii) Financial criteria and the eligibility determination;

(iv) Actions resulting from eligibility determinations;

(v) Determining eligibility of special situation households as specified in §273.11;

(vi) Additional certification functions such as processing changes during certification periods and reporting requirements for households;

(vii) Lost benefits/claims against households;

(viii) Fair/fraud hearings;

(ix) A list of Federal and State energy assistance programs that qualify for the resource and income exclusions discussed in §273.8(e)(14) and §273.9(c)(11) and how these payments are identified as being eligible for the exemption;

(x) Work registration and employment and training requirements.

(2) Issuance, accountability, and reconciliation;

(3) The Performance Reporting System, including instructions or directives for conducting quality control and management evaluation reviews and the quality control sample plan;

(4) A description of the training program, including a listing of the organizational component which conducts

training, to whom and how often training is provided;

(5) The fair/fraud hearing procedures if not included in the Certification Handbook.

(6) The consultation process (where applicable) with the tribal organization of an Indian reservation about the State Plan of Operation and Operating Guidelines in terms of the special needs of members of the tribe and the method to be used for incorporating the comments from the tribal organization into the State Plan of Operations and Operating Guidelines.

(b) *Submittal of operating guidelines and forms.* (1) State agencies shall develop the necessary forms, except the Application for Food Stamps, and other operating guidelines to implement the provisions of the Food Stamp Act and regulations. In accordance with § 273.2(b) and § 273.12(b)(1) State agencies shall use the FCS-designed Application for Food Stamps or an FCS-approved deviation.

(2) State agencies shall submit their operating guidelines and forms and amendments to these materials to FCS for review and audit purposes simultaneous with distribution within the States.

(3) State agencies may request that FCS review and provide comments on their operating guidelines, forms and any amendments to these materials prior to distribution of the materials within the State.

(4) If deficiencies are discovered in a State agency's materials, FCS shall provide the State agency with written notification.

(c) *Waivers.* (1) The Administrator of the Food and Consumer Service or Deputy Administrator for Family Nutrition Programs may authorize waivers to deviate from specific regulatory provisions. Requests for waivers may be approved only in the following situations:

(i) The specific regulatory provision cannot be implemented due to extraordinary temporary situations such as a sudden increase in the caseload due to the loss of SSI cash-out status;

(ii) FCS determines that the waiver would result in a more effective and efficient administration of the program; or

(iii) Unique geographic or climatic conditions within a State preclude effective implementation of the specific regulatory provision and require an alternate procedure; for example, the use of fee agents in Alaska to perform many of the duties involved in the certification of households including conducting the interviews.

(2) FCS shall not approve requests for waivers when:

(i) The waiver would be inconsistent with the provisions of the Act; or

(ii) The waiver would result in material impairment of any statutory or regulatory rights of participants or potential participants.

(3) FCS shall approve waivers for a period not to exceed one year unless the waiver is for an on-going situation. If the waiver is requested for longer than a year, appropriate justification shall be required and FCS will determine if a longer period is warranted and if so, the duration of the waiver. Extensions may be granted provided that States submit appropriate justification as part of the State Plan of Operation.

(4) When submitting requests for waivers, State agencies shall provide compelling justification for the waiver in terms of how the waiver will improve the efficiency and effectiveness of the administration of the Program. At a minimum, requests for waivers shall include but not necessarily be limited to:

(i) Reasons why the waiver is needed;

(ii) The portion of caseload or potential caseload which would be affected and the characteristics of the affected caseload such as geographic, urban, or rural concentration;

(iii) Anticipated impact on service to participants or potential participants who would be affected;

(iv) Anticipated time period for which the waiver is needed; and

(v) Thorough explanation of the proposed alternative provision to be used in lieu of the waived regulatory provision.

(5) Notwithstanding the preceding paragraphs, waivers of the certification period timeframes as described in § 273.10(f) may be granted by the Administrator of the Food and Consumer Service or the Deputy Administrator

for Family Nutrition Programs as provided in section 3(c) of the Act. Waivers authorized by this paragraph are not subject to the public comment provisions of §272.3(d).

(6) Notwithstanding the preceding paragraphs, waivers may be granted by the Administrator of the Food and Consumer Service or the Deputy Administrator for Family Nutrition Programs as provided in section 5(f) of the Act. Waivers authorized by this paragraph are not subject to the public comment provisions of §272.3(d).

(7) Notwithstanding the preceding paragraphs, waivers may be granted by the Administrator of the Food and Consumer Service or the Deputy Administrator for Family Nutrition Programs as provided in section 6(c) of the Act. Waivers authorized by this paragraph are not subject to the public comment provisions of §272.3(d).

(d) *Public comment.* State agencies shall solicit public input and comment on overall Program operations as State laws require or as the individual State agency believes would be useful.

[Amdt. 156, 46 FR 6315, Jan. 21, 1981]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §272.3, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

### §272.4 Program administration and personnel requirements.

(a) *Merit personnel.* (1) State agency personnel used in the certification process shall be employed in accordance with the current standards for a merit system of personnel administration or any standards later prescribed by the U.S. Civil Service Commission under section 208 of the Intergovernmental Personnel Act of 1970.

(2) State agency employees meeting the standards outlined in paragraph (a)(1) of this section shall perform the interviews required in §273.2(e). Volunteers and other non-State agency employees shall not conduct certification interviews or certify food stamp applicants. Exceptions to the use of State merit system personnel in the interview and certification process are specified in §273.2(k) for SSI households, §272.7(d) for households residing in rural Alaska, and part 280 for disaster victims. State agencies are encouraged to use volunteers in activities such as outreach, prescreening, assisting applicants in the application and certification process, and in securing needed verification. Individuals and organizations who are parties to a strike or lockout, and their facilities, may not be used in the certification process except as a source of verification for information supplied by the applicant. Only authorized employees of the State agency, coupon issuers, coupon bulk storage points, and Federal employees involved in administration of the program shall be permitted access to food coupons, ATP's, or other issuance documents.

(b) *Bilingual requirements.* (1) Based on the estimated total number of low-income households in a project area which speak the same non-English language (a single-language minority), the State agency shall provide bilingual program information and certification materials, and staff or interpreters as specified in paragraphs (b) (2) and (3) of this section. Single-language minority refers to households which speak the same non-English language and which do not contain adult(s) fluent in English as a second language;

(2) The State agency shall provide materials used in Program informational activities in the appropriate language(s) as follows:

(i) In project areas with less than 2,000 low-income households, if approximately 100 or more of those households are of a single-language minority;

(ii) In project areas with 2,000 or more low-income households, if approximately 5 percent or more of those households are of a single-language minority; and

(iii) In project areas with a certification office that provides bilingual service as required in paragraph (b)(3) of this section.

(3) The State agency shall provide both certification materials in the appropriate language(s) and bilingual staff or interpreters as follows:

(i) In each individual certification office that provides service to an area containing approximately 100 single-language minority low-income households; and

(ii) In each project area with a total of less than 100 low-income households

if a majority of those households are of a single-language minority.

(A) Certification materials shall include the food stamp application form, change report form and notices to households.

(B) If notices are required in only one language other than English, notices may be printed in English on one side and in the other language on the reverse side. If the certification office is required to use several languages, the notice may be printed in English and may contain statements in other languages summarizing the purpose of the notice and the telephone number (toll-free number or a number where collect calls will be accepted for households outside the local calling area) which the household may call to receive additional information. For example, a notice of eligibility could in the appropriate language(s) state:

Your application for food stamps has been approved in the amount stated above. If you need more information telephone _____.

(4) In project areas with a seasonal influx of non-English-speaking households, the State agency shall provide bilingual materials and staff or interpreters, if during the seasonal influx the number of single-language minority low-income households which move into the area meets or exceeds the requirements in paragraphs (b) (2) and (3) of this section.

(5) The State agency shall insure that certification offices subject to the requirements of paragraph (b) (3) or (4) of this section provide sufficient bilingual staff or interpreters for the timely processing of non-English-speaking applicants.

(6) The State agency shall develop estimates of the number of low-income single-language minority households, both participating and not participating in the program, for each project area and certification office by using census data (including the Census Bureau's Current Population Report: Population Estimates and Projections, Series P–25, No. 627) and knowledge of project areas and areas serviced by certification offices. Local Bureau of Census offices, Community Services Administration offices, community action agencies, planning agencies, migrant service organizations, and school officials may be important sources of information in determining the need for bilingual service. If these information sources do not provide sufficient information for the State agency to determine if there is a need for bilingual staff or interpreters, each certification office shall, for a 6-month period, record the total number of single-language minority households that visit the office to make inquiries about the program, file a new application for benefits, or be recertified. Those certification offices that are contacted by a total of over 100 single-language minority households in the 6-month period shall be required to provide bilingual staff or interpreters. State agencies shall also combine the figures collected in each certification office to determine the need for bilingual outreach materials in each project area.

(c) *Internal controls*—(1) *Requirements.* In order to safeguard certification and issuance records from unauthorized creation or tampering, the State agency shall establish an organizational structure which divides the responsibility for eligibility determinations and coupon issuance among certification, data management, and issuance units. The certification unit shall be responsible for the determination of household eligibility and the creation of records and documents to authorize the issuance of coupons to eligible households. The data management unit, in response to input from the certification unit, shall create and maintain the household issuance record (HIR) master file on cards, computer discs, tapes, or similar memory devices. The issuance unit shall provide certified households with the authorized allotments. In cases where personnel are periodically, or on a part-time basis, shifted from one unit to another, supervisory controls should be sufficient to assure that the unauthorized creation or modification of case records is not possible.

(2) *Exceptions.* With prior written FCS approval, a project area may combine unit responsibilities if the controls specified in paragraph (c)(1) of this section have been found to be administratively infeasible.

(i) To receive approval of combined operations, the State agency shall establish special review requirements which at a minimum include:

(A) Biweekly reconciliation and verification of transactions; and

(B) Semiannual comparison of HIR cards and case records as required by § 274.6(d) and, at least once every other month, second-party review of certification actions.

(ii) The State agency shall annually determine whether each combined operation continues to be justified and shall so advise FCS in writing.

(d) *Training*—(1) *Minimum requirements.* (i) The State agency shall institute a continuing training program for food stamp eligibility workers, hearing officials, and performance reporting system reviewers. Sufficient training shall be provided to these people prior to their initial assumption of duties and, subsequently, on an as-needed basis. Training must convey the goals and methods for promptly and accurately certifying eligible households.

(ii) The State agency shall provide sufficent staff time to ensure that the minimum training requirements are met.

(2) *Additional training.* At their option, State agencies may provide or contract to provide training and assistance to persons working with volunteer or nonprofit organizations that provide program information activities or eligibility screening to persons potentially eligible for food stamps.

(3) *FCS Review.* FCS will review the effectiveness of State agency training based on information obtained from the performance reporting system and other sources.

(e) *Court suit reporting.* (1) State agency responsibility. (i) In the event that a State agency is sued by any person(s) in a State or Federal Court in any matter which involves the State agency's administration of the Food Stamp Program, the State agency shall immediately notify FCS that suit has been brought and shall furnish FCS with copies of the original pleadings. State agencies involved in suits shall, upon request of FCS, take such action as is necessary to join the United States and/or appropriate officials of the Federal Government, such as the Secretary of USDA or the Administrator of FCS, as parties to the suit. FCS may request to join the following types of suits:

(A) Class action suits;

(B) A suit in which an adverse decision could have a national impact;

(C) A suit challenging Federal policy such as a provision of the Act or regulations or an interpretation of the regulations; or,

(D) A suit based on an empirical situation that is likely to recur.

(ii) FCS may advise a State agency to seek a settlement agreement of a court suit if the State agency is being sued because it misapplied Federal policy in administering the Program.

(iii) State agencies shall notify FCS when court cases have been dismissed or otherwise settled. State agencies shall also provide FCS with information that is requested regarding the State agency's compliance with the requirements of court orders or settlement agreements.

(2) FCS shall notify all State agencies of any suits brought in Federal court that involve FCS' administration of the Program and which have the potential of affecting many State agencies' Progam operations. (State agencies need not be notified of suits brought in Federal Court involving FCS' administration of the Program which may only affect Program operations in one or two States.) The notification provided to State agencies shall contain a description of the Federal policy that is involved in the litigation.

(f) *State monitoring of duplicate participation.* (1) Each State agency shall establish a system to assure that no individual participates more than once in a month, in more than one jurisdiction, or in more than one household within the State in the Food Stamp Program. To identify such individuals, the system shall use names and social security numbers at a minimum, and other identifiers such as birth dates or addresses as appropriate.

(i) If the State agency detects a large number of duplicates, it shall implement other measures, such as more frequent checks or increased emphasis on prevention.

(ii) If the State agency provides cash assistance in lieu of coupons for SSI recipients or for households participating in cash-out demonstration projects, the State agency shall check to assure that no individual receives both coupons and other benefits provided in lieu of coupons. Checks to detect individuals receiving both food coupons and cash-out benefits, or any other form of duplicate benefits, shall be made at the time of certification, recertification, and whenever a new member is added to an existing household. However, if the State agency can show that these time frames are incompatible with its system, the State agency shall check for duplicate benefits when necessary, but no less often than annually.

(2) Processing standards for duplicate participation checks at certification and recertification shall not delay the issuance of benefits.

(i) If the State agency chooses to check at the time of certification and recertification, the check for duplicates shall not delay processing of the application and provision of benefits beyond the normal processing standards in § 273.2(g).

(ii) If a duplicate is found in making such a check, the duplication needs to be resolved in accordance with § 273.2(f)(4)(iv) before the application can be processed and benefits provided. Delays in processing caused by this resolution shall be handled in accordance with § 273.2(h).

(3) State agencies shall develop follow-up procedures and corrective action requirements, including time frames within which action must be taken, to be applied to data obtained from matching for duplicate participation. Follow-up actions shall include, but not be limited to, the adjustment of benefits and eligibility, filing of claims, disqualification hearings, and referrals for prosecution, as appropriate.

(4) FCS reserves the right to review State agencies' use of data obtained from matching for duplicate participation and may require State agencies to take additional specific action to ensure that such data is being used to protect Program integrity.

(g) *Hours of operation.* State agencies shall be responsible for determining the hours that food stamp offices shall be open. At least once annually, State agencies shall review the hours of operation of food stamp offices to ensure that the needs of recipients who work, including issuance services operated at these offices, are adequately met. Based on the results of the reviews, State agencies may find it necessary to change the hours that food stamp offices are open to meet the needs of such recipients. The results of these reviews shall be retained at the State level for review by FCS.

(h) *Fraud detection units.* State agencies shall establish and operate fraud detection units in all project areas in which 5,000 or more households participate in the Program. The fraud detection unit shall be responsible for detecting, investigating and assisting in the prosecution of Program fraud and need not be physically located in each 5,000 household ''catchment area''. The workers fulfilling this function need not work full-time in fraud detection nor work exclusively on the Program. A written State agency procedure which systematically identifies and refers potential fraud cases to Investigators shall be considered a ''detection'' activity meeting the requirements of this section. The fraud detection function may be performed by persons not employed by the State agency.

[Amdt. 132, 43 FR 47884, Oct. 17, 1978, as amended by Amdt. 221, 47 FR 35168, Aug. 13, 1982; Amdt. 211, 47 FR 53315, Nov. 26, 1982; Amdt. 237, 47 FR 57668, 57669, Dec. 28, 1982; Amdt. 262, 49 FR 50597, Dec. 31, 1984; 54 FR 7003, Feb. 15, 1989; 54 FR 24527, June 7, 1989; Amdt. 320, 55 FR 6238, Feb. 22, 1990; Amdt. 371, 61 FR 60010, Nov. 26, 1996]

### § 272.5 Program informational activities.

(a) *Definition.* ''Program informational activities'' are those activities that convey information about the Program, including household rights and responsibilities, through means such as publications, telephone hotlines, and face-to-face contacts.

(b) *Minimum requirements.* State agencies shall comply with the following minimum information requirements for applicants and recipients.

(1) *Nutrition information.* (i) FCS will supply State agencies with posters and

pamphlets containing information regarding foods with substantial amounts of the recommended daily allowances of protein, minerals, and vitamins; menus making use of these foods; and the relationship between health and diet;

(ii) Printed materials such as posters, fliers, and pamphlets, that explain the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and, where available, the Commodity Supplemental Food Program (CSF) shall be supplied by agencies administering the WIC and CSF programs (where available);

(iii) State agencies shall display the posters and make the pamphlets available at all food stamp and public assistance offices.

(iv) State agencies shall encourage program participants to participate in the Expanded Food and Nutrition Education Program (EFNEP) and, wherever practicable, allow EFNEP personnel to come into food stamp offices to distribute informational materials and speak with food stamp recipients.

(2) Rights and responsibilities. State agencies shall inform participant and applicant households of their Program rights and responsibilities. This information may be provided through whatever means the State agencies deem appropriate.

(3) All Program informational material shall be available in languages other than English as required in §272.4(b) and shall include a statement that the Program is available to all without regard to race, color, sex, age, handicap, religious creed, national origin or political belief.

(c) *Program informational activities for low-income households.* At their option State agencies may carry out and claim associated costs for Program informational activities designed to inform low-income households about the availablity, eligibility requirements, application procedures, and benefits of the Food Stamp Program. Program informational materials used in such activities shall be subject to §272.4(b), which pertains to bilingual requirements. Before FCS considers costs for such activities eligible for reimbursement at the fifty percent rate under part 277, State agencies shall obtain FCS approval for the attachment to their Plans of Operation as specified in §272.2(d)(1)(ix). In such attachments, State agencies shall describe the subject activities with respect to the socio-economic and demographic characteristics of the target population, types of media used, geographic areas warranting attention, and outside organizations which would be involved. State agencies shall update this attachment to their Plans of Operation when significant changes occur and report projected costs for this Program activity in accordance with §272.2 (c), (e), and (f).

[Amdt. 207, 47 FR 52334, Nov. 19, 1982. Redesignated by Amdt. 211, 47 FR 53316, Nov. 26, 1982; Amdt. 262, 49 FR 50597, Dec. 31, 1984; 52 FR 36398, Sept. 29, 1987; 54 FR 24527, June 7, 1989; Amdt. 320, 55 FR 6239, Feb. 22, 1990]

### §272.6 Nondiscrimination compliance.

(a) *Requirement.* State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act, the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.

(b) *Right to file a complaint.* Individuals who believe that they have been subject to discrimination as specified in paragraph (a) of this section may file a written complaint with the Secretary or the Administrator, FCS, Washington, DC 20250, and/or with the State agency, if the State agency has a system for processing discrimination complaints. The State agency shall explain both the FCS and, if applicable, the State agency complaint system to each individual who expresses an interest in filing a discrimination complaint

and shall advise the individual of the right to file a complaint in either or both systems.

(c) *FCS complaint requirements.* (1) Complaints shall contain the following information to facilitate investigations:

(i) The name, address, and telephone number or other means of contacting the person alleging discrimination.

(ii) The location and name of the organization or office which is accused of discriminatory practices.

(iii) The nature of the incident or action or the aspect of program administration that led the person to allege discrimination.

(iv) The reason for the alleged discrimination (age, race, color, sex, handicap, religious creed, national origin, or political belief).

(v) The names, titles (if appropriate), and addresses of persons who may have knowledge of the alleged discriminatory acts.

(vi) The date or dates on which the alleged discriminatory actions occurred.

(2) If a complainant makes allegations verbally and is unable or is reluctant to put the allegations in writing, the FCS employee to whom the allegations are made shall document the complaint in writing. Every effort shall be made by the individual accepting the complaint to have the complainant provide the information specified in paragraph (c)(1) of this section.

(3) Complaints will be accepted by the Secretary or the Administrator, FCS, even if the information specified in paragraph (c)(1) of this section is not complete. However, investigations will be conducted only if information concerning paragraphs (c)(1) (ii), (iii) or (iv) of this section is provided.

(4) A complaint must be filed no later than 180 days from the date of the alleged discrimination. However, the time for filing may be extended by the Secretary.

(d) *State agency complaint requirements.* (1) The State agency may develop and use a State agency complaint system.

(2) The State agency shall submit to FCS a report on each discrimination complaint processed at the State level. The report shall contain as much information in paragraph (c)(1) of this section as is available to the State agency, the findings of the investigation, and, if appropriate, the corrective action planned or taken.

(e) *Reviews.* [Reserved]

(f) *Public notification.* The State agency shall: (1) Publicize the procedures described in paragraphs (b) and (c) of this section, and, if applicable, the State agency's complaint procedures; (2) insure that all offices involved in administering the program and that also serve the public display the nondiscrimination poster provided by FCS; and (3) insure that participants and other low-income households have access to information regarding nondiscrimination statutes and policies, complaint procedures, and the rights of participants, within 10 days of the date of a request.

(g) *Data collection.* The State agency shall obtain data on households by racial/ethnic category. The racial/ethnic categories are: American Indian or Alaskan Native, Asian or Pacific Islander, black (not of Hispanic origin), Hispanic, and white (not of Hispanic origin). The State agency may request applicants to identify voluntarily their race or ethnicity on the application form. The application form in these States shall clearly indicate that the information is voluntary, that it will not affect eligibility or the level of benefits, and that the reason for the information is to assure that program benefits are distributed without regard to race, color, or national origin. The State agency shall develop alternative means of providing the racial and ethnic data on households, such as by observation during the interview, when the information is not voluntarily provided by the household on the application form.

(h) *Reports.* As required by FCS, the State agency shall report the racial/ethnic data on participating households on forms provided by FCS.

[Amdt. 132, 43 FR 47884, Oct. 17, 1979. Redesignated by Amdt. 211, 47 FR 53315, Nov. 26, 1982, as amended by Amdt. 356, 59 FR 29713, June 9, 1994]

**§272.7 Procedures for program administration in Alaska.**

(a) *Purpose.* To achieve the efficient and effective administration of the Food Stamp Program in rural areas of Alaska, FCS has determined that it is necessary to develop additional regulations which are specifically designed to accommodate the unique demographic and climatic characteristics which exist in these rural areas. The regulations established in this section, except for paragraph (f) of this section, shall apply only in those areas of Alaska designated as ''rural'' in paragraph (b) of this section. All regulations not specifically modified by this section shall remain in effect.

(b) *Area Designations.* (1) Rural I Alaska TFP refers to a Thrifty Food Plan (TFP) that is the higher of the TFP that was in effect in each area on October 1, 1985, or 28.52 percent higher than the Anchorage TFP, as calculated by FCS, with rounding and other reductions that are appropriate. It is to be used in the following areas: In all places in Kodiak Island Borough with the exception of Kodiak; in all places in the Kenai Peninsula Borough that are west of Cook Inlet (including Tyonek, Kustatan, Kalgin Island, Iliamna, Chenik, and Augustine Island) and Chugach Island, English Bay, Port Graham, Portlock, Pt. Gore, Pye Island, and Seldovia. In the Yukon-Koyukuk Census Area, the city of Nenana; and Skwentna in the Matanuska-Susitna Borough. In the Valdez-Cordova Census Area, all places except Dayville and Valdez; and in the Southeast Fairbanks Census Area all places except Big Delta, Delta Junction, and Fort Greely. In the Skagway-Yakutat-Angoon Census Area, all places except Skagway; in Sitka Borough all places except Sitka; in the Wrangell-Petersburg Census Area, all places except Wrangell and Petersburg; in the Ketchikan Gateway Borough, all places except Ketchikan, Saxman, and Ward Cove; in the Prince of Wales-Outer Ketchikan Census Area, all places except Craig, Hyder, and Metlakatla.

(2) Rural II Alaska TFP refers to a TFP that is 56.42 percent higher than the Anchorage TFP, as calculated by FCS, with rounding and other reductions that are appropriate. It is to be used in the following areas: North Slope Borough; Kobuk Census Area; Nome Census Area; Yukon-Koyukuk Census Area except for the city of Nenana; Wade Hampton Census Area; Bethel Census Area; Denali in the Matanuska-Susitna Borough; Dillingham-Bristol Bay Borough; and in all places in the Aleutian Islands except for Cold Bay and Adak.

(3) Urban Alaska TFP refers to a TFP that is the higher of the TFP that was in effect in each area on October 1, 1985, or .79 percent higher than the Anchorage TFP, as calculated by FCS, with rounding and other reductions that are appropriate. It is to be used in the following areas: Cold Bay and Adak in the Aleutian Islands; Kodiak in Kodiak Island Borough; Valdez and Dayville in the Valdez-Cordova Census Area; all places in Kenai Peninsula Borough that are on the Kenai Peninsula except for those specifically designated as Rural I; the entire Anchorage Borough; the entire Matanuska-Susitna Borough except for Denali and Skwentna; the entire Fairbanks-North Star Borough; the entire Juneau Borough; the entire Haines Borough; Sitka in the Sitka Borough; Skagway in the Skagway-Yakutat-Angoon Census Area; Wrangell and Petersburg in the Wrangell-Petersburg Census Area; Ketchikan, Saxman, and Ward Cove in the Ketchikan-Gateway Borough; Craig, Hyder, and Metlakatla in the Prince of Wales-Outer Ketchikan Census Area; and Big Delta, Delta Junction, and Fort Greely in the Southeast-Fairbanks Census Area.

(4) The State agency may, in consultation with FCS, change the designation of any Alaska subdivision contained in the Plan of Operation to reflect changes in demographics or the cost of food within the subdivision.

(c) *Fee agents.* ''Fee agent'' means a paid agent who, on behalf of the State, is authorized to make applications available to low-income households, assist in the completion of applications, conduct required interviews, secure required verification, forward completed applications and supporting documentation to the State agency, and provide other services as required by the State agency. Such services shall

not include making final decisions on household eligibility or benefit levels.

(d) *Application* processing. The State agency may modify the application processing requirements in § 273.2 of this chapter as necessary to insure prompt delivery of services to eligible households. The following restrictions apply:

(1) *Fee agent processing.* If the signed application is first submitted by a household to a fee agent, the fee agent shall mail the application to the State agency within 5 days of receipt. The fee agent shall give the household the maximum amount of time to provide needed verification as long as the five-day processing period is met.

(2) *Application filing date.* An application is considered filed for purposes of timely processing when it is received by an office of the State agency.

(3) *Application processing timeframes.* Eligible households must be provided an opportunity to participate as soon as possible but no later than 30 days after the application is received by an office of the State agency.

(4) *Expedited service.* (i) If the signed application is first submitted by a household to a fee agent, the fee agent shall mail the application to the State agency within 5 days of receipt. If the household is eligible for expedited service, the State agency will mail the coupons no later than the close of business of the second working day following the date the application was received by the State agency.

(ii) If the signed application is submitted directly to the State agency in person by a rural resident or its authorized representative or by mail, the State agency shall process the application and issue coupons to households eligible for expedited service in accordance with the time standards contained in § 273.2(i)(3) of this chapter.

(iii) If an incomplete application is submitted directly to the State agency by mail, the State agency shall conduct the interview by the first working day following the date the application was received if the fee agent can contact the household or the household can be reached by telephone or radiophone and does not object to this method of interviewing on grounds of privacy. Based on information obtained during the interview, the State agency shall complete the application and process the case. Because of the mailing time in rural areas, the State agency shall not return the completed application to the household for signature. The processing standard shall be calculated from the date the application was filed.

(5) *SSI Joint Processing.* SSA workers shall mail all jointly processed applications to the appropriate State agency office within 5 days of receipt of the application. A jointly processed application shall be considered filed for purposes of timely processing when it is received by an office of the State agency. The household, if determined eligible, shall receive benefits retroactive to the first day of the month in which the jointly processed application was received by the SSA worker.

(6) *Interviews.* The State agency shall interview applicant households in the most efficient manner possible, either by face-to-face contact, telephone, radiophone, or other means of correspondence including written correspondence. In instances in which an interview cannot be conducted, the State agency may postpone the interview until after the household is certified.

(e) *Determining household eligibility and benefit level.* If a household submits its application to a fee agent, it shall, if eligible, receive benefits retroactive to the date the application is received by the fee agent. If a household submits its application directly to a State agency office, it shall, if determined eligible, receive benefits retroactive to the date the application is received by the State agency.

(f) *Vehicles.* In areas of the State where there are no licensing requirements, snowmobiles and boats used by the household for basic transportation shall be evaluated in accordance with § 273.8(h) of this chapter even though they are unlicensed. Vehicles necessary for subsistence hunting and fishing shall not be counted as a household resource.

(g) *Reporting changes.* The State agency shall allow the household to choose to report changes either directly to the State agency or to the fee agent. If the household reports the change to the fee

agent, the fee agent will mail the change report to the State agency office within two working days of the date of receipt. The household's obligation to report the change will have been met if it submits the change to the fee agent within 10 days of the date the change becomes known to the household. However, for purposes of State agency action for increasing or decreasing benefits, the change will be considered to have been reported when it is received by a State agency office.

(h) *Fair hearings, fraud hearings, and agency conferences.* The State agency shall conduct fair hearings, administrative fraud hearings, and agency conferences with households that wish to contest denial of expedited service in the most efficient manner possible, either by face-to-face contact, telephone, radiophone, or other means of correspondence including written correspondence, in order to meet the respective time standards contained in §273.15 and §273.16 of this chapter.

(i) *Issuance services.* With the approval of FCS, coupons may be mailed on a quarterly or semiannual basis to certain rural areas of Alaska when provisions are not available on a monthly basis. The decision to allow the distribution of coupons in this manner will be made on an annual basis. These areas shall be listed in the State's Plan of Operation. The State agency shall advise households that live in rural areas where quarterly or semiannual allotments are authorized. If, as the result of the issuance of quarterly or semiannual allotments, food coupons are overissued or underissued, the State agency shall process claim determinations and restore lost benefits.

[Amdt. 162, 45 FR 73003, Nov. 4, 1980, as amended by Amdt. 202, 46 FR 44722, Sept. 4, 1981; Amdt. 215, 47 FR 20741, May 14, 1982. Redesignated and amended by Amdt. 211, 47 FR 53315, 53316, Nov. 26, 1982]

EDITORIAL NOTE: For other FEDERAL REGISTER citations affecting §272.7, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

### §272.8 State income and eligibility verification system.

(a) *General.* (1) State agencies shall maintain and use an income and eligibility verification system (IEVS), as specified in this section. By means of the IEVS, State agencies shall request wage and benefit information from the agencies identified in this paragraph and use that information in verifying eligibility for and the amount of food stamp benefits due to eligible households. Such information shall be requested and used with respect to all household members, including any considered excluded household members as specified in §273.11(c) whenever the SSNs of such excluded household members are available to the State agency. If not otherwise documented, State agencies shall obtain written agreements from these information provider agencies that they shall not record any information about individual food stamp households and that staff in those agencies are subject to the disclosure restrictions of §272.1(c). The wage and benefit information and agencies are:

(i) Wage information maintained by the State Wage Information Collection Agency (SWICA);

(ii) Information about net earnings from self-employment, wages, and payments of retirement income maintained by the Social Security Administration (SSA) and available pursuant to section 6103(1)(7)(A) of the Internal Revenue Service (IRS) Code; and Federal retirement, and survivors, disability, SSI and related benefit information available from SSA;

(iii) Unearned income information from the IRS available pursuant to section 6103(1)(7)(B) of the IRS Code; and

(iv) Claim information from the agency administering Unemployment Insurance Benefits (UIB) and any information in addition to information about wages and UIB available from the agency which is useful for verifying eligibility and benefits, subject to the provisions and limitations of section 303(d) of the Social Security Act.

(2) State agencies shall exchange with State agencies administering certain other programs in the IEVS information about food stamp households' circumstances which may be of use in establishing or verifying eligibility or benefit amounts under the Food Stamp Program and those programs. State agencies may exchange such information with these agencies in other

States when they determine that the same objectives are likely to be met. These programs are:

(i) The Aid to Families with Dependent Children (AFDC);

(ii) Medicaid;

(iii) Unemployment Compensation (UC);

(iv) Food Stamps; and

(v) Any State program administered under a plan approved under title I, X, or XIV (the adult categories), or title XVI of the Social Security Act.

(3) State agencies shall provide information to people administering the Child Support Program (title IV–D of the Social Security Act) and titles II (Federal Old Age, Survivors, and Disability Insurance Benefits) and XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act.

(4) *Agreements.* (i) Prior to requesting or exchanging information with other agencies, State agencies shall execute data exchange agreements with those agencies. The agreements shall specify the information to be exchanged and the procedures which will be used in the exchange of information. These agreements shall be part of the State agency's Plan of Operation, as required by paragraph (i) of this section. These agreements shall cover at least the following areas:

(A) Identification of positions of all agency officials with authority to request wage information;

(B) Methods and timing of the requests for any types of information, including the formats to be used;

(C) The safeguards limiting release or redisclosure as required by Federal or State law or regulation as discussed in § 272.1(c) and as may be required by other guidelines published by the Secretary; and

(D) Reimbursement agreements, as appropriate, including new developmental costs associated with the furnishing of data.

(ii) Agreements with SWICA's and agencies providing UIB data shall specify State agency access no less frequently than twice a month for applicants.

(5) *Uses of data.* The State agency shall use information obtained by means of the IEVS for the purposes of:

(i) Verifying a household's eligibility;

(ii) Verifying the proper amount of benefits;

(iii) Investigating to determine whether participating households received benefits to which they were not entitled; and

(iv) Obtaining information which will be used in conducting criminal or civil prosecutions based on receipt of food stamp benefits to which participating households were not entitled.

(b) *State wage information.* The wage information maintained by a SWICA which is not a UC agency or which is a UC agency but does not use wage data for determining UIB shall:

(1) Contain the Social Security Number (SSN), the last name, wages earned for the period of the report for each employee, and an identifier of the employer such as name and address;

(2) Include all employers covered by the State's UC law;

(3) Be accumulated by employers for no longer periods than calendar quarters and be reported by employers to the SWICA within 30 days of the end of each quarter;

(4) Be machine readable; and

(5) Be accessible to agencies in other States which have executed agreements as required in paragraph (a)(4) of this section and to the Social Security Administration as specified in paragraph (a)(3) of this section for verifying eligibility and benefits under tities II and XVI of the Social Security Act.

(c) *Alternate data sources.* The Secretary may, upon a State agency's application which is included in the attachment to the Plan of Operation specified in paragraph (i) of this section, permit a State agency to request and use income information from an alternate source or sources in order to meet any requirement of paragraph (a) of this section. The application shall document that the alternate source or sources provides accurate and timely information that is as useful for verifying eligibility and benefit amounts. State agencies shall comply with the requirements specified in paragraph (a) of this section unless this application for an alternate source has been approved. The Secretary shall consult with the Secretary of the Department of Health and Human Services and with

the Secretary of the Department of Labor prior to approval of any alternate data source.

(d) *Form of data requests and exchanges.* Requests for wage and benefit information and exchanges of eligibility and benefit information with the programs specified in paragraph (a) of this section shall be in the standardized formats established by the Secretary of Health and Human Services (in consultation with the Secretary) and required by the Secretary for SWICA, UC and other States, and in the formats prescribed by the Commissioners of SSA and IRS for SSA and IRS requests.

(e) *Requesting and using information for applicants.* State agencies shall request and use information about members of all applicant households as specified below.

(1) Information shall be requested at the next available opportunity after the date of application even if the applicant household has been determined eligible by that time. Information about members of applicant households who cannot provide SSNs at application shall be requested at the next available opportunity after the State agency is notified of their SSN's. Information received within the 30-day application period shall be used to determine household eligibility and benefits, if the information is received timely enough that it can be used for that determination. However, State agencies shall make eligibility and benefit determinations without waiting for receipt of IEVS data so as to comply with the promptness standard of §273.2(g). Information received from a source after an eligibility determination has been made shall be used as specified in paragraphs (f) and (g) of this section.

(2) Information from the SWICA, from SSA and IRS, and claim information from the agency administering UIB shall be requested and used as specified in paragraph (e)(1) of this section. Requests to SWICAs shall access the most recent SWICA data available. Requests to SSA and IRS shall be submitted according to procedures specified by the respective Commissioners of those organizations.

(3) Any information other than wage and UIB which UC agencies may have and which State agencies determine would be useful in verifying eligibility or benefits of applicant households shall be requested by methods and at intervals to which State agencies and UC agencies agree and shall be used as specified in paragraph (e)(1) of this section; and

(4) Exchanges of information about applicant households with other programs specified in paragraph (a) of this section shall be made as the State agency and other programs may agree.

(f) *Requesting information about recipients.* Except as provided in paragraph (f)(7) of this section, with respect to all members of recipient households State agencies shall:

(1) Request information from the SWICA quarterly, such requests including all households which participated in any month of the quarter;

(2) Request information about household members from SSA data bases no later than the second month of the certification period, when requests at application did not establish automatic reporting to the State agency of changes in SSA data. Requests shall be submitted according to procedures specified by the Commissioner of SSA;

(3) Request information from IRS annually for all current recipients. Requests shall be submitted to IRS according to procedures specified by the Commissioner of IRS;

(4) Exchange information with other programs specified in paragraph (a) of this section as the State agency and these other programs may agree;

(5) Request information about Unemployment Insurance Benefits (UIB) from the agency administering that program as follows:

(i) For all household members about whom requests at application indicate no receipt of UIB, information shall be requested for the three months subsequent to the month of application or until the receipt of UIB is reported, whichever is earlier;

(ii) For all household members who report a loss of employment, information shall be requested for the three months subsequent to the month the loss is reported or until the receipt of

UIB is reported, whichever is earlier; and

(iii) For all household members receiving UIB, information shall be requested monthly until UIB are exhausted; and

(6) Request from UC agencies any information other than UIB information which State agencies determine would be useful in verifying eligibility or benefits of recipient households. Requests shall be made by methods and at intervals to which the State agencies and the UC agencies agree.

(7) Under certain conditions State agencies may exclude from the requests for information specified in this paragraph those members of recipient households who are participating in one of the other programs listed in paragraph (a)(2) of this section. The conditions for such exclusion are that:

(i) The agency responsible for administering such other program is requesting and acting on information on food stamp recipients who are participating in that program as required by the pertinent regulations for that program, including any concerning selective criteria for information items for follow-up action;

(ii) The other program agency agrees to inform the State agency of the information obtained from its follow-up action when that action discovers discrepancies between actual circumstances of food stamp recipients and circumstances known by the other program agency;

(iii) The other program agency agrees to make available, upon the request of the State agency, information items about food stamp recipients which it did not follow up on; and

(iv) The follow-up action taken by the other program agency is at least as beneficial as such action by the State agency.

(g) *Actions on recipient households.* With respect to information items received as a result of requests made according to paragraph (f) of this section, State agencies shall initiate and pursue action according to the attachment to the Plan of Operation specified in paragraph (i) of this section.

(1) State agency action on information items about recipient households shall include:

(i) Review of the information and comparison of it to case record information;

(ii) For all new or previously unverified information received, contact with the households and/or collateral contacts to resolve discrepancies as specified in §§273.2(f)(4)(iv) and 273.2(f)(9)(iii) and (iv); and

(iii) If discrepancies warrant reducing benefits or terminating eligibility, notices of adverse action.

(2) State agencies shall initiate and pursue the actions specified in paragraph (g)(1) of this section so that the actions are completed within 45 days of receipt of the information items. Actions may be completed later than 45 days from the receipt of information items on no more than 20 percent of the information items if:

(i) The only reason that the actions cannot be completed is the nonreceipt of verification requested from collateral contacts; and

(ii) The actions are completed as specified in §273.12 when verification from a collateral contact is received or in conjunction with the next case action when such verification is not received, whichever is earlier.

(3) When the actions specified in paragraph (g)(1) of this section substantiate an overissuance, State agencies shall establish and take actions on claims as specified in §273.18.

(4) State agencies shall use appropriate procedures to monitor the timeliness requirements in paragraph (g)(2) of this section.

(5) Except for the claims actions specified in paragraph (g)(3) of this section, under the conditions of paragraph (f)(7) of this section, State agencies may exclude from the actions required in paragraph (g) of this section information items pertaining to household members who are participating in one of the other programs listed in paragraph (a)(2) of this section.

(h) *IEVS information and quality control.* The requirements of this section do not relieve the State agency of its responsibility for determining erroneous payments and/or its liability for such payments as specified in part 275 of this title (which pertains to quality control) and in guidelines on quality control established under that part.

State agencies shall make available to quality control reviewers information items which are not selected for follow-up action because of the use of targeting methods specified in paragraph (i)(3) of this section including any information items not selected by other program agencies as provided in paragraph (i)(3)(iii)(C).

(i) *State Plan of Operation.* The requirements for the IEVS specified in this section shall be included in an attachment to the State Plan of Operation as required in §272.2(d). This document shall include:

(1) A description of procedures used, and agreements with the other agencies and programs specified in paragraph (a) of this section, including steps taken to meet requirements of limiting disclosure and safeguarding of information obtained from food stamp households and third parties as specified in §272.1;

(2) Any of the material concerning alternate data sources as specified in paragraph (c) of this section;

(j) *Reports and documentation.* (1) The agency shall report as the Secretary prescribes for determining compliance with these regulations and evaluating the effectiveness of the income and eligibility verification system.

(2) The State agency shall document as required by §273.2(f)(6) its use of information obtained through the IEVS both when an adverse action is and is not initiated.

[Amdt. 264, 51 FR 7204, Feb. 28, 1986, as amended at 53 FR 2822, Feb. 2, 1988; Amdt. 356, 59 FR 29713, June 9, 1994]

EFFECTIVE DATE NOTE: At 53 FR 2822, Feb. 2, 1988, §272.8, was amended by revising paragraph (f) introductory text, adding (f)(7), revising (g), adding a sentence to the end of (h) and revising (i) and (j)(1), effective in part upon approval by the Office of Management and Budget. Paragraphs (i)(3) and (4) and (j)(1) are published below and will become effective upon publication of a notice in the FEDERAL REGISTER.

**§272.8 State income and eligibility verification system.**

* * * * *

(i) * * *

(3) For each of the data sources specified in paragraphs (c) and (f) of this section, a separate description of how the State agency will select (target) information items for the actions specified in paragraph (g)(1) of this section. The description shall:

(i) Describe the targeting method which will be used including such details as: What selective criteria (thresholds) are used, including (when feasible) assurances that the most cost-beneficial data are targeted in instances of redundancy across data sources; what program standards and/or information about households are used, if any; whether the criteria are applied on the basis of individual or groups of information items, and about individual household members or households; and whether the criteria are applied before any follow-up action specified in paragraph (g) of this section are initiated or are applied as part of the comparison of match results to casefile information;

(ii) State the approximate number of information items which will be acted on and the approximate percentage that that number is of the number of information items received;

(iii) Include a sufficiently comprehensive and detailed cost-benefit analysis to justify the targeting method. If the State agency will follow-up on all information items received, it shall certify in its Plan of Operation that it performed an analysis which showed that 100 percent follow up is cost beneficial. If the targeting method will select certain information items for follow up, the justification shall show that following up on more information items than selected would not be cost-beneficial.

(A) Total costs shall include both the Federal and State share of administrative costs. The elements of the total costs shall be limited to the costs of targeting and follow-up action. The justification shall include an estimate of the cost per follow-up action. No costs for any developmental, start-up and other one-time costs or indirect ongoing costs shall be included.

(B) Total benefits shall include such quantifiable factors as the amounts of collections on claims established because of IEVS-obtained information, and the amounts of overissuances and the total of Federal and State administrative costs avoided due to terminating participation and reducing benefits.

(C) As provided in paragraphs (f)(7) and (g)(5) of this section, the State agency may exclude household members from match requests or exclude information items about them from follow up. If the State agency wants to make either of such exclusions, in its cost-benefit justification it shall provide certain information. First, the State agency shall identify the program involved and state that the agency responsible for administering the program meets the conditions of paragraphs (f)(7)(i), (ii) and (iii) of this section. Second, the State agency shall summarize the methods for targeting, or for otherwise selecting information items for follow-

up action, used by the other program agency as required in paragraph (f)(7)(i) of this section. In that summary, the State agency shall explain why those actions are at least as beneficial as the action which the State agency would take to comply with paragraph (g) of this section. The summary shall be based on the State agency's review of the description of the targeting or other selection methods as provided by the other program agency; and

(4) The State agency shall submit revisions to the attachment as warranted by information in the annual report required in paragraph (j)(l) of this section.

(j) *Reports and documentation.* (1) The State agency shall annually assess the targeting aspects of its IEVS specified in paragraph (i)(3) of this section and shall report that assessment to FCS. Such reports shall cover a Federal Fiscal Year (October 1 through September 30) and are due to the appropriate FCS Regional Office by December 31 following the particular Fiscal Year. In the reports the State agency shall provide the following information about its targeting activities separately for each data source:

(i) The actual number of information items acted on and the percentage that that number is of the number of items received;

(ii) A summary of any significant operational events and patterns in targeting, and any consequent changes made or planned in such areas as automated data processing and targeting methods; and

(iii) Any change to the cost-benefit justification which is required by paragraph (i)(3) of this section.

### § 272.9 Approval of homeless meal providers.

The State food stamp agency, or another appropriate State or local governmental agency identified by the State food stamp agency, shall approve establishments serving the homeless upon sufficient evidence, as determined by the agency, that the establishment does in fact serve meals to homeless persons. Where the State food stamp agency identifies another appropriate State or local agency for the purpose of approving establishments serving the homeless, the State food stamp agency will remain responsible for insuring that the provisions of the preceding sentence are effectively carried out. The State food stamp agency, or another appropriate State or local governmental agency identified by the State food stamp agency or private nonprofit organization under contract with the State food stamp agency shall execute contracts with restaurants wishing to sell meals in exchange for food stamp benefits to homeless food stamp households. Such contracts shall specify that such meals are to be sold at ''concessional'' (low or reduced) prices and shall also specify the approximate prices which will be charged, or the amount and type of price reduction.

[56 FR 54777, Oct. 23, 1991; 61 FR 53600, Oct. 15, 1996]

### § 272.10 ADP/CIS Model Plan.

(a) *General purpose and content*—(1) *Purpose.* All State agencies are required to sufficiently automate their food stamp program operations and computerize their systems for obtaining, maintaining, utilizing and transmitting information concerning the food stamp program. Sufficient automation levels are those which result in effective programs or in cost effective reductions in errors and improvements in management efficiency, such as decreases in program administrative costs. Thus, for those State agencies which operate exceptionally efficient and effective programs, a lesser degree of automation may be considered sufficient than in other State agencies. In order to determine a sufficient level of automation in each State, each State agency shall develop an ADP/CIS plan. FCS may withhold State agency funds under § 276.4(a) for failure to submit an ADP/CIS plan in accordance with the deadlines for submission, for failure to make appropriate changes in their ADP/CIS plan within 60 days of their receipt of FCS comments, or for failure to implement the approved ADP/CIS plan in accordance with the dates specified therein, unless extensions of time or deviations from the plan or schedules have been approved by FCS.

(2) *Content.* In developing their ADP/CIS plans, State agencies shall use one of the following three formats:

(i) State agencies which are sufficiently automated in each area specified in § 272.10(b) may provide a single certification statement that they are sufficiently automated in each area.

(ii) State agencies which are sufficiently automated in some, but not all, areas specified in § 272.10(b) shall submit an ADP/CIS plan which consists of

two parts. The first part would be the State agency's certification as to the areas in which they are sufficiently automated. The second part would describe the areas of § 272.10(b) which the State agency has not automated or, in its opinion, has not automated sufficiently and include the State agency's plans for sufficiently automating these areas. State agencies shall include a description of how they intend to automate each area and a timetable for each planned activity, including a consideration of transfers as discussed in paragraph (a)(3) of this section. State agencies which are not planning to automate each of the areas specified § 272.10(b) or which are not already automated in these areas shall provide justification. Any such justification shall include a cost-effectiveness analysis.

(iii) State agencies which are not sufficiently automated in any of the areas specified in § 272.10(b) shall submit an ADP/CIS plan which describes their plans for sufficiently automating each area, including a timetable for each planned activity, and including a consideration of transfers as discussed in paragraph (a)(3) of this section. State agencies which are not planning to automate each of the areas specified in § 272.10(b) or which are not, in their opinion, sufficiently automated in these areas shall provide justification. Any such justification shall include a cost-effectiveness analysis.

(3) *Transfers.* (i) State agencies planning additional automation shall consult with other State agencies and with the appropriate Regional Office to determine whether a transfer or modification of an existing system from another jurisdiction would be more efficient and cost effective than the development of a new system. In assessing the practicability of a transfer, State agencies should consult with other State agencies that have similar characteristics such as whether they are urban or rural, whether they are county or State administered, the geographic size of the States and the size of the caseload.

(ii) State agencies that plan to automate operations using any method other than transfers will need to be able to justify why they are not using transfers. The justification will need to include the results of the consultations with other State agencies, the relative costs of transfer and the system the State agency plans to develop, and the reasons for not using a transfer. Common reasons for not using transfers include: The State agency is required to use a central data processing facility and the (otherwise) transferable system is incompatible with it; the State agency's data base management software is incompatible with the transferable system; the State agency's ADP experts are not familiar with the software/hardware used by the transferable system and acquiring new expertise would be expensive; the transferable system is interactive or uses ''generic'' caseworkers, the receiving State agency does not and it would be expensive to modify the existing system and/or procedures; and transfer would provoke disputes with the State agency's personnel union. State agencies that cite any of these reasons shall not automatically receive approval to develop non-transferred systems. State agencies shall show what efforts were considered to overcome the problems and that those efforts are cost ineffective. This justification will need to be included as part of the Advance Planning Document that the State agency must submit for approval of its proposed system.

(iii) FCS will assist State agencies that request assistance in determining what other States have systems that should be considered as possible transfers.

(b) *Model Plan.* In order to meet the requirements of the Act and ensure the efficient and effective administration of the program, a food stamp system, at a minimum, shall be automated in each of the following program areas in paragraphs (b)(1), Certification, and (b)(2), Issuance Reconciliation and Reporting of this section. The food stamp system must further meet all the requirements in paragraph (b)(3), General, of this section.

(1) *Certification.* (i) Determine eligibility and calculate benefits or validate the eligibility worker's calculations by processing and storing all casefile information necessary for the eligibility determination and benefit

computation (including but not limited to all household members' names, addresses, dates of birth, social security numbers, individual household members' earned and unearned income by source, deductions, resources and household size). Redetermine or revalidate eligibility and benefits based on notices of change in households' circumstances;

(ii) Identify other elements that affect the eligibility of household members such as alien status, presence of an elderly person in the household, status of periodic work registration, disqualification actions, categorical eligibility, and employment and training status;

(iii) Provide for an automatic cutoff of participation for households which have not been recertified at the end of their certification period;

(iv) Notify the certification unit (or generate notices to households) of cases requiring Notices of:

(A) Case Disposition,

(B) Adverse Action and Mass Change, and

(C) Expiration;

(v) Prior to certification, crosscheck for duplicate cases for all household members by means of a comparison with food stamp records within the relevant jurisdiction;

(vi) Meet the requirements of the IEVS system of § 272.8. Generate information, as appropriate, to other programs.

(vii) Provide the capability to effect mass changes: Those initiated at the State level, as well as those resulting from changes at the Federal level (eligibility standards, allotments, deductions, utility standards, SSI, AFDC, SAA benefits);

(viii) Identify cases where action is pending or follow-up must be pursued, for example, households and verification pending or households containing disqualified individuals or a striker;

(ix) Calculate or validate benefits based on restored benefits or claims collection, and maintain a record of the changes made;

(x) Store information concerning characteristics of all household members;

(xi) Provide for appropriate Social Security enumeration for all required household members; and

(xii) Provide for monthly reporting and retrospective budgeting as required.

(2) *Issuance, reconciliation and reporting.* (i) Generate authorizations for benefits in issuance systems employing ATP's, direct mail, or online issuance and store all Household Issuance Record (HIR) information including: name and address of household, household size, period of certification, amount of allotment, case type (PA or NA), name and address of authorized representative, and racial/ethnic data;

(ii) Prevent a duplicate HIR from being established for presently participating or disqualified households;

(iii) Allow for authorized under- or over-issuance due to claims collection or restored benefits;

(iv) Provide for reconciliation of all transacted authorization documents to the HIR masterfile. This process must incorporate any manually-issued authorization documents, account for any replacement or supplemental authorization documents issued to a household, and identify cases of unauthorized and duplicate participation;

(v) Provide a mechanism allowing for a household's redemption of more than one valid authorization document in a given month;

(vi) Generate data necessary to meet Federal issuance and reconciliation reporting requirements, and provide for the eventual capability of directly transmitting data to FCS including:

(A) Issuance:

(*1*) FCS–259—Summary of mail issuance and replacement;

(*2*) FCS–250—Reconciliation of redeemed ATPs with reported authorized coupon issuance.

(B) Reconciliation: FCS–46—ATP Reconciliation Report.

(vii) Generate data necessary to meet other reporting requirements and provide for the eventual capability of directly transmitting data to FCS, including:

(A) FCS–101—Program participation by race;

(B) FCS–209—Status of claims against households; and

(C) FCS–388—Coupon issuance and participation estimates.

(viii) Allow for sample selection for quality control reviews of casefiles, and for management evaluation reviews;

(ix) Provide for program-wide reduction or suspension of benefits and restoration of benefits if funds later become available and store information concerning the benefit amounts actually issued;

(x) Provide for expedited issuance of benefits within prescribed timeframes;

(xi) Produce and store a participation history covering three (3) year(s) for each household receiving benefits.

(xii) Provide for cutoff of benefits for households which have not been recertified timely; and

(xiii) Provide for the tracking, aging, and collection of recipient claims and preparation of the FCS–209, Status of Claims Against Households report.

(3) *General.* The following functions shall be part of an overall State agency system but need not necessarily be automated:

(i) All activities necessary to meet the various timeliness and data quality requirements established by FCS;

(ii) All activities necessary to coordinate with other appropriate Federal and State programs, such as AFDC or SSI;

(iii) All activities necessary to maintain the appropriate level of confidentiality of information obtained from applicant and recipient households;

(iv) All activities necessary to maintain the security of automated systems to operate the Food Stamp Program;

(v) Implement regulatory and other changes including a testing phase to meet implementation deadlines, generally within 90 days;

(vi) Generate whatever data is necessary to provide management information for the State agency's own use, such as caseload, participation and actions data;

(vii) Provide support as necessary for the State agency's management of Federal funds relative to Food Stamp Program administration, generate information necessary to meet Federal financial reporting requirements;

(viii) Routine purging of case files and file maintenance, and

(ix) Provide for the eventual direct transmission of data necessary to meet Federal financial reporting requirements.

[Amdt. 284, 52 FR 35226, Sept. 18, 1987, as amended by Amdt. 356, 59 FR 29713, June 9, 1994]

### §272.11 Systematic Alien Verification for Entitlements (SAVE) Program.

(a) *General.* A State agency shall participate in the SAVE Program established by the Immigration and Naturalization Service (INS), in order to verify the validity of documents provided by aliens applying for food stamp benefits with the central data files maintained by INS.

(b) *Agreements.* (1) Prior to implementing the SAVE Program, the State agency shall execute an agreement with INS. The agreement shall specify the information to be exchanged and the procedures which will be used in the exchange of information.

(2) The agreement shall cover at least the following areas:

(i) Identification of positions of all agency officials with authority to request immigration status information;

(ii) Identification and location of all SAVE access points covered by the agreement;

(iii) For automated SAVE verification through access to the Alien Status Verification Index (ASVI), as outlined in paragraph (d)(1) of this section, a description of the access method and procedures;

(iv) For secondary verification as described in paragraph (d)(2) of this section, the locations of INS District Offices to which verification requests will be directed;

(v) The safeguards limiting release or redisclosure as required by State or Federal law or regulation as discussed in §272.1(c) and as may be required by other guidelines published by the Secretary; and

(vi) Reimbursement or billing agreements for ongoing SAVE operational costs, as well as any developmental costs associated with establishing access to the ASVI database.

(c) *Use of data.* The State agency shall use information obtained through the SAVE Program only for the purposes of:

(1) Verifying the validity of documentation of alien status presented by an applicant;

(2) Verifying an individual's eligibility for benefits;

(3) Investigating whether participating households received benefits to which they were not entitled, if an individual was previously certified to receive benefits on the basis of eligible alien status; and

(4) Assisting in or conducting administrative disqualification hearings, or criminal or civil prosecutions based on receipt of food stamp benefits to which participating households were not entitled.

(d) *Method of verification*—(1) *SAVE verification through ASVI access.* (i) The State agency shall establish a method of accessing the Alien Status Verification Index (ASVI) database and shall attempt to verify the alien's documented status through this method before proceeding to secondary verification unless:

(A) The State agency has determined that the documentation presented is questionable; or

(B) The State agency accepts documents that are not issued by the INS but are determined by the State agency to be reasonable evidence of the alien's immigration status.

(ii) Methods of access to the ASVI may include:

(A) Direct automated access through dedicated telecommunications, modem, point-of-sale terminal, telephone or other access device; or

(B) Periodic file match.

(iii) The State agency shall describe the methods of access in the attachment to the Plan of Operation and shall obtain prior approval from FCS as prescribed by § 277.19 before obtaining equipment, supplies or services to establish such access.

(iv) The State agency shall ensure that the method of access to the ASVI protects the individual's privacy to the maximum degree possible.

(2) *Secondary SAVE verification.* The State agency may verify the documentation presented by an alien applicant by completing INS Form G–845 and submitting photocopies of such documentation to the INS for verification as described in § 272.2(f)(10). This secondary verification procedure shall be used by the State agency whenever the applicant-individual's documented alien status has not been verified through automated access to the ASVI as described in paragraph (d)(1) of this section or significant discrepancies exist between the data on the ASVI and the information provided by the alien applicant.

(e) *Plan of operation.* (1) The requirements for participation in the SAVE Program shall be included in an attachment to the State agency's Plan of Operation as required in § 272.2(d). This document shall include a description of procedures used, method of access and the agreement specified in paragraph (b) of this section, including steps taken to meet requirements of limiting disclosure and safeguarding of information obtained from food stamp households as specified in § 272.1.

(2) The State agency shall also submit as part of the plan a Budget Projection Statement (FCS–366A) which includes an estimate of costs for the implementation and operation of the SAVE Program, as outlined in § 277.19(e). The State agency shall submit with the Budget Projection Statement a narrative justification of estimated costs as required in § 272.2(c)(1)(i).

[53 FR 39440, Oct. 7, 1988]

### § 272.12 Intercept of unemployment compensation benefits.

(a) *General.* State agencies may, at their option, arrange for the intercept of unemployment compensation (UC) benefits to collect claims for intentional Program violations as defined in § 273.16(c). State agencies may not conduct such intercepts unless they have an FCS-approved attachment to their Plan of Operation as required by § 272.2(d)(l)(x). Acceptance of the intercept of UC method of collection is voluntary with each affected household.

(b) *Identification of households subject to the intercept.* (1) State agencies which decide to use the intercept procedure shall, in the attachments to the Plan of Operations required by § 272.2(d)(1)(x), specify if they will use the intercept for nonparticipating households only or for both nonparticipating and participating households.

They shall also specify the type of case subject to UC intercept or the selection criteria for referral of households for intercept.

(2) Upon request of the UC agency, State agencies may provide such agencies identifying casefile information about individuals subject to the intercept.

(3) State agencies shall request that the UC agency provide the State agency the following information from UC files about any such individuals:

(i) Whether the individual is receiving UC benefits;

(ii) The amount of any such benefits; and

(iii) The current (or most recent) home address of the individual.

(c) *Notice of intercept procedures.* (1) State agencies shall notify households subject to the intercept pursuant to paragraph (b) of this section as follows:

(i) State agencies shall notify participating households of the UC intercept procedures with the initial demand letter sent in accordance with § 273.18(d)(3). This letter shall explain to the households that it may use the intercept alone or in combination with other repayment methods, that use of the intercept is voluntary, and that the intercept is one of several repayment methods available to them;

(ii) State agencies shall notify nonparticipating households which have failed to repay claims for intentional program violation of the intercept method unless the judicial action specified in paragraph (f) of this section will be taken without attempting to reach a voluntary agreement. Notices to nonparticipating households shall include a copy of the agreement described in paragraph (d) of this section and directions for contacting the State agency. If the State agency plans to initiate judicial process as described in paragraph (f) of this section against a household which does not voluntarily agree to the intercept, the notice shall advise such households that judicial action shall be initiated unless the household contacts the State agency within 10 days of receipt of the notice.

(2) As part of the agreement with UC agencies described in paragraph (g) of this section, State agencies may arrange for UC agencies to provide UC claimants a notice of the intercept option with directions about how to contact the State agency for further information to be included on or with the application for UC benefits.

(d) *Agreements with individuals.* State agencies may arrange with households for deductions from UC benefits by executing agreements with individual household members who receive UC benefits. Copies of agreements with individuals shall be provided to UC agencies as provided in paragraph (g) of this section. The agreements shall include:

(1) The total amount to be deducted from UC benefits otherwise due;

(2) The amount of UC benefits to be deducted each week;

(3) The number of weeks the deduction will be made;

(4) A statement that:

(i) It is the individual's responsibility to notify the State agency if a change in the amount of the deduction is necessary, for example, because of a change of earnings or in other circumstances affecting income;

(ii) The amount of a weekly deduction is a maximum which may be decreased if there are insufficient UC benefits to allow the full deduction and the number of weeks for the deduction may be correspondingly increased to complete collection; and

(iii) The State agency will provide the individual a receipt for the total amount of deductions actually made;

(5) The signature of the individual agreeing to the deductions; and

(6) Either on the agreement or on a transmittal to the UC agency, a signature of a State agency official indicating concurrence with the agreement.

(e) *Amounts of deduction.* The amount of the weekly deduction shall be determined by agreement between the individual and State agency, provided that for participating households the amount, in combination with any other repayment methods, shall result in a scheduled repayment rate no less than that which would be repaid through the allotment reduction prescribed in § 273.18(g)(3). The determination of the amount shall take into account such factors as the total amount of the claim, the amount of weekly UC benefits and the number of weeks they are expected to be paid, other income

available to the individual, and any other deductions from the individual's UC benefits, allowing priority to such mandatory deductions as those for child support payments required by the Social Security Act and recoveries of prior excess UC benefits.

(f) *Court-ordered deductions.* State agencies may attempt to recover claims for intentional program violations from nonparticipating households by obtaining a writ, order, summons, or other similar process in the nature of garnishment from a court of competent jurisdiction to require the withholding of amounts from unemployment compensation. Subject to State and local law, State agencies may seek such judicial action before or after attempting to reach a voluntary agreement as described in paragraph (d) of this section.

(1) The State agency shall determine an amount to be withheld each week by considering as many of the factors listed in paragraph (e) of this section as it has knowledge of and shall recommend such amount to the court. The State agency shall notify the court of any mandatory deductions from an individual's UC benefits of which it has knowledge.

(2) The State agency shall assure that any individual against whom a court-ordered deduction is sought is notified of:

(i) The total amount to be deducted from UC benefits otherwise due;

(ii) The amount of UC benefits to be deducted each week; and

(iii) The number of weeks the deduction will be made.

(3) The State agency shall provide the UC agency the information specified in paragraph (f)(1) of this section and a copy of the court order or a summary as the UC agency may request.

(g) *Agreement with UC agencies.* State agencies using the procedures specified in this section shall execute written agreements with UC agencies, including UC agencies in other States when circumstances and experience indicate that would be useful. The agreements shall include:

(1) The requirements specified in this section which affect both agencies, including the identifying information the State agency will provide, the frequency of and the procedures for exchanging information;

(2) The particular costs, both initial and ongoing, which the State agency shall reimburse the UC agency. Such costs shall be limited to those attributable to the repayment of claims for intentional Program violations for which the State agency does not otherwise reimburse the UC agency; and

(3) The frequency of transmittals of deductions from UC benefits to the State agency and of reports of amounts deducted for each individual and the total amount transmitted.

[Amdt. 320, 55 FR 6239, Feb. 22, 1990]

# PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

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AUTHORITY: 7 U.S.C. 2011–2032.

EDITORIAL NOTE: OMB control numbers relating to this part 273 are contained in §271.8.

## §273.1 Household concept.

(a) *Household definition*—(1) *General definition.* A household is composed of one of the following individuals or groups of individuals, provided they are not residents of an institution (except as otherwise specified in paragraph (e) of this section), are not residents of a

commercial boarding house, or are not boarders (except as otherwise specified in paragraph (c) of this section):

(i) An individual living alone;

(ii) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others;

(iii) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

(2) *Special definition:* (i) The following individuals living with others or groups of individuals living together *shall be* considered as customarily purchasing food and preparing meals together, even if they do not do so:

(A) A spouse as defined in § 271.2 of a member of the household;

(B) A child under 22 years of age who is living with his or her natural, adoptive, or stepparents, unless the child is also living with his or her own child(ren) or spouse.

(C) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent. A child is considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household, except that a child who is living with his or her own child(ren) or spouse is not considered to be under parental control.

(ii) Although a group of individuals living together and purchasing and preparing meals together constitutes a single household under the provisions of paragraph (a)(1)(iii) of this section, an otherwise eligible member of such a household who is 60 years of age or older and who is unable to purchase and prepare meals because he/she suffers from a disability considered permanent under the Social Security Act or suffers from a nondisease-related, severe, permanent disability may be considered, together with any of the others who is the spouse of the elderly and disabled individual, an individual household provided that the income (all income under § 273.9(b)) of the others with whom the individual resides (excluding the income of the spouse of the elderly and disabled individual) does not exceed 165% of the poverty line.

(b) *Nonhousehold members.* (1) For the purposes of defining a household under the provisions of paragraph (a)(1) of this section, the following individuals shall not be included as a member of the household, unless specifically included as a household member under the provisions of paragraph (a)(2) of this section. If not included as a member of the household under the provisions of paragraph (a)(2) of this section, such individuals shall not be included as a member of the household for the purpose of determining household size, eligibility, or benefit level. The income and resources of such individuals shall be handled in accordance with the provisions of § 273.11(d). The following individuals (if otherwise eligible) may participate as separate households:

(i) *Roomers.* Individuals to whom a household furnishes lodging, but not meals, for compensation.

(ii) *Live-in-attendants.* Individuals who reside with a household to provide medical, housekeeping, child care or similar personal services.

(iii) *Others.* Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent, but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant household.

(2) Some household members are ineligible to receive Program benefits under the provisions of the Food Stamp Act (such as SSI recipients in cash-out States, certain aliens, and certain students). Others may become ineligible for such reasons as being disqualified for committing an intentional Program violation or refusing to comply with a regulatory requirement. These individuals shall be included as a member of the household for the purpose of defining a household under the provisions of paragraphs (a)(1) and (a)(2) of this section. However, such individuals *shall not* be included as eligible members of the household when determining the household's size for the purpose of comparing the household's monthly income

with the income eligibility standard or assigning a benefit level by household size. The income and resources of such individuals shall be handled in accordance with the provisions of § 273.11 (c) or (d), as appropriate. These individuals are not eligible to participate as separate households. Ineligible individuals include the following:

(i) *Ineligible students.* Individuals who do not meet the eligible student requirements of § 273.5.

(ii) *Ineligible aliens.* Individuals who do not meet the citizenship or eligible alien status requirements of § 273.4(a) or the eligible sponsored alien requirements of § 273.11(j).

(iii) *SSI recipients in ''cash-out'' States.* Recipients of SSI benefits who reside in a State designated by the Secretary of Health and Human Services to have specifically included the value of the coupon allotments in its State supplemental payments.

(iv) *Intentional Program violation.* Individuals disqualified for intentional Program violation, as set forth in § 273.16.

(v) *SSN disqualified.* Individuals disqualified for failure to provide an SSN, as set forth in § 273.6. A completed SSA Form 2853 shall be considered proof of application for an SSN for a newborn infant.

(vi) *Workfare sanctioned.* Individuals against whom a sanction was imposed while they were participating in a household disqualified for failure to comply with workfare requirements set forth in § 273.22.

(vii) Persons disqualified for noncompliance with the work requirements of § 273.7.

(c) *Boarders.* (1) Boarders are defined as individuals or groups of individuals residing with others and paying reasonable compensation to the others for lodging and meals (excluding residents of a commercial boarding house). Boarders are ineligible to participate in the Program independent of the household providing the board. They may participate as members of the household providing the boarder services to them, at such household's request. In no event shall boarder status be granted to those individuals or groups of individuals described in paragraph (a)(2) of this section which includes children or siblings residing with elderly or disabled parents or siblings.

(2) The household within which a boarder resides (including the household of the proprietor of a boarding house) may participate in the program if the household meets all the eligibility requirements for program participation.

(3) To determine if an individual is paying reasonable compensation for meals and lodging in making a determination of boarder status, only the amount paid for meals shall be used, provided that the amount paid for meals is distinguishable from the amount paid for lodging. A reasonable monthly payment shall be either of the following:

(i) Boarders whose board arrangement is for more than two meals a day shall pay an amount which equals or exceeds the maximum food stamp allotment for the appropriate size of the boarder household; or

(ii) Boarders whose board arrangement is for two meals or less per day shall pay an amount which equals or exceeds two-thirds of the maximum food stamp allotment for the appropriate size of the boarder household.

(4) An individual furnished both meals and lodging by a household but paying compensation of less than a reasonable amount to the household for such services shall be considered a member of the household providing the services.

(5) None of the income or resources of individuals determined to be boarders and who are not members of the household providing the boarder services (as prescribed in paragraph (c)(3) of this section) shall be considered available to such household. However, the amount of the payment that a boarder gives to a household shall be treated as self-employment income to the household. The procedures for handling self-employment income from boarders (other than such income received by a household that owns and operates a commercial boarding house) are set forth in § 273.11(b). The procedures for handling income from boarders by a household that owns and operates a commercial boarding household are set

forth in § 273.11(a). For Program purposes, a commercial boarding house is defined as an establishment licensed as an enterprise which offers meals and lodging for compensation. In project areas without licensing requirements, a commercial boarding house shall be defined as a commercial establishment which offers meals and lodging for compensation with the intent of making a profit. The number of boarders residing in a boarding house shall not be used to determine if a boarding house is a commercial enterprise.

(6) Notwithstanding the provisions of paragraphs (c)(1), (c)(2), and (c)(4) of this section, foster care individuals placed in the home of relatives or other individuals or families by a Federal, State, or local governmental foster care program, shall be considered boarders. The Federal, State, or local governmental, or court ordered, foster care payments received by the household for such foster care boarder shall not be considered as available income to the household and such payment is exempt from the computation of net self-employment income from boarders under the provisions of § 273.11(b). Foster care boarders may participate in the Program as members of the household providing the boarder services to them, at such household's request. If the household chooses this option, foster care payments received by the household shall be considered unearned income to the household and counted in their entirety in determining the household's income eligibility and benefit level. The provisions of this paragraph (c)(6) do not apply to individuals qualified to participate in the Program under paragraph (e) of this section.

(d) *Head of household.* (1) A State agency shall not use the head of household designation to impose special requirements on the household, such as requiring that the head of household, rather than another responsible member of the household, appear at the certification office to make application for benefits. When designating the head of household, the State agency shall allow the household to select an adult parent of children (of any age) living in the household, or an adult who has parental control over children (under 18 years of age) living in the household, as the head of household provided that all adult household members agree to the selection. The State agency shall permit such households to select their head at each certification action or whenever there is a change in household composition. The State agency shall provide written notice to all households at the time of application and as otherwise appropriate that specifies the household's right to select its head of household in accordance with this paragraph. The written notice shall identify which households have the option to select their head of household, the circumstances under which a household may change its designation of head of household, and how such changes must be reported to the State agency. If all adult household members do not agree to the selection or decline to select an adult parent as the head of household, the State agency may designate the head of household or permit the household to make another selection. In no event shall the household's failure to select an adult parent of children or an adult who has parental control over children as the head of household delay the certification or result in the denial of benefits of an otherwise eligible household. For households that do not consist of adult parents and children or adults who have parental control of children living in the household, the State agency shall designate the head of household or permit the household to do so.

(2) For purposes of failure to comply with § 273.7 and § 273.22 (to the extent that workfare programs operated under this paragraph are included as components of State agency E&T programs), the head of household shall be the principal wage earner unless the household has selected an adult parent of children as specified in § 273.1(d)(1). The principal wage earner shall be the household member (including excluded members) who is the greatest source of earned income in the two months prior to the month of the violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours. No person of any age living with a parent or person fulfilling the role of a parent who

is registered for work or exempt from work registration requirements because such parent or person fulfilling the role of a parent is subject to and participating in any work requirement under title IV of the Social Security Act, or in receipt of unemployment compensation (or has registered for work as part of the application for or receipt of unemployment compensation), or is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours shall be considered the head of household unless the person is an adult parent of children as specified in § 273.1(d)(1) and the household elects to designate the adult parent as its head of household. If there is no principal source of earned income in the household, the household member, documented in the casefile as the head of the household at the time of the violation, shall be considered the head of household. The designation of head of household through the circumstances of this paragraph shall take precedence over a previous designation of head of household at least until the period of ineligibility is ended.

(e) *Residents of institutions.* (1) Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals (over 50% of three meals daily) as part of the institution's normal services. Residents of institutions are not eligible for participation in the program with the following exceptions:

(i) Residents of federally subsidized housing for the elderly built under section 202 of the Housing Act of 1959.

(ii) Narcotic addicts or alcoholics who, for the purpose of regular participation in a drug or alcohol treatment and rehabilitation program, reside at a facility or treatment center, and their children who live with them.

(iii) Disabled or blind individuals (as defined in paragraphs (2) through (11) of the definition of ''Elderly or disabled member,'' contained in § 271.2) who are residents of group living arrangements (as defined in § 271.2).

(iv) Women or women with their children temporarily residing in a shelter for battered women and children as defined in § 271.2. Such persons temporarily residing in shelters for battered women and children shall be considered individual household units for the purposes of applying for and participating in the Program.

(v) Residents of public or private nonprofit shelters for homeless persons.

(2) Residents of public institutions who apply for SSI prior to their release from an institution under the Social Security Administration's Prerelease Program for the Institutionalized (42 U.S.C. 1383 (j)) shall be permitted to apply for food stamps at the same time they apply for SSI. These prerelease applicants shall be processed in accordance with the provisions in § 273.2(c), (g), (i), (j), and (k), § 273.10(a) and § 273.11(i), as appropriate.

(f) *Authorized representatives.* The head of household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in making application for the Program, in obtaining benefits, and/or in using benefits at authorized retail food firms and meal services. Rules pertaining to the use of authorized representatives to obtain household benefits or to use household benefits are in § 274.5. Rules pertaining to designating authorized representatives to apply for the Program are specified in this section.

(1) *Making application for the program.* When the head of the household or the spouse cannot make application, another household member may apply or an adult nonhousehold member may be designated as the authorized representative for that purpose. The head of the household or the spouse should prepare or review the application whenever possible, even though another household member or the authorized representative will actually be interviewed. In conjunction with these provisions, another household member, or the household's authorized representative, may complete work registration forms for those household members required to register for work. The State agency shall inform the household that the household will be held liable for any over issuance which results from erroneous information given by the authorized representative, except as provided in § 273.11(e) and § 273.16(a). Adults

who are non-household members may be designated as authorized representatives for certification purposes only under the following conditions:

(i) The authorized representative has been designated in writing by the head of the household, or the spouse, or another responsible member of the household; and

(ii) The authorized representative is an adult who is sufficiently aware of relevant household circumstances.

(2) *Drug addict/alcoholic treatment centers and group homes as authorized representatives.* Narcotic addicts or alcoholics who regularly participate in a drug or alcoholic treatment program (as defined in § 271.2) on a resident basis and their children who live with them and disabled or blind residents of group living arrangements (as defined in § 271.2) who receive benefits under title II or title XVI of the Social Security Act may elect to participate in the Food Stamp Program.

(i) The residents of drug or alcoholic treatment centers shall apply and be certified for program participation through the use of an authorized representative who shall be an employee of and designated by the publicly operated community mental health center or the private nonprofit organization or institution that is administering the treatment and rehabilitation program.

(ii) Residents of group living arrangements shall either apply and be certified through use of an authorized representative employed and designated by the group living arrangement or apply and be certified on their own behalf or through an authorized representative of their own choice. The group living arrangement shall determine if any resident may apply for food stamps on his/her own behalf; the determination should be based on the resident's physical and mental ability to handle his/her own affairs. The group living arrangement is encouraged to consult with any other agencies of the State providing other services to individual residents prior to a determination. All of the residents of the group living arrangement do not have to be certified either through an authorized representative or individually in order for one or the other method to be used. Applications shall be accepted for any individual applying as a one-person household or for any grouping of residents applying as a household as defined in § 273.1. If the residents are certified on their own behalf, the coupon allotment may either be returned to the facility to be used to purchase food for meals served either communally or individually to eligible residents; used by eligible residents to purchase and prepare food for their own consumption; and/or to purchase meals prepared and served by the group living arrangement. In any case, the group living arrangement is responsible for complying with the requirements set forth in § 273.11(f). If the group living arrangement has its status as an authorized representative suspended by FCS (as discussed in § 273.11(f)(6)), residents applying on their own behalf shall still be able to participate if otherwise eligible.

(3) In the event the only adult living with a household is classified as a nonhousehold member as defined in paragraph (b) of this section, that individual may be the authorized representative for the minor household members.

(4) The following restrictions apply to authorized representatives: (i) State agency employees who are involved in the certification and/or issuance processes and retailers that are authorized to accept food coupons may not act as authorized representatives without the specific written approval of the designated State agency official and only if that official determines that no one else is available to serve as an authorized representative.

(ii) Individuals disqualified for an intentional Program violation shall not act as authorized representatives during the period of disqualification, unless the individual disqualified is the only adult member of the household able to act on its behalf and the State agency has determined that no one else is available to serve as an authorized representative. The State agency shall separately determine whether these individuals are needed to apply on behalf of the household, to obtain coupons, and to use the coupons for food for the household. For example, the household may have an authorized representative to obtain its coupons each month, but not be able to find anyone to purchase

food regularly with the coupons. If the State agency also is unable to find anyone to serve as an authorized representative to purchase food regularly with the coupons, the disqualified member shall be allowed to do so.

(iii) The State agency shall insure that authorized representatives are properly designated. The name of the authorized representative shall be contained in the household's case file. Limits shall not be placed on the number of households an authorized representative may represent. In the event employers, such as those that employ migrant or seasonal farm-workers, are designated as authorized representatives or that a single authorized representative has access to a large number of ATP's or coupons, the State agency should exercise caution to assure that: The household has freely requested the assistance of the authorized representative; the household's circumstances are correctly represented and the household is receiving the correct amount of benefits; and that the authorized representative is properly using the coupons. State agencies which have obtained evidence that an authorized representative has misrepresented a household's circumstances and has knowingly provided false information pertaining to the household, or has made improper use of coupons, may disqualify that authorized representative from participating as an authorized representative in the Food Stamp Program for up to one year. The State agency shall send written notification to the affected household(s) and the authorized representative thirty days prior to the date of disqualification. The notification shall include: The proposed action; the reason for the proposed action; the household's right to request a fair hearing; the telephone number of the office; and, if possible, the name of the person to contact for additional information. This provision is not applicable in the case of drug and alcoholic treatment centers and those group homes which act as authorized representatives for their residents.

(iv) Homeless meal providers, as defined in § 271.2, may not act as authorized representatives for homeless food stamp recipients.

(g) *Strikers.* (1) Households with striking members shall be ineligible to participate in the Food Stamp Program unless the household was eligible for benefits the day prior to the strike and is otherwise eligible at the time of application. However, such a household shall not receive an increased allotment as the result of a decrease in the income of the striking member(s) of the household.

(2) For food stamp purposes, a striker shall be anyone involved in a strike or concerted stoppage of work by emloyees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Any employee affected by a lockout, however, shall not be deemed to be a striker. Further, an individual who goes on strike who is exempt from work registration, in accordance with § 273.7(b), the day prior to the strike, other than those exempt solely on the grounds that they are employed, shall not be deemed to be a striker. Examples of non-strikers who are eligible for participation in the program include but are not limited to:

(i) Employees whose workplace is closed by an employer in order to resist demands of employees (e.g., a lockout);

(ii) Employees unable to work as a result of striking employees (e.g., truckdrivers who are not working because striking newspaper pressmen prevent newspapers from being printed); and,

(iii) Employees who are not part of the bargaining unit on strike who do not want to cross a picket line due to fear of personal injury or death.

(3) Pre-strike eligibility shall be determined by considering the day prior to the strike as the day of application and assuming the strike did not occur.

(4) Eligibility at time of application shall be determined by comparing the striking member's income before the strike (as calculated for paragraph (g)(3) of this section) to the striker's current income and adding the higher of the two to the current income of nonstriking members during the month of application. To determine benefits (and eligibility for households subject to the net income eligibility standard),

deduction shall be calculated for the month of application as for any other household. Whether the striker's pre-strike earnings are used or his current income is used, the earnings deduction shall be allowed if appropriate.

(5) Strikers whose households are eligible to participate under the criteria in §273.1(g) shall be subject to the work registration requirements under §273.7 unless exempt under §273.7(b) the day of application.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §273.1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### §273.2 Application processing.

(a) *General purpose.* The application process includes filing and completing an application form, being interviewed, and having certain information verified. The State agency shall act promptly on all applications and provide food stamp benefits retroactive to the month of application to those households that have completed the application process and have been determined eligible. Expedited service shall be available to households in immediate need. Specific responsibilities of households and State agencies in the application process are detailed below.

(b) *Food Stamp application form.*—(1) *Content.* Each application form shall contain:

(i) In prominent and boldface lettering and understandable terms a statement that the information provided by the applicant in connection with the application for food stamp benefits will be subject to verification by Federal, State and local officials to determine if such information is factual; that if any information is incorrect, food stamps may be denied to the applicant; and that the applicant may be subject to criminal prosecution for knowingly providing incorrect information;

(ii) In prominent and boldface lettering and understandable terms a description of the civil and criminal provisions and penalties for violations of the Food Stamp Act;

(iii) A statement to be signed by one adult household member which certifies, under penalty of perjury, the truth of the information contained in the application, including the information concerning citizenship and alien status;

(iv) A place on the front page of the application where the applicant can write his/her name, address and signature;

(v) In plain and prominent language on or near the front page of the application, notification of the household's right to immediately file the application as long as it contains the applicant's name and address and the signature of a responsible household member or the household's authorized representative;

(vi) In plain and prominent language on or near the front page of the application, a description of the expedited service provisions described in paragraph (i) of this section; and

(vii) In plain and prominent language on or near the front page of the application, notification that benefits are provided from the date of application.

(2) *Income and eligibility verification system (IEVS).* All applicants for food stamp benefits shall be notified at the time of application and at each recertification through a written statement on or provided with the application form that information available through the State income and eligibility verification (IEVS) will be requested, used and may be verified through collateral contact when discrepancies are found by the State agency, and that such information may affect the household's eligibility and level of benefits. All applicants shall also be notified on the application form that the alien status of any household member may be subject to verification by INS through the submission of information from the application to INS, and that the submitted information received from INS may affect the household's eligibility and level of benefits.

(3) *Deviations.* All State agencies shall use an application form designed by FCS. FCS may approve a deviation (design/contents) from that form to accommodate the use of a multi-program application form, the requirements of a computer system (including the use of on-line applications), or other exigencies for which the State agency can submit adequate justification, provided

the form is brief, understandable to applicants, easy to use, and, for multiprogram applications, clear enough to afford applicants the option of answering only those questions relevant to the program or programs for which they are applying. State agencies may request assistance from FCS in the development of a brief, simply-written and readable application, including application forms which cover the Food Stamp Program and the Aid to Families with Dependent Children Program or the Medicaid Program.

(c) *Filing an application*—(1) *Household's right to file.* Households must file food stamp applications by submitting the forms to the food stamp office either in person, through an authorized representative or by mail. The length of time a State agency has to deliver benefits is calculated from the date the application is filed in the food stamp office designated by the State agency to accept the household's application, except when a resident of a public institution is jointly applying for SSI and food stamps prior to his/her release from an institution in accordance with § 273.1(e)(2). Residents of public institutions who apply for foods stamps prior to their release from the institution shall be certified in accordance with § 273.2(g)(1) or § 273.2(i)(3)(i), as appropriate. Each household has the right to file an application form on the same day it contacts the food stamp office during office hours. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the form contains the applicant's name and address, and is signed by a responsible member of the household or the household's authorized representative. State agencies shall document the date the application was filed by recording on the application the date it was received by the food stamp office. When a resident of an institution is jointly applying for SSI and food stamps prior to leaving the institution, the filing date of the application to be recorded by the State agency on the food stamp application is the date of release of the applicant from the institution.

(2) *Contacting the food stamp office.* (i) State agencies shall encourage households to file an application form the same day the household or its representative contacts the food stamp office in person or by telephone and expresses interest in obtaining food stamp assistance. If a household contacting the food stamp office by telephone does not wish to come to the appropriate office to file the application that same day and instead prefers receiving an application through the mail, the State agency shall mail an application form to the household on the same day the telephone request is received. An application shall also be mailed on the same day a written request for food assistance is received.

(ii) Where a project area has designated certification offices to serve specific geographic areas, households may contact an office other than the one designated to service the area in which they reside. When a household contacts the wrong certification office within a project area in person or by telephone, the certification office shall, in addition to meeting the requirements in paragraph (c)(2)(i) of this section, give the household the address and telephone number of the appropriate office. The certification office shall also offer to forward the household's application to the appropriate office that same day if the household has completed enough information on the application to file. The household shall be informed that its application will not be considered filed and the processing standards shall not begin until the application is received by the appropriate office. If the household has mailed its application to the wrong office within a project area, the certification office shall mail the application to the appropriate office on the same day.

(iii) In State agencies that elect to have Statewide residency, as provided in § 273.3, the application processing timeframes begin when the application is filed in any food stamp office in the State.

(3) *Availability of the application form.* The State agency shall make application forms readily accessible to potentially eligible households. The State agency shall also provide an application form to anyone who requests the form.

(4) *Notice of right to file.* The State agency shall post signs in the certification office which explain the application processing standards and the right to file an application on the day of initial contact. The State agency shall include similar information about same day filing on the application form.

(5) *Notice of Required Verification.* The State agency shall provide each household at the time of application for certification and recertification with a notice that informs the household of the verification requirements the household must meet as part of the application process. The notice shall also inform the household of the State agency's responsibility to assist the household in obtaining required verification provided the household is cooperating with the State agency as specified in (d)(1) of this section. The notice shall be written in clear and simple language and shall meet the bilingual requirements designated in § 272.4(b) of this chapter. At a minimum, the notice shall contain examples of the types of documents the household should provide and explain the period of time the documents should cover.

(6) *Withdrawing application.* The household may voluntarily withdraw its application at any time prior to the determination of eligibility. The State agency shall document in the case file the reason for withdrawal, if any was stated by the household, and that contact was made with the household to confirm the withdrawal. The household shall be advised of its right to reapply at any time subsequent to a withdrawal.

(d) *Household cooperation.* (1) To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate with the State agency in completing this process, the application shall be denied at the time of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied. The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes and applications for recertification. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates with the State agency. The State agency shall not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification. The State agency shall not consider individuals identified as nonhousehold members under § 273.1(b)(2) as individuals outside the household.

(2) *Cooperation with QC Reviewer.* In addition, the household shall be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility as a part of a quality control review. If a household is terminated for refusal to cooperate with a quality control reviewer, in accordance with § 275.3(c)(5) or § 275.12(g)(1)(ii), the household may reapply, but shall not be determined eligible until it cooperates with the quality control reviewer. If a household terminated for refusal to cooperate with a State quality control reviewer reapplies after 95 days from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a State quality control reviewer during the completed review period, but must provide verification in accordance with § 273.2(f)(1)(ix). If a household terminated for refusal to cooperate with a Federal quality control reviewer reapplies after seven months from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a Federal quality control reviewer during the completed review period, but must provide verification in accordance with § 273.2(f)(1)(ix).

(e) *Interviews.* (1) All applicant households, including those submitting applications by mail, shall have face-to-face interviews in a food stamp office or other certification site with a qualified eligibility worker prior to initial certification and all recertifications. The individual interviewed may be the head of household, spouse, any other responsible member of the household, or an authorized representative. The applicant may bring any person he or she chooses to the interview. The interviewer shall not simply review the information that appears on the application, but shall explore and resolve with the household unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview, including the appropriate application processing standard and the households' responsibility to report changes. The interview shall be conducted as an official and confidential discussion of household circumstances. The applicant's right to privacy shall be protected during the interview. Facilities shall be adequate to preserve the privacy and confidentiality of the interview.

(2) The office interview shall be waived if requested by any household which is unable to appoint an authorized representative and which has no household members able to come to the food stamp office because they are elderly or disabled (as defined in § 271.2). The office interview shall also be waived if requested by any household which is unable to appoint an authorized representative and lives in a location which is not served by a certification office. The State agency shall waive the office interview on a case-by-case basis for any household which is unable to appoint an authorized representative and which has no household members able to come to the food stamp office because of transportation difficulties or similar hardships which the State agency determines warrants a waiver of the office interview. These hardship conditions include, but are not limited to: Illness, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in an in-office interview. The State agency shall determine if the transportation difficulty or hardship reported by a household warrants a waiver of the office interview and shall document in the case file why a request for a waiver was granted or denied.

(i) The State agency has the option of conducting a telephone interview or a home visit for those households for whom the office interview is waived. Home visits shall be used only if the time of the visit is scheduled in advance with the household.

(ii) Waiver of the face-to-face interview does not exempt the household from the verification requirements, although special procedures may be used to permit the household to provide verification and thus obtain its benefits in a timely manner, such as substituting a collateral contact in cases where documentary verification would normally be provided.

(iii) Waiver of the face-to-face interview shall not affect the length of the household's certification period.

(3) The State agency shall schedule all interviews as promptly as possible to insure eligible households receive an opportunity to participate within 30 days after the application is filed. If a household fails to appear for the first interview, the State agency shall attempt to schedule another interview. The interview shall be rescheduled by the State agency without requiring the household to provide good cause for failing to appear. However, if the household does not appear for the rescheduled interview, the State agency need not initiate action to schedule any further interviews unless the household requests that another interview be scheduled.

(f) *Verification.* Verification is the use of third-party information or documentation to establish the accuracy of statements on the application.

(1) *Mandatory verification.* State agencies shall verify the following information prior to certification for households initially applying:

(i) *Gross nonexempt income.* Gross nonexempt income shall be verified for all households prior to certification. However, where all attempts to verify the income have been unsuccessful because the person or organization providing

the income has failed to cooperate with the household and the State agency, and all other sources of verification are unavailable, the eligibility worker shall determine an amount to be used for certification purposes based on the best available information.

(ii) *Alien status.* (A) Based on the application, the State agency shall determine if members identified as aliens are eligible aliens, as defined in § 273.4 (a)(2) through (a)(9), by requiring that the household present verification for each alien member.

(B) Aliens in the categories specified in § 273.4(a) (2) and (3) shall present either an Immigration and Naturalization Service (INS) Form I–151 or i–551, or such other documents which identify the aliens' immigration status and which the State agency determines are reasonable of the aliens' immigration status.

(C) Aliens in the categories specified in § 273.4 (a)(4) through (a)(7) shall present an INS Form I–94: *Arrival-Departure Record* or other documents which identify the aliens' immigration status and which the State agency determines are reasonable evidence of the aliens' immigration status. The State agency shall accept the INS Form I–94 as verification of eligible alien status only if the form is annotated with section 207, 208, 212(d)(5) or 243(h) of the Immigration and Nationality Act or if the form is annotated with any one of the following terms or a combination of the following terms: Refugee, parolee, paroled, or asylum. An INS Form I–94 annotated with any one of the letters (A) through (L) shall be considered verification of ineligible alien status unless the alien can provide other documentation from INS which indicates that the alien is eligible. If the INS Form I–94 does not bear any of the above annotations and the alien has no other verification of alien classification in his or her possession, the State agency shall advise the alien to submit Form G–641, *Application for Verification of Information from Immigration and Naturalization Service Records,* to INS. State agencies shall accept this form when presented by the alien and properly annotated at the bottom by an INS representative as evidence of lawful admission for permanent residence or parole for humanitarian reasons. The alien shall also be advised that classification under section 207, 208, 212(d)(5), or 243(h) of the Immigration and Nationality Act shall result in eligible status; that the alien may be eligible if acceptable verification is obtained; and that the alien may contact INS, as stated previously, or otherwise obtain the necessary verification or, if the alien wishes and signs a written consent, that the State agency will contact INS to obtain clarification of the alien's status. If the alien does not wish to contact INS, the household shall be given the option of withdrawing its application or participating without that member.

(D) Aliens in the categories specified in § 273.4(a)(8) and (a)(9) shall present documentation such as, but not limited to, a letter, notice of eligibility, or identification card which clearly identifies the alien has been granted legal status in one of those categories.

(E) The State agency is responsible to offer to contact INS when the alien has an INS document that does not clearly indicate eligible or ineligible alien status. The State agency does not need to offer to contact INS on the alien's behalf when the alien does not provide an INS document. However, when State agencies accept non-INS documentation determined to be reasonable evidence of the alien's immigration status as specified in paragraphs (f)(1)(ii) (B), (C), and (D) of this section, the State agency shall photocopy the document and transmit the photocopy to INS for verification. Pending such verification, the State agency shall not delay, deny, reduce or terminate the individual's eligibility for benefits on the basis of the individual's immigration status. The State agency does not need to receive the alien applicant's written consent in order to transmit the photocopy to INS.

(F) The State agency shall provide alien applicants with a reasonable opportunity to submit acceptable documentation of their eligible alien status as of the 30th day following the date of application. A reasonable opportunity shall be at least 10 days from the date of the State agency's request for an acceptable document. When the State

agency accepts non-INS documentation as specified in paragraphs (f)(1)(ii) (B), (C), and (D) of this section and fails to provide an alien applicant with a reasonable opportunity as of the 30th day following the date of application, the State agency shall provide the household with benefits no later than 30 days following the date of application *Provided* the household is otherwise eligible.

(G) Except as specified in paragraphs (f)(1)(ii)(F) and (f)(10)(i) of this section, the alien applicant whose status is questionable shall be ineligible until the alien provides acceptable documentation. The income and resources of the ineligible alien shall be treated in the same manner as a disqualified individual set forth in §273.11(c), and shall be considered available in determining the eligibility of any remaining members.

(iii) *Utility expenses.* The State agency shall verify a household's utility expenses if the household wishes to claim expenses in excess of the State agency's utility standard and the expense would actually result in a deduction. If the household's actual utility expenses cannot be verified before the 30 days allowed to process the application expire, the State agency shall use the standard utility allowance, provided the household is entitled to use the standard as specified in §273.9(d). If the household wishes to claim expenses for an unoccupied home, the State agency shall verify the household's actual utility expenses for the unoccupied home in every case and shall not use the standard utility allowance.

(iv) *Medical expenses.* The amount of any medical expenses (including the amount of reimbursements) deductible under §273.9(d)(3) shall be verified prior to initial certification. Verification of other factors, such as the allowability of services provided or the eligibility of the person incurring the cost, shall be required if questionable.

(v) *Social security numbers.* The State agency shall verify the social security number(s) (SSN) reported by the household by submitting them to the Social Security Administration (SSA) for verification according to procedures established by SSA. The State agency shall not delay the certification for or issuance of benefits to an otherwise eligible household solely to verify the SSN of a household member. Once an SSN has been verified, the State agency shall make a permanent annotation to its file to prevent the unnecessary reverification of the SSN in the future. The State agency shall accept as verified an SSN which has been verified by another program participating in the IEVS described in §272.8. If an individual is unable to provide an SSN or does not have an SSN, the State agency shall require the individual to submit Form SS–5, Application for a Social Security Number, to the SSA in accordance with procedures in §273.6. A completed SSA Form 2853 shall be considered proof of application for an SSN for a newborn infant.

(vi) *Residency.* The residency requirements of §273.3 shall be verified except in unusual cases (such as homeless households, some migrant farmworker households, or households newly arrived in a project area) where verification of residency cannot reasonably be accomplished. Verification of residency should be accomplished to the extent possible in conjunction with the verification of other information such as, but not limited to, rent and mortgage payments, utility expenses, and identity. If verification cannot be accomplished in conjunction with the verification of other information, then the State agency shall use a collateral contact or other readily available documentary evidence. Documents used to verify other factors of eligibility should normally suffice to verify residency as well. Any documents or collateral contact which reasonably establish the applicant's residency must be accepted and no requirement for a specific type of verification may be imposed. No durational residency requirement shall be established.

(vii) *Identity.* The identity of the person making application shall be verified. Where an authorized representative applies on behalf of a household, the identity of both the authorized representative and the head of household

shall be verified. Identity may be verified through readily available documentary evidence, or if this is unavailable, through a collateral contact. Examples of acceptable documentary evidence which the applicant may provide include, but are not limited to, a driver's license, a work or school ID, an ID for health benefits or for another assistance or social services program, a voter registration card, wage stubs, or a birth certificate. Any documents which reasonably establish the applicant's identity must be accepted, and no requirement for a specific type of document, such as a birth certificate, may be imposed.

(viii) *Disability*. (A) The State agency shall verify disability as defined in § 271.2 as follows:

(*1*) For individuals to be considered disabled under paragraphs (2), (3) and (4) of the definition, the household shall provide proof that the disabled individual is receiving benefits under titles I, II, X, XIV or XVI of the Social Security Act.

(*2*) For individuals to be considered disabled under paragraph (6) of the definition, the household must present a statement from the Veterans Administration (VA) which clearly indicates that the disabled individual is receiving VA disability benefits for a service-connected or non-service-connected disability and that the disability is rated as total or paid at the total rate by VA.

(*3*) For individuals to be considered disabled under paragraphs (7) and (8) of the definition, proof by the household that the disabled individual is receiving VA disability benefits is sufficient verification of disability.

(*4*) For individuals to be considered disabled under paragraphs (5) and (9) of the definition, the State agency shall use the Social Security Administration's (SSA) most current list of disabilities considered permanent under the Social Security Act for verifying disability. If it is obvious to the caseworker that the individual has one of the listed disabilities, the household shall be considered to have verified disability. If disability is not obvious to the caseworker, the household shall provide a statement from a physician or licensed or certified psychologist certifying that the individual has one of the nonobvious disabilities listed as the means for verifying disability under paragraphs (5) and (9) of the definition.

(*5*) For individuals to be considered disabled under paragraph (10) of the definition, the household shall provide proof that the individual receives a Railroad Retirement disability annuity from the Railroad Retirement Board *and* has been determined to qualify for Medicare.

(*6*) For individuals to be considered disabled under paragraph (11) of the definition, the household shall provide proof that the individual receives interim assistance benefits pending the receipt of Supplemental Security Income; or disability-related medical assistance under title XIX of the SSA; or disability-based State general assistance benefits. The State agency shall verify that the eligibility to receive these benefits is based upon disability or blindness criteria which are at least as stringent as those used under title XVI of the Social Security Act.

(B) For disability determinations which must be made relevant to the provisions of § 273.1(a)(2)(ii), the State agency shall use the SSA's most current list of disabilities as the initial step for verifying if an individual has a disability considered permanent under the Social Security Act. However, only those individuals who suffer from one of the disabilities mentioned in the SSA list who are unable to purchase and prepare meals because of such disability shall be considered disabled for the purpose of this provision. If it is obvious to the caseworker that the individual is unable to purchase and prepare meals because he/she suffers from a severe physical or mental disability, the individual shall be considered disabled for the purpose of the provision even if the disability is not specifically mentioned on the SSA list. If the disability is not obvious to the caseworker, he/she shall verify the disability by requiring a statement from a physician or licensed or certified psychologist certifying that the individual (in the physician's/psychologist's opinion) is unable to purchase and prepare meals because he/she suffers from one

of the nonobvious disabilities mentioned in the SSA list or is unable to purchase meals because he/she suffers from some other severe, permanent physical or mental disease or nondisease-related disability. The elderly and disabled individual (or his/her authorized representative) shall be responsible for obtaining the cooperation of the individuals with whom he/she resides in providing the necessary income information about the others to the State agency for purposes of this provision.

(ix) State agencies shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a State quality control reviewer, and reapply after 95 days from the end of the annual review period. State agencies shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a Federal quality control reviewer and reapply after seven months from the end of the annual review period.

(x) *Household composition.* State agencies shall verify factors affecting the composition of a household, if questionable. Individuals who claim to be a separate household from those with whom they reside shall be responsible for proving that they are a separate household to the satisfaction of the State agency. Individuals who claim to be a separate household from those with whom they reside based on the various age and disability factors for determining separateness shall be responsible for proving a claim of separateness (at the State agency's request) in accordance with the provisions of § 273.2(f)(1)(viii).

(xi) *Shelter costs for homeless households.* Homeless households claiming shelter expenses greater than the standard estimate of shelter expenses (as defined in § 273.9(d)(5)(i)) must provide verification of these shelter expenses. If a homeless household has difficulty in obtaining traditional types of verification of shelter costs, the caseworker shall use prudent judgment in determining if the verification obtained is adequate. For example, if a homeless individual claims to have incurred shelter costs for several nights and the costs are comparable to costs typically incurred by homeless people for shelter, the caseworker may decide to accept this information as adequate information and not require further verification.

(xii) *Students.* If a person claims to be physically or mentally unfit for purposes of the student exemption contained in § 273.5(b)(2) and the unfitness is not evident to the State agency, verification may be required. Appropriate verification may consist of receipt of temporary or permanent disability benefits issued by governmental or private sources, or of a statement from a physician or licensed or certified psychologist.

(xiii) *Legal obligation and actual child support payments.* The State agency shall obtain verification of the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. Documents that are accepted as verification of the household's legal obligation to pay child support shall not be accepted as verification of the household's actual monthly child support payments. State agencies may and are strongly encouraged to obtain information regarding a household member's child support obligation and payments from Child Support Enforcement (CSE) automated data files. The State agency shall give the household an opportunity to resolve any discrepancy between household verification and CSE records in accordance with paragraph (f)(9) of this section.

(2) *Verification of questionable information.* (i) The State agency shall verify, prior to certification of the household, all other factors of eligibility which the State agency determines are questionable and affect the household's eligibility and benefit level. The State agency shall establish guidelines to be followed in determining what shall be considered questionable information. These guidelines shall not prescribe verification based on race, religion, ethnic background, or national origin. These guidelines shall not target groups such as migrant farmworkers or American Indians for more intensive verification under this provision.

(ii) *Citizenship.* (A) When a household's statement that one or more of

its members are U.S. citizens is questionable, the household shall be asked to provide acceptable verification. Acceptable forms of verification include birth certificates, religious records, voter registration cards, certificates of citizenship or naturalization provided by INS, such as identification cards for use of resident citizens in the United States (INS Form I–179 or INS Form I–197) or U.S. passports. Participation in the AFDC program shall also be considered acceptable verification if verification of citizenship was obtained for that program. If the above forms of verification cannot be obtained and the household can provide a reasonable explanation as to why verification is not available, the State agency shall accept a signed statement from someone who is a U.S. citizen which declares, under penalty of perjury, that the member in question is a U.S. citizen. The signed statement shall contain a warning of the penalties for helping someone commit fraud, such as: If you intentionally give false information to help this person get food stamps, you may be fined, imprisoned, or both.

(B) The member whose citizenship is in question shall be ineligible to participate until proof of U.S. citizenship is obtained. Until proof of U.S. citizenship is obtained, the member whose citizenship is in question will have his or her income, less a prorata share, and all of his or her resources considered available to any remaining household members as set forth in § 273.11(c).

(3) *State agency options.* In addition to the verification required in paragraphs (f)(1) and (f)(2) of this section, the State agency may elect to mandate verification of any other factor which affects household eligibility or allotment level, including household size where not questionable. Such verification may be required Statewide or throughout a project area, but shall not be imposed on a selective, case-by-case basis on particular households.

(i) The State agency may establish its own standards for the use of verification, provided that, at a minimum, all questionable factors are verified in accordance with paragraph (f)(2) of this section and that such standards do not allow for inadvertent discrimination. For example, no standard may be applied which prescribes variances in verification based on race, religion, ethnic background or national origin, nor may a State standard target groups such as migrant farmworkers or American Indians for more intensive verification than other households. The options specified in this paragraph, shall not apply in those offices of the Social Security Administration (SSA) which, in accordance with paragraph (k) of this section, provide for the food stamp certification of households containing recipients of Supplemental Security Income (SSI) and social security benefits. The State agency, however, may negotiate with those SSA offices with regard to mandating verification of these options.

(ii) If a State agency opts to verify a deductible expense and obtaining the verification may delay the household's certification, the State agency shall advise the household that its eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. This provision also applies to the allowance of medical expenses as specified in paragraph (f)(1)(iv) of this section. Shelter costs would be computed without including the unverified components. The standard utility allowance shall be used if the household is entitled to claim it and has not verified higher actual costs. If the expense cannot be verified within 30 days of the date of application, the State agency shall determine the household's eligibility and benefit level without providing a deduction of the unverified expense. If the household subsequently provides the missing verification, the State agency shall redetermine the household's benefits, and provide increased benefits, if any, in accordance with the timeliness standards in § 273.12 on reported changes. If the expense could not be verified within the 30-day processing standard because the State agency failed to allow the household sufficient time, as defined in paragraph (h)(1) of this section, to verify the expense, the household shall be entitled to the restoration of benefits retroactive to the month of application, provided that the missing verification is supplied in accordance with paragraph (h)(3) of this section. If the household

would be ineligible unless the expense is allowed, the household's application shall be handled as provided in paragraph (h) of this section.

(4) *Sources of verification*—(i) *Documentary evidence.* State agencies shall use documentary evidence as the primary source of verification for all items except residency and household size. These items may be verified either through readily available documentary evidence or through a collateral contact, without a requirement being imposed that documentary evidence must be the primary source of verification. Documentary evidence consists of a written confirmation of a household's circumstances. Examples of documentary evidence include wage stubs, rent receipts, and utility bills. Although documentary evidence shall be the primary source of verification, acceptable verification shall not be limited to any single type of document and may be obtained through the household or other source. Whenever documentary evidence cannot be obtained or is insufficient to make a firm determination of eligibility or benefit level, the eligibility worker may require collateral contacts or home visits. For example, documentary evidence may be considered insufficient when the household presents pay stubs which do not represent an accurate picture of the household's income (such as out-dated pay stubs) or identification papers that appear to be falsified.

(ii) *Collateral contacts.* A collateral contact is an oral confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. The State agency may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the State agency. Examples of acceptable collateral contacts may include employers, landlords, social service agencies, migrant service agencies, and neighbors of the household who can be expected to provide accurate third-party verification.

(iii) *Home visits.* Home visits may be used as verification only when documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, and the home visit is scheduled in advance with the household.

(iv) *Discrepancies.* Where unverified information from a source other than the household contradicts statements made by the household, the household shall be afforded a reasonable opportunity to resolve the discrepancy prior to a determination of eligibility or benefits. The State agency may, if it chooses, verify the information directly and contact the household only if such direct verification efforts are unsuccessful. If the unverified information is received through the IEVS, as specified in § 272.8, the State agency may obtain verification from a third party as specified in paragraph (f)(9)(v) of this section.

(5) *Responsibility of obtaining verification.* (i) The household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information. The State agency shall assist the household in obtaining this verification provided the household is cooperating with the State agency as specified under paragraph (d)(1) of this section. Households may supply documentary evidence in person, through the mail, or through an authorized representative. The State agency shall not require the household to present verification in person at the food stamp office. The State agency shall accept any reasonable documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application.

(ii) Whenever documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, the State agency may require a collateral contact or a home visit. The State agency, generally, shall rely on the household to provide the name of any collateral contact. The household may request assistance in designating a collateral

contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide an accurate third-party verification. When the collateral contact designated by the household is unacceptable, the State agency shall either designate another collateral contact, ask the household to designate another collateral contact or to provide an alternative form of verification, or substitute a home visit. The State agency is responsible for obtaining verification from acceptable collateral contacts.

(6) *Documentation.* Case files must be documented to support eligibility, ineligibility, and benefit level determinations. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

(7) *State Data Exchange and Beneficiary Data Exchange.* The State agency may verify SSI benefits through the State Data Exchange (SDX), and Social Security benefit information through the Beneficiary Data Exchange (BENDEX), or through verification provided by the household. The State agency may use SDX and BENDEX data to verify other food stamp eligibility criteria. The State agency may access SDX and BENDEX data without release statements from households, provided the State agency makes the appropriate data request to SSA and executes the necessary data exchange agreements with SSA. The household shall be given an opportunity to verify the information from another source if the SDX or BENDEX information is contradictory to the information provided by the household or is unavailable. Determination of the household's eligibility and benefit level shall not be delayed past the application processing time standards of paragraph (g) of this section if SDX or BENDEX data is unavailable.

(8) *Verification subsequent to initial certification.* (i) *Recertification*—(A) At recertification the State agency shall verify a change in income or actual utility expenses if the source has changed or the amount has changed by more than $25. Previously unreported medical expenses and total recurring medical expenses which have changed by more than $25 shall also be verified at recertification. The State agency shall not verify income if the source has not changed and if the amount is unchanged or has changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. The State agency shall also not verify total medical expenses, or actual utility expenses claimed by households which are unchanged or have changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. The State agency shall require a household eligible for the child support deduction to verify any changes in the legal obligation to pay child support, the obligated amount, and the amount of legally obligated child support a household member pays to a nonhousehold member. The State agency shall verify reportedly unchanged child support information only if the information is incomplete, inaccurate, inconsistent or outdated.

(B) Newly obtained social security numbers shall be verified at recertification in accordance with verification procedures outlined in § 273.2(f)(1)(v).

(C) Other information which has changed may be verified at recertification. Unchanged information shall not be verified unless the information is incomplete, inaccurate, inconsistent or outdated. Verification under this paragraph shall be subject to the same verification procedures as apply during initial verification.

(ii) *Changes.* Changes reported during the certification period shall be subject to the same verification procedures as apply at initial certification, except that the State agency shall not verify changes in income if the source has not changed and if the amount has changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. The State agency shall also not verify total medical expenses or actual utility expenses which are unchanged or have changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated.

(9) *Use of IEVS.* (i) The State agency shall use information obtained through the IEVS to verify the eligibility and benefit level of applicant and participating households, in accordance with procedures specified in § 272.8.

(ii) The State agency may access data through the IEVS provided the disclosure safeguards and data exchange agreements required by part 272 are satisfied.

(iii) The State agency shall take action, including proper notices to households, to terminate, deny, or reduce benefits based on information obtain through the IEVS which is considered verified upon receipt. This information is social security and SSI benefit information obtained from SSA, and AFDC benefit information and UIB information obtained from the agencies administering those programs. If the State agency has information that the IEVS-obtained information about a particular household is questionable, this information shall be considered unverified upon receipt and the State agency shall take action as specified in paragraph (f)(9)(iv) of this section.

(iv) Except as noted in this paragraph, prior to taking action to terminate, deny, or reduce benefits based on information obtained through the IEVS which is considered unverified upon receipt, State agencies shall independently verify the information. Such unverified information is unearned income information from IRS, wage information from SSA and SWICAs, and questionable IEVS information discussed in paragraph (f)(9)(iii) of this section. Independent verification shall include verification of the amount of the asset or income involved, whether the household actually has or had access to such asset or income such that it would be countable income or resources for food stamp purposes, and the period during which such access occurred. Except with respect to unearned income information from IRS, if a State agency has information which indicates that independent verification is not needed, such verification is not required.

(v) The State agency shall obtain independent verification of unverified information obtained from IEVS by means of contacting the household and/or the appropriate income, resource or benefit source. If the State agency chooses to contact the household, it must do so in writing, informing the household of the information which it has received, and requesting that the household respond within 10 days. If the household fails to respond in a timely manner, the State agency shall send it a notice of adverse action as specified in § 273.13. The State agency may contact the appropriate source by the means best suited to the situation. When the household or appropriate source provides the independent verification, the State agency shall properly notify the household of the action it intends to take and provide the household with an opportunity to request a fair hearing prior to any adverse action.

(10) *Use of SAVE.* When participating in the INS SAVE Program to verify the validity of documents presented by applicant aliens, State agency's shall use the following procedures:

(i) The State agency shall provide an applicant alien with a reasonable opportunity to submit acceptable documentation of their eligible alien status prior to the 30th day following the date of application. A reasonable opportunity shall be at least 10 days from the date of the State agency's request for an acceptable document. An alien who has been given a reasonable opportunity to submit acceptable documentation and has not done so as of the 30th day following the date of application shall not be certified for benefits until acceptable documentation has been submitted. However, if the 10-day reasonable opportunity period provided by the State agency does not lapse before the 30th day following the date of application, the State agency shall provide the household with benefits no later than 30 days following the date of application *Provided* the household is otherwise eligible.

(ii) The written consent of the alien applicant shall not be required as a condition for the State agency to contact INS to verify the validity of documentation.

(iii) State agencies which access the ASVI database through an automated access shall also submit INS Form G–845, with an attached photocopy of the alien's document, to INS whenever the initial automated access does not confirm the validity of the alien's documentation or a significant discrepancy exists between the data provided by the ASVI and the information provided by

the applicant. Pending such responses from either the ASVI or INS Form G–845, the State agency shall not delay, deny, reduce, or terminate the alien's eligibility for benefits on the basis of the individual's alien status.

(iv) If the State agency determines, after complying with the requirements of this section, that the alien is not in an eligible alien status, the State agency shall take action, including proper notices to the household, to terminate, deny or reduce benefits. The State agency shall provide households the opportunity to request a fair hearing under § 273.15 prior to any adverse action.

(v) The use of SAVE shall be documented in the casefile or other agency records. When the State agency is waiting for a response from SAVE, agency records shall contain either a notation showing the date of the State agency's transmission or a copy of the INS Form G–845 sent to INS. Once the SAVE response is received, agency records shall show documentation of the ASVI Query Verification Number or contain a copy of the INS-annotated Form G–845. Whenever the response from automated access to the ASVI directs the eligibility worker to initiate secondary verification, agency records shall show documentation of the ASVI Query Verification Number and contain a copy of the INS Form G–845.

(g) *Normal processing standard*—(1) *Thirty-day processing.* The State agency shall provide eligible households that complete the initial application process an opportunity to participate (as defined in § 274.2(b)) as soon as possible, but no later than 30 calendar days following the date the application was filed, except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to release from the institution in accordance with § 273.1(e)(2). An application is filed the day the appropriate food stamp office receives an application containing the applicant's name and address, which is signed by either a responsible member of the household or the household's authorized representative. Households entitled to expedited processing are specified in paragraph (i) of this section. For residents of public institutions who apply for food stamps prior to their release from the institution in accordance with § 273.1(e)(2), the State agency shall provide an opportunity to participate as soon as possible, but not later than 30 calendar days from the date of release of the applicant from the institution.

(2) *Combined allotments.* Households which apply for initial month benefits (as described in § 273.10(a)) after the 15th of the month, are processed under normal processing timeframes, have completed the application process within 30 days of the date of application, and have been determined eligible to receive benefits for the initial month of application and the next subsequent month, may be issued a combined allotment at State agency option which includes prorated benefits for the month of application and benefits for the first full month of participation. The benefits shall be issued in accordance with § 274.2(c) of this chapter.

(3) *Denying the application.* Households that are found to be ineligible shall be sent a notice of denial as soon as possible but not later than 30 days following the date the application was filed. If the household has failed to appear for two scheduled interviews and has made no subsequent contact with the State agency to express interest in pursuing the application, the State agency shall send the household a notice of denial on the 30th day following the date of application. The household must file a new application if it wishes to participate in the program. In cases where the State agency was able to conduct an interview and request all of the necessary verification on the same day the application was filed, and no subsequent requests for verification have been made, the State agency may also deny the application on the 30th day if the State agency provided assistance to the household in obtaining verification as specified in paragraph (f)(5) of this section, but the household failed to provide the requested verification.

(h) *Delays in processing.* If the State agency does not determine a household's eligibility and provide an opportunity to participate within 30 days following the date the application was filed, the State agency shall take the following action:

(1) *Determining cause.* The State agency shall first determine the cause of the delay using the following criteria:

(i) A delay shall be considered the fault of the household if the household has failed to complete the application process even though the State agency has taken all the action it is required to take to assist the household. The State agency must have taken the following actions before a delay can be considered the fault of the household:

(A) For households that have failed to complete the application form, the State agency must have offered, or attempted to offer, assistance in its completion.

(B) If one or more members of the household have failed to register for work, as required in § 273.7, the State agency must have informed the household of the need to register for work and given the household at least 10 days from the date of notification to register these members.

(C) In cases where verification is incomplete, the State agency must have provided the household with a statement of required verification and offered to assist the household in obtaining required verification and allowed the household sufficient time to provide the missing verification. Sufficient time shall be at least 10 days from the date of the State agency's initial request for the particular verification that was missing.

(D) For households that have failed to appear for an interview, the State agency must have attempted to reschedule the initial interview within 30 days following the date the application was filed. However, if the household has failed to appear for the first interview and a subsequent interview is postponed at the household's request or cannot otherwise be rescheduled until after the 20th day but before the 30th day following the date the application was filed, the household must appear for the interview, bring verification, and register members for work by the 30th day; otherwise, the delay shall be the fault of the household. If the household has failed to appear for the first interview and a subsequent interview is postponed at the household's request until after the 30th day following the date the application was filed, the delay shall be the fault of the household. If the household has missed both scheduled interviews and requests another interview, any delay shall be the fault of the household.

(ii) Delays that are the fault of the State agency include, but are not limited to, those cases where the State agency failed to take the actions described in paragraphs (h)(1)(i) (A) through (D) of this section.

(2) *Delays caused by the household.* (i) If by the 30th day the State agency cannot take any further action on the application due to the fault of the household, the household shall lose its entitlement to benefits for the month of application. However, the State agency shall give the household an additional 30 days to take the required action, except that, if verification is lacking, the State agency has the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing.

(A) The State agency has the option of sending the household either a notice of denial or a notice of pending status on the 30th day. The option chosen may vary from one project area to another, provided the same procedures apply to all households within a project area. However, if a notice of denial is sent and the household takes the required action within 60 days following the date the application was filed, the State agency shall reopen the case without requiring a new application. No further action by the State agency is required after the notice of denial or pending status is sent if the household failed to take the required action within 60 days following the date the application was filed, or if the State agency chooses the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing, and the household fails to provide the necessary verification by this 30th day.

(B) State agencies may include in the notice a request that the household report all changes in circumstances since it filed its application. The information that must be contained on the notice of denial or pending status is explained in § 273.10(g)(1) (ii) and (iii).

(ii) If the household was at fault for the delay in the first 30-day period, but is found to be eligible during the second 30-day period, the State agency shall provide benefits only from the month following the month of application. The household is not entitled to benefits for the month of application when the delay was the fault of the household.

(3) *Delays caused by the State agency.* (i) Whenever a delay in the initial 30-day period is the fault of the State agency, the State agency shall take immediate corrective action. Except as specified in §§273.2(f)(1)(ii)(F) and 273.2(f)(10)(i), the State agency shall not deny the application if it caused the delay, but shall instead notify the household by the 30th day following the date the application was filed that its application is being held pending. The State agency shall also notify the household of any action it must take to complete the application process. If verification is lacking the State agency has the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing.

(ii) If the household is found to be eligible during the second 30-day period, the household shall be entitled to benefits retroactive to the month of application. If, however, the household is found to be ineligible, the State agency shall deny the application.

(4) *Delays beyond 60 days.* (i) If the State agency is at fault for not completing the application process by the end of the second 30-day period, and the case file is otherwise complete, the State agency shall continue to process the original application until an eligibility determination is reached. If the household is determined eligible, and the State agency was at fault for the delay in the initial 30 days, the household shall receive benefits retroactive to the month of application. However, if the initial delay was the household's fault, the household shall receive benefits retroactive only to the month following the month of application. The State agency may use the original application to determine the household's eligibility in the months following the 60-day period, or it may require the household to file a new application.

(ii) If the State agency is at fault for not completing the application process by the end of the second 30-day period, but the case file is not complete enough to reach an eligibility determination, the State agency may continue to process the original application, or deny the case and notify the household to file a new application. If the case is denied, the household shall also be advised of its possible entitlement to benefits lost as a result of State agency caused delays in accordance with §273.17. If the State agency was also at fault for the delay in the initial 30 days, the amount of benefits lost would be calculated from the month of application. If, however, the household was at fault for the initial delay, the amount of benefits lost would be calculated from the month following the month of application.

(iii) If the household is at fault for not completing the application process by the end of the second 30-day period, the State agency shall deny the application and require the household to file a new application if it wishes to participate. If however, the State agency has chosen the option of holding the application pending only until 30 days following the date of the initial request for the particular verification that was missing, and verification is not received by that 30th day, the State agency may immediately close the application. A notice of denial need not be sent if the notice of pending status informed the household that it would have to file a new application if verification was not received within 30 days of the initial request. The household shall not be entitled to any lost benefits, even if the delay in the initial 30 days was the fault of the State agency.

(i) *Expedited service*—(1) *Entitlement to expedited service.* The following households are entitled to expedited service:

(i) Households with less than $150 in monthly gross income, as computed in §273.10 provided their liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, and lump sum payments as specified in §273.9(c)(8)) do not exceed $100;

(ii) Migrant or seasonal farmworker households who are destitute as defined in § 273.10(e)(3) provided their liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, and lump sum payments as specified in § 273.9(c)(8)) do not exceed $100;

(iii) Households in which all members are ''homeless individuals'' as defined in § 271.2 and which meet the monthly income eligibility test required under § 273.9(a) and the maximum resource test specified in § 273.8(a); or

(iv) Households whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage, and utilities (including entitlement to a SUA, as appropriate, in accordance with § 273.9(d)).

(2) *Identifying households needing expedited service.* The State agency's application procedures shall be designed to identify households eligible for expedited service at the time the household requests assistance. For example, a receptionist, volunteer, or other employee shall be responsible for screening applications as they are filed or as individuals come in to apply.

(3) *Processing standards.* All households receiving expedited service, except those receiving it during months in which allotments are suspended or cancelled, shall have their cases processed in accordance with the following provisions. Those households receiving expedited service during suspensions or cancellations shall have their cases processed in accordance with the provisions of § 271.7(e)(2).

(i) *General.* For households entitled to expedited service, the State agency shall make available to the recipient coupons or an ATP card not later than the fifth calendar day following the date an application was filed. For a resident of a public institution who applies for benefits prior to his/her release from the institution in accordance with § 273.1(e)(2) and who is entitled to expedited service, the date of filing of his/her food stamp application is the date of release of the applicant from the institution. Whatever system a State agency uses to ensure meeting this delivery standard shall be designed to allow a reasonable opportunity for redemption of ATPs no later than the fifth calendar day following the day the application was filed.

(ii) *Drug addicts and alcoholics, group living arrangement facilities.* For residents of drug addiction or alcoholic treatment and rehabilitation centers and residents of group living arrangements who are entitled to expedited service, the State agency shall make available to the recipient coupons or an ATP card not later than the 5 calendar days following the date an application was filed.

(iii) *Out-of-office interviews.* If a household is entitled to expedited service and is also entitled to a waiver of the office interview, the State agency shall conduct the interview (unless the household cannot be reached) and complete the application process within the expedited service standards. The first day of this count is the calendar day following application filing. If the State agency conducts a telephone interview and must mail the application to the household for signature, the mailing time involved will not be calculated in the expedited service standards. Mailing time shall only include the days the application is in the mail to and from the household and the days the application is in the household's possession pending signature and mailing.

(iv) *Late determinations.* If the prescreening required in paragraph (i)(2) of this section fails to identify a household as being entitled to expedited service and the State agency subsequently discovers that the household is entitled to expedited service, the State agency shall provide expedited service to households within the processing standards described in paragraphs (i)(3) (i) and (ii) of this section, except that the processing standard shall be calculated from the date the State agency discovers the household is entitled to expedited service.

(v) *Residents of shelters for battered women and children.* Residents of shelters for battered women and children who are otherwise entitled to expedited service shall be handled in accordance with the time limits in paragraph (i)(3)(i) of this section.

(4) *Special procedures for expediting service.* The State agency shall use the

following procedures when expediting certification and issuance:

(i) In order to expedite the certification process, the State agency shall use the following procedures:

(A) In all cases, the applicant's identity (i.e., the identity of the person making the application) shall be verified through a collateral contact or readily available documentary evidence as specified in paragraph (f)(1) of this section.

(B) All reasonable efforts shall be made to verify within the expedited processing standards, the household's residency in accordance with §273.2(f)(1)(vi), income statement (including a statement that the household has no income), liquid resources and all other factors required by §273.2(f), through collateral contacts or readily available documentary evidence. However, benefits shall not be delayed beyond the delivery standards prescribed in paragraph (i)(3) of this section, solely because these eligibility factors have not been verified.

State agencies also may verify factors other than identity, residency, and income provided that verification can be accomplished within expedited processing standards. State agencies should attempt to obtain as much additional verification as possible during the interview, but should not delay the certification of households entitled to expedited service for the full timeframes specified in paragraph (i)(3) of this section when the State agency has determined it is unlikely that other verification can be obtained within these timeframes. Households entitled to expedited service will be asked to furnish a social security number for each person or apply for one for each person before the second full month of participation. Those household members unable to provide the required SSN's or who do not have one prior to the second full month of participation shall be allowed to continue to participate only if they satisfy the good cause requirements with respect to SSN's specified in §273.6(d), except that households with a newborn may have up to 6 months following the month the baby was born to supply an SSN or proof of an application for an SSN for the newborn in accordance with §273.6(b)(4). The State agency may attempt to register other household members but shall postpone the registration of other household members if it cannot be accomplished within the expedited service timeframes. With regard to the work registration requirements specified in §273.7, the State agency shall, at a minimum, require the applicant to register (unless exempt or unless the household has designated an authorized representative to apply on its behalf in accordance with §273.1(f)). The State agency may attempt registration of other household members by requesting that the applicant complete the work registration forms for other household members to the best of his or her ability. The State agency may also attempt to accomplish work registration for other household members in a timely manner through other means, such as calling the household. The State agency may attempt to verify questionable work registration exemptions, but such verification shall be postponed if the expedited service timeframes cannot be met.

(ii) Once an acceptable collateral contact has been designated, the State agency shall promptly contact the collateral contact, in accordance with the provisions of paragraph (f)(4)(ii) of this section. Although the household has the primary responsibility for providing other types of verification, the State agency shall assist the household in promptly obtaining the necessary verification.

(iii) Households that are certified on an expedited basis and have provided all necessary verification required in paragraph (f) of this section prior to certification shall be assigned normal certification periods. If verification was postponed, the State agency may certify these households for the month of application (the month of application and the subsequent month for those households applying after the 15th of the month) or, at the State agency's option, may assign normal certification periods to those households whose circumstances would otherwise warrant longer certification periods. State agencies, at their option, may request any household eligible for expedited service which applies after the 15th of the month and is certified

for the month of application and the subsequent month only to submit a second application (at the time of the initial certification) if the household's verification is postponed.

(A) For households applying on or before the 15th of the month, the State agency may assign a one-month certification period or assign a normal certification period. Satisfaction of the verification requirements may be postponed until the second month of participation. If a one-month certification period is assigned, the notice of eligibility may be combined with the notice of expiration or a separate notice may be sent. The notice of eligibility must explain that the household has to satisfy all verification requirements that were postponed. For subsequent months, the household must reapply and satisfy all verification requirements which were postponed or be certified under normal processing standards. If the household does not satisfy the postponed verification requirements and does not appear for the interview, the State agency does not need to contact the household again.

(B) For households applying after the 15th of the month, the State agency may assign a 2-month certification period or a normal certification period of no more than 12 months. Verification may be postponed until the third month of participation, if necessary, to meet the expedited timeframe. If a two-month certification period is assigned, the notice of eligibility may be combined with the notice of expiration or a separate notice may be sent. The notice of eligibility must explain that the household is obligated to satisfy the verification requirements that were postponed. For subsequent months, the household must reapply and satisfy the verification requirements which were postponed or be certified under normal processing standards. If the household does not satisfy the postponed verification requirements and does not attend the interview, the State agency does not need to contact the household again. When a certification period of longer than 2 months is assigned and verification is postponed, households must be sent a notice of eligibility advising that no benefits for the third month will be issued until the postponed verification requirements are satisfied. The notice must also advise the household that if the verification process results in changes in the household's eligibility or level of benefits, the State agency will act on those changes without advance notice of adverse action.

(C) Households which apply for initial benefits (as described in § 273.10(a)) after the 15th of the month, are entitled to expedited service, have completed the application process, and have been determined eligible to receive benefits for the initial month and the next subsequent month, shall receive a combined allotment consisting of prorated benefits for the initial month of application and benefits for the first full month of participation within the expedited service timeframe. If necessary, verification shall be postponed to meet the expedited timeframe. The benefits shall be issued in accordance with § 274.2(c) of this chapter.

(D) The provisions of paragraph (i)(4)(iii)(C) of this section do not apply to households which have been determined ineligible to receive benefits for the month of application or the following month, or to households which have not satisfied the postponed verification requirements. However, households eligible for expedited service may receive benefits for the initial month and next subsequent month under the verification standards of paragraph (i)(4) of this section.

(E) If the State agency chooses to exercise the option to require a second application in accordance with paragraph (i)(4)(iii) of this section and receives the application before the third month, it shall not deny the application but hold it pending until the third month. The State agency will issue the third month's benefits within 5 working days from receipt of the necessary verification information but not before the first day of the month. If the postponed verification requirements are not completed before the end of the third month, the State agency shall terminate the household's participation and shall issue no further benefits.

(iv) There is no limit to the number of times a household can be certified under expedited procedures, as long as

prior to each expedited certification, the household either completes the verification requirements that were postponed at the last expedited certification or was certified under normal processing standards since the last expedited certification. The provisions of this section shall not apply at recertification if a household reapplies before the end of its current certification period.

(v) Households requesting, but not entitled to, expedited service shall have their applications processed according to normal standards.

(j) *PA, GA and categorically eligible households.* Households applying for public assistance (PA) shall be notified of their right to apply for food stamp benefits at the same time and shall be allowed to apply for food stamp benefits at the same time they apply for PA benefits. The applications of these households shall be processed in accordance with the requirements of paragraph (j)(1) of this section, and their eligibility shall be based solely on food stamp eligibility criteria unless the household is categorically eligible, as provided in paragraph (j)(2) of this section. If a State has a single Statewide GA application form, households in which all members are included in a State or local GA grant shall have their application for food stamps included in the GA application form. State agencies shall use the joint application processing procedures described in paragraph (j)(1) of this section for GA recipients in accordance with paragraph (j)(3) of this section. The eligibility of jointly processed GA households shall be based solely on food stamp eligibility criteria unless the household is categorically eligible as provided in paragraph (j)(4) of this section. The benefit levels of all households shall be based solely on food stamp criteria. Jointly processed and categorically eligible households shall be certified in accordance with food stamp procedural, timeliness, and notice requirements, including the 5-day expedited service provisions of § 273.2(i) and normal 30-day application processing standards of § 273.2(g). Individuals authorized to receive PA, SSI, or GA benefits but who have not yet received payment are considered recipients of benefits from those programs. In addition, individuals are considered recipients of PA, SSI, or GA if their PA, SSI, or GA benefits are suspended or recouped. Individuals entitled to PA, SSI, or GA benefits but who are not paid such benefits because the grant is less than a minimum benefit are also considered recipients. Individuals not receiving GA, PA, or SSI benefits who are entitled to Medicaid only shall not be considered recipients.

(1) *Applicant PA households.* (i) The application for PA shall contain all the information necessary to determine a household's food stamp eligibility and level of benefits. Information relevant only to food stamp eligibility shall be contained in the PA form or shall be an attachment to it. The joint PA/food stamp application shall clearly indicate that the household is providing information for both programs, is subject to the criminal penalties of both programs for making false statements, waives the notice of adverse action as specified by both programs for making false statements, and waives the notice of adverse action as specified in paragraph (j)(1)(iv) of this section. The joint PA/food stamp application may be used for all food stamp applicants provided the application form is approved for all households by FCS.

(ii) The State agency shall conduct a single interview at initial application for both public assistance and food stamp purposes. PA households shall not be required to see a different eligibility worker or otherwise be subjected to two interview requirements to obtain the benefits of both programs. Following the single interview, the application may be processed by separate workers to determine eligibility and benefit levels for food stamps and public assistance. A household's eligibility for food stamp out-of-office interview provisions in § 273.2(e)(2) does not relieve the household of any responsibility for a face-to-face interview to be certified for PA.

(iii) For households applying for both public assistance and food stamps, the verification procedures described in paragraphs (f)(1) through (f)(8) of this section shall be followed for those factors of eligibility which are needed solely for purposes of determining the

household's eligibility for food stamps. For those factors of eligibility which are needed to determine both PA eligibility and food stamp eligibility, the State agency may use the PA verification rules. However, the State agency shall not delay the household's food stamp benefits if, at the end of 30 days following the date the application was filed, the State agency has sufficient verification to meet the verification requirements of paragraphs (f)(1) through (f)(8) of this section but does not have sufficient verification to meet the PA verification rules.

(iv) In order to determine if a household will be eligible due to its status as a recipient PA/SSI household, the State agency may temporarily postpone, within the 30-day processing standard, the food stamp eligibility determination if the household is not entitled to expedited service and appears to be categorically eligible. However, the State agency shall postpone denying a potentially categorically eligible household until the 30th day in case the household is determined eligible to receive PA benefits. Once the PA application is approved, the household is to be considered categorically eligible if it meets all the criteria concerning categorical eligibility in § 273.2(j)(2). If the State agency can anticipate the amount and the date of receipt of the initial PA payment, but the payment will not be received until a subsequent month, the State agency shall vary the household's food stamp benefit level according to the anticipated receipt of the payment and notify the household. Portions of initial PA payments intended to retroactively cover a previous month shall be disregarded as lump sum payments under § 273.9(c)(8). If the amount or date of receipt of the initial PA payment cannot be reasonably anticipated at the time of the food stamp eligibility determination, the PA payments shall be handled as a change in circumstances. However, the State agency is not required to send a notice of adverse action if the receipt of the PA grant reduces, suspends or terminates the household's food stamp benefits, provided the household is notified in advance that its benefits may be reduced, suspended, or terminated when the grant is received. The case may be terminated if the household is not categorically eligible. The State agency shall ensure that the denied application of a potentially categorically eligible household is easily retrievable. For a household filing a joint application for food stamps and PA benefits or a household that has a PA application pending and is denied food stamps but is later determined eligible to receive PA benefits and is otherwise categorically eligible, the State agency shall provide benefits using the original application and any other pertinent information occurring subsequent to that application. Except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from a public institution in accordance with § 273.1(e)(2), benefits shall be paid from the beginning of the period for which PA or SSI benefits are paid, the original food stamp application date, or December 23, 1985 whichever is later. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution shall be paid benefits from the date of their release from the institution. In situations where the State agency must update and reevaluate the original application of a denied case, the State agency shall not reinterview the household, but shall use any available information to update the application. The State agency shall then contact the household by phone or mail to explain and confirm changes made by the State agency and to determine if other changes in household circumstances have occurred. If any information obtained from the household differs from that which the State agency obtained from available information or the household provided additional changes in information, the State agency shall arrange for the household or it authorized representative to initial *all* changes, re-sign and date the updated application and provide necessary verification. In no event can benefits be provided prior to the date of the original food stamp application filed on or after December 23, 1985. Any household that is determined to be eligible to receive PA benefits for a period of time within the 30-day food stamp processing time, shall be provided food stamp

benefits back to the date of the food stamp application. However, in no event shall food stamp benefits be paid for a month for which such household is ineligible for receipt of any PA benefits for the month, unless the household is eligible for food stamp benefits and an NPA case. Benefits shall be prorated in accordance with § 273.10(a)(1)(ii) and (e)(2)(ii)(B). Household that file joint applications that are found categorically eligible after being denied NPA food stamps shall have their benefits for the initial month prorated from the date from which the PA benefits are payable, or the date of the original food stamp application, whichever is later. The State agency shall act on reevaluating the original application either at the household's request or when it becomes otherwise aware of the household's PA and/or SSI eligibility. The household shall be informed on the notice of denial required by § 273.10(g)(1)(ii) to notify the State agency if its PA or SSI benefits are approved.

(v) Households whose PA applications are denied shall not be required to file new food stamp applications but shall have their food stamp eligibility determined or continued on the basis of the original applications filed jointly for PA and food stamp purposes and any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits.

(2) *Categorically eligible PA and SSI households.* (i) Any household (except those listed in paragraph (j)(2)(iii) of this section) in which all members receive or are authorized to receive PA and/or SSI benefits shall be considered eligible for food stamps because of their status as PA and/or SSI recipients unless the entire household is institutionalized as defined in § 273.1(e) or disqualified for any reason from receiving food stamps. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution in accordance with § 273.1(e)(2), shall not be categorically eligible upon a finding by SSA of potential SSI eligibility prior to such release. The individuals shall be considered categorically eligible at such time as a final SSI eligibility determination has been made and the individual has been released from the institution. The eligibility factors which are deemed for food stamp eligibility without the verification required in § 273.2(f) because of PA/SSI status are the resource, gross and net income limits; social security number information; sponsored alien information; and residency. If any of the following factors are questionable, the State agency shall verify, in accordance with § 273.2(f), that the household which is considered categorically eligible:

(A) Contains only members that are PA or SSI recipients as defined in the introductory paragraph § 273.2(j);

(B) Meets the household definition in § 273.1(a);

(C) Includes all persons who purchase and prepare food together in one food stamp household regardless of whether or not they are separate units for PA or SSI purposes; and

(D) Includes no persons who have been disqualified as provided for in paragraph (j)(2)(iii) of this section.

(ii) Households subject to retrospective budgeting that have been suspended for PA purposes as provided for in Aid to Families with Dependent Children (AFDC) regulations, or that receive zero benefits shall continue to be considered as authorized to receive benefits from the appropriate agency. Categorical eligibility shall be assumed at recertification in the absence of a timely PA redetermination. If a recertified household is subsequently terminated from PA benefits, the procedures in § 273.12(f)(3), (4), and (5) shall be followed, as appropriate.

(iii) Under no circumstances shall any household be considered categorically eligible if:

(A) Any member of that household is disqualified for an intentional Program violation in accordance with § 273.16 or for failure to comply with monthly reporting requirements in accordance with § 273.21;

(B) The entire household is disqualified because one or more of its members failed to comply with workfare in accordance with § 273.22; or

(C) The head of the household is disqualified for failure to comply with the

work requirements in accordance with § 273.7.

(iv) These households are subject to all food stamp eligibility and benefits provisions (including the provisions of § 273.11(c)) and cannot be reinstated in the Program on the basis of categorical eligibility provisions.

(v) No person shall be included as a member in any household which is otherwise categorically eligible if that person is:

(A) An ineligible alien as defined in § 273.4;

(B) Ineligible under the student provisions in § 273.5;

(C) An SSI recipient in a cash-out State as defined in § 273.20; or

(D) Institutionalized in a nonexempt facility as defined in § 273.1(e).

(E) Ineligible because of failure to comply with a work requirement of § 273.7.

(vi) For the purposes of work registration, the exemptions in § 273.7(b) shall be applied to individuals in categorically eligible households. Any such individual who is not exempt from work registration is subject to the other work requirements in § 273.7.

(vii) When determining eligibility for a categorically eligible household all provisions of this subchapter except for those listed below shall apply:

(A) Section 273.8 except for the last sentence of paragraph (a).

(B) Section 273.9(a) except for the fourth sentence in the introductory paragraph.

(C) Section 273.10(a)(1)(i).

(D) Section 273.10(b).

(E) Section 273.10(c) for the purposes of eligibility.

(F) Section 273.10(e)(2)(iii)(A).

(3) *Applicant GA households.* (i) State agencies shall use the joint application processing procedures in paragraph (j)(1) of this section for GA households, except for the effective date of categorical eligibility, when the criteria in paragraphs (j)(3)(i) (A) and (B) of this section are met. Benefits for GA households that are categorically eligible, as provided in paragraph (j)(4) of this section, shall be provided from the date of the original food stamp application, the beginning of the period for which GA benefits are authorized, or the effective date of State GA categorical eligibility (February 1, 1991) or local GA categorical eligibility (August 1, 1992), whichever is later:

(A) The State agency administers a GA program which uses formalized application procedures and eligibility criteria that test levels of income and resources; and,

(B) Administration of the GA program is integrated with the administration of the PA or food stamp programs, in that the same eligibility workers process applications for GA benefits and PA or food stamp benefits.

(ii) State agencies in which different eligibility workers process applications for GA benefits and PA or food stamp benefits, but procedures otherwise meet the criteria in paragraph (j)(3)(i) of this section may, with FCS approval, jointly process GA and food stamp applications. If approved, State agencies shall adhere to the joint application processing procedures in paragraph (j)(1) of this section, except for the effective date of categorical eligibility for GA households. Benefits shall be provided GA households that are categorically eligible, as provided in paragraph (j)(4) of this section, from the date of the original food stamp application, the beginning of the period for which GA benefits are authorized, or the effective date of State GA categorical eligibility (February 1, 1992) or local GA categorical eligibility (August 1, 1992), whichever is later.

(iii) Requirements for combining the GA and food stamp application forms or providing food stamp application forms to GA applicant households depend on the extent to which application forms and administration of the GA and food stamp programs are integrated.

(A) State agencies that have a single Statewide GA application form shall include the food stamp application form in the GA application form and shall inform GA applicant households that they may be categorically eligible for food stamps. The joint GA and food stamp application form shall clearly indicate that the household is providing information for both programs and is subject to the criminal penalties of both programs for making false statements. The application form must also notify the household that if food stamp

benefits are issued before the GA is approved, the food stamp benefits may be reduced without further notice when the GA assistance is approved (as specified in § 273.2(j)(1)(iv) and § 273.13(b)(6)). With FCS approval, the joint GA and food stamp application form may be used for households applying only for food stamps.

(B) State agencies that do not have a single Statewide GA application form but have local offices in which the same agency administers both the GA program and the Food Stamp Program shall provide households applying for a local GA grant with a food stamp application form at the time of their application for GA, along with information concerning how to apply for food stamps, and information about possible categorical eligibility.

(C) If GA and the Food Stamp Program are administered by separate offices and a single application form is not required, the State agency shall encourage the agencies administering GA to refer GA applicants to the local food stamp office or provide applicant households with food stamp application forms and inform GA applicants of their potential categorical eligibility for food stamps. State agencies may allow GA applicants to leave a food stamp application form at the GA office which contains, at a minimum, the applicant's name, address and signature. If the GA office accepts a food stamp application form, it is responsible for forwarding the application form the same day to the appropriate food stamp office for processing. The procedural and timeliness requirements that apply to the application process shall begin when the food stamp office receives the application form. The GA office may advise households that they may receive faster service if they take the application form directly to the food stamp office.

(D) In areas where GA programs are administered by agencies such as the Bureau of Indian Affairs of the Department of the Interior, the State agency shall endeavor to gain the cooperation of the agencies in referring GA applicants to the food stamp office. Where possible, this referral should consist of informing the GA applicants of their potential eligibility for food stamp benefits, providing them with food stamp applications and directing them to the local food stamp office.

(4) *Categorically eligible GA households.* Households in which each member receives benefits from a State or local GA program which meets the criteria for conferring categorical eligibility in paragraph (j)(4)(i) of this section shall be categorically eligible for food stamps unless the individual or household is ineligible as specified in paragraph (j)(4)(iv) and (j)(4)(v) of this section.

(i) *Certification of qualifying programs.* Recipients of benefits from programs that meet the criteria in paragraphs (j)(4)(i)(A) through (j)(4(i)(C) of this section shall be considered categorically eligible to receive benefits from the Food Stamp Program. If a program does not meet all of these criteria, the State agency may submit a program description to the appropriate FCS regional office for a determination. The description should contain, at a minimum, the type of assistance provided, the income eligibility standard, and the period for which the assistance is provided.

(A) The program must have income standards which do not exceed the gross income eligibility standard in § 273.9(a)(1). The rules of the GA program apply in determining countable income.

(B) The program must provide GA benefits as defined in § 271.2 of this part.

(C) The program must provide benefits which are not limited to one-time emergency assistance.

(ii) *Verification requirements.* In determining whether a household is categorically eligible, the State agency shall verify that each member receives PA benefits, SSI, or GA from a program that meets the criteria in paragraph (j)(4)(i) section or that has been certified by FCS as an appropriate program and that it includes no individuals who have been disqualified as provided in paragraph (j)(4)(iv) or (j)(2)(v) of this section. The State agency shall also verify household composition if it is questionable, in accordance with § 273.2(f), in order to determine that the household meets the definition of a household in § 273.1(a).

(iii) *Deemed eligibility factors.* When determining eligibility for a categorically eligible household, all Food Stamp Program requirements apply except the following:

(A) Resources. None of the provisions of § 273.8 apply to categorically eligible households except the second sentence of § 273.8(a) pertaining to categorical eligibility and § 273.8(i) concerning transfer of resources. The provision in § 273.10(b) regarding resources available the time of the interview does not apply to categorically eligible households.

(B) Gross and net income limits. None of the provisions in § 273.9(a) relating to income eligibility standards apply to categorically eligible households, except the fourth sentence pertaining to categorical eligibility. The provisions in §§ 273.10(a)(1)(i) and 273.10(c) relating to the income eligibility determination also do not apply to categorically eligible households.

(C) Zero benefit households. The provision of § 273.10(e)(2)(iii)(A) which allows a State agency to deny the application of a household with three or more members entitled to no benefits because its net income exceeds the level at which benefits are issued does not apply to categorically eligible households. All eligible households of one or two persons must be provided the minimum benefit, as required by § 273.10(e)(2)(ii)(C).

(D) Residency.

(E) Sponsored alien information.

(iv) *Ineligible household members.* No person shall be included as a member of an otherwise categorically eligible household if that person is:

(A) An ineligible alien, as defined in § 273.4;

(B) An ineligible student, as defined in § 273.5;

(C) Disqualified for failure to provide or apply for an SSN, as required by § 273.6;

(D) A household member, not the head of household, disqualified for failure to comply with a work requirement of § 273.7;

(E) Disqualified for intentional program violation, as required by § 273.16;

(F) An SSI recipient in a cash-out State, as defined in § 273.20; or

(G) An individual who is institutionalized in a nonexempt facility, as defined in § 273.1(e).

(v) *Ineligible households.* A household shall not be considered categorically eligible if:

(A) It refuses to cooperate in providing information to the State agency that is necessary for making a determination of its eligibility or for completing any subsequent review of its eligibility, as described in § 273.2(d) and § 273.21(m)(1)(ii);

(B) The household is disqualified because the head of household fails to comply with a work requirement of § 273.7;

(C) The household is ineligible under the striker provisions of § 273.1(g); or

(D) The household is ineligible because it knowingly transferred resources for the purpose of qualifying or attempting to qualify for the Program, as provided in § 273.8(i).

(vi) *Combination households.* Households consisting entirely of recipients of PA, SSI and/or GA from a program that meets the requirements of § 273.2(j)(4)(i) shall be categorically eligible in accordance with the provisions for paragraphs (j)(2)(iii) and (j)(2)(v) of this section for members receiving PA and SSI or provisions of paragraphs (j)(4) (iv) and (v) of this section for members receiving GA.

(5) *Households with some PA or GA recipients.* State agencies that use the joint application processing procedures in paragraphs (j)(1) and (j)(3) of this section may apply these procedures to a food stamp applicant household in which some, but not all, members are in the PA/GA filing unit, except for procedures concerning categorical eligibility. If the State agency decides not to use the joint application procedures for these households, the households shall file separate applications for PA/GA and food stamp benefits. This decision shall not be made on a case-by-case basis, but shall be applied uniformly to all households of this type in a project area.

(k) *SSI households.* For purposes of this paragraph, SSI is defined as Federal SSI payments made under title XVI of the Social Security Act, federally administered optional supplementary payments under section 1616

of that Act, or federally administered mandatory supplementary payments made under section 212(a) of Pub. L. 93–66. Except in cashout States (§ 273.20), households which have not applied for food stamps in the thirty preceding days, and which do not have applications pending, may apply and be certified for food stamp benefits in accordance with the procedures described in § 273.2(k)(1)(i) or § 273.2(k)(1)(ii) and with the notice, procedural and timeliness requirements of the Food Stamp Act of 1977 and its implementing regulations. Households applying simultaneously for SSI and food stamps shall be subject to food stamp eligibility criteria, and benefit levels shall be based solely on food stamp eligibility criteria until the household is considered categorically eligible. However, households in which all members are either PA or SSI recipients or authorized to receive PA or SSI benefits (as discussed in § 273.2(j)) shall be food stamp eligible based on their PA/SSI status as provided for in § 273.2(j)(1)(iv) and (j)(2). Households denied NPA food stamps that have an SSI application pending shall be informed on the notice of denial of the possibility of categorical eligibility if they become SSI recipients. The State agency shall make an eligibility determination based on information provided by SSA or by the household.

(1) *Initial application and eligibility determination.* At each SSA office, the State agency shall either arrange for SSA to complete and forward food stamp applications, or the State agency shall outstation State food stamp eligibility workers at the SSA Offices with SSA's concurrence, based upon an agreement negotiated between the State agency and the SSA.

(i) If the State agency arranges with the SSA to complete and forward food stamp applications the following actions shall be taken:

(A) Whenever a member of a household consisting only of SSI applicants or recipients transacts business at an SSA office, the SSA shall inform the household of:

(*1*) Its right to apply for food stamps at the SSA office without going to the food stamp office; and

(*2*) Its right to apply at a food stamp office if it chooses to do so.

(B) The SSA will accept and complete food stamp applications received at the SSA Office from SSI households and forward them, within one working day after receipt of a signed application, to a designated office of the State agency. SSA shall also forward to the State agency a transmittal form which will be approved by SSA and FCS. The SSA will use the national food stamp application form for joint processing. State agencies may substitute a State food stamp application, provided that prior approval is received from both FCS and SSA. SSA shall approve, deny, or comment upon FCS-approved State food stamp applications within thirty days of their submission to SSA.

(C) SSA will accept and complete food stamp applications from SSI households received by SSA staff in contact stations. SSA will forward all food stamp applications from SSI households to the designated food stamp office.

(D) The SSA staff shall complete joint SSI and food stamp applications for residents of public institutions in accordance with § 273.1(e)(2).

(E) The State agency shall designate an address for the SSA to forward food stamp applications and accompanying information to the State agency for eligibility determination. Applications and accompanying information must be forwarded to the agreed upon address in accordance with the time standards contained in § 273.2(k)(1)(i)(B).

(F) Except for applications taken in accordance with paragraph (k)(1)(i)(D) of this section, the State agency shall make an eligibility determination and issue food stamp benefits to eligible SSI households within 30 days following the date the application was received by the SSA. Applications shall be considered filed for normal processing purposes when the signed application is received by SSA. The expedited processing time standards shall begin on the date the State agency receives a food stamp application. The State agency shall make an eligibility determination and issue food stamp benefits to a resident of a public institution who applies jointly for SSI and food

stamps within 30 days following the date of the applicant's release from the institution. Expedited processing time standards for an applicant who has applied for food stamps and SSI prior to release shall also begin on the date of the applicant's release from the institution in accordance with § 273.2 (i)(3)(i). SSA shall notify the State agency of the date of release of the applicant from the institution. If, for any reason, the State agency is not notified on a timely basis of the applicant's release date, the State agency shall restore benefits in accordance with § 273.17 to such applicant back to the date of release. Food stamp applications and supporting documentation sent to an incorrect food stamp office shall be sent to the correct office, by the State agency, within one working day of their receipt in accordance with § 273.2(c)(2)(ii).

(G) Households in which all members are applying for or participating in SSI will not be required to see a State eligibility worker, or otherwise be subjected to an additional State interview. The food stamp application will be processed by the State agency. The State agency shall not contact the household further in order to obtain information for certification for food stamp benefits unless: the application is improperly completed; mandatory verification required by § 273.2(f)(1) is missing; or, the State agency determines that certain information on the application is questionable. In no event would the applicant be required to appear at the food stamp office to finalize the eligibility determination. Further contact made in accordance with this paragraph shall not constitute a second food stamp certification interview.

(H) SSA shall refer non-SSI households to the correct food stamp office. The State agencies shall process those applications in accordance with the procedures noted in § 273.2. Applications from such households shall be considered filed on the date the signed application is taken at the correct State agency office, and the normal and expedited processing time standards shall begin on that date.

(I) The SSA shall prescreen all applications for entitlement to expedited services on the day the application is received at the SSA office and shall mark ''Expedited Processing'' on the first page of all households' applications that appear to be entitled to such processing. The SSA will inform households which appear to meet the criteria for expedited service that benfits may be issued a few days sooner if the household applies directly at the food stamp office. The household may take the application from SSA to the food stamp office for screening, an interview, and processing of the application. This provision does not apply to applications described in paragraph (k)(1)(i)(D) of this section.

(J) The State agency shall prescreen all applications received from the SSA for entitlement to expedited service on the day the application is received at the correct food stamp office. All SSI households entitled to expedited service shall be certified in accordance with § 273.2(i) except that the expedited processing time standard shall begin on the date the application is received at the correct State agency office, unless the applicant is a resident of a public institution as described in § 273.1(e)(2).

(K) The State agency shall develop and implement a method to determine if members of SSI households whose applications are forwarded by the SSA are already participating in the Food Stamp Program directly through the State agency.

(L) If SSA takes an SSI application or redetermination on the telephone from a member of a pure SSI household, a food stamp application shall also be completed during the telephone interview. In these cases, the food stamp application shall be mailed to the claimant for signature for return to the SSA office or to the State agency. SSA shall then forward any food stamp applications it receives to the State agency. The State agency may not require the household to be interviewed again in the food stamp office. The State agency shall not contact the household further in order to obtain information for certification for food stamp benefits except in accordance with § 273.2(k)(1)(i)(F).

(M) To SSI recipients redetermined for SSI by mail, the SSA shall send a stuffer informing them of their right to file a food stamp application at the

SSA office (if they are members of a pure SSI household) or at their local food stamp office, and their right to an out-of-office food stamp interview to be performed by the State agency if the household is unable to appoint an authorized representative.

(N) Section 272.4 bilingual requirements shall not apply to the Social Security Administration.

(O) State agencies shall provide and SSA shall distribute an information sheet or brochure to all households processed under this paragraph. This material shall inform the household of the following: The address and telephone number of the household's correct food stamp office, the remaining actions to be taken in the application process, and a statement that a household should be notified of the food stamp determinations within thirty days and can contact the food stamp office if it receives no notification within thirty days, or has other questions or problems. It shall also include the client's rights and responsibilities (including fair hearings, authorized representatives, out-of-office interviews, reporting changes and timely reapplication), information on how and where to obtain coupons, and how to use coupons (including the commodities clients may purchase with coupons).

(P) As part of the SSA-State agency joint food stamp processing agreement, States may negotiate, on behalf of project areas, to have SSA provide initial eligibility and payment data where the local area is unable to access accurate and timely data through the State's SDX. However, in negotiating such agreements, SSA may challenge a State's determination that it does not have the computer capability to use SDX data. If SSA, FCS, and the State are unable to resolve this matter, and SSA determines that a State does have the capability to provide accurate and timely SDX data to the food stamp project area, SSA is not required to provide alternate means of transmitting initial SSI eligibility and payment data.

(ii) If the State agency chooses to outstation eligibility workers at SSA offices, with SSA's concurrence, the following actions shall be completed.

(A) SSA will provide adequate space for State food stamp eligibility workers in SSA offices.

(B) The State agency shall have at least one outstationed worker on duty at all time periods during which households will be referred for food stamp application processing. In most cases this would require the availability of an outstationed worker throughout normal SSA business hours.

(C) The following households shall be entitled to file food stamp applications with, and be interviewed by an outstationed eligibility worker:

(*1*) Households containing an applicant for or recipient of SSI;

(*2*) Households which do not have an applicant for or recipient of SSI, but which contain an applicant for or recipient of benefits under title II of the Social Security Act, if the State agency and SSA have an agreement to allow the processing of such households at SSA offices.

(D) Households shall be interviewed for food stamps on the day of application unless there is insufficient time to conduct an interview. The State agency shall arrange for the outstationed worker to interview applicants as soon as possible.

(E) The State agency shall not refuse to provide service to persons served by the SSA office because they do not reside in the county or project area in which the SSA office is located, provided, however, that they reside within the jurisdictions served by the SSA office and the State agency. The State agency is not required to process the applications of persons who are not residing within the SSA office jurisdiction but who do reside within the State agency's jurisdiction, other than to forward the forms to the correct food stamp offices.

(F) The State agency may permit the eligibility worker outstationed at the SSA to determine the eligibility of households, or may require that completed applications be forwarded elsewhere for the eligibility determination.

(G) Applications from households entitled to joint processing through an outstationed eligibility worker shall be considered filed on the date they are submitted to that worker. Both the

normal and expedited service time standards shall begin on that date.

(H) Households not entitled to joint processing shall be entitled to obtain and submit applications at the SSA office. The outstationed eligibility worker need not process these applications except to forward them to the correct food stamp office where they shall be considered filed upon receipt (any activities beyond acceptance and referral of the application would require SSA concurrence). Both the normal and expedited service time standards shall begin on that date.

(iii) Regardless of whether the State agency or SSA conducts the food stamp interview, the following actions shall be taken:

(A) *Verification.* (*1*) The State agency shall ensure that information required by §273.2(f) is verified prior to certification for households initially applying. Households entitled to expedited certification services shall be processed in accordance with §273.2(i).

(*2*) The State agency has the option of verifying SSI benefit payments through the State Data Exchange (SDX), the Beneficiary Data Exchange (BENDEX) and/or through verification provided by the household.

(*3*) State agencies may verify other information through SDX and BENDEX but only to the extent permitted by data exchange agreements with SSA. Information verified through SDX or BENDEX shall not be reverified unless it is questionable. Households shall be given the opportunity to provide verification from another source if all necessary information is not available on the SDX or the BENDEX, or if the SDX/BENDEX information is contradictory to other household information.

(B) *Certification period.* (*1*) State agencies shall certify households under these procedures for up to twelve months, according to the standards in §273.10(f), except for State agencies which must assign the initial certification period to coincide with adjustments to the SSI benefit amount as designated in §273.10(f)(3)(iii).

(*2*) In cases jointly processed in which the SSI determination results in denial, and the State agency believes that food stamp eligibility or benefit levels may be affected, the State agency shall send the household a notice of expiration advising that the certification period will expire the end of the month following the month in which the notice is sent and that it must reapply if it wishes to continue to participate. The notice shall also explain that its certification period is expiring because of changes in circumstances which may affect food stamp eligibility or benefit levels and that the household may be entitled to an out-of-office interview, in accordance with §273.2(e)(2).

(C) *Changes in circumstances.* (*1*) Households shall report changes in accordance with the requirements in §273.12. The State agency shall process changes in accordance with §273.12.

(*2*) Within ten days of learning of the determination of the application for SSI through SDX, the household, advisement from SSA where SSA agrees to do so for households processed under §273.2(k)(1)(i), or from any other source, the State agency shall take required action in accordance with §273.12. State agencies are encouraged to monitor the results of the SSI determination through SDX and BENDEX to the extent practical.

(*3*) The State agency shall process adjustments to SSI cases resulting from mass changes, in accordance with provisions of §273.12(e).

(D) *SSI households applying at the food stamp office.* The State agency shall allow SSI households to submit food stamp applications to local food stamp offices rather than through the SSA if the household chooses. In such cases all verification, including that pertaining to SSI program benefits, shall be provided by the household, by SDX or BENDEX, or obtained by the State agency rather than being provided by the SSA.

(E) *Restoration of lost benefits.* The State agency shall restore to the household benefits which were lost whenever the loss was caused by an error by the State agency or by the Social Security Administration through joint processing. Such an error shall include, but not be limited to, the loss of an applicant's food stamp application after it has been filed with SSA or with a State agency's outstationed

worker. Lost benefits shall be restored in accordance with §273.17.

(2) *Recertification.* (i) The State agency shall complete the application process and approve or deny timely applications for recertification in accordance with §273.14 of the food stamp regulations. A face-to-face interview shall be waived if requested by a household consisting entirely of SSI participants unable to appoint an authorized representative. The State agency shall provide SSI households with a notice of expiration in accordance with §273.14(b), except that such notification shall inform households consisting entirely of SSI recipients that they are entitled to a waiver of a face-to-face interview if the household is unable to appoint an authorized representative.

(ii) Households shall be entitled to make a timely application (in accordance with §273.14(b)(3)) for food stamp recertification at an SSA office under the following conditions.

(A) In SSA offices where §273.2(k)(1)(i) is in effect, SSA shall accept the application of a pure SSI household and forward the completed application, transmittal form and any available verification to the designated food stamp office. Where SSA accepts and refers the application in such situations, the household shall not be required to appear at a second office interview, although the State agency may conduct an out-of-office interview, if necessary.

(B) In SSA offices where §273.2(k)(1)(ii) is in effect, the outstationed worker shall accept the application and interview the recipient and the State agency shall process the application according to §273.14.

(l) *Households applying for or receiving social security benefits.* An applicant for or recipient of social security benefits under title II of the Social Security Act shall be informed at the SSA office of the availability of benefits under the Food Stamp Program and the availability of a Food Stamp Program application at the SSA office. The SSA office is not required to accept applications and conduct interviews for title II applicants/recipients in the manner prescribed in §273.2(k) for SSI applicants/recipients unless the State agency has chosen to outstation eligibility workers at the SSA office and has an agreement with SSA to allow the processing of such households at SSA offices. In these cases, processing shall be in accordance with §273.2(k)(1)(ii).

(m) *Households where not all members are applying for or receiving SSI.* An applicant for or recipient of SSI shall be informed at the SSA office of the availability of benefits under the Food Stamp Program and the availability of a food stamp application at the SSA office. The SSA office is not required to accept applications or to conduct interviews for SSI applicants or recipients who are not members of households in which all are SSI applicants or recipients unless the State agency has chosen to outstation eligibility workers at the SSA office. In this case, processing shall be in accordance with §273.2(k)(1)(ii).

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §273.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### §273.3 Residency.

(a) A household shall live in the State in which it files an application for participation. The State agency may also require a household to file an application for participation in a specified project area (as defined in §271.2 of this chapter) or office within the State. No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in §271.2 and was a member of a household containing the person who had abused him or her. Residents of shelters for battered women and children shall be handled in accordance with §273.11(g). The State agency shall not impose any durational residency requirements. The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes shall not be considered residents.

(b) When a household moves within the State, the State agency may require the household to reapply in the new project area or it may transfer the household's casefile to the new project area and continue the household's certification without reapplication. If the State agency chooses to transfer the case, it shall act on changes in household circumstances resulting from the move in accordance with § 273.12(c) or § 273.21. It shall also ensure that duplicate participation does not occur in accordance with § 272.4(f) of this chapter, and that the transfer of a household's case shall not adversely affect the household.

[46 FR 60166, Dec. 8, 1981, as amended by Amdt. 211, 47 FR 53317, Nov. 26, 1982; Amdt. 269, 51 FR 10785, Mar. 28, 1986; Amdt. 274, 51 FR 18750, May 21, 1986; Amdt. 364, 61 FR 54317, Oct. 17, 1996]

### § 273.4 Citizenship and alien status.

(a) *Citizens and eligible aliens.* State agencies shall prohibit participation in the program by any person who is not a resident of the United States and one of the following:

(1) A United States citizen.

(2) An alien lawfully admitted for permanent residence as an immigrant as defined in sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act. However, an alien lawfully admitted for permanent residence pursuant to section 245A of the Immigration and Nationality Act must be eligible as specified in paragraph (a)(8) of this section.

(3) An alien who entered the United States prior to January 1, 1972 or some later date as required by law, and has continuously maintained residency in the United States since then, and is not ineligible for citizenship, but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and Nationality Act.

(4) An alien who is qualified for entry pursuant to section 207 or 208 of the Immigration and Nationality Act.

(5) An alien granted asylum through an exercise of discretion by the Attorney General pursuant to section 208 of the Immigration and Nationality Act.

(6) An alien lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act, or as a result of a grant of parole by the Attorney General.

(7) An alien living within the United States for whom the Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act.

(8) An alien who is defined as aged, blind or disabled in accordance with section 1614(a)(1) of the Social Security Act and is considered to be lawfully admitted for temporary or permanent residence pursuant to section 245A(b)(1) of the Immigration and Nationality Act. Such aliens may obtain lawful permanent resident status under section 245(b)(1) of the Immigration and Nationality Act no earlier than November 7, 1988.

(9) An alien who is, as of June 1, 1987, or thereafter, a special agricultural worker and lawfully admitted for temporary residence in accordance with section 210(a) of the Immigration and Nationality Act.

(b) *Ineligible aliens.* Aliens other than those described in paragraph (a) of this section shall not be eligible to participate. This includes, but is not limited to, alien visitors, tourists, diplomats and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country.

(c) *Income and resources.* The income and resources of an ineligible alien shall be handled as outlined in § 273.11(c)(2).

(d) *Awaiting verification.* If verification of eligible alien status as required by § 273.2(f) is not provided on a timely basis, the eligibility of the remaining household members shall be determined. The income and resources of the individual whose alien status is unverified shall be handled as outlined in § 273.11(c) and considered available in determining the eligibility of the remaining household members. If verification of eligible alien status is subsequently received, the State agency

shall act on the information as a reported change in household membership in accordance with timeliness standards in §273.12.

(e) *Reporting illegal aliens.* (1) The State agency shall immediately inform the local INS office whenever personnel responsible for the certification or recertification of households determine that any member of a household is ineligible to receive food stamps because the member is present in the United States in violation of the Immigration and Nationality Act.

(2) When a household indicates inability or unwillingness to provide documentation of alien status for any household member, that member should be classified as an ineligible alien. When a person indicates inability or unwillingness to provide documentation of alien status, that person should be classified as an ineligible alien. In such cases the State agency shall not continue efforts to obtain that documentation.

[Amdt. 189, 47 FR 17763, Apr. 23, 1982, as amended by Amdt. 269, 51 FR 10785, Mar. 28, 1986; 52 FR 20058, May 29, 1987; 52 FR 22888, June 16, 1987; 53 FR 6558, Mar. 2, 1988; 56 FR 63596, Dec. 4, 1991; Amdt. 364, 61 FR 54317, Oct. 17, 1996]

### §273.5 Students.

(a) *Applicability.* An individual who is enrolled at least half-time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless the individual qualifies for one of the exemptions contained in paragraph (b) of this section. An individual is considered to be enrolled in an institution of higher education if the individual is enrolled in a business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum or if the individual is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a high school diploma is required.

(b) *Student Exemptions.* To be eligible for the program, a student as defined in paragraph (a) of the section must meet at least one of the following criteria.

(1) Be age 17 or younger or age 50 or older;

(2) Be physically or mentally unfit;

(3) Be receiving Aid to Families with Dependent Children under Title IV of the Social Security Act;

(4) Be enrolled as a result of participation in the Job Opportunities and Basic Skills program under Title IV of the Social Security Act or its successor program;

(5) Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;

(6) Be participating in a State or federally financed work study program during the regular school year.

(i) To qualify under this provision, the student must be approved for work study at the time of application for food stamps, the work study must be approved for the school term, and the student must anticipate actually working during that time. The exemption shall begin with the month in which the school term begins or the month work study is approved, whichever is later. Once begun, the exemption shall continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.

(ii) The exemption shall not continue between terms when there is a break of a full month or longer unless the student is participating in work study during the break.

(7) Be participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer;

(8) Be responsible for the care of a dependent household member under the age of 6;

(9) Be responsible for the care of a dependent household member who has reached the age of 6 but is under age 12 when the State agency has determined that adequate child care is not available to enable the student to attend class and comply with the work requirements of paragraph (b)(5) or (b)(6) of this section;

(10) Be a single parent enrolled in an institution of higher education on a

full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12.

(i) This provision applies in those situations where only one natural, adoptive or stepparent (regardless of marital status) is in the same food stamp household as the child.

(ii) If no natural, adoptive or stepparent is in the same food stamp household as the child, another full-time student in the same food stamp household as the child may qualify for eligible student status under this provision if he or she has parental control over the child and is not living with his or her spouse.

(11) Be assigned to or placed in an institution of higher education through or in compliance with the requirements of one of the programs identified in paragraphs (b)(11)(i) through (b)(11)(iv) of this section. Self-initiated placements during the period of time the person is enrolled in one of these employment and training programs shall be considered to be in compliance with the requirements of the employment and training program in which the person is enrolled provided that the program has a component for enrollment in an institution of higher education and that program accepts the placement. Persons who voluntarily participate in one of these employment and training programs and are placed in an institution of higher education through or in compliance with the requirements of the program shall also qualify for the exemption. The programs are:

(i) a program under the Job Training Partnership Act of 1974 (29 U.S.C. 1501, et seq.);

(ii) an employment and training program under § 273.7;

(iii) a program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296); or

(iv) an employment and training program for low-income households that is operated by a State or local government where one or more of the components of such program is at least equivalent to an acceptable food stamp employment and training program component as specified in § 273.7(f)(1). Using the criteria in § 273.7(f)(1), State agencies shall make the determinations as to whether or not the programs qualify.

(c) The enrollment status of a student shall begin on the first day of the school term of the institution of higher education. Such enrollment shall be deemed to continue through normal periods of class attendance, vacation and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer school).

(d) The income and resources of an ineligible student shall be handled as outlined in § 273.11(d).

[46 FR 43025, Aug. 25, 1981, as amended by Amdt. 235, 47 FR 55908, Dec. 14, 1982; Amdt. 269, 51 FR 10785, Mar. 28, 1986; Amdt. 274, 51 FR 18750, May 21, 1986; Amdt. 277, 51 FR 30048, Aug. 22, 1986; Amdt. 370, 60 FR 48869, Sept. 21, 1995]

### § 273.6 Social security numbers.

(a) *Requirements for participation.* The State agency shall require that a household participating or applying for participation in the Food Stamp Program provide the State agency with the social security number (SSN) of each household member or apply for one before certification. If individuals have more than one number, all numbers shall be required. The State agency shall explain to applicants and participants that refusal or failure without good cause to provide an SSN will result in disqualification of the individual for whom an SSN is not obtained.

(b) *Obtaining SSNs for food stamp household members.* (1) For those individuals who provide SSNs prior to certification, recertification or at any office contact, the State agency shall record the SSN and verify it in accordance with § 273.2(f)(1)(v).

(2) For those individuals who do not have an SSN, the State agency shall:

(i) If an enumeration agreement with SSA exists, complete the application for an SSN, Form SS–5. To complete Form SS–5, the State agency must document the verification of identity, age, and citizenship or alien status as required by SSA and forward the SS–5 to SSA.

(ii) If no enumeration agreement exists, an individual must apply at the SSA, and the State agency shall arrange with SSA to be notified directly

of the SSN when it is issued. The State agency shall inform the household where to apply and what information will be needed, including any which may be needed for SSA to notify the State agency of the SSN. The State agency shall advise the household member that proof of application from SSA will be required prior to certification. SSA normally uses the Receipt of Application for a Social Security Number, Form SSA–5028, as evidence that an individual has applied for an SSN. State agencies may also use their own documents for this purpose.

(3) The State agency shall follow the procedures described in paragraphs (b)(2) (i) and (ii) of this section for individuals who do not know if they have an SSN, or are unable to find their SSN.

(4) If the household is unable to provide proof of application for an SSN for a newborn, the household must provide the SSN or proof of application at its next recertification or within 6 months following the month the baby is born, whichever is later. If the household is unable to provide an SSN or proof of application for an SSN at its next recertification within 6 months following the baby's birth, the State agency shall determine if the good cause provisions of paragraph (d) of this section are applicable.

(c) *Failure to comply*. If the State agency determines that a household member has refused or failed without good cause to provide or apply for an SSN, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification applies to the individual for whom the SSN is not provided and not to the entire household. The earned or unearned income and resources of an individual disqualified from the household for failure to comply with this requirement shall be counted as household income and resources to the extent specified in § 273.11(c) of these regulations.

(d) *Determining good cause*. In determining if good cause exists for failure to comply with the requirement to apply for or provide the State agency with an SSN, the State agency shall consider information from the household member, SSA and the State agency (especially if the State agency was designated to send the SS–5 to SSA and either did not process the SS–5 or did not process it in a timely manner). Documentary evidence or collateral information that the household member has applied for an SSN or made every effort to supply SSA with the necessary information to complete an application for an SSN shall be considered good cause for not complying timely with this requirement. Good cause does not include delays due to illness, lack of transportation or temporary absences, because SSA makes provisions for mail-in applications in lieu of applying in person. If the household member can show good cause why an application for a SSN has not been completed in a timely manner, that person shall be allowed to participate for one month in addition to the month of application. If the household member applying for an SSN has been unable to obtain the documents required by SSN, the State agency caseworker should make every effort to assist the individual in obtaining these documents. Good cause for failure to apply must be shown monthly in order for such a household member to continue to participate. Once an application has been filed, the State agency shall permit the member to continue to participate pending notification of the State agency of the household member's SSN.

(e) *Ending disqualification*. The household member(s) disqualified may become eligible upon providing the State agency with an SSN.

(f) *Use of SSNs*. The State agency is authorized to use SSNs in the administration of the Food Stamp Program. To the extent determined necessary by the Secretary and the Secretary of Health and Human Services, State agencies shall have access to information regarding individual Food Stamp Program applicants and participants who receive benefits under title XVI of the Social Security Act to determine such a household's eligibility to receive assistance and the amount of assistance, or to verify information related to the benefit of these households. State agencies shall use the State Data Exchange (SDX) to the maximum extent possible. The State agency should also

use the SSNs to prevent duplicate participation, to facilitate mass changes in Federal benefits as described in § 273.12(e)(3) and to determine the accuracy and/or reliability of information given by households. In particular, SSNs shall be used by the State agency to request and exchange information on individuals through the IEVS as specified in § 272.8.

(g) *Entry of SSNs into automated data bases.* State agencies with automated food stamp data bases containing household information shall enter all SSNs obtained in accordance with § 273.6(a) into these files.

[Amdt. 264, 51 FR 7206, Feb. 28, 1986; Amdt. 364, 61 FR 54317, Oct. 17, 1996]

### § 273.7 Work requirements.

(a) *Persons required to register.* Each household member who is not exempt by paragraph (b)(1) of this section shall be registered for employment by the State agency at the time of application, and once every twelve months after initial registration, as a condition of eligibility. The registration form need not be completed by the member required to register.

(b) *Exemptions from work registration.* (1) The following persons are exempt from the work registration requirement:

(i) A person younger than 16 years of age or a person 60 years of age or older. If a child has its 16th birthday within a certification period, the child shall fulfill the work registration requirement as part of the next scheduled recertification process, unless the child qualifies for another exemption. A person age sixteen or seventeen who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time-basis is exempt.

(ii) A person physically or mentally unfit for employment. If mental or physical unfitness is claimed and the unfitness is not evident to the State agency, verification may be required. Appropriate verification may consist of receipt of temporary or permanent disability benefits issued by governmental or private sources, or of a statement from a physician or licensed or certified psychologist.

(iii) A household member subject to and complying with any work requirement under title IV of the Social Security Act, including WIN registration. If the exemption claimed is questionable, the State agency shall be responsible for verifying the exemption.

(iv) A parent or other household member who is responsible for the care of a dependent child under 6 or an incapacitated person. If the child has its 6th birthday within a certification period, the individual responsible for the care of the child shall fulfill the work registration requirement as part of the next scheduled recertification process, unless the individual qualifies for another exemption.

(v) A person is in receipt of unemployment compensation. A person who has applied for, but has not yet begun to receive, unemployment compensation shall also be exempt if that person was required to register for work with the SESA as part of the unemployment compensation application process. If the exemption claimed is questionable, the State agency shall be responsible for verifying the exemption with the appropriate office of the SESA.

(vi) A regular participant in a drug addiction or alcoholic treatment and rehabilitation program.

(vii) A person who is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings at least equal to the Federal minimum wage multiplied by 30 hours. This shall include migrant and seasonal farmworkers who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days (although this shall not prevent individuals from seeking additional services from SESA). For work registration purposes, a person residing in certain designated areas of Alaska, as specified in § 274.10(a)(4)(iii), who subsistence hunts and/or fishes a minimum of 30 hours weekly as determined by averaging such activity over the certification period shall be considered exempt as self-employed.

(viii) A student enrolled at least half time in any recognized school, training program, or institution of higher education; provided that students enrolled at least half time in an institution of

higher education have met the eligibility conditions in § 273.5 of this part. A student enrolled in a school, training program or institution of higher education shall remain exempt during normal periods of class attendance, vacation and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer). Persons who are not enrolled at least half time or who experience a break in enrollment status due to graduation, expulsion, or suspension, or who drop out or otherwise do not intend to return to school, shall not be considered students for the purpose of qualifying for this exemption.

(2)(i) Persons losing exemption status due to any changes in circumstances that are subject to the reporting requirements of § 273.12 (such as loss of employment that also results in a loss of income of more than $25 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) shall register for employment when the change is reported. If the State agency does not use a work registration form, it shall annotate the change to the member's exemption status. If a work registration form is used, the State agency shall be responsible for providing the participant with a work registration form when the change is reported. Participants shall be responsible for returning the form to the State agency within 10 calendar days from the date the form was handed to the household member reporting the change in person, or the date the State agency mailed the form. If the participant fails to return the form, the State agency shall issue a notice of adverse action stating that the participant or, if the individual is the head of household, the household is being terminated and why, but that the termination can be avoided by returning the form.

(ii) Those persons who lose their exemption due to a change in circumstances that is not subject to the reporting requirements of § 273.12 shall register for employment at their household's next recertification.

(c) *State agency responsibilities.* (1) The State shall register for work each household member not exempted by the provisions of § 273.7(b). Upon reaching a determination that an applicant or a member of the applicant's household is required to register, the State agency shall explain to the applicant the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply. The State agency shall provide a written statement of the above to each work registrant in the household. A notice shall also be provided when a previously exempt member or new household member becomes subject to a work requirement, and at recertification. The State agency shall permit the applicant to complete a record or form for each household member required to register for employment in accordance with paragraph (a) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency or when the registration is otherwise annotated or recorded by the State.

(2) The State agency shall be responsible for screening each work registrant to determine whether or not it is appropriate, based on the State's criteria, to refer the individual to an employment and training program, and if appropriate, referring the individual to an employment and training program component. Upon entry into each component the registrant applicant or volunteer, should be told, either orally or in writing, the requirements of the component, what will constitute noncompliance and the sanctions for noncompliance. The State agency shall initiate conciliation procedures, pursuant to paragraph (g)(1)(ii) of this section, upon determining that an individual has not complied with E&T requirements. The State agency shall issue a notice of adverse action (Form FCS–441 or equivalent State-designed form) to the individual or household, as appropriate, no later than the last day of the conciliation period. If the notice of adverse action was issued prior to the end of the conciliation period and the State agency verifies that compliance was achieved by the end of the conciliation

period, the notice of adverse action may be cancelled. If States wish to use different intake and sanction systems which are compatible with title IV–A work programs such systems shall be proposed in the State agency's plan, and subject to the Secretary's approval.

(3) The State agency shall design and operate an employment and training program which may consist of one or more or a combination of employment and/or training components as described in § 273.7(f). The State agency must ensure that it is notified by the agency or agencies operating its E&T components within ten days if an E&T mandatory participant fails to comply with E&T requirements.

(4) In accordance with 7 CFR 272.2(e)(9), each State agency must prepare and submit an Employment and Training plan to its appropriate FCS Regional Office and to the FCS National Office. The plan shall be available for public inspection at the State agency headquarters. In its plan, the State shall detail the following:

(i) The nature of the employment and training components the State plans to offer and the reasons for such components, including cost information. The methodology for State reimbursement for education components shall be specifically addressed;

(ii) An operating budget for the Federal fiscal year with an estimate of the cost of operation for one full year. Any State which will request 50 percent federal reimbursement for State E & T administrative costs, other than for participant reimbursements, shall include in its plan, or amendments to its plan, an itemized list of all activities and costs for which those Federal funds will be claimed. Costs in excess of the federal grant shall be allowed only with the prior approval of the Department and must be adequately documented to assure that they are necessary, reasonable and properly allocated;

(iii) The categories and types of individuals the State seeks to exempt from E&T participation, the basis used to determine these exemptions, including any cost information and the estimated percentage of work registrants the State plans to exempt;

(iv) The characteristics of the population the State does intend to place;

(v) The estimated number of volunteers the State expects to place in its employment and training program;

(vi) The geographic areas covered and not covered by the plan and why, and the type and location of services to be offered;

(vii) The method the State will use to count all work registrants the first month of each fiscal year;

(viii) The method the State agency uses to report work registrant information and prevent work registrants from being reported twice within a Federal fiscal year on the quarterly FCS Form 583. This method must specify how work registrants are excluded if the State agency work register all food stamp applicants (i.e., universal work registration) when the applicants are exempt from work registration as specified under paragraph (b) of this section *or* if the State agency work registers nonexempt participants whenever a new application is submitted and the participants may have already been registered within the past twelve months as specified under paragraph (a) of this section. If the method the State agency uses is questionable or unacceptable, FCS reserves the right to adjust a State agency's work registrant count. FCS shall advise a State agency of how the adjusted figure was determined and shall allow the State agency 30 days to submit another method for consideration by FCS.

(ix) If a State plans to offer components which are significantly more intensive than the minimum level of effort specified in § 273.7(f), or plans to concentrate its efforts on persons who may be difficult to place, due to employment obstacles, it shall be made clear in the State's employment and training plan. If, because of the nature of its components, or the population served, a State believes that an adjustment to the performance standard established in § 273.7(o) is appropriate, and wishes to request a revision in the standard, it shall specify the percentage of its work registered population it intends to serve, and provide the Department with detailed information about why it has chosen to operate such a component or components, or

chosen to focus on certain persons, the intended benefits to be gained by the recipient and Federal and State governments, and the number of persons it plans to serve in the component. The information provided to the Department will be used in determining whether the State's performance standard will be affected;

(x) The organizational relationship between the units responsible for certification and the units operating the employment and training components. FCS is specifically concerned that the lines of communication be efficient and that noncompliance be reported to the certification unit within ten working days after such noncompliance is determined;

(xi) The relationship between the State agency and other organizations it plans to coordinate with for the provision of services. Copies of contracts shall be available for inspection;

(xii) The availability, if appropriate, of employment and training programs to Indians living on reservations.

(xiii) Beginning with the Fiscal Year 1992 State E&T plan, the procedures developed by the State agency under paragraph (g)(1)(ii) of this section for conciliation. To the extent possible, State agencies should design conciliation procedures for the E&T program that will be compatible with the conciliation process that State agencies that administer the Aid to Families with Dependent Children (AFDC) Program will establish for the Job Opportunities and Basic Skills Training (JOBS) Program as mandated by the Family Support Act of 1988.

(xiv) The Statewide limit(s) for dependent care reimbursements as established by the State agency. The limit(s) shall not be less than the dependent care deduction amounts specified under §273.9(d)(4).

(xv) The local market rates of dependent care providers in the State. State agencies shall adopt the local market rates already established by programs under section 402(g) of the Social Security Act. State agencies shall establish separate local market rates for categories of care relevant to food stamp E&T which are not addressed under section 402(g) of the Social Security Act and include such rates in the E&T State Plan.

(5) Plans shall be submitted biennially, 45 days before the start of the fiscal year, beginning in FY 1990. States must submit plan revisions to the appropriate FCS regional office for approval if they plan to alter the nature or location of their components or the number or characteristics of persons served. The proposed changes shall be submitted for approval at least 30 days prior to planned implementation.

(6) The State shall submit quarterly reports to FCS no later than 45 days after the end of each Federal fiscal quarter containing monthly figures for the number of:

(i) Participants newly work registered;

(ii) Work registrants exempted by the State from participation in an employment and training program;

(iii) Participants who volunteer for and commence participation in an approved E&T component;

(iv) E&T mandatory participants who commence an approved E&T component including Food Stamp Program applicants in States which operate a component for applicants;

(v) Work registrants sent a Notice of Adverse Action for failure to comply with E&T requirements, and the number of applicants who were denied food stamp certification or recertification for failure to comply with an E&T component.

(7) States shall submit annually, on their first quarterly report the number of work registered persons in that State as in October of the new fiscal year.

(8) States shall submit annually, on their final quarterly report the following information:

(i) The number of Food Stamp Program work registrants who were exempted as part of a category of persons during the course of the year separated by the specific reasons for the exemptions.

(ii) The number of food stamp participants (E&T mandatory and volunteers) placed in each E&T component offered by the State agency.

(9) Additional information may be required of individual State agencies on an as needed basis depending on the

contents of the State's plan regarding the type of components offered and the characteristics of persons served.

(10) States must ensure, to the maximum extent practicable, that employment and training programs are provided for Indians living on reservations.

(11) If a benefit overissuance is discovered for a month or months in which a mandatory E & T participant has already fulfilled a work component requirement, the State agency shall follow the procedure specified in § 273.22(f)(9) for a workfare overissuance.

(d) *Federal financial participation*—(1) *Employment and training grants.* (i) State agencies shall receive an employment and training program grant for each fiscal year or portion of the fiscal year in which they operate an employment and training program. The grant shall require no State matching.

(A) Except as otherwise provided in paragraph (d)(1)(i)(D) of this section, effective in FY 1992, the nonperformance based Federal funding for employment and training grants shall be allocated on the basis of work registrants in each State agency as a percentage of work registrants nationwide. FCS will use work registrant data from the most recent Federal fiscal year. In FY 1992, each State agency shall receive an increase or decrease that is one-half of the difference between:

(*1*) An amount that is based on the percent of each State agency's caseload in FY 1990 as compared to the average monthly caseload nationwide; and

(*2*) An amount that is based on the percent of each State agency's work registrant population in FY 1990 as compared to number of work registrants nationwide.

(B) Effective in FY 1992, no State agency shall receive less tha $50,000 in nonperformance based Federal E&T funds. To ensure that no State agency receives less than $50,000 in FY 192, each State agency that is allocated more than $50,000 and would receive an increase in its E&T grant shall have its grant reduced if necessary. The reduction shall be proportionate to the number of work registrants in each State receiving more than $50,000 and receiving an increase in its E&T grant as compared to the total number of work registrants in all the States receiving more than $50,000 coupled with increases in their E&T grants. To insure that no State agency receives less than $50,000 as of FY 1993, each State agency that is allocated to receive more than $50,000 shall have its grant reduced, if necessary, proportionate to the number of work registrants in each State as compared to the total number of work registrants in all the State agencies receiving more than $50,000. The funds from the reduction shall be distributed to State agencies initially allocated to receive less than $50,000.

(C) In Federal fiscal year 1993, the Secretary shall allocate $15 million of the Federal funds available for unmatched employment and training grants based on the ratio of the number of E&T mandatory participants placed (as defined under paragraph (o) of this section) in a food stamp E&T program in an eligible State to the number of E&T mandatory participants placed in all eligible States in Calendar Year 1991. Beginning in Federal fiscal year 1994, and each subsequent Federal fiscal year until FY 1998, the Secretary shall allocate $15 million of Federal funds on the basis of the amount of performance-based funding each State agency received in Federal fiscal year 1993, provided the State agency has met the performance standard (as defined under paragraph (o) of this section) for the second preceding Federal fiscal year. For example, to receive performance-based funding in Federal fiscal year 1996, the State agency must have met its performance standard in Federal fiscal year 1994. Corrections to reports required to be submitted in accordance with paragraph (c) of this section must be received by FCS, and State agency good cause appeals must be resolved no later than March 1, to be used in determining whether a State agency is eligible for performance-based funding for the Federal fiscal year beginning the following October. If the data on the reports show that a State agency did not meet its performance standard or a good cause determination was not made by FCS by March 1, the State

agency shall not be eligible for performance-based funding. In this instance, the Secretary shall redistribute the $15 million Federal funds to eligible State agencies on the basis of Calendar Year 1991 data as prescribed under this paragraph, excluding the noncompliant States.

(D) The Secretary may adjust the level of grants during a fiscal year to take into account substantial amounts of funds for employment and training programs which are unlikely to be used by a State agency during the fiscal year and which could be productively used by another State agency or agencies, with concurrence of the State agencies involved.

(E) State agencies shall use employment and training program grants to fund the administrative costs of planning, implementing and operating employment and training programs in accordance with approved State agency plans. Employment and training grants shall not be used for the process of determining whether a participant shall be work registered, the work registration process, or any further screening performed during the certification process, nor for sanction activity which takes place after the operator of an employment and training component has reported noncompliance without good cause. For purposes of this paragraph, the certification process shall be considered to have ended when an individual is referred to an employment and training component for assessment or participation. Employment and training grants shall also not be used to subsidize the wages of participants, or to reimburse participants under paragraph (d)(1)(ii) of this section.

(F) A State's receipt of the employment and training program grant as allocated under paragraph (d)(1)(i) (A) or (B) of this section is contingent on the Secretary's approval of the State's employment and training plan. If an adequate plan is not submitted, the Secretary may reallocate a State's grant among other States with approved plans. Non-receipt of an employment and training program grant does not release a State from performance requirements under paragraph (o) of this section or sanctions for insufficient performance.

(G) Federal funds made available to a State agency under this section to operate a component under paragraph (f)(1)(vi) of this section shall not be used to supplant nonfederal funds for existing educational services and activities that promote the purposes of this component. Education expenses are approvable to the extent that employment and training component costs exceed the normal cost of services provided to persons not participating in an employment and training program.

(ii) *Participant reimbursements.* The State agency shall provide payments to participants in its E&T program, including applicants required to perform job search and volunteers, for expenses that are reasonably necessary and directly related to participation in the E&T program. These payments may be provided as a reimbursement for expenses incurred or in advance as payment for anticipated expenses in the coming month. The State agency shall inform each E&T participant that allowable expenses up to the amounts specified in paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section will be reimbursed by the State agency upon presentation of appropriate documentation. Reimbursable costs may include, but are not limited to, dependent care costs, transportation, and other work, training or education related expenses such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home. Any allowable costs incurred by a noncompliant E&T participant that are reasonably necessary and directly related to participation in the conciliation process shall be reimbursable under paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section. The State agency may reimburse participants for expenses beyond the amounts specified in paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section, however, only costs which are up to but not in excess of those amounts shall be subject to Federal cost sharing. Reimbursement shall not be provided from E&T grants provided under paragraph (d)(1)(i) of this section. Any expense

covered by a reimbursement under this section shall not be deductible under § 273.10(d)(1)(i). Reimbursements shall be provided as follows:

(A) The costs of such dependent care expenses that are determined by the State agency to be necessary for the participation of a household member in the E&T program up to the actual cost of dependent care, the local market rate, or the Statewide limit, whichever is lowest. A dependent care reimbursement shall be provided to an E&T participant for all dependents requiring dependent care unless otherwise prohibited by this section. A reimbursement shall not be provided for a dependent age 13 or older unless the dependent is physically and/or mentally incapable of caring for himself or herself or under court supervision. A reimbursement shall be provided for all dependents who are physically and/or mentally incapable of caring for themselves or who are under court supervision, regardless of age, if dependent care is necessary for the participation of a household member in the E&T program. Verification of the physical and/or mental incapacity is questionable. Also, verification of a court imposed requirement for the supervision of a dependent age 13 or older is necessary if the need for dependent care is questionable. If more than one household member is required to participate in the E&T program, the State agency shall provide reimbursement for the actual cost of dependent care, the local market rate, or the Statewide limit, whichever is lowest, for each dependent in the household, regardless of the number of household members participating in the E&T program. An individual who is the caretaker relative of a dependent in a family receiving benefits under the AFDC program in a local area where an employment, training, or education program under the AFDC program is in operation, or was in operation on September 19, 1988, is not eligible for such reimbursement. An E&T participant is not entitled to the dependent care reimbursement if a member of the E&T participant's food stamp household provides the dependent care services. The State agency must verify the participant's need for dependent care and the cost of the dependent care prior to the issuance of the reimbursement. The verification must include the name and address of the dependent care provider, the cost and the hours of service, e.g., five hours per day, five days per week for two weeks. A participant may not be reimbursed for dependent care services beyond that which is required for participation in the E&T program. In lieu of providing reimbursements for dependent care expenses, a State agency may arrange for dependent care through providers by the use of purchase of service contracts, by providing vouchers to the household or by other means. A State agency may require that dependent care provided or arranged by the State agency meet all applicable standards of State and local law, including requirements designed to ensure basic health and safety protections, e.g., fire safety. An E&T participant may refuse available appropriate dependent care as provided or arranged by the State agency, if the participant can arrange other dependent care or can show that such refusal will not prevent or interfere with participation in the E&T program as required by the State agency. A State agency may claim 50 percent of costs for dependent care services provided or arranged by the State agency up to the actual cost of dependent care, the local market rate, or the Statewide limit, whichever is lowest.

(B) The actual costs of transportation and other costs (excluding dependent care costs) that are determined by the State agency to be necessary and directly related to participation in the E&T program up to $25 per participant per month. Such costs shall be the actual costs of participation unless the State agency has a method approved in its State E&T plan for providing allowances to participants to reflect approximate costs of participation. If a State agency has an approved method to provide allowances rather than reimbursements, it must provide participants an opportunity to claim actual expenses which exceed the standard, up to $25 or such other maximum level of reimbursements which is established by the State agency.

(C) No participant cost which has been reimbursed under a workfare program under § 273.22, title IV of the Social Security Act or other work program shall be reimbursed under this section.

(D) Any portion of dependent care costs which are reimbursed under this section may not be claimed as an expense and used in calculating the dependent care deduction under § 273.9(d)(4) for determining benefits.

(E) The State agency shall inform all mandatory E&T participants that they may be exempted from E&T participation if their monthly expenses that are reasonably necessary and directly related to participation in the E&T program exceed the allowable reimbursement amount. Persons for whom allowable monthly expenses in an E&T component exceed the amounts specified under paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section shall not be required to participate in that component. These individuals shall be placed, if possible, in another suitable component in which the individual's monthly E&T expenses would not exceed the allowable reimbursable amount paid by the State agency. If a suitable component is not available, these individuals shall be exempted from E&T participation until a suitable component is available or the individual's circumstances change and his/her monthly expenses do not exceed the allowable reimbursable amount paid by the State agency. Individuals exempted because their monthly expenses exceed the allowable reimbursable amounts specified under paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section may volunteer to participate in the E&T program. Volunteers must be informed that their allowable expenses in excess of the reimbursable amounts will not be reimbursed. Dependent care expenses incurred that are otherwise allowable but not reimbursed because they exceed the reimbursable amount specified under paragraph (d)(1)(ii)(B) shall be considered in determining a dependent care deduction under 7 CFR 273.9(d)(4).

(iii) Fifty percent of all other administrative costs incurred by State agencies in operating employment and training programs, above the costs referenced in paragraphs (d)(1)(i) of this section, shall be funded by the Federal government.

(iv) Enhanced cost-sharing due to placement of workfare participants in paid employment is available only for workfare programs funded under § 273.22(g) at the 50 percent reimbursement level and reported as such.

(2) *Funding mechanism.* Employment and training program funding will be disbursed through States' Letters of Credit in accordance with § 277.5 of the regulations. The State agency shall ensure that records are maintained which support the financial claims being made to FCS.

(3) *Fiscal recordkeeping and reporting requirements.* Total employment and training expenditures shall be reported on the Financial Status Report (SF–269) in the column containing ''other'' expenses. Employment and training expenditures shall also be separately identified in an attachment to the SF–269 to show, as provided in instructions, total State and Federal employment and training expenditures; expenditures funded with the unmatched Federal grants; State and Federal expenditures for participant reimbursements; State and Federal expenditures for employment and training costs at the 50 percent reimbursement level; and State and Federal expenditures for optional workfare program costs, operated under section 20 of the Food Stamp Act and § 273.22 of the regulations. Claims for enhanced funding for placements of participants in employment after their initial participation in the optional workfare program shall be submitted in accordance with § 273.22.

(e) *Work registrant requirements.* Work registrants shall:

(1) Participate in an employment and training program if assigned by the State agency;

(2) Respond to a request from the State agency or its designee for supplemental information regarding employment status or availability for work;

(3) Report to an employer to whom referred by the State agency or its designee if the potential employment meets the suitability requirements described in paragraph (i) of this section;

(4) Accept a bona fide offer of suitable employment at a wage not less than the higher of either the applicable State or Federal minimum wage;

(f) *Employment and training programs.* Persons required to register for work and not exempted by the State agency from placement in an employment and training program shall be subject to the requirements imposed by the State agency for that individual. Such individuals are referred to in this section as E&T mandatory participants. Requirements may vary among participants. Failure to comply without good cause with the requirements imposed by the State agency shall result in disqualification as specified in § 273.7(g).

(1) *Components.* To be considered acceptable by FCS, any component offered by a State agency shall entail certain levels of effort by the participants. The level of effort should be comparable to spending approximately 12 hours a month for two months (or less in workfare or work experience components if the household's benefit divided by the minimum wage is less than this amount) making job contacts; however, FCS may approve components which do not meet this guideline which it determines will advance program goals. An initial screening by an eligibility worker to determine whom to place in an employment and training program does not constitute a component. An employment and training program offered by a State agency must offer one or more of the following components:

(i) A job search program comparable to that required for the AFDC program under Part A of title IV of the Social Security Act. The State may require that an individual participate in a job search program from the time an application is filed for an initial period of up to eight consecutive weeks. Following this initial period (which may extend beyond the date when eligibility is determined) the State may require an additional job search period, not to exceed eight weeks (or its equivalent) in any period of 12 consecutive months. The first such period of 12 consecutive months shall begin at any time following the close of the initial period. States must not impose requirements which would delay the determination of an individual's eligibility for aid or in issuing benefits to any household which is otherwise eligible.

(ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program. Job search training activities are approvable if they directly enhance the employability of the participants. A direct link between the job search training activities and job-readiness must be established for a component to be approved.

(iii) A workfare program as described in § 273.22;

(iv) A program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. Such an employment or training experience shall:

(A) Limit employment experience assignments to projects that serve a useful public purpose in fields such as health, social services, environmental protection, urban and rural development, welfare, recreation, public facilities, public safety, and day care;

(B) To the extent possible, use the prior training, experience, and skills of the participating member in making appropriate employment or training experience assignments;

(C) Not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(D) Provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(v) A project, program or experiment such as a supported work program, or a JTPA or State or local program aimed at accomplishing the purpose of the employment and training program.

(vi) Educational programs or activities to improve basic skills or otherwise improve employability including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program as specified under paragraph (f) of this section. Allowable educational activities may include, but are not limited to, high school or equivalent educational programs, remedial education programs to achieve a basic literacy level, and instructional programs in English as a second language. Only educational components that directly enhance the employability of the participants are allowable. A direct link between the education and job-readiness must be established for a component to be approved.

(vii) A program designed to improve the self-sufficiency of recipients through self-employment including programs that provide instruction for self-employment ventures.

(2) *Exemptions.* Subject to the requirements for overall plan approval by the Secretary, State agencies may exempt certain work registered individuals and categories of individuals from employment and training participation. Individual exemptions shall be evaluated at each recertification and exemptions granted to categories of persons should be reviewed no less frequently than annually to determine whether they remain valid. If a State recognizes that because of changes in its caseload the exemption limit set forth in its approved plan is insufficient, the State may seek to amend its State plan during the year. FCS will consider changes in a State's caseload in determining whether a State has complied with its exemption limit.

(i) Persons who have participated in the Food Stamp Program for 30 days or less may be exempted from participation.

(ii) Categories of persons for whom an employment and training requirement would be impracticable may be exempted. Factors such as the availability of work opportunities and the cost-effectiveness of the requirements may be considered. In making the determination of exemption, the State agency may designate a category of all households residing in a specific area of the State.

(iii) State agencies may exempt from participation individual household members for whom participation is impracticable because of personal circumstances such as lack of job readiness, the remote location of work opportunities, physical condition, the unavailability of dependent care, and monthly E&T expenses that exceed the allowable reimbursable amounts specified in paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section.

(iv) Persons who are assigned to a job or training component, do not commence the component and are determined to have good cause shall be considered exempted if the reason for good cause will last for 60 days or longer. When the reason for the exemption is no longer applicable, the person may be placed in a component.

(3) *Time spent in an employment and training program.* (i) The number of months a participant spends in an employment and training component shall be determined by the State agency with the exception of the limitations placed on job search in paragraph (f)(1)(i). The State agency may also determine the number of successive components in which a participant may be placed.

(ii) The time spent by the members of a household collectively each month in an employment and training work program including, but not limited to those carried out under § 273.7(f)(1) (iii) and (iv), combined with any hours worked that month in a workfare program under § 273.22 shall not exceed the number of hours equal to the household's allotment for that month divided by the higher of the applicable State or Federal minimum wage. The total hours of participation in an E&T component for any household member individually in any month, together with any hours worked in a workfare program under § 273.22 and any hours worked for compensation (in cash or in kind), shall not exceed 120.

(4) *Voluntary participation.* (i) A State agency may operate program components in which individuals elect to participate.

(ii) A State agency shall permit, to the extent it deems practicable, persons exempt from the work registration or employment and training requirements, or those not exempt who have complied or are complying with the requirements, to participate in any employment and training program it offers.

(iii) Voluntary participants in an employment and training component shall not be disqualified for failure to comply with employment and training requirements.

(iv) The hours of participation or work of a volunteer may not exceed the hours required of E&T mandatory participants, as specified in paragraph (f)(3) of this section.

(5) *Priority Service to Volunteers.* With prior approval from FCS, two State agencies may provide priority service to volunteers through September 30, 1995. State agencies that submit an application to provide priority service to volunteers have the flexibility to establish procedures that deviate from regulations specified under paragraph (f)(4) of this section.

(i) To be eligible for FCS approval, a State agency shall submit an application that:

(A) Describes the volunteer population it intends to serve (e.g., number served, volunteer definition, characteristics of the target group, percent of volunteer population that are mandatory work registrants under normal E&T requirements and percent that are exempt from work registration);

(B) Describes the component activities that will be offered to volunteer participants;

(C) Identifies where the volunteer program will operate (i.e., Statewide or selected counties);

(D) Specifies the duration of the volunteer program;

(E) Identifies the criteria and research design the State agency recommends to evaluate the effectiveness of the program;

(F) Provides assurances that applicants who are subject to work registration as specified under § 273.7 (a) and (b) are required to work register as a condition of eligibility;

(G) Provides assurances that the State agency will meet the established performance standards under § 273.7(o); and

(H) Provides assurances that the evaluation will be conducted by an organization separate from the administration of the State agency and that ongoing and final result of the evaluation will be provided to FCS.

(ii) State agencies which receive approval to provide priority volunteer service shall:

(A) Submit a revised E&T plan that incorporates the voluntary service provisions;

(B) Continue to report quarterly (i.e., Form FCS 583) as specified under paragraph (c)(6) of this section;

(C) Meet the performance standards as specified under § 273.7(o); and

(D) Submit data annually which show the number of volunteers who fail to complete an assigned E&T activity.

(g) *Failure to comply*—(1) *Noncompliance with Food Stamp Program work regulations.* (i) If the State agency determines that an individual other than the head of household as defined in § 273.1(d) has refused or failed without good cause to comply with the requirements imposed by this section and by the State agency, that individual shall be ineligible to participate in the Food Stamp Program for two months, as provided in this paragraph, and shall be considered an ineligible household member, pursuant to § 273.1(b)(2). If the head of household fails to comply, the entire household is ineligible to participate as provided in this paragraph. Ineligibility in both cases shall continue either until the member who caused the violation complies with the requirement as specified in paragraph (h) of this section, leaves the household, becomes exempt from work registration through paragraph (b) of this section, other than through the exemptions of paragraphs (b)(1)(iii) or (b)(1)(v), or for two months, whichever occurs earlier. A household determined to be ineligible due to failure to comply with the provisions of this section may reestablish eligibility if a new and eligible person joins the household as its head of household, as defined in § 273.1(d)(2). If any household member who failed to comply joins another household as head of the household as specified under §273.1(d)(1) or (d)(2),

that entire new household is ineligible for the remainder of the disqualification period. If the member who failed to comply joins another household where he/she is not head of household, the individual shall be ineligible for two months and shall be considered an ineligible household member pursuant to §273.1(b)(2).

(ii) The State agency shall develop conciliation procedures to be used upon determining that an individual has refused or failed to comply with an E&T requirement. The purpose of the conciliation effort is to determine the reason(s) the work registrant did not comply with the E&T requirement and provide the noncomplying individual with an opportunity to comply prior to the issuance of the notice of adverse action. The conciliation period shall begin the day following the date the State agency learns of the noncompliance and shall continue for a period not to exceed 30 calendar days. Within this conciliation period, the State agency shall, at a minimum, contact the noncomplying household member to ascertain the reason(s) for the noncompliance and determine whether good cause for the noncompliance exists, as discussed in paragraph (m) of this section. If good cause does not exist, the State agency shall inform the household member of the pertinent E&T requirements and the consequences of failing to comply. The household member shall be informed of the action(s) necessary for compliance and the date by which compliance must be achieved to avoid the notice of adverse action. This date may not exceed the end of the conciliation period. To avoid the notice of adverse action, the noncomplying household member must perform a verifiable act of compliance, such as attending a job search training session or submitting a report of job contacts. Verbal commitment by the household member is not sufficient, unless the household member is prevented from complying by circumstances beyond the household member's control, such as the unavailability of a suitable component. If it is apparent that the individual will not comply (i.e., the individual refuses to comply and does not have good cause), the State agency may end the conciliation period early and proceed with the issuance of the notice of adverse action under paragraph (g)(1)(iii) of this section. The individual's refusal to comply shall be documented in the casefile.

(iii) If the work registrant does not comply during the conciliation period the State agency shall issue a notice of adverse action to the individual or household, as specified in §273.13, no later than the last day of the conciliation period. If the notice of adverse action is issued prior to the end of the conciliation period, the notice may be cancelled if the State agency is able to verify that compliance was achieved by the end of the conciliation period.

(iv) If an individual refuses or fails to comply with any of the work requirements imposed by this section, other than the E&T requirements, the State agency shall determine whether good cause for the noncompliance exists, as discussed in paragraph (m) of this section. Within ten days of the State agency determining the noncompliance was without good cause, the State agency shall provide the individual or household with a notice of adverse action, as specified in §273.13.

(v) The notice of adverse action shall contain the particular act of noncompliance committed, the proposed period of disqualification and shall specify that the individual or household may reapply at the end of the disqualification period. Information shall also be included on or with the notice describing the action which can be taken to end or avoid the sanction, and procedures contained in paragraph (h) of this section. The disqualification period shall begin with the first month following the expiration of the ten-day adverse notice period, unless a fair hearing is requested.

(vi) Each individual or household has a right to request a fair hearing, in accordance with §273.15, to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with the work registration or employment and training requirements of this section. Individuals or households may appeal State agency actions such as exemption status, the type of requirement imposed, or State agency refusal to

make a finding of good cause if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. The State agency or its designee operating the relevant component shall receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency shall be available through one of these means. A household shall be allowed to examine its E&T component casefile at a reasonable time before the date of the fair hearing, except for confidential information (which may include test results) that the agency determines should be protected from release. Confidential information not released to a household may not be used by either party at the hearing. The results of the fair hearing shall be binding on the State agency.

(2) *Failure to comply with a work requirement under title IV of the Social Security Act, or unemployment compensation work requirement.* A household containing a member who was exempt from work registration in accordance with paragraph (b)(1)(iii) or (b)(1)(v) of this section because he or she was registered for work under title IV or unemployment compensation and who fails to comply with a title IV or unemployment compensation requirement comparable to a food stamp work registration or employment and training program requirement shall be treated as though the member had failed to comply with the corresponding food stamp requirements.

(i) If the State agency learns that a household member has refused or failed without good cause to comply with a title IV or unemployment compensation requirement, the State agency shall determine whether the requirement was comparable. Similarly, if the household reports the loss or denial of AFDC or unemployment compensation or if the State agency otherwise learns of such loss or denial, the State agency will determine whether the loss or denial was caused by a determination by the administering agency that a household member refused or failed without good cause to comply with the work requirement and, if so, whether the requirement was comparable to the work registration or employment and training program requirement. The title IV or unemployment compensation requirement shall not be considered comparable if it places responsibilities on the household which exceed those imposed by the food stamp work registration or FCS approved employment and training program requirements.

(ii) If the State determines that the title IV or unemployment compensation requirement is comparable, the individual or household (if the individual who committed the violation is the head of household) shall be disqualified in accordance with the following provisions. The State agency shall provide a notice of adverse action as specified in § 273.13 within 10 days after learning of the household member's noncompliance with the unemployment compensation or title IV requirement. The notice shall comply with the requirements of § 273.7(g)(1). An individual or household shall not be disqualified from participation if the noncomplying member meets one of the work registration exemptions provided in § 273.7(b) other than the exemptions provided in paragraphs (b)(1)(iii) and (b)(1)(v) of that section. Household members who fail to comply with a noncomparable title IV or unemployment compensation requirement shall lose their exemption under § 273.7(b)(1)(iii) and (v), and must register for work if required to do so in § 273.7(a).

(iii) If the State agency determination of noncompliance with a comparable title IV or unemployment compensation work requirement leads to a denial or termination of the individuals or household's food stamp benefits, the individual or household has a right to appeal the decision in accordance with the provisions of § 273.7(g)(1).

(iv) A disqualified individual or household may resume participation in the Program in accordance with paragraph (h) of this section.

(h) *Ending disqualification.* Following the end of the 2 month disqualification period for noncompliance with the work registration or employment and training requirements, participation may resume if a disqualified individual

or household applies again and is determined eligible. Eligibility may be reestablished by a household during a disqualification period and the household shall (if otherwise eligible) be permitted to resume participation if the head of the household becomes exempt from the work registration requirement, is no longer a member of the household, or complies with the appropriate requirement listed in paragraph (h)(1) through (h)(5) of this section. An individual who has been disqualified for noncompliance may be permitted to resume participation during the disqualification period (if otherwise eligible) by becoming exempt from work registration or by complying with the following appropriate requirements:

(1) Refusal to register—registration by the household member.

(2) Refusal to respond to a request from the State agency or its designee requiring supplemental information regarding employment status or availability for work—compliance with the request.

(3) Refusal to report to an employer to whom referred—reporting to this employer if work is still available or to another employer to whom referred.

(4) Refusal to accept a bona fide offer of suitable employment to which referred—acceptance of the employment if still available to the participant, or securing other employment which yields earnings per week equivalent to the refused job, or securing any other employment of at least 30 hours per week or securing employment of less than 30 hours per week but with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

(5) Refusal to comply with a State agency (or its designee) assignment as part of an FCS approved employment and training program—compliance with the assignment or an alternative assignment by the State agency.

(i) *Suitable employment.* (1) In addition to any criteria established by State agencies, employment shall be considered unsuitable if:

(i) The wage offered is less than the highest of:

(A) The applicable Federal minimum wage; (B) the applicable State minimum wage; or (C) eighty percent (80%) of the Federal minimum wage if neither the Federal nor State minimum wage is applicable.

(ii) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified under paragraph (i)(1)(i) of this section.

(iii) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(iv) The work offered is at a site subject to a strike or lockout at the time of the offer unless the strike has been enjoined under section 208 of the Labor-Management Relations Act (29 U.S.C. 78) (commonly known as the Taft-Hartley Act), or unless an injunction has been issued under section 10 of the Railway Labor Act (45 U.S.C. 160).

(2) In addition, employment shall be considered suitable unless the household member involved can demonstrate or the State agency otherwise becomes aware that:

(i) The degree of risk to health and safety is unreasonable.

(ii) The member is physically or mentally unfit to perform the employment, as documented by medical evidence or by reliable information from other sources.

(iii) The employment offered within the first 30 days of registration is not in the member's major field of experience.

(iv) The distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting. Employment shall not be considered suitable if daily commuting time exceeds 2 hours per day, not including the transporting of a child to and from a child care facility. Nor shall employment be considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the jobsite.

(v) The working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs. For example, a Sabbatarian could refuse to work on the Sabbath.

(j) *Participation of strikers.* Strikers whose households are eligible under the criteria in § 273.1(g) shall be subject to the work registration requirements unless exempt under paragraph (b) of this section at the time of application.

(k) *Registration of certain PA, GA, and refugee households.* (1) State agencies may request approval from FCS to substitute State or local procedures for work registration for PA households not subject to the work requirements under title IV of the Social Security Act or for GA households. Work requirements imposed on refugees participating in refugee resettlement programs including but not limited to the Indochinese Refugee Assistance Program may also be substituted, with FCS approval. To receive approval, it must be demonstrated that:

(i) The work registration procedures are at least equivalent to food stamp work registration requirements;

(ii) Registrants' activities are monitored so that appropriate sanctions as required by these regulations will be applied. However, if additional work requirements (beyond those required under this section) are placed on household members, a household's food stamp benefits shall not be denied for the failure of a household member to comply with a requirement that exceeds the requirements of this section. For example, if a State rule requires individuals to register for work through age 65, any individual 60 years of age or older who fails to comply shall not be denied food stamp benefits as a result of that failure;

(iii) All household members which are not exempt under paragraph (b)(1) of this section are either registered for work under such Federal, State or local programs as described in this paragraph, or are registered for work as provided in paragraph (a) of this section.

(2) Household members who are program participants under title IV of the Social Security Act or registered for work under unemployment compensation and fail to comply with comparable work requirements of those programs shall be handled in accordance with the provisions in § 273.7(g)(2).

(l) Household members who are applying for SSI and for food stamps under § 273.2(k)(1)(i) shall have the requirement for work registration waived until:

(1) They are determined eligible for SSI and thereby become exempt from work registration, or

(2) They are determined ineligible for SSI and where applicable, a determination of their work registration status is then made through recertification procedures in accordance with § 273.2(k)(1)(iii)(B)(*2*), or through other means.

(m) *Determining good cause.* The State agency shall be responsible for determining good cause in those instances where the work registrant has failed to comply with the work registration, employment and training, and voluntary quit requirements of this section. In determining whether or not good cause exists, the State agency shall consider the facts and circumstances, including information submitted by the household member involved and the employer. Good cause shall include circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age six but are under age 12.

(n) *Voluntary quit.* No household whose head of household, as defined in § 273.1(d)(2), voluntarily quits a job of 20 hours a week or more without good cause 60 days or less prior to the date of application or at any time thereafter shall be eligible for participation in the program as specified below. At the time of application, the State agency shall explain to the applicant the consequences of the head of household quitting a job without good cause, and of the consequence of a person joining the household as its head if that individual has voluntarily quit employment.

(1) *Determining whether a voluntary quit occurred and application processing.* (i) When a household files an application for participation, or when a participating household reports the loss of a source of income, the State agency shall determine whether any household member voluntarily quit his or her job.

Benefits shall not be delayed beyond the normal processing times specified in § 273.2 pending the outcome of this determination. This provision applies only if the employment involved 20 hours or more per week or provided weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours; the quit occurred within 60 days prior to the date of application or anytime thereafter; and the quit was without good cause. Changes in employment status that result from reducing hours of employment while working for the same employer, terminating a self-employment enterprise or resigning from a job at the demand of the employer will not be considered a voluntary quit for purposes of this section. An employee of the Federal Government, or of a State or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike, shall be considered to have voluntarily quit his or her job without good cause. If an individual quits a job, secures new employment at comparable wages or hours and is then laid off or, through no fault of his own loses the new job, the earlier quit will not form the basis of a disqualification.

(ii) In the case of an applicant household, the State agency shall determine whether any currently unemployed (i.e. employed less than 20 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) household member who is required to register for work or who is exempt through § 273.7(b)(1)(vii) has voluntarily quit his or her job within the last 60 days. If the State agency learns that a household has lost a source of income after the date of application but before the household is certified, the State agency shall determine whether a voluntarily quit occurred.

(iii) The State agency shall determine whether any household member voluntarily quit his or her job while participating in the Program, within 60 days prior to applying for participation, or in the time between application and certification. If a household is already participating when a quit which occurred prior to certification is discovered, the household shall be regarded as a participating household and the 90 day sanction shall be imposed in accordance with § 273.7(n)(1)(vi).

(iv) If a determination of voluntary quit is established, the State agency shall then determine if the member who quit is the head of household as defined in § 273.1(d)(2).

(v) Upon the determination that the head of household voluntarily quit employment, the State agency shall determine if the voluntary quit was with good cause as defined in § 273.7(n)(3). In the case of an applicant household, if the voluntary quit was without good cause, the household's application for participation shall be denied and sanction imposed for 90 days, starting from the date of quit. The State agency shall provide the applicant household with a notice of denial in accordance with § 273.2(g)(3). The notice shall inform the household of the proposed period of disqualification; its right to reapply at the end of the 90 day period; and of its right to a fair hearing. In the case of participating households, benefits shall be terminated for a period of 90 days, in accordance with paragraph (n)(1)(vi) of this section.

(vi) If the State agency determines that the head of a participating household voluntarily quit his or her job while participating in the program or discovers a quit which occured within 60 days prior to application for benefits or between application and certification, the State agency shall provide the household with a notice of adverse action as specified in § 273.13 within 10 days after the determination of a quit. Such notification shall contain the particular act of noncompliance committed, the proposed period of ineligibility, the actions which may be taken to end or avoid the disqualification, and shall specify that the household may reapply at the end of the disqualification period. Except as otherwise specified in this paragraph, the period of ineligibility shall run continuously for three months or 90 days, beginning with the first of the month after all normal procedures for taking adverse action have been followed. The 90 day disqualification period may be converted to a three calendar month

period only for participating households. If a voluntary quit occurs in the last month of a certification period or is determined in the last 30 days of the certification period the household shall be denied recertification for a period of 90 days beginning with the day after the last certification period ends. If such household does not apply for food stamp benefits by the end of the certification period, a claim shall be established for the benefits received by the household for up to 90 days beginning the first of the month after the month in which the quit occurred. If there are fewer than 90 days from the first of the month after the month in which the quit occurred to the end of the certification period, a claim shall be imposed, and the household shall remain ineligible for benefits for a prorated number of days, with the end result that a claim was established or the household was ineligible for a full 90 day period. Each household has a right to a fair hearing to appeal a denial or termination of benefits due to a determination that the head of household voluntarily quit his or her job without good cause. If the participating household's benefits are continued pending a fair hearing and the State agency determination is upheld, the disqualification period shall begin the first of the month after the hearing decision is rendered.

(vii) Persons who have been disqualified for quitting a job as head of one household will carry their sanction with them if they join a new household as its head. The new household will remain ineligible for the remainder of the sanction period unless the person who caused the disqualification ends it in a manner prescribed in § 273.7(n)(5). If an individual who voluntarily quit joins a new household and is not the household head the sanction shall be terminated as specified under §273.1(d)(1) or (d)(2).

(viii) If an application for participation in the Program is filed in the third month of disqualification, the State agency shall in accord with § 273.10(a)(3) use the same application for the denial of benefits in the remaining month of disqualification and certification for any subsequent month(s) if all other eligibility criteria are met.

(2) *Exemptions from voluntary quit provisions.* Persons who are exempt from the work registration provisions in § 273.7(b) at the time of the quit, with the exception of those exempted by § 273.7(b)(1)(vii) shall be exempt from the voluntary quit provisions.

(3) *Good cause.* Good cause for leaving employment includes the good cause provisions found in § 273.7(m), and resigning from a job that does not meet the suitability criteria specified in § 273.7(i). Good cause for leaving employment shall also include:

(i) Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs;

(ii) Work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule;

(iii) Acceptance by the head of household of employment, or enrollment of at least half-time in any recognized school, training program or institution of higher education, that requires the head of household to leave employment;

(iv) Acceptance by any other household member of employment or enrollment at least half-time in any recognized school, training program or institution of higher education in another county or similar political subdivision which requires the household to move and thereby requires the head of household to leave employment;

(v) Resignations by persons under the age of 60 which are recognized by the employer as retirement;

(vi) Employment which becomes unsuitable by not meeting the criteria specified in § 273.7(i) after the acceptance of such employment;

(vii) Acceptance of a bona fide offer of employment of more than 20 hours a week or in which the weekly earnings are equivalent to the Federal minimum wage multiplied by 20 hours which, because of circumstances beyond the control of the primary wage earner, subsequently either does not materialize or results in employment of less than 20 hours a week or weekly earnings of less than the Federal minimum wage multiplied by 20 hours; and

(viii) Leaving a job in connection with patterns of employment in which

workers frequently move from one employer to another such as migrant farm labor or construction work. There may be some circumstances where households will apply for food stamp benefits between jobs particularly in cases where work may not yet be available at the new job site. Even though employment at the new site has not actually begun, the quitting of the previous employment shall be considered as with good cause if part of the pattern of that type of employment.

(4) *Verification.* (i) To the extent that the information given by the household is questionable, as defined in § 273.2(f)(2), State agencies shall request verification of the household's statements. The primary responsibility for providing verification as provided in § 273.2(f)(5) rests with the household. If it is difficult or impossible for the household to obtain documentary evidence in a timely manner, the State agency shall offer assistance to the household to obtain the needed verification. Acceptable sources of verification include but are not limited to the previous employer, employee associations, union representatives and grievance committees or organizations. Whenever documentary evidence cannot be obtained, the State agency shall substitute a collateral contact. The State agency is responsible for obtaining verification from acceptable collateral contacts provided by the household.

(ii) If the household and State agency are unable to obtain requested verification from these or other sources because the cause for the quit resulted from circumstances that for good reason cannot be verified, such as a resignation from employment due to discrimination practices or unreasonable demands by an employer or because the employer cannot be located, the household will not be denied access to the Program.

(5) *Ending a voluntary quit disqualification.* (i) Following the end of the disqualification period a household may begin participation in the program if it applies again and is determined eligible.

(ii) Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the member who caused the disqualification secures new employment which is comparable in salary or hours to the job which was quit, or leaves the household. Comparable employment may entail fewer hours or a lower net salary than the job which was quit. Eligibility may also be reestablished if the violator becomes exempt from the work registration requirements through § 273.7(b) other than paragraphs (b)(1)(iii) or (b)(1)(v) of that section. Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow the member who caused the disqualification. If a head of household who committed the violation joins another food stamp household as head of the household, that household shall be ineligible for the balance of the period of ineligibility.

(iii) A household determined ineligible due to a voluntary quit without good cause may reestablish eligibility if a new and otherwise eligible member joins as its head of household as defined by § 273.1(d)(2).

(o) *Performance standards.* The Secretary shall establish an annual performance standard for the minimum number of eligible persons that States must place in employment and training programs.

(1) *Performance formula.* To ascertain a State's level of performance at the end of each fiscal year, FCS will divide the number of E&T mandatory participants plus volunteers the State has ''placed'' in its E&T program over the course of the year (the numerator) by the number of E&T mandatory participants who were eligible to have been placed in the program over the course of the year plus volunteers (the denominator). The denominator is herein referred to as the ''base of eligibles.''

(2) *Counting placements in an employment and training program.* State agencies may consider a person placed in an E&T program, for purposes of performance standards, if the person commences an employment and training component, or fails to comply with E&T requirements and is denied certification or is sent a Notice of Adverse Action for the noncompliance. NOAAs

sent for noncompliance with work registration optional workfare or voluntary quit shall not count as placements. Assigned persons who have good cause for noncompliance shall not be counted as placed. If the good cause for the noncompliance is temporary (less than 60 days), the person shall be referred again to a component as soon as practicable. If the good cause represents a situation or condition which will continue for 60 days or more, the person shall be considered exempt by the State agency. If a participant reports to a component which involves several months, that individual would be counted as placed in the initial month only. Each time a participant is placed in a different component after having completed a prior component, he/she may be counted as placed. If participation in one type of E&T component is not continuous, the participant may be counted as having been placed more than once in the same component. If an E&T mandatory participant does not comply with E&T requirements, and a Notice of Adverse Action is sent, the person is counted as placed in the month the NOAA is mailed.

(3) *Counting the ''base of eligibles''.* The base of persons eligible to participate in an E&T program (the denominator) consists of all nonexempt work registrants in the month of October plus newly work registered food stamp recipients who have not been exempted by the State under § 273.7(f)(2) of these regulations from participation in an E&T program, and food stamp program applicants who are assigned by the State to enter an E&T component at the time of application and are subsequently certified for food stamp participation. These groups are considered E&T mandatory participants. In addition, volunteers who are placed in an E&T component shall be counted in the base of eligibles. State agencies need not count any individual in the base of eligibles more than once in a fiscal year. For purposes of computing the base of eligibles for the two performance standard reporting periods of Fiscal Year 1989 (first quarter and the remaining three quarters) the first quarter base of eligibles is the cumulative total of 25 percent of the number of E&T mandatory participants in the State in October 1988 (including persons in work registrant status carried over from the previous fiscal year), plus new E&T mandatory participants registered during November and December 1988, plus volunteers placed in E&T components during the quarter. The second performance period base of eligibles is the total of 75 percent of the October 1988 count of E&T mandatory participants plus new E&T mandatory participants registered during the months of January through September 1989, plus volunteers placed in E&T components during these same nine months.

(4) *Applicant participation.* Some States may wish to operate a job search or other component which begins at the time of Food Stamp Program application. The applicants who are placed in this component (who either perform the job search or who do not and are denied eligibility for failure to comply with the E&T requirement) should be counted as ''placed''. These persons need be counted in the base of eligibles, or the denominator, only if their application is approved, they are certified for food stamp benefits and they are work registered. At that time, they should be counted as ''newly work registered'' if they have not been counted in this category in the previous 12 months. If an applicant performs a job search and is either denied eligibility, for causes other than non-compliance with the E&T requirements, or certified but exempted from work registration, the individual need not be counted in the base of eligibles.

(5) *Accounting for short-term participants.* There are a number of work registrants considered E&T mandatory who are counted in the base of eligibles but who remain on the Food Stamp Program for such a short period of time States are unable to place them in an E&T component. These short term recipients inflate the State's base of eligibles and make it more difficult for States to meet their performance standard. States may choose one of two methods to counteract the effects of short term participants.

(i) States may exempt from E&T participation persons who will leave the Food Stamp Program within 30 days of application. This may mean that

States will not attempt to serve such persons unless they volunteer for E&T participation. States must count each individual as having been exempted under the reporting requirements of § 273.7(c)(6)(ii).

(ii) States may, at the close of the fiscal year, subtract 10 percent from their base of eligibles (denominator) to account for E&T mandatory participants who have left the program within 30 days of application. This 10 percent adjustment may be made without supporting documentation. Since the short term mandatory participants are not exempted from participation, States may attempt to place them in a component and may count them as placed (in their numerator) if they meet the placement criteria of paragraph (o)(2) of this section. For Fiscal Year 1989, this 10 percent adjustment may be applied to the base of eligible totals for each reporting period resulting from the computations specified in paragraph (o)(3) of this section.

(6) *Performance data collection.* To determine the annual total in the base of eligibles (denominator), State agencies shall count the number of E&T mandatory participants (non-exempt work registrants) in the State during the month of October, including persons in that status who were work registered the prior year. The number of newly work registered E&T mandatory participants for each subsequent month should be added to the October count. Volunteers placed in components shall be added for each month of the fiscal year. Separate counts shall be maintained for E&T mandatory participants and volunteers. To determine the number of persons ''placed'' in an E&T program (numerator), the State agency shall count and add cumulatively every month non-exempt work registrants and volunteers who were ''placed'' in a component, as defined in paragraph (o)(2) of this section.

(7) *Percentage of persons to be placed.* Beginning in Fiscal Year 1992, 10 percent of the number of mandatory E&T participants, plus volunteers who participated, shall be placed in an E&T Program. This performance standard shall remain in effect through Fiscal Year 1995.

(8) *Variations in performance standards.* (i) The Department will adjust the performance standard for an individual State agency if the State agency can show, prospectively, that the components it plans to offer or the type of participant it plans to serve will require significantly higher levels of service. If a State proposes that its performance standard be adjusted, it should propose the amount of the requested adjustment and provide a justification. The additional documentation called for in § 273.7(c) must be submitted to FCS in the State's employment and training plan. In determining whether an adjustment of the performance standard is warranted and the level of the adjustment, FCS will consider the number of persons who will be placed, the percentage of planned placements compared to the State's E&T mandatory population, the intensity and effectiveness of the components, and the cost.

(ii) Only in extraordinary circumstances should a State expect to have a performance standard approved which is lower than 40 percent of the nationwide standard.

(p) *State noncompliance with Employment and Training requirements.* (1) If a State agency fails to efficiently and effectively administer its employment and training program, the provisions of § 276.1(a)(3) shall apply.

(2) If a State has failed to meet its established performance standard, FCS shall determine whether there was good cause for the noncompliance. Good cause for State noncompliance is specified in § 276.6. In determining whether a State agency has met a performance standard, the Secretary will also consider factors such as the extent to which volunteers have participated in the employment and training program, placements in unsubsidized employment, increases in earnings and the reduction in the number of persons participating in the Food Stamp Program, and changes in the States caseload, if the State supplies the Agency with appropriate documentation. Lack of E & T funding at the 100 percent Federal level shall not constitute good cause.

(3) If the Agency finds that there was not sufficient good cause for the

State's failure to meet its performance standards the Agency may disallow administrative funds. The dollar amount of the funds disallowed shall be calculated by reducing the amount of the State's 100 percent Federal employment and training allocation for the pertinent year proportionately to the percentage below its standard the State's performance fell. This amount shall then be disallowed from the State's administrative funds as specified in § 276.4(c) except that no formal warning is required. The Secretary may withhold a larger percentage of the allocation depending on the severity of the noncompliance. Appeal and administrative review provisions of § 276.1(b), shall apply.

(4) In addition to the disallowance described in paragraph (p)(2) of this section, a State agency shall not receive performance-based funding for a given fiscal year in accordance with paragraph (d)(1)(i)(B) of this section, if the State agency does not meet its performance standard (as establish prospectively) for the second preceding fiscal year.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.7, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### § 273.8 Resource eligibility standards.

(a) *Uniform standards.* The State agency shall apply the uniform national resource standards of eligibility to all applicant households, including those households in which members are recipients of federally aided public assistance, general assistance, or supplemental security income. Households which are categorically eligible as defined in § 273.2(j)(2) or 273.2(j)(4) do not have to meet the resource limits or definitions in this section.

(b) *Maximum allowable resources.* The maximum allowable resources, including both liquid and nonliquid assets, of all members of the household shall not exceed $2,000 for the household, except that, for households including a member or members age 60 or over, such resources shall not exceed $3,000.

(c) *Definition of resources.* In determining the resources of a household, the following shall be included and documented by the State agency in sufficient detail to permit verification:

(1) Liquid resources, such as cash on hand, money in checking or savings accounts, savings certificates, stocks or bonds, lump sum payments as specified in § 273.9(c)(8), funds held in individual retirement accounts (IRA's), and funds held in Keogh plans which do not involve the household member in a contractual relationship with individuals who are not household members. In counting resources of households with IRA's or includable Keogh plans, the State agency shall include the total cash value of the account or plan minus the amount of the penalty (if any) that would be exacted for the early withdrawal of the entire amount in the account or plan; and

(2) Nonliquid resources, personal property, licensed and unlicensed vehicles, buildings, land, recreational properties, and any other property, provided that these resources are not specifically excluded under paragraph (e) of this section. The value of nonexempt resources, except for licensed vehicles as specified in paragraph (h) of this section, shall be its equity value. The equity value is the fair market value less encumbrances.

(3) For households containing sponsored aliens (as defined in § 273.11(j)(1)), resources shall also include that portion of the resources of an alien's sponsor and the sponsor's spouse (if living with the sponsor) which have been deemed to be those of the alien in accordance with the procedures established in § 273.11(j), unless the sponsored alien is otherwise exempt from this provision in accordance with § 273.11(j).

(d) *Jointly owned resources.* Resources owned jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household. If the household can demonstrate that it has access to only a portion of the resource, the value of that portion of the resource shall be counted toward the household's resource level. The resource shall be considered totally inaccessible to the household if the resource cannot practically be subdivided

and the household's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply. For the purpose of this provision, ineligible aliens or disqualified individuals residing with the household shall be considered household members. Resources shall be considered inaccessible to persons residing in shelters for battered women and children, as defined in §271.2, if

(1) The resources are jointly owned by such persons and by members of their former household; and

(2) The shelter resident's access to the value of the resources is dependent on the agreement of a joint owner who still resides in the former household.

(e) *Exclusions from resources.* In determining the resources of a household, only the following shall be excluded:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others. Public rights of way, such as roads which run through the surrounding property and separate it from the home, will not affect the exemption of the property. The home and surrounding property shall remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, if the household intends to return. Households that currently do not own a home, but own or are purchasing a lot on which they intend to build or are building a permanent home, shall receive an exclusion for the value of the lot and, if it is partially completed, for the home.

(2) Household goods, personal effects, the cash value of life insurance policies, one burial plot per household member, and the value of one bona fide funeral agreement per household member, provided that the agreement does not exceed $1,500 in equity value, in which event the value above $1,500 is counted. The cash value of pension plans or funds shall be excluded, except that Keogh plans which involve no contractual relationship with individuals who are not household members and individual retirement accounts (IRA's) shall not be excluded under this paragraph.

(3) Licensed vehicles shall be excluded as specified in paragraph (h) of this section. The exclusion also includes unlicensed vehicles on those Indian reservations that do not require vehicles driven by tribal members to be licensed.

(4) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis. Such property shall include rental homes and vacation homes.

(5) Property, such as farm land or work related equipment, such as the tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of a household member. Property essential to the self-employment of a household member engaged in farming shall continue to be excluded for one year from the date the household member terminates his/her self-employment from farming.

(6) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value. The exclusion shall also apply to the value of the property sold under the installment contract, or held as security in exchange for a purchase price consistent with the fair market value of that property.

(7) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended; for example, payments made by the Department of Housing and Urban Development through the individual and family grant program or disaster loans or grants made by the Small Business Administration.

(8) Resources having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. The State agency may verify that the property is for sale and that the household has not declined a reasonable offer. Verification may be obtained through a collateral contact or documentation, such as an

advertisement for public sale in a newspaper of general circulation or a listing with a real estate broker. Any funds in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible to the household if:

(i) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(ii) The trustee administering the funds is either:

(A) A court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or (B) an individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph;

(iii) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and

(iv) The funds held in irrevocable trust are either:

(A) Established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or (B) established from nonhousehold funds by a nonhousehold member.

(9) Resources, such as those of students or self-employed persons, which have been prorated as income. The treatment of student income is explained in § 273.10(c) and the treatment of self-employment income is explained in § 273.11(a).

(10) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs; and

(11) Resources which are excluded for food stamp purposes by express provision of Federal statute. The following is a listing of some of the resources excluded by Federal statute:

(i) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92–203, section 21(a)) or the Sac and Fox Indian claims agreement (Pub. L. 94–189);

(ii) Payments received by certain Indian tribal members under Pub. L. 94–114, section 6, regarding submarginal land held in trust by the United States;

(iii) Benefits received from the special supplemental food program for women, infants and children (WIC) (Pub. L. 92–443, section 9);

(iv) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91–646, section 216);

(v) Earned income tax credits received before January 1, 1980, as a result of Pub. L. 95–600, the Revenue Act of 1978.

(vi) Payments received from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540).

(vii) Payments received by the Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation from the Indian Claims Commission as designated under Pub. L. 95–433, section 2.

(viii) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, section 5).

(ix) Payments of relocation assistance to members of the Navajo and Hopi Tribes under Pub. L. 93–531.

(12) Earned income tax credits shall be excluded as follows:

(i) A Federal earned income tax credit received either as a lump sum or as payments under section 3507 of the Internal Revenue Code for the month of receipt and the following month for the individual and that individual's spouse.

(ii) Any Federal, State or local earned income tax credit received by any household member shall be excluded for 12 months, provided the household was participating in the Food Stamp Program at the time of receipt of the earned income tax credit and provided the household participates continuously during that 12-month period. Breaks in participation

of one month or less due to administrative reasons, such as delayed recertification or missing or late monthly reports, shall not be considered as nonparticipation in determining the 12-month exclusion.

(13) Where an exclusion applies because of use of a resource by or for a household member, the exclusion shall also apply when the resource is being used by or for an ineligible alien or disqualified person whose resources are being counted as part of the household's resources. For example, work related equipment essential to the employment of an ineligible alien or disqualified person shall be excluded (in accordance with paragraph (e)(5) of this section), as shall one burial plot per ineligible alien or disqualified household member (in accordance with paragraph (e)(2) of this section).

(14) Energy assistance payments or allowances excluded as income under §273.9(c)(11).

(15) Non-liquid asset(s) against which a lien has been placed as a result of taking out a business loan and the household is prohibited by the security or lien agreement with the lien holder (creditor) from selling the asset(s).

(16) Property, real or personal, to the extent that it is directly related to the maintenance or use of a vehicle excluded under paragraphs (h)(1)(i), (h)(1)(ii) or (h)(1)(v) of this section. Only that portion of real property determined necessary for maintenance or use is excludable under this provision. For example, a household which owns a produce truck to earn its livelihood may be prohibited from parking the truck in a residential area. The household may own a 100-acre field and use a quarter-acre of the field to park and/or service the truck. Only the value of the quarter-acre would be excludable under this provision, not the entire 100-acre field.

(17) The resources of a household member who receives SSI or PA benefits. A household member is considered a recipient of these benefits if the benefits have been authorized but not received, if the benefits are suspended or recouped, or if the benefits are not paid because they are less than a minimum amount. Individuals entitled to Medicaid benefits only are not considered recipients of SSI or PA.

(18) State agencies shall develop clear and uniform standards for identifying kinds of resources that, as a practical matter, the household is unable to sell for any significant return because the household's interest is relatively slight or because the costs of selling the household's interest would be relatively great. A resource shall be so identified if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household. This provision does not apply to financial instruments such as stocks, bonds, and negotiable financial instruments, or to vehicles. The determination of whether any part of the value of a vehicle is included as a resource shall be handled using the provisions of paragraph (h) of this section. The State agency may require verification of the value of a resource to be excluded if the information provided by the household is questionable. The following definitions shall be used in developing these standards:

(i) *Significant return* shall be any return, after estimated costs of sale or disposition, and taking into account the ownership interest of the household, that is estimated to be one half or more of the applicable resource limit for the household; and

(ii) *Any significant amount of funds* shall be funds amounting to one half or more of the applicable resource limit for the household.

(f) *Handling of excluded funds.* Excluded funds that are kept in a separate account, and that are not commingled in an account with nonexcluded funds, shall retain their resource exclusion for an unlimited period of time. The resources of students and self-employment households which are excluded as provided in paragraph (e)(9) of this section and are commingled in an account with nonexcluded funds shall retain their exclusion for the period of time over which they have been prorated as income. All other excluded moneys which are commingled in an account with nonexcluded funds shall retain their exemption for six months from the date they are commingled.

After six months from the date of commingling, all funds in the commingled account shall be counted as a resource.

(g) *Fair market value of licensed vehicles.* The fair market value of licensed automobiles, trucks, and vans will be determined by the value of those vehicles as listed in publications written for the purpose of providing guidance to automobile dealers and loan companies. Publications listing the value of vehicles are usually referred to as ''blue books.'' The State agency shall insure that the blue book used to determine the value of licensed vehicles has been updated within the last 6 months. The National Automobile Dealers Association's (NADA) Used Car Guide Book is a commonly available and frequently updated publication. The State agency shall assign the wholesale value to vehicles. If the term ''wholesale value'' is not used in a particular blue book, the State agency shall assign the listed value which is comparable to the wholesale value. The State agency shall not increase the basic value of a vehicle by adding the value of low mileage or other factors such as optional equipment. A household may indicate that for some reason, such as body damage or inoperability, a vehicle is in less than average condition. Any household which claims that the blue book value does not apply to its vehicle shall be given the opportunity to acquire verification of the true value from a reliable source. Also, households shall be asked to acquire verification of the value of licensed antique, custom made, or classic vehicles, if the State agency is unable to make an accurate appraisal. If a vehicle is especially equipped with apparatus for the handicapped, the apparatus shall not increase the value of the vehicle. The blue book value shall be assigned as if the vehicle were not so equipped. If a vehicle is no longer listed in the blue book, the household's estimate of the value of the vehicle shall be accepted, unless the State agency has reason to believe the estimate is incorrect. In that case, and if it appears that the vehicle's value will affect eligibility, the household shall obtain an appraisal or produce other evidence of its value, such as a tax assessment or a newspaper advertisement which indicates the amount for which like vehicles are being sold. If a new vehicle is not yet listed in the blue book, the State agency shall determine the wholesale value through some other means (e.g., contacting a car dealer which sells that make of vehicle).

(h) *Handling of licensed vehicles.* The value of licensed vehicles shall be excluded or counted as a resource as follows:

(1) The entire value of any licensed vehicle shall be excluded if the vehicle is:

(i) Used primarily (over 50 percent of the time the vehicle is used) for income producing purposes such as, but not limited to, a taxi, truck, or fishing boat. Licensed vehicles which have previously been used by a self-employed household member engaged in farming but are no longer used over 50 percent of the time in farming because the household member has terminated his/her self-employment from farming shall continue to be excluded as a resource for one year from the date the household member terminated his/her self-employment from farming;

(ii) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(iii) Necessary for long distance travel, other than daily commuting, that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available to the household), for example, the vehicle of a traveling sales person or a migrant farmworker following the work stream.

(iv) Used as the household's home and, therefore, excluded under paragraph (e)(1) of this section; or

(v) Necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle per physically disabled household member). A vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is specially equipped to meet the specific needs of the disabled person or if the vehicle is a special type of vehicle that

makes it possible to transport the disabled person. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member; or

(vi) Necessary to carry fuel for heating or water for home use when such transported fuel or water is anticipated to be the primary source of fuel or water for the household during the certification period. Households shall receive this resource exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle. Households shall not be required to furnish documentation, as mandated by §273.2(f)(4), unless the exclusion of the vehicle is questionable. If the basis for exclusion of the vehicle is questionable, the State agency may require documentation from the household, in accordance with §273.2(f)(4).

(2) The exclusion in paragraphs (h)(1)(i) through (iv) of this section will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

(3) Each licensed vehicle not excluded under paragraph (h)(1) of this section shall be evaluated individually to determine its fair market value resource exclusion limit, and that portion of the resource exclusion limit which exceeds $4,500 for FY 1993, shall be attributed in full toward the household's resource level regardless of any encumbrances. The $4,500 fair market value resource exclusion limit for licensed vehicles shall remain in effect through August 31, 1994. On September 1, 1994 through September 30, 1995, the fair market value resource exclusion limit shall be increased to $4,550. On October 1, 1995 through September 30, 1996, the fair market value resource exclusion limit shall be increased to $4,600. On October 1, 1996 and each October 1 thereafter, using a base of $5,000, the fair market value resource exclusion limit for licensed vehicles shall be adjusted to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics for the 12-month period ending on June 30 preceding the date of such adjustment and rounded to the nearest $50. Any value in excess of the appropriate fair market value resource exclusion limit shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicle. For example, in November 1994 a household owning an automobile with a fair market value of $5,550 shall have $1,000 applied toward its resource exclusion level. Any value in excess of $4,550 (the fair market value resource exclusion limit for that time period) shall be attributed to the household's resource level, regardless of the amount of the household's investment in the vehicle, and regardless of whether or not the vehicle is used to transport household members to and from employment. Each vehicle shall be appraised individually. The fair market value resource exclusion limit of two or more vehicles shall not be added together to reach a total fair market value resource exclusion in excess of the fair market value resource exclusion for the appropriate time period.

(4) Licensed vehicles shall also be evaluated for their equity value, except for:

(i) Vehicles excluded in paragraph (h)(1) of this section; (ii) one licensed vehicle per household, regardless of the use of the vehicle; and (iii) any other vehicle used to transport household members (or an ineligible alien or disqualified household member whose resources are being considered available to household) to and from employment, or to and from training or education which is preparatory to employment, or to seek employment in compliance with the employment and training criteria. A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during temporary periods of unemployment. The equity value of licensed vehicles not covered by this exclusion, and of unlicensed vehicles not excluded by paragraphs (e)(3), (4), or (5) of this section, shall be attributed toward the household's resource level.

(5) In the event a licensed vehicle is assigned both a fair market value in excess of $4,500 and an equity value, only the greater of the two amounts

shall be counted as a resource. For example, a second car which is not used by a household member to go to work will be evaluated for both fair market value and for equity value. If the fair market value is $5,000 and the equity value is $1,000 the household shall be credited with only the $1,000 equity value, and the $500 excess fair market value will not be counted.

(6) In summary, each licensed vehicle shall be handled as follows: First, the vehicle shall be evaluated to determine if it is an income producer, a home, necessary to transport a disabled household member, or necessary to carry fuel for heating or water for home use. If not exempt, it will be evaluated to determine if its fair market value exceeds $4,500. If worth more than $4,500, the portion in excess of $4,500 for each vehicle will be counted as a resource. The vehicle will also be evaluated to see if it is equity exempt as the household's only vehicle or necessary for employment reasons. If not equity exempt, the equity value will be counted as a resource. If the vehicle has a countable market value of more than $4,500 and also has a countable equity value, only the greater of the two amounts shall be counted as a resource.

(i) *Transfer of resources.* (1) At the time of application, households shall be asked to provide information regarding any resources which any household member (or ineligible alien or disqualified person whose resources are being considered available to the household) had transferred within the 3-month period immediately preceding the date of application. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits shall be disqualified from participation in the program for up to 1 year from the date of the discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the 3-month period prior to application or if they are transferred knowingly after the household is determined eligible for benefits. An example of the latter would be assets which the household acquires after being certified and which are then transferred to prevent the household from exceeding the maximum resource limit.

(2) Eligibility for the program will not be affected by the following transfers:

(i) Resources which would not otherwise affect eligibility, for example, resources consisting of excluded personal property such as furniture or of money that, when added to other nonexempt household resources, totaled less at the time of the transfer than the allowable resource limits;

(ii) Resources which are sold or traded at, or near, fair market value;

(iii) Resources which are transferred between members of the same household (including ineligible aliens or disqualified persons whose resources are being considered available to the household); and

(iv) Resources which are transferred for reasons other than qualifying or attempting to qualify for food stamp benefits, for example, a parent placing funds into an educational trust fund described in paragraph (e)(9) of this section.

(3) In the event the State agency establishes that an applicant household knowingly transferred resources for the purpose of qualifying or attempting to qualify for food stamp benefits, the household shall be sent a notice of denial explaining the reason for and length of the disqualification. The period of disqualification shall begin in the month of application. If the household is participating at the time of the discovery of the transfer, a notice of adverse action explaining the reason for and length of the disqualification shall be sent. The period of disqualification shall be made effective with the first allotment to be issued after the notice of adverse action period has expired, unless the household has requested a fair hearing and continued benefits.

(4) The length of the disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceeds the allowable resource limits. The following chart will be used to determine the period of disqualification.

| Amount in excess of the resource limit | Period of disqualification (months) |
|---|---|
| $0 to 249.99 | 1 |
| 250 to 999.99 | 3 |
| 1,000 to 2999.99 | 6 |
| 3,000 to 4,999.99 | 9 |
| 5,000 or more | 12 |

(j) *Resources of nonhousehold members.* (1) The resources of nonhousehold members, as defined in §273.1(b)(1), shall be handled as outlined in §273.11(d).

(2) The resources of nonhousehold members, as defined in §273.1(b)(2), shall be handled as outlined in §273.11(c) and (d), as appropriate.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §273.8, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### §273.9 Income and deductions.

(a) *Income eligibility standards.* Participation in the Program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Households which contain an elderly or disabled member shall meet the net income eligiblity standards for the Food Stamp Program. Households which do not contain an elderly or disabled member shall meet both the net income eligibility standards and the gross income eligibility standards for the Food Stamp Program. Households which are categorically eligible as defined in §273.2(j)(2) or 273.2(j)(4) do not have to meet either the gross or net income eligibility standards. The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(1) The gross income eligibility standards for the Food Stamp Program shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be 130 percent of the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

(ii) The income eligibility standards for Alaska shall be 130 percent of the Federal income poverty levels for Alaska.

(iii) The income eligibility standards for Hawaii shall be 130 percent of the Federal income poverty levels for Hawaii.

(2) The net income eligibility standards for the Food Stamp Program shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

(ii) The income eligibility standards for Alaska shall be the Federal income poverty levels for Alaska.

(iii) The income eligibility standard for Hawaii shall be the Federal income poverty levels for Hawaii.

(3) The income eligibility limits, as described in this paragraph, are revised each October 1 to reflect the annual adjustment to the Federal income poverty guidelines for the 48 States and the District of Columbia, for Alaska, and for Hawaii.

(i) 130 percent of the annual income poverty guidelines shall be divided by 12 to determine the monthly gross income standards, rounding the results upwards as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is multiplied by 130 percent, divided by 12, and the results rounded upward if necessary.

(ii) The annual income poverty guidelines shall be divided by 12 to determine the monthly net income eligibility standards, rounding the results upward as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

(4) The monthly gross and net income eligibility standards for all areas will be prescribed in General Notices published in the FEDERAL REGISTER.

(b) *Definition of income.* Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

(1) Earned income shall include: (i) All wages and salaries of an employee.

(ii) The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the costs of doing business as provided in paragraph (c) of this section. Ownership of rental property shall be considered a self-employment enterprise; however, income derived from the rental property shall be considered earned income only if a member of the household is actively engaged in the management of the property at least an average of 20 hours a week. Payments from a roomer or boarder, except foster care boarders, shall also be considered self-employment income.

(iii) Training allowances from vocational and rehabilitative programs recognized by Federal, State, or local governments, such as the work incentive program, to the extent they are not a reimbursement. Training allowances under Job Training Partnership Act, other than earnings as specified in paragraph (b)(1)(v) of this section, are excluded from consideration as income.

(iv) Payments under Title I (VISTA, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93–113 Stat., as amended) shall be considered earned income and subject to the earned income deduction prescribed in § 273.10(e)(1)(i)(B), excluding payments made to those households specified in paragraph (c)(10)(iii) of this section.

(v) Earnings to individuals who are participating in on-the-job training programs under section 204(5), title II, of the Job Training Partnership Act. This provision does not apply to household members under 19 years of age who are under the parental control of another adult member, regardless of school attendance and/or enrollment as discussed in paragraph (c)(7) of this section. For the purpose of this provision, earnings include monies paid by the Job Training Partnership Act and monies paid by the employer.

(vi) Educational assistance which has a work requirement (such as work study, an assistantship or fellowship with a work requirement) in excess of the amount excluded under § 273.9(c)(3).

(2) Unearned income shall include, but not be limited to:

(i) Assistance payments from Federal or federally aided public assistance programs, such as supplemental security income (SSI) or aid to families with dependent children (AFDC); general assistance (GA) programs (as defined in § 271.2); or other assistance programs based on need. Such assistance is considered to be unearned income even if provided in the form of a vendor payment (provided to a third party on behalf of the household), unless the vendor payment is specifically exempt from consideration as countable income under the provisions of paragraph (c)(1) of this section. Assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves, shall be considered unearned income.

(ii) Annuities; pensions; retirement, veteran's, or disability benefits; worker's or unemployment compensation including any amounts deducted to repay claims for intentional program violations as provided in § 272.12; old-age, survivors, or social security benefits; strike benefits; foster care payments for children or adults who are considered members of the household; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least 20 hours a week.

(iii) Support or alimony payments made directly to the household from nonhousehold members.

(iv) Scholarships, educational grants, deferred payment loans for education, veteran's educational benefits and the like, other than educational assistance with a work requirement, in excess of amounts excluded under § 273.9(c).

(v) Payments from Government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

(vi) Monies which are withdrawn or dividends which are or could be received by a household from trust funds considered to be excludable resources under § 273.8(e)(8). Such trust withdrawals shall be considered income in the

month received, unless otherwise exempt under the provisions of paragraph (c) of this section. Dividends which the household has the option of either receiving as income or reinvesting in the trust are to be considered as income in the month they become available to the household unless otherwise exempt under the provisions of paragraph (c) of this section.

(3) The earned or unearned income of an individual disqualified from the household for intentional Program violation, in accordance with § 273.16, or as a result of a sanction imposed while he/she was participating in a household disqualified for failure to comply with workfare requirements, in accordance with § 273.22, shall continue to be attributed in their entirety to the remaining household members. However, the earned or unearned income of individuals disqualified from households for failing to comply with the requirement to provide an SSN, in accordance with § 273.6, or for being an ineligible alien, in accordance with § 273.4, shall continue to be counted as income, less a pro rata share for the individual. Procedures for calculating this pro rata share are described in § 273.11(c).

(4) For households containing sponsored aliens (as defined in § 273.11(j)(1)), unearned income shall also include that amount of the monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien as unearned income in accordance with the procedures established in § 273.11(j), unless the sponsored alien is otherwise exempt from this provision in accordance with § 273.11(j). Actual money paid to the alien by the sponsor or the sponsor's spouse would not be considered income to the alien unless the amount paid exceeds the amount attributed. The amount paid that actually exceeds the amount attributed would be considered income to the alien in addition to the amount attributed to the alien.

(5) Income shall not include the following:

(i) Moneys withheld from an assistance payment, earned income, or other income source, or moneys received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, provided that the overpayment was not excludable under paragraph (c) of this section. However, moneys withheld from assistance from another program, as specified in § 273.11(k), shall be included as income.

(ii) Child support payments received by AFDC recipients which must be transferred to the agency administering title IV–D of the Social Security Act, as amended, to maintain AFDC eligibility.

(c) *Income exclusions.* Only the following items shall be excluded from household income and no other income shall be excluded:

(1) Any gain or benefit which is not in the form of money payable directly to the household, including in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of the household and include meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household. Payments made to a third party on behalf of the household are included or excluded as income as follows:

(i) *Public assistance (PA) vendor payments.* PA vendor payments are counted as income unless they are made for:

(A) Medical assistance;

(B) Child care assistance;

(C) Energy assistance as defined in paragraph (c)(11) of this section;

(D) Emergency assistance (including, but not limited to housing and transportation payments) for migrant or seasonal farmworker households while they are in the job stream;

(E) Housing assistance payments for households living in transitional housing for the homeless;

(F) Emergency and special assistance. PA provided to a third party on behalf of a household which is not specifically excluded from consideration as income under the provisions of paragraphs (c)(1)(i)(A) through (c)(1)(i)(E) of this section shall be considered for exclusion under this provision. To be considered emergency or special assistance

and excluded under this provision, the assistance must be provided over and above the normal PA grant or payment, or cannot normally be provided as part of such grant or payment. If the PA program is composed of various standards or components, the assistance would be considered over and above the normal grant or not part of the grant if the assistance is not included as a regular component of the PA grant or benefit or the amount of assistance exceeds the maximum rate of payment for the relevant component. If the PA program is not composed of various standards or components but is designed to provide a basic monthly grant or payment for all eligible households and provides a larger basic grant amount for all households in a particular category, e.g., all households with infants, the larger amount is still part of the normal grant or benefit for such households and not an ''extra'' payment excluded under this provision. On the other hand, if a fire destroyed a household item and a PA program provides an emergency amount paid directly to a store to purchase a replacement, such a payment is excluded under this provision. If the PA program is not composed of various standards, allowances, or components but is simply designed to provide assistance on an as-needed basis rather than to provide routine, regular monthly benefits to a client, no exclusion would be granted under this provision because the assistance is not provided over and above the normal grant, it is the normal grant. If it is not clear whether a certain type of PA vendor payment is covered under this provision, the State agency shall apply to the appropriate FCS Regional Office for a determination of whether the PA vendor payments should be excluded. The application for this exclusion determination must explain the emergency or special nature of the vendor payment, the exact type of assistance it is intended to provide, who is eligible for the assistance, how the assistance is paid, and how the vendor payment fits into the overall PA benefit standard. A copy of the rules, ordinances, or statutes which create and authorize the program shall accompany the application request.

(ii) *General assistance (GA) vendor payments.* Vendor payments made under a State or local GA program or a comparable basic assistance program are excluded from income except for some vendor payments for housing. A housing vendor payment is counted as income unless the payment is for:

(A) Assistance provided for utility costs;

(B) Energy assistance (as defined in paragraph (c)(11) of this section);

(C) Housing assistance from a State or local housing authority;

(D) Emergency assistance for migrant or seasonal farmworker households while they are in the job stream;

(E) Housing assistance for households living in transitional housing for the homeless;

(F) Emergency or special payments (as defined in paragraph (c)(1)(i)(F) of this section; or

(G) Assistance provided under a program in a State in which no GA payments may be made directly to the household in the form of cash.

(iii) *Department of Housing and Urban Development (HUD) vendor payments.* Rent or mortgage payments made to landlords or mortgagees by HUD are excluded.

(iv) *Educational assistance vendor payments.* Educational assistance provided to a third party on behalf of the household for living expenses shall be treated the same as educational assistance payable directly to the household.

(v) *Vendor payments that are reimbursements.* Reimbursements made in the form of vendor payments are excluded on the same basis as reimbursements paid directly to the household in accordance with paragraph (c)(5) of this section.

(vi) *Demonstration project vendor payments.* In-kind or vendor payments which would normally be excluded as income but are converted in whole or in part to a direct cash payment under a federally authorized demonstration project or waiver of provisions of Federal law shall be excluded from income.

(vii) *Other third-party payments.* Other third-party payments shall be handled as follows: moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a

household expense shall be counted as income and not excluded. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. This distinction is illustrated by the following examples:

(A) A friend or relative uses his or her own money to pay the household's rent directly to the landlord. This vendor payment shall be excluded.

(B) A household member earns wages. However, the wages are garnished or diverted by the employer and paid to a third party for a household expense, such as rent. This vendor payment is counted as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, the rent payment shall be excluded from income. Similarly, if the employer provides housing to an employee in addition to wages, the value of the housing shall not be counted as income.

(C) A household receives court-ordered monthly support payments in the amount of $400. Later, $200 is diverted by the provider and paid directly to a creditor for a household expense. The payment is counted as income. Money deducted or diverted from a court-ordered support or alimony payment (or other binding written support or alimony agreement) to a third party for a household's expense shall be included as income because the payment is taken from money that is owed to the household. However, payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household are excluded from income because they are not otherwise payable to the household. For example, a court awards support payments in the amount of $400 a month and in addition orders $200 to be paid directly to a bank for repayment of a loan. The $400 payment is counted as income and the $200 payment is excluded from income. Support payments not required by a court order or other legally binding agreement (including payments in excess of the amount specified in a court order or written agreement) which are paid to a third party on the household's behalf shall be excluded from income.

(2) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter.

(3)(i) Educational assistance, including grants, scholarships, fellowships, work study, educational loans on which payment is deferred, veterans' educational benefits and the like.

(ii) To be excluded, educational assistance referred to in paragraph (c)(3)(i) must be:

(A) Awarded to a household member enrolled at a:

(*1*) Recognized institution of post-secondary education (meaning any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance in the State in which the institution is located, provided that the institution is legally authorized or recognized by the State to provide an educational program beyond secondary education in the State or provides a program of training to prepare students for gainful employment, including correspondence schools at that level),

(*2*) School for the handicapped,

(*3*) Vocational education program,

(*4*) Vocational or technical school,

(*5*) Program that provides for obtaining a secondary school diploma or the equivalent;

(B) Used for or identified (earmarked) by the institution, school, program, or other grantor for the following allowable expenses:

(*1*) Tuition,

(*2*) Mandatory school fees, including the rental or purchase of any equipment, material, and supplies related to the pursuit of the course of study involved,

(*3*) Books,

(*4*) Supplies,

(*5*) Transportation,

(*6*) Miscellaneous personal expenses, other than normal living expenses, of the student incidental to attending a school, institution or program,

(*7*) Dependent care,

(*8*) Origination fees and insurance premiums on educational loans,

(*9*) Normal living expenses which are room and board are not excludable.

(*10*) Amounts excluded for dependent care costs shall not also be excluded under the general exclusion provisions of paragraph § 273.9(c)(5)(i)(C). Dependent care costs which exceed the amount excludable from income shall be deducted from income in accordance with paragraph § 273.9(d)(4) and be subject to a cap.

(iii) Exclusions based on use pursuant to paragraph (c)(3)(ii)(B) must be incurred or anticipated for the period the educational income is intended to cover regardless of when the educational income is actually received. If a student uses other income sources to pay for allowable educational expenses in months before the educational income is received, the exclusions to cover the expenses shall be allowed when the educational income is received. When the amounts used for allowable expense are more than amounts earmarked by the institution, school, program or other grantor, an exclusion shall be allowed for amounts used over the earmarked amounts. Exclusions based on use shall be subtracted from unearned educational income to the extent possible. If the unearned educational income is not enough to cover the expense, the remainder of the allowable expense shall be excluded from earned educational income.

(iv) An individual's total educational income exclusions granted under the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section cannot exceed that individual's total educational income which was subject to the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section.

(4) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred. Educational loans on which repayment is deferred shall be excluded pursuant to the provisions of § 273.9(c)(3)(i). A loan on which repayment must begin within 60 days after receipt of the loan shall not be considered a deferred repayment loan.

(5) Reimbursements for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household. Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not excluded. To be excluded, these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed actual expenses, unless the provider or the household indicates the amount is excessive.

(i) Examples of excludable reimbursements which are not considered to be a gain or benefit to the household are:

(A) Reimbursements or flat allowances, including reimbursements made to the household under § 273.7(d)(1)(ii), for job- or training-related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements which are provided over and above the basic wages for these expenses are excluded; however, these expenses, if not reimbursed, are not otherwise deductible. Reimbursements for the travel expenses incurred by migrant workers are also excluded.

(B) Reimbursements for out-of-pocket expenses of volunteers incurred in the course of their work.

(C) Medical or dependent care reimbursements.

(D) Reimbursements received by households to pay for services provided by Title XX of the Social Security Act.

(E) Any allowance a State agency provides no more frequently than annually for children's clothes when the children enter or return to school or daycare, provided the State agency does not reduce the monthly AFDC payment for the month in which the school clothes allowance is provided. State agencies are not required to verify attendance at school or daycare.

(F) Reimbursements made to the household under § 273.7(d)(1)(ii) for expenses necessary for participation in an education component under the E&T program.

(ii) The following shall not be considered a reimbursement excludable under this provision:

(A) No portion of benefits provided under title IV–A of the Social Security Act, to the extent such benefits are attributed to an adjustment for work-related or child care expenses (except for payments or reimbursements for such expenses made under an employment, education or training program initiated under such title after September 19, l988), shall be considered excludable under this provision.

(B) No portion of any educational assistance that is provided for normal living expenses (room and board) shall be considered a reimbursement excludable under this provision.

(6) Moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member. If the intended beneficiaries of a single payment are both household and nonhousehold members, any identifiable portion of the payment intended and used for the care and maintenance of the nonhousehold member shall be excluded. If the nonhousehold member's portion cannot be readily identified, the payment shall be evenly prorated among intended beneficiaries and the exclusion applied to the nonhousehold member's pro rata share or the amount actually used for the nonhousehold member's care and maintenance, whichever is less.

(7) The earned income (as defined in paragraph (b)(1) of this section) of any household member who is under age 22, who is an elementary or secondary school student, and who lives with a natural, adoptive, or stepparent or under the parental control of a household member other than a parent. For purposes of this provision, an elementary or secondary school student is someone who attends elementary or secondary school, or who attends classes to obtain a General Equivalency Diploma that are recognized, operated, or supervised by the student's state or local school district, or who attends elementary or secondary classes through a home-school program recognized or supervised by the student's state or local school district. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount of work performed cannot be differentiated from that of other household members, the total earnings shall be prorated equally among the working members and the child's pro rata share excluded.

(8) Money received in the form of a nonrecurring lump-sum payment, including, but not limited to, income tax refunds, rebates, or credits; retroactive lump-sum social security, SSI, public assistance, railroad retirement benefits, or other payments; lump-sum insurance settlements; or refunds of security deposits on rental property or utilities. These payments shall be counted as resources in the month received, in accordance with § 273.8(c) unless specifically excluded from consideration as a resource by other Federal laws.

(9) The cost of producing self-employment income. The procedures for computing the cost of producing self-employment income are described in § 273.11.

(10) Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the food stamp program. The following laws provide such an exclusion:

(i) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91–646, section 216).

(ii) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92–203, section 21(a));

(iii) Any payment to volunteers under Title II (RSVP, Foster Grandparents and others) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93–113) as amended. Payments under title I of that Act (including payments from such title I programs as VISTA, University Year for Action, and Urban Crime Prevention Program) to volunteers shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the

title I program, except that households which were receiving an income exclusion for a Vista or other title I Subsistence allowance at the time of conversion to the Food Stamp Act of 1977 shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of conversion. Temporary interruptions in food stamp participation shall not alter the exclusion once an initial determination has been made. New applicants who were not receiving public assistance or food stamps at the time they joined VISTA shall have these volunteer payments included as earned income. The FCS National Office shall keep FCS Regional Offices informed of any new programs created under title I and II or changes in programs mentioned above so that they may alert State agencies.

(iv) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94–114, section 6).

(v) Allowances, earnings, or payments (including reimbursements) to individuals participating in programs under the Job Training Partnership Act (Pub. L. 90–300), except as provided for under paragraph (b)(1)(v) of this section.

(vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540).

(vii) Earned income tax credits received as a result of Pub. L. 95–600, the Revenue Act of 1978 which are received before January 1, 1980.

(viii) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95–433).

(ix) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, section 5).

(x) Payments of relocation assistance to members of the Navajo and Hopi Tribes under Pub. L. 93–531.

(11) Payments or allowances made for the purpose of providing energy assistance under any Federal law, including utility reimbursements made by the Department of Housing and Urban Development and the Farmers Home Administration. In addition, any payments or allowances, including tax credits, under State or local law which are so designated and made for the purpose of providing energy assistance shall be excluded from consideration as income, provided that FCS has approved the exclusion of such payments or allowances. Notification of FCS approval will contain a specific date on which it becomes effective, but in no case will that date be later than 30 days following FCS notification to the State agency. The payments shall include but not be limited to assistance which is combined in a single payment with public assistance (PA) or general assistance (GA). The State agency shall submit documentation to FCS to show that the State or local energy assistance to be excluded meets the purpose designation as follows:

(i) The State or local payments or allowances are made for the purpose of providing energy assistance to households. Some indicators of purpose are:

(A) The energy assistance is not limited to households which receive PA or GA;

(B) The energy assistance is provided only to households which actually incur home energy costs;

(C) If the energy assistance payments are made separately or combined with other assistance payments, such as PA or GA, the energy assistance results in an increase in total assistance to the household (not counting food stamps) when compared to the assistance level as of the first day of the State or local legislative session during which the energy assistance is authorized or increased;

(D) The energy assistance is based on studies, surveys, or reports evaluating home energy costs. The energy assistance levels should be directly tied to the findings of such studies, surveys, or reports; and

(E) The energy assistance payments are designated as such by the legislative body enacting them;

(ii) The payments or allowances are clearly designated, (A) in State or local law, or (B) in documentation supporting or accompanying the statute, as energy assistance, distinct from other

assistance. If the designation is contained only in supporting documentation it must clearly reflect the intent of both chambers of a bicameral legislature or the intent of a majority of members of a town council or county board. Documentation that would show a majority intent of an enacting body could take the form of a legislative resolution, the preamble and body of county regulations, county or town ordinances, or similar measures that represent the wishes of an entire legislative body; and

(iii) The levels of State or local energy assistance payments or allowances are calculated based on the seasonal home energy needs of typical households over an aggregate period not exceeding six months per year. If the State or local energy assistance is actually provided over a period longer than this aggregate, then the State agency shall document the reasons why it is administratively infeasible or impracticable to provide the energy assistance within the aggregate period on which it is based. If the legislation enacting the energy assistance program requires calculation of the energy assistance payments on the basis of only *increased* seasonal home energy needs, such payments may be excluded.

(12) At State agency option, the State agency may exclude from unearned income, up to $50 monthly of title IV–D child support payments in cases where such payments are received by households from the title IV–D support agency responsible for collecting such child support payments on behalf of AFDC recipients. The exclusion must be uniformly applied to all affected households.

(13) Cash donations based on need received on or after February 1, 1988 from one or more private nonprofit charitable organizations, but not to exceed $300 in a Federal fiscal year quarter.

(14) Earned income tax credit payments received either as a lump sum or payments under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income tax credits received as part of the paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year).

(15) Any payment made to an E&T participant under § 273.7(d)(1)(ii) for costs that are reasonably necessary and directly related to participation in the E&T program. These costs include, but are not limited to, dependent care costs, transportation, other expenses related to work, training or education, such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home. Also, the value of any dependent care services provided for or arranged under § 273.7(d)(1)(ii)(A) would be excluded.

(16) Governmental foster care payments received by households with foster care individuals who are considered to be boarders in accordance with § 273.1(c).

(17) Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support (PASS) which has been approved under section 1612(b)(4)(A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act. This income may be spent in accordance with an approved PASS or deposited into a PASS savings account for future use.

(d) *Income deductions.* Deductions shall be allowed only for the following household expenses:

(1) *Standard deduction.* The per household per month standard deduction amounts applicable for use in the 48 contiguous States and the District of Columbia, and the amounts applicable for Alaska, Hawaii, Guam, and the Virgin Islands are adjusted annually and will be prescribed in General Notices published in the FEDERAL REGISTER.

(2) *Earned income deduction.* Twenty percent of gross earned income as defined in paragraph (b)(1) of this section. Earnings excluded in paragraph (c) of this section shall not be included in gross earned income for purposes of computing the earned income deduction.

(3) *Excess medical deduction.* That portion of medical expenses in excess of $35 per month, excluding special diets, incurred by any household member who is elderly or disabled as defined in § 271.2. Spouses or other persons receiving benfits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction

but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction. Allowable medical costs are:

(i) Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State law or other qualified health professional.

(ii) Hospitalization or outpatient treatment, nursing care, and nursing home care including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the State.

(iii) Prescription drugs when prescribed by a licensed practitioner authorized under State law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional; in addition, costs of medical supplies, sick-room equipment (including rental) or other prescribed equipment are deductible;

(iv) Health and hospitalization insurance policy premiums. The costs of health and accident policies such as those payable in lump sum settlements for death or dismemberment or income maintenance policies such as those that continue mortgage or loan payments while the beneficiary is disabled are not deductible;

(v) Medicare premiums related to coverage under Title XVIII of the Social Security Act; any cost-sharing or spend down expenses incurred by Medicaid recipients;

(vi) Dentures, hearing aids, and prosthetics;

(vii) Securing and maintaining a seeing eye or hearing dog including the cost of dog food and veterinarian bills;

(viii) Eye glasses prescribed by a physician skilled in eye disease or by an optometrist;

(ix) Reasonable cost of transportation and lodging to obtain medical treatment or services;

(x) Maintaining an attendant, homemaker, home health aide, or child care services, housekeeper, necessary due to age, infirmity, or illness. In addition, an amount equal to the one person coupon allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment for this meal related deduction shall be that in effect at the time of initial certification. The State agency is only required to update the allotment amount at the next scheduled recertification; however, at their option, the State agency may do so earlier. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the State agency shall treat the cost as a medical expense.

(4) *Dependent care.* Payments for the actual costs for the care of children or other dependents when necessary for a household member to accept or continue employment, comply with the employment and training requirements as specified under § 273.7(f), or attend training or pursue education which is preparatory to employment, except as provided in § 273.10(d)(1)(i). The maximum monthly dependent care deduction amount households shall be granted under this provision is $200 a month for each dependent child under two (2) years of age and $175 a month for each other dependent.

(5) *Shelter costs*—(i) *Homeless households.* State agencies shall use a standard estimate of the shelter expenses for households in which all members are homeless and are not receiving free shelter throughout the month. If State agencies opt to develop their own estimate, the estimate must be consistent with costs incurred by homeless people for shelter and the methodology and database used in developing the State estimate shall be submitted to FCS for approval. If a State agency finds that area shelter costs differ by geographic areas, the State agency may develop specific estimates by geographic areas. If a State agency submits data that show shelter costs for most homeless households are higher than the FCS shelter estimate, the higher shelter estimate shall be used. If State agencies do not wish to develop their own estimate, then the State agency shall use the estimate provided by the Department. The Department's shelter estimate for FY 92 is $128. The Department will update this figure annually when the shelter cap is adjusted using the same method as is used in indexing the shelter cap. All homeless households

which incur or reasonably expect to incur shelter costs during a month shall be eligible for the estimate unless higher shelter costs are verified in accordance with § 273.2(f)(1)(xi) of this chapter at which point, the household may use actual shelter costs rather than the estimate. Homeless households which incur no shelter costs during the month shall *not* be eligible for the standard estimate.

(ii) *Household shelter deduction.* Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in paragraphs (d)(1), (2), (3) and (4) of this section have been allowed. The shelter deduction shall not exceed the maximum limit established for the area. This is applicable unless the household contains a member who is elderly or disabled as defined in § 271.2. Such households shall receive an excess shelter deduction for the monthly cost that exceeds 50 percent of the household's monthly income after all other applicable deductions. The shelter deduction amount applicable for use in the 48 contiguous States and the District of Columbia, and the amounts applicable for use in Alaska, Hawaii, Guam, and the Virgin Islands are adjusted annually and will be prescribed in General Notices published in the FEDERAL REGISTER. Shelter costs shall include only the following:

(A) Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

(B) Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

(C) The cost of heating and cooking fuel; cooling and electricity; water and sewerage; garbage and trash collection fees; the basic service fee for one telephone, including tax on the basic fee; and fees charged by the utility provider for initial installation of the utility. One-time deposits shall not be included as shelter costs.

(D) The shelter costs for the home if temporarily not occupied by the household because of employment or training away from home, illness, or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

(E) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs shall not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

(6) *Standard utility allowance.* (i) The State agency may elect to offer a standard utility allowance to households for use in calculating shelter costs. The State agency may establish either:

(A) A separate standard utility allowance for individual utility expenses defined in paragraph (d)(5)(ii)(C) of this section;

(B) A single standard utility allowance which includes a heating or cooling component and which is available to all households which incur out-of-pocket heating or cooling expenses; or

(C) Two single standard utility allowances which include a heating or cooling component.

If the State agency chooses to develop two standard utility allowances for households which incur heating or cooling expenses, one standard shall only be used for those households which receive indirect energy assistance payments other than payments under the Low Income Home Energy Assistance Act of 1981, and the second standard shall be used for all other households. A cooling cost is a verifiable utility expense relating to the operation of air conditioning systems or room air conditioners.

(ii) The standard utility allowance which includes a heating or cooling component shall be made available only to households which incur heating and cooling costs separately and apart

from their rent or mortgage. These households include:

(A) Residents of rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual metering;

(B) Recipients of energy assistance payments made under the Low Income Home Energy Assistance Act of 1981; or

(C) Recipients of indirect energy assistance payments, made under a program other than the Low Income Home Energy Assistance Act of 1981, who continue to incur out-of-pocket heating or cooling expenses in accordance with § 273.10(d)(6) during any month covered by the certification period.

To be qualified, the household must be billed on a regular basis for its heating or cooling costs. A household which incurs cooling or heating fuel costs on an irregular basis but is otherwise eligible to use the standard allowance may continue to use the allowance between billing periods. A household which lives in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs shall not be permitted to use the standard utility allowance which includes a heating or cooling cost component. If a household is not entitled to the standard utility allowance, it may claim the actual utility expenses (for any utility identified in paragraph (d)(5)(ii)(C) of this section) which it does pay separately.

(iii) The State agency may elect to develop either an annualized standard utility allowance or seasonal standard utility allowances. If the State agency elects to use a single annualized standard utility allowance it will not be required to seasonally adjust the budgets of qualified households which incur either heating or cooling costs. If the State agency elects to vary the allowance seasonally it shall ensure that during the heating season the allowance is provided only to households with heating costs, and that during the cooling season the allowance is provided only to households with cooling costs.

(iv) State agencies shall develop methodologies, subject to FCS approval, to be followed in establishing their standard utility allowances. The standard allowance(s) developed by the State agency shall be submitted to FCS for approval.

(v) The State agency may establish standard utility allowances as prescribed in paragraph (d)(6)(i) of this section.

(A) If the State agency establishes separate standard allowances, households which do not qualify for the standard allowance for heating and cooling costs may be allowed to use the other standard allowances.

(B) If the State agency establishes one or two single standard allowances, it shall include the cost of heating and/or cooling, cooking fuel, electricity not used to heat or cool the residence, the basic service fee for one telephone, water, sewerage, and garbage and trash collection. If the State agency elects to develop a single standard for those households which receive indirect energy assistance payments, as provided for in paragraph (d)(6)(i) of this section, the standard shall reflect the average out-of-pocket heating or cooling expense for such households.

(C) The State agency may develop a method, subject to FCS approval, for calculating a mandatory telephone allowance for use in conjunction with a single utility allowance or as the standard allowance for the telephone if the State has separate standard allowances by utility. In States with a single utility allowance, the telephone allowance would apply to households which are not entitled to claim the overall standard, but which, nonetheless, incur separate telephone expenses. The State agency may mandate use of the telephone allowance even if actual telephone costs are higher.

(vi) The State agency shall review and adjust the standard utility allowance(s) annually to reflect changes in the cost of utilities. The State agency may use data gathered through quality control sampling, surveys of utility company rates, or other methods for updating the standard utility allowance(s). The State agency may vary the size of the standard utility allowance to reflect differences such as seasonal cost changes or cost variations between geographical areas.

(vii) At the time of certification the household shall be advised that it may

deduct its actual utility costs rather than the standard allowances (except as provided in paragraph (d)(6)(v)(C) of this section for a telephone standard) throughout the certification period if the household can verify these costs. The State agency shall further advise the household when it has the right to switch between the use of actual utility costs and the standard utility allowance. The State agency shall permit the household to switch between actual utility costs and the standard utility allowance at the time of recertification and one additional time during each twelve-month period.

(viii) If the household shares utility expenses with, and lives with, another individual not participating in the Food Stamp Program, another household participating in the Food Stamp Program, or both, the allowance shall be prorated among the household and the other individual, household, or both, *Provided*, That the State agency may, if it is unable to accurately determine the prorata share of utility costs paid by the parties, use the actual utility costs paid by each household. Under no circumstances shall the total amount of utility costs used to determine the amount of the deduction exceed the total amount of actual utility costs for the residence.

(7) *Child support deduction*. Legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). The State agency shall allow a deduction for amounts paid toward arrearages. Alimony payments made to or for a nonhousehold member shall not be included in the child support deduction.

(8) *Adjustment of standard deduction*. (i) Effective October 1, 1987, and each October 1 thereafter, the standard deduction shall be adjusted to reflect change in the CPI–U for items other than food for the twelve months ending the preceding June 30.

(ii) These adjustments shall be based on the previous unrounded numbers, and the result rounded down to the nearest lower dollar increment.

(9) *Adjustment of shelter deduction*.

(i) Effective October 1, 1987, for households whose certification period begins on or after October 1, 1987, the maximum monthly excess shelter expense deduction limits shall be $164 for the 48 States and DC, $285 for Alaska, $234 for Hawaii, $199 for Guam, and $121 for the Virgin Islands. Effective October 1, 1987, for households whose certification period began before October 1, 1987, the maximum monthly excess shelter deduction limits shall be $152 for the 48 States and DC, $261 for Alaska, $217 for Hawaii, $185 for Guam, and $112 for the Virgin Islands. Households whose certification period began before October 1, 1987 shall receive the higher deduction limits stated in this paragraph beginning with the first month of the certification period for which such households are recertified after October 1, 1987. Effective October 1, 1988, and each October 1 thereafter, the maximum limit for excess shelter expense deductions shall be adjusted to reflect changes in the shelter, fuel, and utilities components of housing costs in the CPI–U for the twelve months ending the preceding June 30.

(ii) These adjustments shall be based on the previous unrounded numbers, and the result rounded down to the nearest lower dollar increment.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §273.9, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### §273.10 Determining household eligibility and benefit levels.

(a) *Month of application*—(1) *Determination of eligibility and benefit levels.* (i) A household's eligibility shall be determined for the month of application by considering the household's circumstances for the entire month of application. Most households will have the eligibility determination based on circumstances for the entire calendar month in which the household filed its application. However, State agencies may, with the prior approval of FCS, use a fiscal month if the State agency determines that it is more efficient and satisfies FCS that the accounting procedures fully comply with certification and issuance requirements contained in these regulations. A State agency may

elect to use either a standard fiscal month for all households, such as from the 15th of one calendar month to the 15th of the next calendar month, or a fiscal month that will vary for each household depending on the date an individual files an application for the Program. Applicant households consisting of residents of a public institution who apply jointly for SSI and food stamps prior to release from the public institution in accordance with §273.1(e)(2) will have their eligibility determined for the month in which the applicant household was released from the institution.

(ii) A household's benefit level for the initial months of certification shall be based on the day of the month it applies for benefits and the household shall receive benefits from the date of application to the end of the month unless the applicant household consists of residents of a public institution. For households which apply for SSI prior to their release from a public institution in accordance with §273.1(e)(2), the benefit level for the initial month of certification shall be based on the date of the month the household is released from the institution and the household shall receive benefits from the date of the household's release from the institution to the end of the month. As used in this section, the term initial month means the first month for which the household is certified for participation in the Food Stamp Program following any period of more than one month, fiscal or calendar depending on the State's issuance cycle, during which the household was not certified for participation. For purposes of this provision, a household is not considered to be the same household as the previously participating household if the certification worker has established a new food stamp case for the household because of a significant change in the membership of the previously participating household. Recertification shall be processed in accordance with §273.10(a)(2). The State agency shall prorate a household's benefits according to one of the two following options:

(A) The State agency shall use a standard 30-day calendar or fiscal month. A household applying on the 31st of a month will be treated as though it applied on the 30th of the month.

(B) The State agency shall prorate benefits over the exact length of a particular calendar or fiscal month.

(iii) To determine the amount of the prorated allotment, the State agency shall use either the appropriate Food Stamp Allotment Proration Table provided by FCS or whichever of the following formulae is appropriate:

(A) For State agencies which use a standard 30-day calendar or fiscal month the formula is as follows, keeping in mind that the date of application for someone applying on the 31st of a month is the 30th:

$$X = \frac{a \times b}{c}$$

full month's benefits × ——— = allotment

(B) For State agencies which use the exact number of days in a month, the formula is:

$$X = \frac{a \times b}{c}$$

full month's benefits × ——— = allotment

(C) If after using the appropriate formula the result ends in 1 through 99 cents, the State agency shall round the product down to the nearest lower

whole dollar. If the computation results in an allotment of less than $10, then no issuance shall be made for the initial month.

(iv) Those households which are entitled to expedited service as defined in § 273.2(i)(1), and which apply for benefits after the 15th of the month, shall be assigned certification periods in accordance with § 273.2(i)(4)(iii). However, the benefits for the second full month following the month of application shall not be issued until all necessary verification not already provided has been provided to the State agency.

(2) *Application for recertification.* Eligibility for recertification shall be determined based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period. The level of benefits for recertifications shall be based on the same anticipated circumstances, except for retrospectively budgeted households which shall be recertified in accordance with § 273.21(f)(2). If an application for recertification is submitted more than one month after the household's certification period has expired, that application shall be considered an initial application and benefits for that month shall be prorated in accordance with paragraph (a)(1)(ii) of this section. In addition, if the household submits an application for recertification prior to the end of its certification period but is found ineligible for the first month following the end of the certification period, then the first month of any subsequent participation shall be considered an initial month. Conversely, if the household submits an application for recertification prior to the end of its certification period and is found eligible for the first month following the end of the certification period, then that month shall not be an initial month.

(3) *Anticipated changes.* Because of anticipated changes, a household may be eligible for the month of application, but ineligible in the subsequent month. The household shall be entitled to benefits for the month of application even if the processing of its application results in the benefits being issued in the subsequent month. Similarly, a household may be ineligible for the month of application, but eligible in the subsequent month due to anticipated changes in circumstances. Even though denied for the month of application, the household does not have to reapply in the subsequent month. The same application shall be used for the denial for the month of application and the determination of eligibility for subsequent months, within the timeliness standards in § 273.2.

(4) *Changes in allotment levels.* As a result of anticipating changes, the household's allotment for the month of application may differ from its allotment in subsequent months. The State agency shall establish a certification period for the longest possible period over which changes in the household's circumstances can be reasonably anticipated. The household's allotment shall vary month to month within the certification period to reflect changes anticipated at the time of certification, unless the household elects the averaging techniques in paragraphs (c)(3) and (d)(3) of this section.

(b) *Determining resources.* Available resources at the time the household is interviewed shall be used to determine the household's eligibility.

(c) *Determining income*—(1) *Anticipating income.* (i) For the purpose of determining the household's eligibility and level of benefits, the State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These moneys shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it

which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average. Households shall be advised to report all changes in gross monthly income as required by § 273.12.

(ii) Income received during the past 30 days shall be used as an indicator of the income that is and will be available to the household during the certification period. However, the State agency shall not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. Similarly, if the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income. The State agency shall exercise particular caution in using income from a past season as an indicator of income for the certification period. In many cases of seasonally fluctuating income, the income also fluctuates from one season in one year to the same season in the next year. However, in no event shall the State agency automatically attribute to the household the amounts of any past income. The State agency shall not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.

(2) *Income only in month received.* (i) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15, use the State Agency's PA conversion standard, or use the exact monthly figure if it can be anticipated for each month of the certification period. Nonrecurring lump-sum payments shall be counted as a resource starting in the month received and shall not be counted as income.

(ii) Wages held at the request of the employee shall be considered income to the household in the month the wages would otherwise have been paid by the employer. However, wages held by the employer as a general practice, even if in violation of law, shall not be counted as income to the household, unless the household anticipates that it will ask for and receive an advance, or that it will receive income from wages that were previously held by the employer as a general practice and that were, therefore, not previously counted as income by the State agency. Advances on wages shall count as income in the month received only if reasonably anticipated as defined in paragraph (c)(1) of this section.

(iii) Households receiving income on a recurring monthly or semimonthly basis shall not have their monthly income varied merely because of changes in mailing cycles or pay dates or because weekends or holidays cause additional payments to be received in a month.

(3) *Income averaging.* (i) Households, except destitute households, and PA households subject to a monthly reporting requirement, may elect to have income averaged. Income shall not be averaged for a destitute household since averaging would result in assigning to the month of application income from future periods which is not available to the destitute household for its current food needs. To average income, the State agency shall use the household's anticipation of income fluctuations over the certification period. The number of months used to arrive at the average income need not be the same as the number of months in the certification period. For example, if fluctuating income for the past 30 days and the month of application are known and, with reasonable certainty, are representative of the income fluctuations anticipated for the coming months, the income from the 2 known months may

be averaged and projected over a certification period of longer than 2 months.

(ii) Households which, by contract or self-employment, derive their annual income in a period of time shorter than 1 year shall have that income averaged over a 12-month period, provided the income from the contract is not received on an hourly or piecework basis. These households may include school employees, sharecroppers, farmers, and other self-employed households. However, these provisions do not apply to migrant or seasonal farmworkers. The procedures for averaging self-employed income are described in § 273.11. Contract income which is not the household's annual income and is not paid on an hourly or piecework basis shall be prorated over the period the income is intended to cover.

(iii) Earned and unearned educational income, after allowable exclusions, shall be averaged over the period which it is intended to cover. Income shall be counted either in the month it is received, or in the month the household anticipates receiving it or receiving the first installment payment, although it is still prorated over the period it is intended to cover.

(d) *Determining deductions.* Deductible deductions include only certain dependent care, shelter, child support and medical costs as described in § 273.9.

(1) *Disallowed expenses.* (i) Any expense, in whole or part, covered by educational income which has been excluded pursuant to the provisions of § 273.9(c)(3) shall not be deductible. For example, the portion of rent covered by excluded vendor payments shall not be calculated as part of the household's shelter cost. In addition, an expense which is covered by an excluded vendor payment that has been converted to a direct cash payment under the approval of a federally authorized demonstration project as specified under § 273.9(c)(1) shall not be deductible. However, that portion of an allowable medical expense which is not reimbursable shall be included as part of the household's medical expenses. If the household reports an allowable medical expense at the time of certification but cannot provide verification at that time, and if the amount of the expense cannot be reasonably anticipated based upon available information about the recipient's medical condition and public or private medical insurance coverage, the household shall have the nonreimbursable portion of the medical expense considered at the time the amount of the expense or reimbursement is reported and verified. A dependent care expense which is reimbursed or paid for by the Job Opportunities and Basic Skills Training (JOBS) program under title IV–F of the Social Security Act (42 U.S.C. 681) or the Transitional Child Care (TCC) program shall not be deductible. A utility expense which is reimbursed or paid by an excluded payment, including HUD or FmHA utility reimbursements, shall not be deductible.

(ii) Expenses shall only be deductible if the service is provided by someone outside of the household and the household makes a money payment for the service. For example, a dependent care deduction shall not be allowed if another household member provides the care, or compensation for the care is provided in the form of an inkind benefit, such as food.

(2) *Billed expenses.* Except as provided in paragraph (d)(3) of this section a deduction shall be allowed only in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. For example, rent which is due each month shall be included in the household's shelter costs, even if the household has not yet paid the expense. Amounts carried forward from past billing periods are not deductible, even if included with the most recent billing and actually paid by the household. In any event, a particular expense may only be deducted once.

(3) *Averaging expenses.* Households may elect to have fluctuating expenses averaged. Households may also elect to have expenses which are billed less often than monthly averaged forward over the interval between scheduled billings, or, if there is no scheduled interval, averaged forward over the period the expense is intended to cover. For example, if a household receives a single bill in February which covers a 3-month supply of fuel oil, the bill may be averaged over February, March, and

April. The household may elect to have one-time only expenses averaged over the entire certification period in which they are billed. Households reporting one-time only medical expenses during their certification period may elect to have a one-time deduction or to have the expense averaged over the remaining months of their certification period. Averaging would begin the month the change would become effective.

(4) *Anticipating expenses.* The State agency shall calculate a household's expenses based on the expenses the household expects to be billed for during the certification period. Anticipation of the expense shall be based on the most recent month's bills, unless the household is reasonably certain a change will occur. When the household is not claiming the utility standard, the State agency may anticipate changes during the certification period based on last year's bills from the same period updated by overall price increases; or, if only the most recent bill is available, utility cost increases or decreases over the months of the certification period may be based on utility company estimates for the type of dwelling and utilities used by the household. The State agency shall not average past expenses, such as utility bills for the last several months, as a method of anticipating utility costs for the certification period. At certification and recertification, the household shall report and verify all medical expenses. The household's monthly medical deduction for the certification period shall be based on the information reported and verified by the household, and any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period based on available information about the recipient's medical condition, public or private insurance coverage, and current verified medical expenses. The household shall not be required to file reports about its medical expenses during the certification period. If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with § 273.2(f)(8)(ii) if the change would increase the household's allotment. The State agency has the option of either requiring verification prior to acting on the change, or requiring the verification prior to the second normal monthly allotment after the change is reported. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without requiring verification, though verification which is required by § 273.2(f)(8) shall be obtained prior to the household's recertification. If a child in the household reaches his or her second birthday during the certification period, the $200 maximum dependent care deduction defined in § 273.9(d)(4) shall be adjusted in accordance with this section not later than the household's next regularly scheduled recertification.

(5) *Conversion of deductions.* The income conversion procedures in paragraph (c)(2) of this section shall also apply to expenses billed on a weekly or biweekly basis.

(6) *Energy Assistance Payments.* Except for payments made under the Low Income Energy Assistance Act of 1981, the State agency shall prorate energy assistance payments as provided for in § 273.9(d) over the entire heating or cooling season the payment is intended to cover.

(7) Households which contain a member who is a disabled SSI recipient in accordance with paragraphs (2), (3), (4) or (5) of the definition of a disabled member in § 271.2 or households which contain a member who is a recipient of SSI benefits and the household is determined within the 30-day processing standard to be categorically eligible (as discussed in § 273.2(j)) or determined to be eligible as an NPA household and later becomes a categorically eligible household, shall be entitled to the excess medical deduction of § 273.9(d)(3) and the uncapped excess shelter expense deduction of § 273.9(d)(5) for the period for which the SSI recipient is authorized to receive SSI benefits or the date of the food stamp application, whichever is later, if the household incurs such expenses. Households, which contain an SSI recipient as discussed in this paragraph, which are determined ineligible as an NPA household and later become categorically eligible

and entitled to restored benefits in accordance with § 273.2(j)(1)(iv), shall receive restored benefits using the medical and excess shelter expense deductions from the beginning of the period for which SSI benefits are paid, the original food stamp application date or December 23, 1985, whichever is later, if the household incurs such expenses.

(8) *Child support deduction.* State agencies may budget child support payments prospectively, in accordance with paragraphs (d)(2) through (d)(5) of this section, or retrospectively, in accordance with § 273.21(b) and § 273.21(f)(2), regardless of the budgeting system used for the household's other circumstances.

(e) *Calculating net income and benefit levels*—(1) *Net monthly income.* (i) To determine a household's net monthly income, the State agency shall:

(A) Add the gross monthly income earned by all household members and the total monthly unearned income of all household members, minus income exclusions, to determine the household's total gross income. Net losses from the self-employment income of a farmer shall be offset in accordance with § 273.11(a)(2)(iii).

(B) Multiply the total gross monthly earned income by 20 percent and subtract that amount from the total gross income; or multiply the total gross monthly earned income by 80 percent and add that to the total monthly unearned income, minus income exclusions.

(C) Subtract the standard deduction.

(D) If the household is entitled to an excess medical deduction as provided in § 273.9(d)(3), determine if total medical expenses exceed $35. If so, subtract that portion which exceeds $35.

(E) Subtract allowable monthly dependent care expenses, if any, up to a maximum amount as specified under § 273.9(d)(4) for each dependent. If the household is entitled to an excess shelter deduction, compute the household's excess shelter deduction in accordance with paragraph (e)(1)(i)(G) of this section.

(F) Subtract allowable monthly child support payments in accordance with § 273.9(d)(7).

(G) Total the allowable shelter expenses to determine shelter costs. Subtract from total shelter costs 50 percent of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction according to paragraph (e)(1)(i)(H) of this section.

(H) Subtract the excess shelter cost up to the maximum amount allowed for the area (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly income after all other applicable deductions. Households not subject to a capped shelter expense shall have the full amount exceeding 50 percent of their net income subtracted. The household's net monthly income has been determined.

(ii) In calculating net monthly income, the State agency shall use one of the following two procedures:

(A) Round down each income and allotment calculation that ends in 1 through 49 cents and round up each calculation that ends in 50 through 99 cents; or

(B) Apply the rounding procedure that is currently in effect for the State's Aid to Families with Dependent Children (AFDC) program. If the State AFDC program includes the cents in income calculations, the State agency may use the same procedures for food stamp income calculations. Whichever procedure is used, the State agency may elect to include the cents associated with each individual shelter cost in the computation of the shelter deduction and round the final shelter deduction amount. Likewise, the State agency may elect to include the cents associated with each individual medical cost in the computation of the medical deduction and round the final medical deduction amount.

(2) *Eligibility and benefits.* (i)(A) Households which contain an elderly or disabled member as defined in § 271.2, shall have their net income, as calculated in paragraph (e)(1) of this section (except for households considered destitute in accordance with paragraph (e)(3) of this section), compared to the monthly income eligibility standards

defined in § 273.9(a)(2) for the appropriate household size to determine eligibility for the month.

(B) In addition to meeting the net income eligibility standards, households which do not contain an elderly or disabled member shall have their gross income, as calculated in accordance with paragraph (e)(1)(i)(A) of this section, compared to the gross monthly income standards defined in § 273.9(a)(1) for the appropriate household size to determine eligibility for the month.

(C) For households considered destitute in accordance with paragraph (e)(3) of this section, the State agency shall determine a household's eligibility by computing its gross and net income according to paragraph (e)(3) of this section, and comparing, as appropriate, the gross and/or net income to the corresponding income eligibility standard in accordance with § 273.9(a)(1) or (2).

(D) If a household contains a member who is fifty-nine years old on the date of application, but who will become sixty before the end of the month of application, the State agency shall determine the household's eligibility in accordance with paragraph (e)(2)(i)(A) of this section.

(E) If a household contains a student whose income is excluded in accordance with § 273.9(c)(7) and the student becomes 22 during the month of application, the State agency shall exclude the student's earnings in the month of application and count the student's earnings in the following month. If the student becomes 22 during the certification period, the student's income shall be excluded until the month following the month in which the student turns 22.

(ii)(A) Except as provided in paragraphs (a)(1), (e)(2)(iii) and (e)(2)(vi) of this section, the household's monthly allotment shall be equal to the maximum food stamp allotment for the household's size reduced by 30 percent of the household's net monthly income as calculated in paragraph (e)(1) of this section. If 30 percent of the household's net income ends in cents, the State agency shall round in one of the following ways:

(*1*) The State agency shall round the 30 percent of net income up to the nearest higher dollar; or

(*2*) The State agency shall not round the 30 percent of net income at all. Instead, after subtracting the 30 percent of net income from the appropriate Thrifty Food Plan, the State agency shall round the allotment down to the nearest lower dollar.

(B) If the calculation of benefits in accordance with paragraph (e)(2)(ii)(A) of this section for an initial month would yield an allotment of less than $10 for the household, no benefits shall be issued to the household for the initial month.

(C) Except during an initial month, all eligible one- and two-person households shall receive minimum monthly allotments equal to the minimum benefit and all eligible households with three or more members which are entitled to $1, $3, and $5 allotments shall receive allotments, of $2, $4, and $6, respectively, to correspond with current coupon book determinations.

(iii) For an eligible household with three or more members which is entitled to no benefits (except because of the proration requirements of paragraph (a)(1) and the provision precluding issuances of less than $10 in an initial month of paragraph (e)(2)(ii)(B)) of this section:

(A) The State agency shall deny the household's application on the grounds that its net income exceeds the level at which benefits are issued; or

(B) The State agency shall certify the household but suspend its participation, subject to the following conditions:

(*1*) The State agency shall inform the suspended household, in writing, of its suspended status, and of its rights and responsibilities while it is in that status.

(*2*) The State agency shall set the household's change reporting requirements and the manner in which those changes will be reported and processed.

(*3*) The State agency shall specify which changes shall entitle the household to have its status converted from suspension to issuance, and which changes shall require the household to reapply for participation.

(*4*) The household shall retain the right to submit a new application while it is suspended.

(*5*) The State agency shall convert a household from suspension to issuance status, without requiring an additional certification interview, and issue its initial allotment, within ten days of the date the household reports the change.

(*6*) The State agency shall prorate the household's benefits, in the first month after the suspension period, from the date the household reports a change, in accordance with paragraph (a)(1) of this section.

(*7*) The State agency may delay the work registration of the household's members until the household is determined to be entitled to benefits.

(iv) For those eligible households which are entitled to no benefits in their initial month of application, in accordance with paragraph (a)(1) or (e)(2)(ii)(B) of this section, but are entitled to benefits in subsequent months, the State agency shall certify the households beginning with the month of application.

(v) When a household's circumstances change and it becomes entitled to a different income eligibility standard, the State agency shall apply the different standard at the next recertification or whenever the State agency changes the household's eligibility, benefit level or certification period, whichever occurs first.

(vi) During a month when a reduction, suspension or cancellation of allotments has been ordered pursuant to the provisions of § 271.7, eligible housholds shall have their benefits calculated as follows:

(A) If a benefit reduction is ordered, State agencies shall reduce the maximum food stamp allotment amounts for each household size by the percentage ordered in the Department's notice on benefit reductions. State agencies shall multiply the maximum food stamp allotment amounts by the percentage specified in the FCS notice; if the result ends in 1 through 99 cents, round the result up to the nearest higher dollar; and subtract the result from the normal maximum food stamp allotment amount. In calculating benefit levels for eligible households, State agencies would follow the procedures detailed in paragraph (e)(2)(ii) of this section and substitute the reduced maximum food stamp allotment amounts for the normal maximum food stamp allotment amounts.

(B) Except as provided in paragraphs (a)(1), (e)(2)(ii)(B), and (e)(2)(vi)(C) of this section, one- and two-person households shall be provided with at least the minimum benefit.

(C) In the event that the national reduction in benefits is 90 percent or more of the benefits projected to be issued for the affected month, the provision for a minimum benefit for households with one or two members only may be disregarded and all households may have their benefits lowered by reducing maximum food stamp allotment amounts by the percentage specified by the Department. The benefit reduction notice issued by the Department to effectuate a benefit reduction will specify whether minimum benefits for households with one or two members only are to be provided to households.

(D) If the action in effect is a suspension or cancellation, eligible households shall have their allotment levels calculated according to the procedures in paragraph (e)(2)(ii) of this section. However, the allotments shall not be issued for the month the suspension or cancellation is in effect. The provision for the minimum benefit for households with one or two members only shall be disregarded and all households shall have their benefits suspended or cancelled for the designated month.

(E) In the event of a suspension or cancellation, or a reduction exceeding 90 percent of the affected month's projected issuance, all households, including one and two-person households, shall have their benefits suspended, cancelled or reduced by the percentage specified by FCS.

(3) *Destitute households.* Migrant or seasonal farmworker households may have little or no income at the time of application and may be in need of immediate food assistance, even though they receive income at some other time during the month of application. The following procedures shall be used to determine when migrant or seasonal

farmworker households in these circumstances may be considered destitute and, therefore, entitled to expedited service and special income calculation procedures. Households other than migrant or seasonal farmworker households shall not be classified as destitute.

(i) Households whose only income for the month of application was received prior to the date of application, and was from a terminated source, shall be considered destitute households and shall be provided expedited service.

(A) If income is received on a monthly or more frequent basis, it shall be considered as coming from a terminated source if it will not be received again from the same source during the balance of the month of application or during the following month.

(B) If income is normally received less often than monthly, the nonreceipt of income from the same source in the balance of the month of application or in the following month is inappropriate to determine whether or not the income is terminated. For example, if income is received on a quarterly basis (e.g., on January 1, April 1, July 1, and October 1), and the household applies in mid-January, the income should not be considered as coming from a terminated source merely because no further payments will be received in the balance of January or in February. The test for whether or not this household's income is terminated is whether the income is anticipated to be received in April. Therefore, for households that normally receive income less often than monthly, the income shall be considered as coming from a terminated source if it will not be received in the month in which the next payment would normally be received.

(ii) Households whose only income for the month of application is from a new source shall be considered destitute and shall be provided expedited service if income of more than $25 from the new source will not be received by the 10th calendar day after the date of application.

(A) Income which is normally received on a monthly or more frequent basis shall be considered to be from a new source if income of more than $25 has not been received from that source within 30 days prior to the date the application was filed.

(B) If income is normally received less often than monthly, it shall be considered to be from a new source if income of more than $25 was not received within the last normal interval between payments. For example, if a household applies in early January and is expecting to be paid every 3 months, starting in late January, the income shall be considered to be from a new source if no income of more than $25 was received from the source during October or since that time.

(iii) Households may receive both income from a terminated source prior to the date of application, and income from a new source after the date of application, and still be considered destitute if they receive no other income in the month of application and income of more than $25 from the new source will not be received by the 10th day after the date of application.

(iv) Destitute households shall have their eligibility and level of benefits calculated for the month of application by considering only income which is received between the first of the month and the date of application. Any income from a new source that is anticipated after the day of application shall be disregarded.

(v) Some employers provide travel advances to cover the travel costs of new employees who must journey to the location of their new employment. To the extent that these payments are excluded as reimbursements, receipt of travel advances will not affect the determination of when a household is destitute. However, if the travel advance is by written contract an advance of wages that will be subtracted from wages later earned by the employee, rather than a reimbursement, the wage advance shall count as income. In addition, the receipt of a wage advance for travel costs of a new employee shall not affect the determination of whether subsequent payments from the employer are from a new source of income, nor whether a household shall be considered destitute. For example, if a household applies on May 10, has received a $50 advance for travel from its new employer on May 1 which

by written contract is an advance on wages, but will not receive any other wages from the employer until May 30, the household shall be considered destitute. The May 30 payment shall be disregarded, but the wage advance received prior to the date of application shall be counted as income.

(vi) A household member who changes jobs but continues to work for the same employer shall be considered as still receiving income from the same source. A migrant farmworker's source of income shall be considered to be the grower for whom the migrant is working at a particular point in time, and not the crew chief. A migrant who travels with the same crew chief but moves from one grower to another shall be considered to have moved from a terminated income source to a new source.

(vii) The above procedures shall apply at initial application and at recertification, but only for the first month of each certification period. At recertification, income from a new source shall be disregarded in the first month of the new certification period if income of more than $25 will not be received from this new source by the 10th calendar day after the date of the household's normal issuance cycle.

(4) Thrifty Food Plan (TFP) and Maximum Food Stamp Allotments.

(i) Maximum food stamp allotment level. Maximum food stamp allotments shall be based on the TFP as defined in § 271.2, and they shall be uniform by household size throughout the 48 contiguous States and the District of Columbia. The TFP for Hawaii shall be the TFP for the 48 States and DC adjusted for the price of food in Honolulu. The TFPs for urban, rural I, and rural II parts of Alaska shall be the TFP for the 48 States and DC adjusted by the price of food in Anchorage and further adjusted for urban, rural I, and rural II Alaska as defined in § 272.7(c). The TFPs for Guam and the Virgin Islands shall be adjusted for changes in the cost of food in the 48 States and DC, provided that the cost of these TFPs may not exceed the cost of the highest TFP for the 50 States. The TFP amounts and maximum allotments in each area are adjusted annually and will be prescribed in a General Notice published in the FEDERAL REGISTER.

(ii) *Adjustment.* (A) Effective October 1, 1982, the Thrifty Food Plan amounts shall be adjusted to the nearest lower dollar increment to reflect changes in the Consumer Price Index for All Urban Consumers for the cost of food during the twenty-one month period ending June 30, 1982, less one percent of the adjusted Thrifty Food Plan.

(B) Effective October 1, 1983, and October 1, 1984, the Thrifty Food Plan amounts shall be adjusted to the nearest lower dollar increment to reflect changes in the Consumer Price Index for All Urban Consumers for the cost of food during the twelve month period ending on the preceding June 30, less one percent of the adjusted Thrifty Food Plan.

(C) Effective October 1, 1985, October 1, 1986, and October 1, 1987, the Thrifty Food Plan amounts shall be adjusted to the nearest lower dollar increment to reflect changes in the Consumer Price Index for All Urban Consumers for the cost of food during the twelve month period ending on the preceding June 30.

(D) Effective October 1, 1988, maximum food stamp allotments shall be based on 100.65 percent of the cost of the TFP for the preceding June, rounded to the nearest lower dollar increment.

(E) Effective October 1, 1989, maximum food stamp allotments shall be based on 102.05 percent of the cost of the TFP for the preceding June, rounded to the nearest lower dollar increment.

(F) Effective October 1, 1990 and each October 1, thereafter, maximum food stamp allotments shall be based on 103 percent of the cost of the TFP for the preceding June, rounded to the nearest lower dollar increment.

(f) *Certification periods.* The State agency shall establish a definite period of time within which a household shall be eligible to receive benefits. At the expiration of each certification period, entitlement to food stamp benefits ends. Further eligibility shall be established only upon a recertification based upon a newly completed application, an interview, and verification as required by § 273.2(f). Under no circumstances shall benefits be continued beyond the

end of a certification period without a new determination of eligibility.

(1) Certification periods shall conform to calendar months, except where FCS has approved the use of fiscal months. At initial application, the first month in the certification period shall generally be the month of application, even if the household's eligibility is not determined until a subsequent month. For example, if a household files an application in January and the application is not processed until February, a 6-month certification period would include January through June. Upon recertification, the certification period will begin with the month following the last month of the previous certification period.

(2) [Reserved]

(3)(i) Households in which all members are included in a single PA or GA grant shall have their food stamp recertifications at the same time they are redetermined for PA or GA. Definite food stamp certification periods must be assigned to these households in accordance with the provisions of this section, however, those periods may be shortened or extended in order to align the food stamp recertification date with the PA or GA redetermination date. The household's food stamp certification period can only be extended when the household is initially approved for PA/GA. The food stamp certification period may be extended up to 12 months to align the food stamp certification period with the PA/GA redetermination period. If the household's certification period is extended, the State agency shall notify the household of the changes in its certification period. At the end of the extended certification period the household must be sent a Notice of Expiration and must be recertified before being eligible for further food stamp assistance, even if the PA or GA redetermination is not set to expire. If the household's certification period is shortened, the State agency shall send it a notice of expiration which informs the household that its certification period will expire at the end of the month following the month the notice of expiration is sent and that it must reapply if it wishes to continue to participate. The notice of expiration shall also explain to the household that its certification period is expiring in order that it may be recertified for food stamps at the same time that it is redetermined for PA or GA.

(ii) Households in which all members receive assistance under Title XIX of the Social Security Act or other medical assistance program may have their food stamp recertification at the same time they are redetermined for assistance under Title XIX or other medical assistance program. The State agency must follow the same requirements that apply in paragraph (f)(3)(i) of this section.

(4) Households shall be assigned the longest certification periods possible based on the predictability of the household's circumstances. Households shall be certified for at least 3 months, except as follows:

(i) Households eligible for a certification period of 3 months or less shall, at the time of certification, have their certification periods increased by 1 month, if the certification process is completed after the 15th day of the month of application and the household's circumstances warrant the longer certification period. For example, if a household which is eligible for a 3-month certification period makes application in June and is not certified until late June or early July, the certification period would include June through September.

(ii) Households shall be certified for 1 or 2 months, as appropriate, when the household cannot reasonably predict what its circumstances will be in the near future, or when there is a substantial likelihood of frequent and significant changes in income or household status; for example, day laborers and migrant workers if income is uncertain and subject to large fluctuations during the work season due to the uncertainty of continuous employment or due to bad weather and other circumstances.

(iii) If a State agency opts to effect the Social Security/SSI cost-of-living increase through the process of recertification, the affected cases shall be assigned certification periods that ensure that they are due for recertification in accordance with § 273.12(e)(3)(ii). Households entitled to

a certification period of up to 12 months as discussed in paragraph (f)(5) of this section shall, on a one-time basis, be certified for less than a year in order to comply with this provision.

(5) Households shall be certified for up to 6 months if there is little likelihood of changes in income and household status; for example, households with a stable income record and for which major changes in income, deductions, or composition are not anticipated.

(6) Households consisting entirely of unemployable or elderly persons with very stable income shall be certified for up to 12 months provided other household circumstances are expected to remain stable; for example, social security recipients, SSI recipients and persons who receive pensions or disability payments.

(7) Households whose primary source of income is from self-employment (including self-employed farmers) or from regular farm employment with the same employer shall be certified for up to 12 months, provided income can be readily predicted and household circumstances are not likely to change. Annual certification periods may be assigned to farmworkers who are provided their annual salaries on a scheduled monthly basis which does not change as the amount of work changes.

(8) Households required to submit monthly reports in accordance with § 273.21(b) shall be certified for not less than six months and not more than 12 months. The limit of 12 months may be waived for these households if the State agency can demonstrate that such a waiver would result in improved administration of the Program. The six-month minimum may be waived for households subject to less frequent than monthly reporting if the State agency can demonstrate that such a waiver would result in improved administration of the Program.

(9) Households eligible for a child support deduction that have no record of regular child support payments or of child support arrearages and are not required to report child support payment information required by the State agency periodically (monthly or quarterly) during the certification period shall be certified for no more than 3 months. Households with a record of regular child support and arrearage payments that are not required to report payment information periodically during the certification period shall be certified for no more than 6 months. These requirements do not apply to households whose certification periods are established in accordance with paragraphs (f)(3), (f)(6), or (f)(7) of this section. Households required to report monthly or quarterly shall be assigned certification periods in accordance with paragraph (f)(8) of this section.

(g) *Certification notices to households.* (1) *Initial applications.* State agencies shall provide applicants with one of the following written notices as soon as a determination is made, but no later than 30 days after the date of the initial application:

(i) *Notice of eligibility*. (A) If an application is approved, the State agency shall provide the household with written notice of the amount of the allotment and the beginning and ending dates of the certification period. The household shall also be advised of variations in the benefit level based on changes anticipated at the time of certification. If the initial allotment contains benefits for both the month of application and the current month's benefits, the notice shall explain that the initial allotment includes more than 1 month's benefits, and shall indicate the monthly allotment amount for the remainder of the certification period. The notice shall also advise the household of its right to a fair hearing, the telephone number of the food stamp office (a toll-free number or a number where collect calls will be accepted for households outside the local calling area), and, if possible, the name of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the services. The State agency may also include in the notice a reminder of the household's obligation to report changes in circumstance and of the need to reapply for continued participation at the end of the certification period. Other information which would be useful to the household may also be included.

(B) In cases where a household's application is approved on an expedited basis without verification, as provided in § 273.2(i), the notice shall explain that the household must provide the verification which was waived. If the State agency has elected to assign a longer certification period to some households certified on an expedited basis, the notice shall also explain the special conditions of the longer certification period, as specified in § 273.2(i), and the consequences of failure to provide the postponed verification.

(C) For households provided a notice of expiration at the time of certification, as required in § 273.14(b), the notice of eligibility may be combined with the notice of expiration or separate notices may be sent.

(ii) *Notice of denial.* If the application is denied, the State agency shall provide the household with written notice explaining the basis for the denial, the household's right to request a fair hearing, the telephone number of the food stamp office (a toll-free number or a number where collect calls will be accepted for households outside the local calling area), and, if possible, the name of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service. A household which is potentially categorically eligible but whose food stamp application is denied shall be asked to inform the State agency if it is approved to receive PA and/or SSI benefits or benefits from a State or local GA program. In cases where the State agency has elected to use a notice of denial when a delay was caused by the household's failure to take action to complete the application process, as provided in § 273.2(h)(2), the notice of denial shall also explain: The action that the household must take to reactivate the application; that the case will be reopened without a new application if action is taken within 30 days of the date the notice of denial was mailed; and that the household must submit a new application if, at the end of the 30-day period, the household has not taken the needed action and wishes to participate in the program. If the State agency chooses the option specified in § 273.2(h)(2) of reopening the application in cases where verification is lacking only if household provides verification within 30 days of the date of the initial request for verification, the State agency shall include on the notice of denial the date by which the household must provide the missing verification.

(iii) *Notice of pending status.* If the application is to be held pending because some action by the State is necessary to complete the application process, as specified in § 273.2(h)(2), or the State agency has elected to pend all cases regardless of the reason for delay, the State agency shall provide the household with a written notice which informs the household that its application has not been completed and is being processed. If some action by the household is also needed to complete the application process, the notice shall also explain what action the household must take and that its application will be denied if the household fails to take the required action within 60 days of the date the application was filed. If the State agency chooses the option specified in § 273.2(h) (2) and (3) of holding the application pending in cases where verification is lacking only until 30 days following the date verification was initially requested, the State agency shall include on the notice of pending status the date by which the household must provide the missing verification.

(2) *Applications for recertification.* The State agency shall provide households that have filed an application by the 15th of the last month of their certification period with either a notice of eligibility or a notice of denial by the end of the current certification period if the household has complied with all recertification requirements. The State agency shall provide households that have received a notice of expiration at the time of certification, and have timely reapplied, with either a notice of eligibility or a notice of denial not later than 30 days after the date of the household's initial opportunity to obtain its last allotment.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.10, see the List of

CFR Sections Affected in the Finding Aids section of this volume.

### §273.11 Action on households with special circumstances.

(a) *Self-employment income.* The procedures for handling income received from boarders by a household that does not own and operate a commercial boardinghouse are described in paragraph (b) of this section. For all other households receiving self-employment income, including those households that own and operate a commercial boardinghouse, the State agency shall calculate the self-employment income as follows:

(1) *Annualizing self-employment income.* (i) Self-employment income which represents a household's annual income shall be annualized over a 12-month period even if the income is received within only a short period of time during that 12 months. For example, self-employment income received by farmers shall be averaged over a 12-month period, if the income is intended to support the farmer on an annual basis. However, if the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the State agency shall calculate the self-employment income on anticipated earnings. The State agency shall not calculate self-employment income on the basis of prior income (e.g. income tax returns) when the household has experienced a substantial increase or decrease in business. This self-employment income shall be annualized even if the household receives income from other sources in addition to self-employment.

(ii) Self-employment income which is received on a monthly basis but which represents a household's annual support shall normally be averaged over a 12-month period. If, however, the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business, the State agency shall calculate the self-employment income based on anticipated earnings.

(iii) Self-employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover. For example, self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year shall have their self-employment income averaged over the summer months rather than a 12-month period.

(iv) If a household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise shall be averaged over the period of time the business has been in operation, and the monthly amount projected for the coming year. However, if the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household may be certified for less than a year until the business has been in operation long enough to base a longer projection.

(v) Notwithstanding the provisions of paragraphs (i) through (iv) of this paragraph, households subject to MRRB who derive their self-employment income from a farming operation and who incur irregular expenses to produce such income shall have the option to annualize the allowable costs of producing self-employment income from farming when the self-employment farm income is annualized.

(2) *Determining monthly income from self-employment.* (i) For the period of time over which self-employment income is determined, the State agency shall add all gross self-employment income (including capital gains), exclude the cost of producing the self-employment income, and divide the self-employment income by the number of months over which the income will be averaged.

(ii) For those households whose self-employment income is not averaged but is instead calculated on an anticipated basis, the State agency shall add any capital gains the household anticipates it will receive in the next 12 months, starting with the date the application is filed, and divide this amount by 12. This amount shall be used in successive certification periods

during the next 12 months, except that a new average monthly amount shall be calculated over this 12-month period if the anticipated amount of capital gains changes. The State agency shall then add the anticipated monthly amount of capital gains to the anticipated monthly self-employment income, and subtract the cost of producing the self-employment income. The cost of producing the self-employment income shall be calculated by anticipating the monthly allowable costs of producing the self-employment income.

(iii) The monthly net self-employment income shall be added to any other earned income received by the household. The total monthly earned income, less a 20 percent earned income deduction, shall then be added to all monthly unearned income received by the household. If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, such losses shall be offset against any other countable income in the household. Losses from farm self-employment enterprises shall be offset in two phases. The first phase is an offsetting against non-farm self-employment income. The second phase is offsetting against the total of earned and unearned income. For purposes of this provision, to be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of $1000 or more from the farming enterprise. The standard deduction, dependent care, and shelter costs shall be computed in accordance with § 273.9(d) and subtracted to determine the monthly net income of the household. Net losses from the self-employment income of a farmer shall be prorated over the year in accordance with § 273.11(a)(1).

(iv) If a State agency determines that a household is eligible based on its monthly net income, the State may elect to offer the household an option to determine the benefit level by using either the same net income which was used to determine eligibility, or by unevenly prorating the household's total net income over the period for which the household's self-employment income was averaged to more closely approximate the time when the income is actually received. If income is prorated, the net income assigned in any month cannot exceed the maximum monthly income eligibility standards for the household's size.

(3) *Capital gains.* The proceeds from the sale of capital goods or equipment shall be calculated in the same manner as a capital gain for Federal income tax purposes. Even if only 50 percent of the proceeds from the sale of capital goods or equipment is taxed for Federal income tax purposes, the State agency shall count the full amount of the capital gain as income for food stamp purposes.

(4) *Allowable costs of producing self-employment income.* (i) Allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor, stock, raw material, seed and fertilizer, interest paid to purchase income-producing property, insurance premiums, and taxes paid on income-producing property.

(ii) In determining net self-employment income, the following items shall not be allowable as costs of doing business:

(A) Payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods;

(B) Net losses from previous periods;

(C) Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work), as these expenses are accounted for by the 20-percent earned income deduction specified in § 273.9(d)(2); and

(D) Depreciation.

(5) *Assigning certification periods.* (i) Households that receive their annual support from self-employment and have no other source of income may be certified for up to 12 months. For those households that receive other sources of income or whose self-employment income is intended to cover a period of time that is less than a year, the State agency shall assign a certification period appropriate for the household's circumstances.

(ii) For those self-employed households that receive their annual income in a short period of time, the initial certification period shall be assigned to

bring the household into the annual cycle. For example, the State agency may provide for recertification at the time the household normally receives all or a majority of its annual income or the State agency may prefer to have the annual cycle coincide with the filing of the household's income tax.

(b) *Households with income from boarders and day care.*—(1) *Households with boarders.* Persons paying a reasonable amount for room and board as specified in § 273.1(c) shall be excluded from the household when determining the household's eligibility and benefit level. The income of households owning and operating a commercial boardinghouse shall be handled as described in paragraph (a) of this section. For all other households, payments from the boarder, except forter care boarders as defined in § 273.1(c)(6), shall be treated as self-employment income and the household's eligibility determined as follows:

(i) *Income from the boarder.* The income from boarders shall include all direct payments to the household for room and meals, including contributions to the household's shelter expenses. Shelter expenses paid directly by boarders to someone outside of the household shall not be counted as income to the household.

(ii) *Cost of doing business.* In determining the income received from boarders, the State agency shall exclude the portion of the boarder payment that is a cost of doing business. The amount allowed as a cost of doing business shall not exceed the payment the household receives from the boarder for lodging and meals. Households may elect one of the following methods to determine the cost of doing business:

(A) The cost of the maximum food stamp allotment for a household size that is equal to the number of boarders; or

(B) The actual documented cost of providing room and meals, if the actual cost exceeds the appropriate maximum food stamp allotment. If actual costs are used, only separate and identifiable costs of providing room and meals to boarders shall be excluded; or

(C) A flat amount or fixed percentage of the gross income, provided that the method used to determine the flat amount or fixed percentage is objective and justifiable and is stated in the State's food stamp manual.

(iii) *Deductible expenses.* The net income from self-employment shall be added to other earned income and a 20-percent earned income deduction shall be applied to the total. Shelter costs the household actually incurs, even if the boarder contributes to the household for part of the household's shelter expenses, shall be computed to determine if the household will receive a shelter deduction. However, the shelter costs shall not include any shelter expenses paid directly by the boarder to a third party, such as to the landlord or utility company.

(2) *Income from day care.* Households deriving income from day care may elect one of the following methods of determining the cost of meals provided to the individuals:

(i) Actual documented costs of meals;

(ii) A standard per day amount based on estimated per meal costs; or

(iii) Current reimbursement amounts used in the Child and Adult Care Food Program.

(c) *Treatment of income and resources of certain nonhousehold members.* During the period of time that a household member cannot participate because he/she is an ineligible alien, is ineligible because of disqualification for an intentional Program violation, is ineligible because of noncompliance with a work requirement of § 273.7 is ineligible because of disqualification for failure or refusal to obtain or provide an SSN, or is ineligible because a sanction has been imposed while he/she was participating in a household disqualified for failing to comply with workfare requirements, the eligibility and benefit level of any remaining household members shall be determined in accordance with the procedures outlined in this section.

(1) *Intentional Program violation disqualification, workfare, or work requirement sanction.* The eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of disqualification for intentional Program violation noncompliance with a

work requirement of § 273.7 or imposition of a sanction while they were participating in a household disqualified for failure to comply with workfare requirements shall be determined as follows:

(i) *Income, resources, and deductible expenses.* The income and resources of the ineligible household member(s) shall continue to count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, child support, and excess shelter deductions shall continue to apply to the remaining household members.

(ii) *Eligibility and benefit level.* The ineligible member shall not be included when determining the household's size for the purposes of:

(A) Assigning a benefit level to the household;

(B) Comparing the household's monthly income with the income eligibility standards; or

(C) Comparing the household's resources with the resource eligibility limits. The State agency shall ensure that no household's coupon allotment is increased as a result of the exclusion of one or more household members.

(2) *SSN disqualification and ineligible alien.* The eligibility and benefit level of any remaining household members of a household containing individuals determined to be ineligible for being an ineligible alien or because of disqualification for refusal to obtain or provide an SSN shall be determined as follows:

(i) *Resources.* The resources of such ineligible members shall continue to count in their entirety to the remaining household members.

(ii) *Income.* A pro rata share of the income of such ineligible members shall be counted as income to the remaining members. This pro rata share is calculated by first subtracting the allowable exclusions from the ineligible member's income and dividing the income evenly among the household members, including the ineligible members. All but the ineligible members' share is counted as income for the remaining household members.

(iii) *Deductible expenses.* The 20 percent earned income deduction shall apply to the prorated income earned by such ineligible members which is attributed to their households. That portion of the households' allowable child support payment, shelter and dependent care expenses which are either paid by or billed to the ineligible members shall be divided evenly among the households' members including the ineligible members. All but the ineligible members' share is counted as a deductible child support payment, shelter or dependent care expense for the remaining household members.

(iv) *Eligibility and benefit level.* Such ineligible members shall not be included when determining their households' sizes for the purposes of:

(A) Assigning a benefit level to the household;

(B) Comparing the household's monthly income with the income eligibility standards; or

(C) Comparing the household's resources with the resource eligibility limits.

(3) *Reduction or termination of benefits within the certification period.* Whenever an individual is determined ineligible within the household's certification period, the State agency shall determine the eligibility or ineligibility of the remaining household members based, as much as possible, on information in the case file.

(i) *Excluded for intentional Program violation disqualification.* If a household's benefits are reduced or terminated within the certification period because one of its members was excluded because of disqualification for intentional Program violation, the State agency shall notify the remaining members of their eligibility and benefit level at the same time the excluded member is notified of his or her disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits, unless the household has already had a fair hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the fair hearing.

(ii) *SSN or workfare disqualification, ineligible alien, or work requirement sanction.* If a household's benefits are reduced or terminated within the certification period because one or more of

its members is an ineligible alien, is ineligible because a sanction has been imposed while he/she was participating in a household disqualified for failing to comply with workfare requirements, is ineligible because of noncompliance with a work requirement of § 273.7 or is ineligible because he/she was disqualified for refusal to obtain or provide an SSN, the State agency shall issue a notice of adverse action in accordance with § 273.13(a)(2) which informs the household of the ineligibility, the reason for the ineligibility, the eligibility and benefit level of the remaining members, and the action the household must take to end the ineligibility.

(d) *Treatment of income and resources of other nonhousehold members.* (1) For all other nonhousehold members defined in § 273.1 (b)(1) and (b)(2) who are not specifically mentioned in paragraph (c) of this section, the income and resources of such individuals shall not be considered available to the household with whom the individual resides. Cash payments from the nonhousehold member to the household will be considered income under the normal income standards set in § 273.9(b). Vendor payments, as defined in § 273.9(c)(1), shall be excluded as income. If the household shares deductible expenses with the nonhousehold member, only the amount actually paid or contributed by the household shall be deducted as a household expense. If the payments or contributions cannot be differentiated, the expenses shall be prorated evenly among persons actually paying or contributing to the expense and only the household's pro rata share deducted.

(2) When the earned income of one or more household members and the earned income of a nonhousehold member are combined into one wage, the income of the household members shall be determined as follows:

(i) If the household's share can be identified, the State agency shall count that portion due to the household as earned income.

(ii) If the household's share cannot be identified the State agency shall prorate the earned income among all those whom it was intended to cover and count that prorated portion to the household.

(3) Such nonhousehold members shall not be included when determining the size of the household for the purposes of:

(i) Assigning a benefit level to the household;

(ii) Comparing the household's monthly income with the income eligibility standards; or

(iii) Comparing the household's resources with the resource eligibility limits.

(e) *Residents of drug/alcoholic treatment and rehabilitation programs.* (1) Narcotic addicts or alcoholics who regularly participate in publicly operated or private non-profit drug or alcoholic treatment and rehabilitation programs on a resident basis may voluntarily apply for the Food Stamp Program. Resident addicts and alcoholics shall have their eligibility determined as a one-person household. The State agency shall certify residents of addict/alcoholic treatment centers by using the same provisions that apply to all other applicant households except that certification must be accomplished through an authorized representative as described in § 273.1(f)(2). Prior to certifying any residents for food stamps, the State agency shall verify that the treatment center is authorized by FCS as a retailer if the center wishes to redeem coupons through a wholesaler or, if it is not authorized by FCS as a retailer that it is under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x *et seq.*) (as defined in *Drug addiction or alcoholic treatment and rehabilitation program* in § 271.2). The guidelines for issuing FCS authorizations to these treatment centers are set forth in § 278.1(e).

(2) Each treatment and rehabilitation center shall provide the State agency with a list of currently participating residents. This list shall include a statement signed by a responsible center official attesting to the validity of the list. The State agency shall require the list on either a monthly or semimonthly basis. In addition, the State agency shall conduct periodic random onsite visits to the center to assure the accuracy of the list and that the State agency's records are consistent and up to date.

(3) The following provisions apply to residents of treatment centers:

(i) When expedited processing standards as described in § 273.2(i) are necessary, eligibility for the initial application shall be processed on an expedited basis, and the State agency shall complete verification and documentation requirements prior to issuance of a second coupon allotment;

(ii) When normal processing standards apply, the State agency shall complete the verification and documentation requirements prior to making an eligibility determination for the initial application;

(iii) The State agency shall process changes in household circumstances and recertifications by using the same standards that apply to all other food stamp households; and

(iv) Resident households shall be afforded the same rights to notices of adverse action, to fair hearings, and to entitlement to lost benefits as are all other food stamp households.

(4) The treatment center shall notify the State agency, as provided in § 273.12(a), of changes in the household's income or other household circumstances and of when the addict or alcoholic leaves the treatment center. The treatment center shall return a household's ATP or coupons received after the household has left the center.

(5)(i) When the household leaves the center, the center shall provide the resident household with its ID card and any untransacted ATP cards. The household, not the center, shall be allowed to sign for and receive any remaining authorized benefits reflected on HIR cards. The departing household shall also receive its full allotment if already issued and if no coupons have been spent on behalf of that individual household. These procedures are applicable at any time during the month. However, if the coupons have already been issued and any portion spent on behalf of the individual, and the household leaves the treatment and rehabilitation program prior to the 16th day of the month, the treatment center shall provide the household with one half of its monthly coupon allotment. If the household leaves on or after the 16th day of the month and the coupons have already been issued and used, the household does not receive any coupons.

(ii) Once the household leaves the treatment center, the center is no longer allowed to act as that household's authorized representative. The center, if possible, shall provide the household with a change report form to report to the State agency the household's new address and other circumstances after leaving the center and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

(iii) The treatment center shall return to the State agency any coupons not provided to departing residents at the end of each month. These returned coupons shall include those not provided to departing residents because they left either prior to the 16th and the center was unable to provide the individual with the coupons or they left on or after the 16th of the month.

(6) The organization or institution shall be responsible for any misrepresentation or intentional Program violation which it knowingly commits in the certification of center residents. As an authorized representative, the organization or institution must be knowledgeable about household circumstances and should carefully review those circumstances with residents prior to applying on their behalf. The organization or institution shall be strictly liable for all losses or misuse of food coupons held on behalf of resident households and for all overissuances which occur while the households are residents of the treatment center.

(7) The organization or institution authorized by FCS as a retail food store may be penalized or disqualified, as described in § 278.6, if it is determined administratively or judicially that coupons were misappropriated or used for purchases that did not contribute to a certified household's meals. The State agency shall promptly notify FCS when it has reason to believe that an organization or institution is misusing coupons in its possession. However, the State agency shall take no action prior to FCS action against the organization or institution. The State agency shall establish a claim for overissuances of food coupons held on

behalf of resident clients as stipulated in paragraph (e)(6) of this section if any overissuances are discovered during an investigation or hearing procedure for redemption violations. If FCS disqualifies an organization or institution as an authorized retail food store, the State agency shall suspend its authorized representative status for the same period.

(f) *Residents of a group living arrangement.* (1) Disabled or blind residents of a group living arrangement (as defined in § 271.2) may voluntarily apply for the Food Stamp Program. If these residents apply through the use of the facility's authorized representative, their eligibility shall be determined as one-person households. If the residents apply on their own behalf, the household size shall be in accordance with the definition in § 273.1. The State agency shall certify these residents using the same provisions that apply to all other households. Prior to certifying any residents for food stamps, the State agency shall verify that the group living arrangement is authorized by FCS or is certified by the appropriate agency or agencies of the State (as defined in § 271.2) including that agency's (or agencies') determination that the center is a nonprofit organization.

(2) Each group living arrangement shall provide the State agency with a list of currently participating residents. This list shall include a statement signed by a responsible center official attesting to the validity of the list. The State shall require the list on a periodic basis. In addition, the State agency shall conduct periodic random onsite visits to assure the accuracy of the list and that the State agency's records are consistent and up to date.

(3) The same provisions applicable in § 273.11(e)(3) to residents of treatment centers also apply to blind or disabled residents of group living arrangements when the facility acts as the resident's authorized representative.

(4) If the resident has made application on his/her own behalf, the household is responsible for reporting changes to the State agency as provided in § 273.12(a). If the group living arrangement is acting in the capacity of an authorized representative, the group living arrangement shall notify the State agency, as provided in § 273.12(a), of changes in the household's income or other household circumstances and when the individual leaves the group living arrangement. The group living arrangement shall return any household's ATP card or coupons to the State agency if they are received after the household has left the group living arrangement.

(5)(i) When the household leaves the facility, the group living arrangement, either acting as an authorized representative or retaining use of the coupons on behalf of the residents (regardless of the method of application), shall provide residents with their ID cards (if applicable) and any untransacted ATP cards. The household, not the group living arrangement, shall be allowed to sign for and receive any remaining authorized benefits reflected on HIR cards. Also, the departing household shall receive its full allotment if issued and if no coupons have been spent on behalf of that individual household. These procedures are applicable at any time during the month. However, if the coupons have already been issued and any portion spent on behalf of the individual, and the household leaves the group living arrangement prior to the 16th day of the month, the facility shall provide the household with its ID card (if applicable) and one half of its monthly coupon allotment. If the household leaves on or after the 16th day of the month and the coupons have already been issued and used, the household does not receive any coupons. If a group of residents have been certified as one household and have returned the coupons to the facility to use, the departing residents shall be given a pro rata share of one-half of the coupon allotment if leaving prior to the 16th day of the month and shall be instructed to obtain ID cards or written authorizations to use the coupons from the local office.

(ii) Once the resident leaves, the group living arrangement no longer acts as his/her authorized representative. The group living arrangement, if possible, shall provide the household with a change report form to report to the State agency the individual's new address and other circumstances after

leaving the group living arrangement and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

(iii) The group living arrangement shall return to the State agency any coupons not provided to departing residents at the end of each month. These returned coupons shall include those not provided to departing residents because they left on or after the 16th of the month or they left prior to the 16th and the facility was unable to provide them with the coupons.

(6) The same provisions applicable to drug and alcoholic treatment center in paragraphs (e) (6) and (7) of this section also apply to group living arrangements when acting as an authorized representative. These provisions, however, are not applicable if a resident has applied on his/her own behalf. The resident applying on his/her own behalf shall be responsible for overissuances as would any other household as discussed in § 273.18.

(7) The group living arrangement may purchase and prepare food to be consumed by eligible residents on a group basis if residents normally obtain their meals at a central location as part of the group living arrangement services or if meals are prepared at a central location for delivery to the individual residents. If residents purchase and/or prepare food for home consumption, as opposed to communal dining, the group living arrangement shall ensure that each resident's food stamps are used for meals intended for that resident. If the resident retains use of his/her own coupon allotment, he/she may either use the coupons to purchase meals prepared for them by the facility or to purchase food to prepare meals for their own consumption.

(g) *Shelters for battered women and children.* (1) Prior to certifying its residents under this paragraph, the State agency shall determine that the shelter for battered women and children meets the definition in § 271.2 and document the basis of this determination. Shelters having FCS authorization to redeem at wholesalers shall be considered as meeting the definition and the State agency is not required to make any further determination. The State agency may choose to require local project area offices to maintain a list of shelters meeting the definition to facilitate prompt certification of eligible residents following the special procedures outlined below.

(2) Many shelter residents have recently left a household containing the person who has abused them. Their former household may be certified for participation in the Program, and its certification may be based on a household size that includes the women and children who have just left. Shelter residents who are included in such certified households may nevertheless apply for and (if otherwise eligible) participate in the Program as separate households if such certified household which includes them is the household containing the person who subjected them to abuse. Shelter residents who are included in such certified households may receive an additional allotment as a separate household only once a month.

(3) Shelter residents who apply as separate households shall be certified solely on the basis of their income and resources and the expenses for which they are responsible. They shall be certified without regard to the income, resources, and expenses of their former household. Jointly held resources shall be considered inaccessible in accordance with § 273.8. Room payments to the shelter shall be considered as shelter expenses.

(4) Any shelter residents eligible for expedited service shall be handled in accordance with § 273.2(i).

(5) State agencies shall take prompt action to ensure that the former household's eligibility or allotment reflects the change in the household's composition. Such action shall include either shortening the certification period by issuing a notice of expiration in accordance with § 273.14(b) to the former household of shelter residents or acting on the reported change in accordance with § 273.12 by issuing a notice of adverse action in accordance with § 273.13.

(h) *Homeless food stamp households.* Homeless food stamp households shall be permitted to use their food stamp benefits to purchase prepared meals from homeless meal providers authorized by FCS under § 278.1(h).

(i) *Prerelease applicants.* A household which consists of a resident or residents of a public institution(s) which applies for SSI under SSA's Prerelease Program for the Institutionalized shall be allowed to apply for food stamp benefits jointly with their application for SSI prior to their release from the institution. Such households shall be certified in accordance with the provisions of § 273.1(e), § 273.2(c), (g), (i), (j) and (k), and § 273.10(a), as appropriate.

(j) *Households containing sponsored alien members.* (1) *Definitions.* ''Sponsored alien'' means those aliens lawfully admitted for permanent residence into the United States as described in § 273.4(a)(2). ''Sponsor'' means a person who executed an affidavit(s) of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident. ''Date of entry'' or ''Date of admission'' means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

(2) *Deeming of sponsor's income and resources as that of the sponsored alien.* Portions of the gross income and the resources of a sponsor and the sponsor's spouse (if living with the sponsor) shall be deemed to be the unearned income and resources of a sponsored alien for three years following the alien's admission for permanent residence to the United States. The spouse's income and resources will be counted even if the sponsor and spouse were married after the signing of the agreement.

(i) The monthly income of the sponsor and sponsor's spouse (if living with the sponsor) deemed to be that of the alien shall be the total monthly earned and unearned income as defined in § 273.9(b) (including the income exclusions provided for in § 273.9(c)) of the sponsor and sponsor's spouse at the time the household containing the sponsored alien member applies or is recertified for Program participation, reduced by: (A) A 20 percent earned income amount for that portion of the income determined as earned income of the sponsor and the sponsor's spouse; and (B) an amount equal to the Food Stamp Program's monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for Federal income tax purposes.

(ii) If the alien has already reported gross income information on his/her sponsor due to AFDC's sponsored alien rules, that income amount may be used for Food Stamp Program deeming purposes. However, allowable reductions to be applied to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the alien shall be limited to the 20 percent earned income amount and the Food Stamp Program's gross monthly income amount provided for in paragraphs (j)(2)(i)(A) and (j)(2)(i)(B) of this section.

(iii) Actual money paid to the alien by the sponsor or the sponsor's spouse will not be considered as income to the alien unless the amount paid exceeds the amount attributed to the alien under paragraph (j)(2)(i) of this section. Only the portion of the amount paid that actually exceeds the amount deemed would be considered income to the alien in addition to the deemed income amount.

(iv) Resources of the sponsor and sponsor's spouse to be deemed to be that of the alien shall be the total amount of their resources as determined in accordance with § 273.8, reduced by $1,500.

(v) The amount of income and resources deemed to be that of the sponsored alien in accordance with paragraphs (j)(2)(i) and (iv) of this section, shall be considered in determining the eligibility and benefit level of the household of which the alien is a member.

(vi) If a sponsored alien can demonstrate to the State agency's satisfaction that his/her sponsor sponsors other aliens, then the income and resources deemed under the provisions of paragraphs (j)(2)(i) and (iv) of this section shall be divided by the number of such aliens that apply for or are participating in the program.

(vii) If the alien reports that he/she has changed sponsors during the certification period, then deemed income

and resources shall be recalculated based on the required information about the new sponsor and sponsor's spouse as outlined in paragraphs (j)(2)(i) through (j)(2)(iv) of this section and the reported change would be handled in accordance with the timeframes and procedures outlined in § 273.12 or § 273.21, as appropriate. In the event that an alien loses his/her sponsor during the three-year limit on the sponsored alien provisions of this section and does not obtain another, the deemed income and resources of the previous sponsor shall continue to be attributed to the alien until such time as the alien obtains another sponsor or until the three-year period for applying the sponsored alien provisions expires, whichever occurs first. However, should the alien's sponsor become deceased, the deemed income and resources of sponsor shall no longer be attributed to the alien.

(3) *Exempt aliens.* The provisions of this paragraph do not apply to:

(i) An alien who is participating in the Food Stamp Program as a member of his/her sponsor's household or an alien whose sponsor is participating in the Food Stamp Program separate and apart from the alien;

(ii) An alien who is sponsored by an organization or group as opposed to an individual;

(iii) An alien who is not required to have a sponsor under the Immigration and Nationality Act, such as, but not limited to, a refugee, a parolee, one granted asylum, and a Cuban or Haitian entrant.

(4) *Sponsored alien's responsibility.* For a period of three years from the alien's date of entry or date of admission as a lawful permanent resident, the alien shall be responsible for obtaining the cooperation of his/her sponsor, for providing the State agency at the time of application and at the time of recertification with the information and/or documentation necessary to calculate deemed income and resources in accordance with paragraphs (j)(2)(i) through (j)(2)(iv) of this section, and for providing the names (or other identifying factors) of other aliens for whom the alien's sponsor has signed an agreement to support to enable the State agency to determine how many of such other aliens are Food Stamp Program applicants or participants and initiate the proration provisions in paragraph (j)(2)(vi) of this section. If such information about other aliens for whom the sponsor is responsible is not provided to the State agency, the deemed income and resource amounts calculated shall be attributed to the applicant alien in their entirety until such time as the information is provided. The alien shall also be responsible for reporting the required information about the sponsor and sponsor's spouse should the alien obtain a different sponsor during the certification period and for reporting a change in income should the sponsor or the sponsor's spouse change or lose employment or become deceased during the certification period. Such changes shall be handled in accordance with the timeliness standards and procedures described in §§ 273.12 and 273.21, as appropriate.

(5) *State agency responsibilities.* (i) The State agency shall obtain the following information from the alien at the time of the household's initial application and at the time the household applies for recertification:

(A) The income and resources of the alien's sponsor and the sponsor's spouse (if living with the sponsor).

(B) The names or other identifying factors (such as an alien registration number) of other aliens for whom the sponsor has signed an affidavit of support or similar agreement to enable the State agency to fulfill the requirements of paragraph (j)(2)(vi) of this section.

(C) The provision of the Immigration and Nationality Act under which the alien was admitted.

(D) The date of the alien's entry or admission as a lawful permanent resident as established by INS.

(E) The alien's date of birth, place of birth, and alien registration number.

(F) The number of dependents who are claimed or could be claimed as dependents by the sponsor or the sponsor's spouse for Federal income tax purposes.

(G) The name, address and phone number of the alien's sponsor.

(ii) The State agency shall verify income information obtained in accordance with paragraphs (j)(4) and (j)(5)(i) of this section. The State agency shall verify all other information obtained in accordance with paragraphs (j)(4) and (j)(5)(i) of this section if questionable and which affects household eligibility and benefit levels in accordance with the procedures established in § 273.2(f). State agencies shall assist aliens in obtaining verification in accordance with the provisions of § 273.2(f)(5).

(6) *Awaiting verification.* While the State agency is awaiting receipt and/or verification from the alien of information necessary to carry out the provisions of paragraph (j)(2) of this section, the sponsored alien shall be ineligible until such time as all necessary facts are obtained. The eligibility of any remaining household members shall be determined. The income and resources of the ineligible alien (excluding the deemed income and resources of the alien's sponsor and sponsor's spouse) shall be considered available in determining the eligibility and benefit level of the remaining household members in accordance with paragraph (c) of this section. If the sponsored alien refuses to cooperate in providing and/or verifying needed information, other adult members of the alien's household shall be responsible for providing and/or verifying information required in accordance with the provisions of § 273.2(d). If the information and/or verification is subsequently received, the State agency shall act on the information as a reported change in household membership in accordance with the timeliness standards in § 273.12 or § 273.21, as appropriate. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as needed sponsor information is provided and/or verified. State agencies shall assist aliens in obtaining verification in accordance with the provisions of § 273.2(f)(5).

(7) *Memorandum of agreement.* The Secretary shall enter into an agreement with the Secretary of State and the Attorney General whereby they shall inform any sponsor of an alien and the alien, at the time the sponsor executes an affidavit of support or similar agreement on behalf of an alien, of the requirements of section 1308 of Pub. L. 97–98. Under the agreement the Bureau of Consular Affairs of the State Department and local INS offices shall provide information to State agencies that is needed to carry out the provisions of this paragraph. This agreement shall set forth the specific information that must be released by all parties to facilitate identification of the alien and sponsor and enable State agencies to perform required verification of information supplied by the alien which is essential for eligibility determinations, as specified in paragraph (j)(5) of this section.

(8) *Overissuance due to incorrect sponsor information.* (i) Any sponsor of an alien and alien shall be jointly and severably liable for repayment of any overissuance of coupons as a result of incorrect information provided by the sponsor. However, if the alien's sponsor had good cause or was without fault for supplying the incorrect information, the alien's household shall be solely liable for repayment of the overissuance. The State agency shall establish procedures for determining good cause under this provision, and shall include such procedures in its State Plan of Operation.

(ii) Where the sponsor did not have good cause, the State agency shall decide whether to establish a claim for the overissuance against the sponsor or the alien's household, or both. The State agency may choose to establish claims against both parties at the same time or to establish a claim against the party it deems most likely to repay first. If a claim is established against the alien's sponsor first, the State agency shall ensure that a claim is established against the alien's household whenever the sponsor fails to respond to the State agency's demand letter within 30 days of receipt. The State agency shall return to the alien's sponsor and/or the alien's household any amounts repaid in excess of the total amount of the claim.

(iii) *Collecting claims against sponsors.* (A) State agencies shall initiate collection action by sending the alien's sponsor a written demand letter which informs the sponsor of the amount owed, the reason for the claim, and how the

sponsor may pay the claim. The sponsor shall also be informed that the sponsor will not be held responsible for repayment of the claim if the sponsor can demonstrate that he/she had good cause or was without fault for the incorrect information having been supplied to the State agency. In addition, the State agency shall follow-up the written demand letter with personal contact, if possible. The sponsor is entitled to a fair hearing either to contest a determination that the sponsor was at fault where it was determined that incorrect information has been provided or to contest the amount of the claim.

(B) The State agency may pursue other collection actions, as appropriate, to obtain payment of a claim against any sponsor which fails to respond to a written demand letter. The State agency may terminate collection action against a sponsor at any time if it has documentation that the sponsor cannot be located or when the cost of further collection is likely to exceed the amount that can be recovered.

(C) If the alien's sponsor responds to the written demand letter and is financially able to pay the claim at one time, the State agency shall collect a lumpsum cash payment. The State agency may negotiate a payment schedule with the sponsor for repayment of the claim, as long as payments are provided in regular installments. Payments shall be submitted to FCS in accordance with the procedures specified in § 273.18(h). For submission to FCS, any funds collected from the sponsor shall be reported and the State agency's retention shall be based on whether the corresponding claim against the alien's household is being treated as an inadvertent household error claim or intentional misrepresentation or fraud claim.

(iv) *Collecting claims against alien households.* Prior to initiating collection action against the household of a sponsored alien for repayment of an overissuance caused by incorrect information concerning the alien's sponsor or sponsor's spouse, the State agency shall determine whether such incorrect information was supplied due to inadvertent household error or an act of intentional Program violation on the part of the alien. If sufficient documentary evidence exists to substantiate that the incorrect information was provided in an act of intentional Program violation on the part of the alien, the State agency shall pursue the case in accordance with § 273.16 for intentional Program violation disqualifications. The claim against the alien's household shall be handled as an inadvertent household error claim prior to the determination of intentional Program violation by an administrative disqualification hearing official or a court of appropriate jurisdiction. If the State agency determines that the incorrect information was supplied due to misunderstanding or unintended error on the part of the sponsored alien, the claim shall be handled as an inadvertent household error claim in accordance with § 273.18. These actions shall be taken regardless of the current eligibility of the sponsored alien or the alien's household.

(k) *Failure to comply with another assistance program's requirements.* A State agency shall not increase food stamp benefits when a household's benefits received under another means-tested Federal, State or local welfare or public assistance program, which is governed by welfare or public assistance laws or regulations and which distributes public funds, have been decreased (reduced, suspended or terminated) due to an intentional failure to comply with a requirement of the program that imposed the benefit decrease. This provision does not apply in the case of individuals or households subject to a food stamp work sanction imposed pursuant to 7 CFR 273.7(g)(2). State agency procedures shall adhere to the following minimum conditions:

(1) This provision must be applied to all applicable cases. If a State agency is not successful in obtaining the necessary cooperation from another Federal, State or local means-tested welfare or public assistance program to enable it to comply with the requirements of this provision, the State agency shall not be held responsible for noncompliance as long as the State agency has made a good faith effort to obtain the information.

(2) A State agency shall not reduce, suspend or terminate a household's

current food stamp allotment amount when the household's benefits under another applicable assistance program have been decreased due to an intentional failure to comply with a requirement of that program.

(3) A State agency must adjust food stamp benefits when eligible members are added to the food stamp household regardless of whether or not the household is prohibited from receiving benefits for the additional member under another Federal, State or local welfare or public assistance means-tested program.

(4) Changes in household circumstances which are not related to a penalty imposed by another Federal, State or local welfare or public assistance means-tested program shall not be affected by this provision.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §273.11, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### §273.12 Reporting changes.

(a) *Household responsibility to report.* (1) Certified households are required to report the following changes in circumstances:

(i) Changes in the sources of income or in the amount of gross monthly income of more than $25, except changes in the public assistance grant, or the general assistance grant in project areas where GA and food stamp cases are jointly processed in accord with §273.2(j)(2). Since the State agency has prior knowledge of all changes in the public assistance grant and general assistance grants, action shall be taken on the State agency information;

(ii) All changes in household composition, such as the addition or loss of a household member;

(iii) Changes in residence and the resulting change in shelter costs;

(iv) The acquisition of a licensed vehicle not fully excludable under §273.8(e); and

(v) When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of $2,000.

(vi) Changes in the legal obligation to pay child support.

(2) Certified households shall report changes within 10 days of the date the change becomes known to the household. Optional procedures for reporting changes are contained in §273.12(f) for households in States with FCS-approved forms for jointly reporting food stamp and public assistance changes and food stamp and general assistance changes.

(3) An applying household shall report all changes related to its food stamp eligibility and benefits at the certification interview. Changes, as provided in paragraph (a)(1) of this section, which occur after the interview but before the date of the notice of eligibility, shall be reported by the household within 10 days of the date of the notice.

(4) The State agency may require a household that is eligible to receive a child support deduction in accordance with §273.9(d)(7) to report information required by the State agency regarding child support on a change report, a monthly report, or quarterly report. The State agency shall process the reports in accordance with procedures for the systems used in budgeting the household's income and deductions. The following requirements apply to quarterly reports:

(i) The State agency shall provide the household a reasonable period after the end of the last month covered by the report in which to return the report. If the household does not file the report by the due date or files an incomplete report, the State agency shall provide the household with a reminder notice advising the household that it has 10 days from the date the State agency mails the notice to file a complete report. If the household does not file a complete report by the extended filing date as specified in the reminder notice, the State agency shall determine the household's eligibility and benefits without consideration of the child support deduction. The State agency shall not terminate the benefits of a household for failure to submit a quarterly report unless the household is otherwise ineligible. The State agency shall send the household an adequate notice as defined in §271.2 of this chapter if

the household fails to submit a complete report or if the information contained on a complete report results in a reduction or termination of benefits. The quarterly report shall meet the requirements specified in paragraph (b) of this section. The State agency may combine the content of the reminder notice and the adequate notice as long as the notice meets the requirements of the individual notices.

(ii) The quarterly report form, if required, shall be the sole reporting requirement for reporting child support payments during the certification period. Households excluded from monthly reporting as specified in § 273.21(b) and households required to submit monthly reports shall not be required to submit quarterly reports.

(5) State agencies shall not impose any food stamp reporting requirements on households except as provided in paragraph (a) of this section.

(b) *Report forms.* (1) The State agency shall provide the household with a form for reporting the changes required in paragraph (a)(1) of this section to be reported within 10 days and shall pay the postage for return of the form. The change report form shall, at a minimum, include the following:

(i) A space for the household to report whether the change shall continue beyond the report month;

(ii) The civil and criminal penalties for violations of the Act in understandable terms and in prominent and boldface lettering;

(iii) A reminder to the household of its right to claim actual utility costs if its costs exceed the standard;

(iv) The number of the food stamp office and a toll-free number or a number where collect calls will be accepted for households outside the local calling area; and

(v) A statement describing the changes in household circumstances contained in § 273.12(a)(1) that must be reported and a statement which clearly informs the household that it is required to report these changes.

(2) A quarterly report form for reporting changes in the child support obligation and payments shall be written in clear, simple language and meet the bilingual requirements described in § 272.4(b) of this chapter. The report shall meet the requirements of § 273.21(h)(2)(iii) through (h)(2)(vii).

(3) Changes reported over the telephone or in person by the household shall be acted on in the same manner as those reported on the change report form.

(4) A change report form shall be provided to newly certified households at the time of certification, at recertification if the household needs a new form; and a new form shall be sent to the household whenever a change report form is returned by the household. A change report may be provided to households more often at the State agency's option.

(c) *State agency action on changes.* The State agency shall take prompt action on all changes to determine if the change affects the household's eligibility or allotment. However, during the certification period, the State agency shall not act on changes in the medical expenses of households eligible for the medical expense deduction which it learns of from a source other than the household and which, in order to take action, require the State agency to contact the household for verification. The State agency shall only act on those changes in medical expenses that it learns about from a source other than the household if those changes are verified upon receipt and do not necessitate contact with the household. Even if there is no change in the allotment, the State agency shall document the reported change in the casefile, provide another change report form to the household, and notify the household of the receipt of the change report. If the reported change affects the household's eligibility or level of benefits, the adjustment shall also be reported to the household. The State agency shall also advise the household of additional verification requirements, if any, and state that failure to provide verification shall result in increased benefits reverting to the original allotment. The State agency shall document the date a change is reported, which shall be the date the State agency receives a report form or is advised of the change over the telephone or by a personal visit. Restoration of lost benefits shall be provided to any household if the State agency

fails to take action on a change which increases benefits within the time limits specified in paragraph (c)(1) of this section.

(1) *Increase in benefits.* (i) For changes which result in an increase in a household's benefits, other than changes described in paragraph (c)(1)(ii) of this section, the State agency shall make the change effective no later than the first allotment issued 10 days after the date the change was reported to the State agency. For example, a $30 decrease in income reported on the 15th of May would increase the household's June allotment. If the same decrease were reported on May 28, and the household's normal issuance cycle was on June 1, the household's allotment would have to be increased by July.

(ii) For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of $50 or more in the household's gross monthly income, the State agency shall make the change effective not later than the first allotment issued 10 days after the date the change was reported. However, in no event shall these changes take effect any later than the month following the month in which the change is reported. Therefore, if the change is reported after the 20th of a month and it is too late for the State agency to adjust the following month's allotment, the State agency shall issue a supplementary ATP or otherwise provide an opportunity for the household to obtain the increase in benefits by the 10th day of the following month, or the household's normal issuance cycle in that month, whichever is later. For example, a household reporting a $100 decrease in income at any time during May would have its June allotment increased. If the household reported the change after the 20th of May and it was too late for the State agency to adjust the ATP normally issued on June 1, the State agency would issue a supplementary ATP for the amount of the increase by June 10.

(iii) The State agency may elect to verify changes which result in an increase in a household's benefits in accordance with the verification requirements of § 273.2(f)(8)(ii), prior to taking action on these changes. If the State agency elects this option, it must allow the household 10 days from the date the change is reported to provide verification required by § 273.2(f)(8)(ii). If the household provides verification within this period, the State shall take action on the changes within the timeframes specified in paragraphs (c)(1) (i) and (ii) of this section. The timeframes shall run from the date the change was reported, not from the date of verification. If, however, the household fails to provide the required verification within 10 days after the change is reported but does provide the verification at a later date, then the timeframes specified in paragraphs (c)(1) (i) and (ii) of this section for taking action on changes shall run from the date verification is provided rather than from the date the change is reported. If the State agency does not elect this option, verification required by § 273.2(f)(8)(ii) must be obtained prior to the issuance of the second normal monthly allotment after the change is reported. If in these circumstances the household does not provide verification, the household's benefits will revert to the original benefit level. Whenever a State agency increases a household's benefits to reflect a reported change and subsequent verification shows that the household was actually eligible for fewer benefits, the State agency shall establish a claim for the overissuance in accordance with § 273.18. In cases where the State agency has determined that a household has refused to cooperate as defined in § 273.2(d), the State agency shall terminate the household's eligibility following the notice of adverse action.

(2) *Decreases in benefits.* (i) If the household's benefit level decreases or the household becomes ineligible as a result of the change, the State agency shall issue a notice of adverse action within 10 days of the date the change was reported unless one of the exemptions to the notice of adverse action in § 273.13 (a)(3) or (b) applies. When a notice of adverse action is used, the decrease in the benefit level shall be made effective no later than the allotment for the month following the month in which the notice of adverse

action period has expired, provided a fair hearing and continuation of benefits have not been requested. When a notice of adverse action is not used due to one of the exemptions in § 273.13 (a)(3) or (b), the decrease shall be made effective no later than the month following the change. Verification which is required by § 273.2(f) must be obtained prior to recertification.

(ii) The State agency may suspend a household's certification prospectively for one month if the household becomes temporarily ineligible because of a periodic increase in recurring income or other change not expected to continue in the subsequent month. If the suspended household again becomes eligible, the State agency shall issue benefits to the household on the household's normal issuance date. If the suspended household does not become eligible after one month, the State agency shall terminate the household's certification. Households are responsible for reporting changes as required by paragraph (a) of this section during the period of suspension.

(d) *Failure to report.* If the State agency discovers that the household failed to report a change as required by paragraph (a) of this section and, as a result, received benefits to which it was not entitled, the State agency shall file a claim against the household in accordance with § 273.18. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if the household's benefits are reduced. A household shall not be held liable for a claim because of a change in household circumstances which it is not required to report in accordance with § 273.12(a)(1). Individuals shall not be disqualified for failing to report a change, unless the individual is disqualified in accordance with the disqualification procedures specified in § 273.16.

(e) *Mass changes.* Certain changes are initiated by the State or Federal government which may affect the entire caseload or significant portions of the caseload. These changes include, but are not limited to, adjustments to the income eligibility standards, the shelter and dependent care deductions, the maximum food stamp allotment and the standard deduction; annual and seasonal adjustments to State utility standards; periodic cost-of-living adjustments to Retirement, Survivors, and Disability Insurance (RSDI), Supplemental Security Income (SSI) and other Federal benefits; periodic adjustments to Aid to Families with Dependent Children (AFDC) or General Assistance (GA) payments; and other changes in the eligibility and benefit criteria based on legislative or regulatory changes.

(1) *Federal adjustments to eligibility standards, allotments, and deductions, and State adjustments to utility standards.* (i) State agencies shall implement these changes for all households at a specific point in time. Adjustments to Federal standards shall be implemented prospectively regardless of the household's budgeting system. Annual and seasonal adjustments in State utility standards shall also be implemented prospectively for all households.

(A) Adjustments in the maximum food stamp allotment shall be effective in accordance with § 273.10(e)(4)(ii).

(B) Adjustments in the standard deduction shall be effective in accordance with § 273.9(d)(7).

(C) Adjustments in the shelter deduction shall be effective in accordance with § 273.9(d)(8).

(D) Adjustments in the income eligibility standards shall be effective in accordance with § 273.9(a)(3).

(ii) A notice of adverse action shall not be used for these changes. At a minimum, the State agencies shall publicize these mass changes through the news media; posters in certification offices, issuance locations, or other sites frequented by certified households; or general notices mailed to households. At its option, the State agency may send the notice described in paragraph (e)(4) of this section or some other type of written explanation of the change. A household whose certification period overlaps a seasonal variation in the State utility standard shall be advised at the time of initial certification of when the adjustment will occur and what the variation in the benefit level will be, if known.

(2) *Mass changes in public assistance and general assistance.* (i) When the

State agency makes an overall adjustment to public assistance (PA) payments, corresponding adjustments in households' food stamp benefits shall be handled as a mass change in accordance with the procedures in paragraphs (e) (4), (5) and (6) of this section. When the State agency has at least 30 days, advance knowledge of the amount of the PA adjustment, the State agency shall make the change in benefits effective in the same month as the PA change. If the State agency does not have sufficient notice, the food stamp change shall be effective no later than the month following the month in which the PA change was made.

(ii) State agencies which also administer a general assistance (GA) program shall handle mass adjustments to GA payments in accordance with the schedules outlined in paragraph (e)(2)(i) and the procedures in paragraphs (e) (4), (5) and (6) of this section. However, where State agencies do not administer both programs, mass changes in GA payments shall be subject to the schedule in paragraph (e)(3) and the procedures in paragraphs (e) (4), (5) and (6) of this section.

(3) *Mass changes in Federal benefits.* The State agency shall establish procedures for making mass changes to reflect cost-of-living adjustments (COLAs) in benefits and any other mass changes under RSDI, SSI, and other programs such as veteran's assistance under title 38 of the United States Code and the Black Lung Program, where information on COLA's is readily available and is applicable to all or a majority of those programs' beneficiaries. Households on retrospective budgeting but not monthly reporting shall have the change reflected in accordance with the State's system. Monthly reporting households shall report the change on the appropriate monthly report but are not required to report these types of changes outside the monthly report. The State agency shall handle such information provided on the monthly report in accordance with its normal procedures. Households not subject to monthly reporting shall not be responsible for reporting these changes. The State agency shall be responsible for automatically adjusting a household's food stamp benefit level. The change shall be reflected no later than the second allotment issued to nonmonthly reporting households issued after the month in which the change becomes effective.

(4) *Notice for Mass Changes.* When the State agency makes a mass change in food stamp eligibility or benefits by simultaneously converting the caseload or that portion of the caseload that is affected, or by conducting individual desk reviews in place of a mass change, it shall notify all households whose benefits are reduced or terminated in accordance with the requirements of this paragraph, except for mass changes made under § 273.12(e)(1); and

(i) At a minimum, the State agency shall inform the household of:

(A) The general nature of the change;

(B) Examples of the change's effect on households' allotments;

(C) The month in which the change will take effect;

(D) The household's right to a fair hearing;

(E) The household's right to continue benefits and under what circumstances benefits will be continued pending a fair hearing;

(F) General information on whom to contact for additional information; and

(G) The liability the household will incur for any overissued benefits if the fair hearing decision is adverse.

(ii) At a minimum, the State agency shall notify the household of the mass change or the result of the desk review on the date the household is scheduled to receive the allotment which has been changed.

(iii) In addition, the State shall notify the household of the mass change as much before the household's scheduled issuance date as reasonably possible, although the notice need not be given any earlier than the time required for advance notice of adverse action.

(5) *Fair hearings.* The household shall be entitled to request a fair hearing when it is aggrieved by the mass change.

(6) *Continuation of benefits.* A household which requests a fair hearing due to a mass change shall be entitled to continued benefits at its previous level only if the household meets three criteria;

(i) The household does not specifically waive its right to a continuation of benefits;

(ii) The household requests a fair hearing in accordance with § 273.13(a)(1); and

(iii) The household's fair hearing is based upon improper computation of food stamp eligibility or benefits, or upon misapplication or misinterpretation of Federal law or regulation.

(f) *PA and GA households.* (1) Except as provided in paragraph (f)(2) of this section, PA households have the same reporting requirements as any other food stamp household. PA households which report a change in circumstances to the PA worker shall be considered to have reported the change for food stamp purposes. All of the requirements pertaining to reporting changes for PA households shall be applied to GA households in project areas where GA and food stamp cases are processed jointly in accordance with provisions of § 273.2(j)(3).

(2)(i) State agencies may use a joint change reporting form for households to report changes for both PA and food stamp purposes. Whenever a joint change reporting form is used, the State agency shall insure that adjustments are made in a household's eligibility status or allotment for the months determined appropriate given the household's budgeting cycle.

(ii) State agencies may combine the use of a joint PA/food stamp change reporting form with a PA reporting system that demands the regular submission of reports, such as a monthly reporting system. The State agency shall insure that the procedures in § 273.21(h) are followed.

(3) Households shall be notified whenever their benefits are altered as a result of changes in the PA benefits or whenever the food stamp certification period is shortened to reflect changes in the household's circumstances. If the certification period is shortened, the household's certification period shall not end any earlier than the month following the month in which the State agency determines that the certification period should be shortened, allowing adequate time for the State agency to send a notice of expiration and for the household to timely reapply. If the PA benefits are terminated but the household is still eligible for food stamp benefits, members of the household shall be advised of food stamp work registration requirements, if applicable, as their WIN registration exemption no longer applies.

(4) Whenever a change results in the reduction or termination of a household's PA benefits within its food stamp certification period, and the State agency has sufficient information to determine how the change affects the household's food stamp eligibility and benefit level, the State agency shall take the following actions:

(i) If a change in household circumstances requires both a reduction or termination in the PA payment and a reduction or termination in food stamp benefits, the State agency shall issue a single notice of adverse action for both the PA and food stamp actions. If the household requests a fair hearing within the period provided by the notice of adverse action, the household's food stamp benefits shall be continued on the basis authorized immediately prior to sending the notice. If the fair hearing is requested for both programs' benefits, the hearing shall be conducted according to PA procedures and timeliness standards. However, the household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, the change shall be made effective in accordance with the procedures specified in paragraph (c) of this section.

(ii) If the household's food stamp benefits will be increased as a result of the reduction or termination of PA benefits, the State agency shall issue the PA notice of adverse action, but shall not take any action to increase the household's food stamp benefits until the household decides whether it will appeal the adverse action. If the household decides to appeal and its PA benefits are continued, the household's food stamp benefits shall continue at the previous basis. If the household does not appeal, the State agency shall make the change effective in accordance with the procedures specified in paragraph (c) of this section, except

that the time limits for the State agency to act on changes which increase a household's benefits shall be calculated from the date the PA notice of adverse action period expires.

(5) Whenever a change results in the termination of a household's PA benefits within its food stamp certification period, and the State agency does not have sufficient information to determine how the change affects the household's food stamp eligibility and benefit level (such as when an absent parent returns to a household, rendering the household categorically ineligible for public assistance, and the State agency does not have any information on the income of the new household member), the State agency shall not terminate the household's food stamp benefits but shall instead take the following action:

(i) Where a PA notice of adverse action has been sent, the State agency shall wait until the household's notice of adverse action period expires or until the household requests a fair hearing, whichever occurs first. If the household requests a fair hearing and its PA benefits are continued pending the appeal, the household's food stamp benefits shall be continued at the same basis.

(ii) If a PA notice of adverse action is not required, or the household decides not to request a fair hearing and continuation of its PA benefits, the State agency shall send the household a notice of expiration which informs the household that its certification period will expire at the end of the month following the month the notice of expiration is sent and that it must reapply if it wishes to continue to participate. The notice of expiration shall also explain to the household that its certification period is expiring because of changes in its circumstances which may affect its food stamp eligibility and benefit level.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §273.12, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### §273.13 Notice of adverse action.

(a) *Use of notice.* Prior to any action to reduce or terminate a household's benefits within the certification period, the State agency shall, except as provided in paragraph (b) of this section, provide the household timely and adequate advance notice before the adverse action is taken.

(1) The notice of adverse action shall be considered timely if the advance notice period conforms to that period of time defined by the State agency as an adequate notice period for its public assistance caseload, provided that the period includes at least 10 days from the date the notice is mailed to the date upon which the action becomes effective. Also, if the adverse notice period ends on a weekend or holiday, and a request for a fair hearing and continuation of benefits is received the day after the weekend or holiday, the State agency shall consider the request timely received.

(2) The notice of adverse action shall be considered adequate if it explains in easily understandable language: The proposed action; the reason for the proposed action; the household's right to request a fair hearing; the telephone number of the food stamp office (toll-free number or a number where collect calls will be accepted for households outside the local calling area) and, if possible, the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service.

(3) The State agency may notify a household that its benefits will be reduced or terminated, no later than the date the household receives, or would have received, its allotment, if the following conditions are met:

(i) The household reports the information which results in the reduction or termination.

(ii) The reported information is in writing and signed by the household.

(iii) The State agency can determine the household's allotment or ineligibility based solely on the information provided by the household as required in paragraph (a)(3)(ii) of this section.

(iv) The household retains its right to a fair hearing as allowed in § 273.15.

(v) The household retains its right to continued benefits if the fair hearing is requested within the time period set by the State agency in accordance with § 273.13(a)(1).

(vi) The State agency continues the household's previous benefit level, if required, within five working days of the household's request for a fair hearing.

(b) *Exemptions from notice.* Individual notices of adverse action shall not be provided when:

(1) The State initiates a mass change as described in § 273.12(e).

(2) The State agency determines, based on reliable information, that all members of a household have died.

(3) The State agency determines, based on reliable information, that the household has moved from the project area.

(4) The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the increased allotment would terminate.

(5) The household's allotment varies from month to month within the certification period to take into account changes which were anticipated at the time of certification, and the household was so notified at the time of certification.

(6) The household jointly applied for PA/GA and food stamp benefits and has been receiving food stamp benefits pending the approval of the PA/GA grant and was notified at the time of certification that food stamp benefits would be reduced upon approval of the PA/GA grant.

(7) A household member is disqualified for intentional Program violation, in accordance with § 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member. The notice requirements for individuals or households affected by intentional Program violation disqualifications are explained in § 273.16.

(8) The State agency has elected to assign a longer certification period to a household certified on an expedited basis and for whom verification was postponed, provided the household has received written notice that the receipt of benefits beyond the month of application is contingent on its providing the verification which was initially postponed and that the State agency may act on the verified information without further notice as provided in § 273.2(i)(4).

(9) The State agency must change the household's benefits back to the original benefit level as required in § 273.12(c)(1)(iii).

(10) Converting a household from cash and/or food stamp coupon repayment to benefit reduction as a result of failure to make agreed upon repayment as discussed in § 273.18.

(11) The State agency is terminating the eligibility of a resident of a drug or alcoholic treatment center or a group living arrangement if the facility loses either its certification from the appropriate agency or agencies of the State (as defined in § 271.2) or has its status as an authorized representative suspended due to FCS disqualifying it as a retailer. However, residents of group living arrangements applying on their own behalf are still eligible to participate.

(12) The household voluntarily requests, in writing or in the presence of a caseworker, that its participation be terminated. If the household does not provide a written request, the State agency shall send the household a letter confirming the voluntary withdrawal. Written confirmation does not entail the same rights as a notice of adverse action except that the household may request a fair hearing.

(13) The State agency determines, based on reliable information, that the household will not be residing in the project area and, therefore, will be unable to obtain its next allotment. The State agency shall inform the household of its termination no later than its next scheduled issuance date. While the State agency may inform the household before its next issuance date, the State agency shall not delay terminating the household's participation in order to provide advance notice.

(14) The State agency initiates recoupment of a claim as specified in § 273.18(g)(4) against a household which

has previously received a notice of adverse action with respect to such claim.

(c) *Optional notice.* The State agency may, at its option, send the household an adequate notice as provided in paragraph (b)(3) of this section when the household's address is unknown and mail directed to it has been returned by the post office indicating no known forwarding address.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §273.13, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### §273.14 Recertification.

(a) *General.* No household may participate beyond the expiration of the certification period assigned in accordance with §273.10(f) without a determination of eligibility for a new period. The State agency must establish procedures for notifying households of expiration dates, providing application forms, scheduling interviews, and recertifying eligible households prior to the expiration of certification periods. Households must apply for recertification and comply with interview and verification requirements.

(b) *Recertification process.* (1) *Notice of expiration.* (i) The State agency shall provide households certified for one month or certified in the second month of a two-month certification period a notice of expiration (NOE) at the time of certification. The State agency shall provide other households the NOE before the first day of the last month of the certification period, but not before the first day of the next-to-the-last month. Jointly processed PA and GA households need not receive a separate food stamp notice if they are recertified for food stamps at the same time as their PA or GA redetermination.

(ii) Each State agency shall develop a NOE. A model form (Form FCS–439) is available from FCS. The NOE must contain the following:

(A) The date the certification period expires;

(B) The date by which a household must submit an application for recertification in order to receive uninterrupted benefits;

(C) The consequences of failure to apply for recertification in a timely manner;

(D) Notice of the right to receive an application form upon request and to have it accepted as long as it contains a signature and a legible name and address;

(E) Information on alternative submission methods available to households which cannot come into the certification office or do not have an authorized representative and how to exercise these options;

(F) The address of the office where the application must be filed;

(G) The household's right to request a fair hearing if the recertification is denied or if the household objects to the benefit issuance;

(H) Notice that any household consisting only of Supplemental Security Income (SSI) applicants or recipients is entitled to apply for food stamp recertification at an office of the Social Security Administration;

(I) Notice that failure to attend an interview may result in delay or denial of benefits; and

(J) Notice that the household is responsible for rescheduling a missed interview and for providing required verification information.

(iii) To expedite the recertification process, State agencies are encouraged to send a recertification form, an interview appointment letter, and a statement of needed verification required by §273.2(c)(5) with the NOE.

(2) *Application form.* (i) The State agency shall provide each household with an application form to obtain all information needed to determine eligibility and benefits for a new certification period. The State agency may use either its regular application as defined in §273.2(b) or a special recertification form. The recertification form can only be used by households which are applying for recertification before the end of their current certification period. Recertification forms must be approved by FCS as required by §273.2(b)(3). Recertification forms used for joint food stamps/SSI processing must be approved by SSA in accordance with §273.2(k)(1)(i)(B). The recertification form must elicit from the

household sufficient information regarding household composition, income and resources that, when added to information already contained in the casefile, will ensure an accurate determination of eligibility and benefits. The information required by § 273.2(b)(1)(i),(b)(1)(ii), (b)(1)(iii), (b)(1)(iv) and (b)(1)(v) must be included on the recertification form. The information regarding the Income and Eligibility Verification System in § 273.2(b)(2) may be provided on a separate form. A combined form for PA and GA households may be used in accordance with § 273.2(j). Monthly reporting households shall be recertified as provided in § 273.21(q). State agencies may use the same form for households required to report changes in circumstances and monthly reporting households.

(ii) The State agency may request that the household bring the application form to the interview or return the form by a specified date (not less than 15 days after receipt of the form).

(3) *Interview*. (i) As part of the recertification process, the State agency shall conduct a face-to-face interview with a member of each household. The face-to-face interview may be waived in accordance with § 273.2(e). The State agency may also waive the face-to-face interview for a household that has no earned income if all of its members are elderly or disabled. The State agency has the option of conducting a telephone interview or a home visit for those households for whom the office interview is waived. However, a household that requests a face-to-face interview must be granted one.

(ii) If a household receives PA/GA and will be recertified for food stamps more than once in a 12-month period, the State agency may choose to conduct a face-to-face interview with that household only once during that period. The face-to-face interview shall be conducted at the same time that the household receives a face-to-face interview for PA/GA purposes. At any other recertification during that year period, the State agency may interview the household by telephone, conduct a home visit, or recertify the household by mail.

(iii) The State agency may schedule the interview prior to the application filing date, provided that the household's application is not denied at that time for failure to appear for the interview. The State agency shall schedule the interview on or after the date the application was filed if the interview has not been previously scheduled, or the household has failed to appear for any interviews scheduled prior to this time and has requested another interview. State agencies shall schedule interviews so that the household has at least 10 days after the interview in which to provide verification before the certification period expires.

(4) *Verification*. Information provided by the household shall be verified in accordance with § 273.2(f)(8)(i). The State agency shall provide the household a notice of required verification as provided in § 273.2(c)(5) and notify the household of the date by which the verification requirements must be satisfied. The household must be allowed a minimum of 10 days to provide required verification information. Any household whose eligibility is not determined by the end of its current certification period due to the time period allowed for submitting any missing verification shall receive an opportunity to participate, if eligible, within 5 working days after the household submits the missing verification.

(c) *Timely application for recertification*. (1) Households reporting required changes in circumstances that are certified for one month or certified in the second month of a two-month certification period shall have 15 days from the date the NOE is received to file a timely application for recertification.

(2) Other households reporting required changes in circumstances that submit applications by the 15th day of the last month of the certification period shall be considered to have made a timely application for recertification.

(3) For monthly reporting households, the filing deadline shall be either the 15th of the last month of the certification period or the normal date for filing a monthly report, at the State agency's option. The option chosen must be uniformly applied to the

State agency's entire monthly reporting caseload.

(4) For households consisting only of SSI applicants or recipients who apply for food stamp recertification at SSA offices in accordance with § 273.2(k)(1), an application shall be considered filed for normal processing purposes when the signed application is received by the SSA.

(d) *Timely processing.* (1) Households that were certified for one month or certified for two months in the second month of the certification period and have met all required application procedures shall be notified of their eligibility or ineligibility. Eligible households shall be provided an opportunity to receive benefits no later than 30 calendar days after the date the household received its last allotment.

(2) Other households that have met all application requirements shall be notified of their eligibility or ineligibility by the end of their current certification period. In addition, the State agency shall provide households that are determined eligible an opportunity to participate by the household's normal issuance cycle in the month following the end of its current certification period.

(e) *Delayed processing.* (1) *Delays caused by the State agency.* Households which have submitted an application for recertification in a timely manner but, due to State agency error, are not determined eligible in sufficient time to provide for issuance of benefits by the household's next normal issuance date shall receive an immediate opportunity to participate upon being determined eligible, and the allotment shall not be prorated. If the household was unable to participate for the month following the expiration of the certification period because of State agency error, the household is entitled to restored benefits.

(2) *Delays caused by the household.* (i) If a household does not submit a new application by the end of the certification period, the State agency must close the case without further action.

(ii) If a recertification form is submitted more than one month after the timely filing deadline, it shall be treated the same as an application for initial certification. In accordance with § 273.10(a)(1)(ii), the household's benefits shall not be prorated unless there has been a break of more than one month in the household's certification.

(iii) A household which submits an application by the filing deadline but does not appear for an interview scheduled after the application has been filed, or does not submit verification within the required timeframe, loses its right to uninterrupted benefits. The State agency has three options for handling such cases:

(A) Send the household a denial notice as soon as the household either fails to appear for an interview or fails to submit verification information within the required timeframe. If the interview is completed, or the household provides the required verification information within 30 days of the date of application and is determined eligible, the household must be reinstated and receive benefits within 30 calendar days after the application was filed or within 10 days of the date the interview is completed or required verification information is provided, whichever is later. In no event shall a subsequent period's benefits be provided before the end of the current certification period.

(B) Deny the household's recertification application at the end of the last month of the current certification period. The State agency may on a Statewide basis either require households to submit new applications to continue benefits or reinstate the households without requiring new applications if the households have been interviewed and have provided the required verification information within 30 days after the applications have been denied.

(C) Deny the household's recertification request 30 days after application. The State agency may on a Statewide basis either require households to submit new applications to continue benefits or reinstate households without requiring new applications if such households have been interviewed and have provided the required verification within 30 days after the applications have been denied.

(f) *Expedited service.* A State agency is not required to apply the expedited service provisions of § 273.2(i) at recertification if the household applies for

recertification before the end of its current certification period.

[Amdt. 364, 61 FR 54318, Oct. 17, 1996]

EFFECTIVE DATE NOTE: At 61 FR 54318, Oct. 17, 1996, § 273.14(b)(2) was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

### § 273.15 Fair hearings.

(a) *Availability of hearings.* Except as provided in § 271.7(f), each State agency shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the houshold in the Program.

(b) *Hearing system.* Each State agency shall provide for either a fair hearing at the State level or for a hearing at the local level which permits the household to further appeal a local decision to a State level fair hearing. State agencies may adopt local level hearings in some project areas and maintain only State level hearings in other project areas.

(c) *Timely action on hearings*—(1) *State level hearings.* Within 60 days of receipt of a request for a fair hearing, the State agency shall assure that the hearing is conducted, a decision is reached, and the household and local agency are notified of the decision. Decisions which result in an increase in household benefits shall be reflected in the coupon allotment within 10 days of the receipt of the hearing decision even if the State agency must provide a supplementary ATP or otherwise provide the household with an opportunity to obtain the allotment outside of the normal issuance cycle. However, the State agency may take longer than 10 days if it elects to make the decision effective in the household's normal issuance cycle, provided that the issuance will occur within 60 days from the household's request for the hearing. Decisions which result in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the hearing decision.

(2) *Local level hearings.* Within 45 days of receipt of a request for a fair hearing, the State agency shall assure that the hearing is conducted, and that a decision is reached and reflected in the coupon allotment.

(3) *Appeals of local level decisions.* Within 45 days of receipt of any request for a State level review of a decision or for a new State level hearing, the State agency shall assure that the review or the new hearing is conducted, and that a decision is reached and reflected in the coupon allotment.

(4) *Household requests for postponement.* The household may request and is entitled to receive a postponement of the scheduled hearing. The postponement shall not exceed 30 days and the time limit for action on the decision may be extended for as many days as the hearing is postponed. For example, if a State level hearing is postponed by the household for 10 days, notification of the hearing decision will be required within 70 days from the date of the request for a hearing.

(d) *Agency conferences.* (1) The State agency shall offer agency conferences to households which wish to contest a denial of expedited service under the procedures in § 273.2(i). The State agency may also offer agency conferences to households adversely affected by an agency action. The State agency shall advise households that use of an agency conference is optional and that it shall in no way delay or replace the fair hearing process. The agency conferences may be attended by the eligibility worker responsible for the agency action, and shall be attended by an eligibility supervisor and/or the agency director, and by the household and/or its representative. An agency conference may lead to an informal resolution of the dispute. However, a fair hearing must still be held unless the household makes a written withdrawal of its request for a hearing.

(2) An agency conference for households contesting a denial of expedited service shall be scheduled within 2 working days, unless the household requests that it be scheduled later or states that it does not wish to have an agency conference.

(e) *Consolidated hearings.* State agencies may respond to a series of individual requests for hearings by conducting a single group hearing. State agencies may consolidate only cases where individual issues of fact are not disputed and where related issues of State and/or Federal law, regulation or policy are the sole issues being raised. In all group hearings, the regulations governing individual hearings must be followed. Each individual household shall be permitted to present its own case or have its case presented by a representative.

(f) *Notification of right to request hearing.* At the time of application, each household shall be informed in writing of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or a representative, such as a legal counsel, a relative, a friend or other spokesperson. In addition, at any time the household expresses to the State agency that it disagrees with a State agency action, it shall be reminded of the right to request a fair hearing. If there is an individual or organization available that provides free legal representation, the household shall also be informed of the availability of that service.

(g) *Time period for requesting hearing.* A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days. Action by the State agency shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.

(h) *Request for hearing.* A request for a hearing is defined as a clear expression, oral or written, by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired. If it is unclear from the household's request what action it wishes to appeal, the State agency may request the household to clarify its grievance. The freedom to make a request for a hearing shall not be limited or interfered with in any way.

(i) *State agency responsibilities on hearing requests.* (1) Upon request, the State agency shall make available without charge the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing. If the individual making the request speaks a language other than English and the State agency is required by § 272.4(c)(3) to provide bilingual staff or interpreters who speak the appropriate language, the State agency shall insure that the hearing procedures are verbally explained in that language. Upon request, the State agency shall also help a household with its hearing request. If a household makes an oral request for a hearing, the State agency shall complete the procedures necessary to start the hearing process. Households shall be advised of any legal services available that can provide representation at the hearing.

(2) The State agency shall expedite hearing requests from households, such as migrant farmworkers, that plan to move from the jurisdiction of the hearing official before the hearing decision would normally be reached. Hearing requests from these households shall be processed faster than others if necessary to enable them to receive a decision and a restoration of benefits if the decision so indicates before they leave the area.

(3) The State agency shall publish clearly written uniform rules of procedure that conform to these regulations and shall make the rules available to any interested party. At a minimum, the uniform rules of procedure shall include the time limits for hearing requests as specified in paragraph (g) of this section, advance notification requirements as specified in paragraph (i)(1) of this section, hearing timeliness standards as specified in paragraph (c) of this section, and the rights and responsibilities of persons requesting a hearing as specified in paragraph (p) of this section.

(j) *Denial or dismissal of request for hearing.* The State agency shall not deny or dismiss a request for a hearing unless:

(1) The request is not received within the time period specified in paragraph (g) of this section;

(2) The request is withdrawn in writing by the household or its representative; or

(3) The household or its representative fails, without good cause, to appear at the scheduled hearing.

(k) *Continuation of benefits.* (1) If a household requests a fair hearing within the period provided by the notice of adverse action, as set forth in § 273.13, and its certification period has not expired, the household's participation in the program shall be continued on the basis authorized immediately prior to the notice of adverse action, unless the household specifically waives continuation of benefits. The form for requesting a fair hearing shall contain space for the household to indicate whether or not continued benefits are requested. If the form does not positively indicate that the household has waived continuation of benefits, the State agency shall assume that continuation of benefits is desired and the benefits shall be issued accordingly. If the State agency action is upheld by the hearing decision, a claim against the household shall be established for all overissuances. If a hearing request is not made within the period provided by the notice of adverse action, benefits shall be reduced or terminated as provided in the notice. However, if the household establishes that its failure to make the request within the advance notice period was for good cause, the State agency shall reinstate the benefits to the prior basis. When benefits are reduced or terminated due to a mass change, participation on the prior basis shall be reinstated only if the issue being contested is that food stamp eligibility or benefits were improperly computed or that Federal law or regulation is being misapplied or misinterpreted by the State agency.

(2) Once continued or reinstated, benefits shall not be reduced or terminated prior to the receipt of the official hearing decision unless:

(i) The certification period expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the State agency;

(ii) The hearing official makes a preliminary determination, in writing and at the hearing, that the sole issue is one of Federal law or regulation and that the household's claim that the State agency improperly computed the benefits or misinterpreted or misapplied such law or regulation is invalid;

(iii) A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent notice of adverse action; or

(iv) A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending.

(3) The State agency shall promptly inform the household in writing if benefits are reduced or terminated pending the hearing decision.

(l) *Notification of time and place of hearing.* The time, date, and place of the hearing shall be arranged so that the hearing is accessible to the household. At least 10 days prior to the hearing, advance written notice shall be provided to all parties involved to permit adequate preparation of the case. However, the household may request less advance notice to expedite the scheduling of the hearing. The notice shall:

(1) Advise the household or its representative of the name, address, and phone number of the person to notify in the event it is not possible for the household to attend the scheduled hearing.

(2) Specify that the State agency will dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause.

(3) Include the State agency hearing procedures and any other information that would provide the household with an understanding of the proceedings and that would contribute to the effective presentation of the household's case.

(4) Explain that the household or representative may examine the case file prior to the hearing.

(m) *Hearing official.* Hearings shall be conducted by an impartial official(s) who: Does not have any personal stake

or involvement in the case; was not directly involved in the initial determination of the action which is being contested; and was not the immediate supervisor of the eligibility worker who took the action. State level hearings shall be conducted by State level personnel and shall not be conducted by local level personnel.

(1) *Designation of hearing official.* The hearing official shall be:

(i) An employee of the State agency;

(ii) An individual under contract with the State agency;

(iii) An employee of another public agency designated by the State agency to conduct hearings;

(iv) A member or official of a statutory board or other legal entity designated by the State agency to conduct hearings; or

(v) An executive officer of the State agency, a panel of officials of the State agency or a person or persons expressly appointed to conduct State level hearings or to review State and/or local level hearing decisions.

(2) *Power and duties.* The hearing official shall:

(i) Administer oaths or affirmations if required by the State;

(ii) Insure that all relevant issues are considered;

(iii) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(iv) Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing;

(v) Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the State agency;

(vi) Provide a hearing record and recommendation for final decision by the hearing authority; or, if the hearing official is the hearing authority, render a hearing decision in the name of the State agency, in accordance with paragraph (q) of this section, which will resolve the dispute.

(n) *Hearing authority.* The hearing authority shall be the person designated to render the final administrative decision in a hearing. The same person may act as both the hearing official and the hearing authority. The hearing authority shall be subject to the requirements specified in paragraph (m) of this section.

(o) *Attendance at hearing.* The hearing shall be attended by a representative of the State agency and by the household and/or its representative. The hearing may also be attended by friends or relatives of the household if the household so chooses. The hearing official shall have the authority to limit the number of persons in attendance at the hearing if space limitations exist.

(p) *Household rights during hearing.* The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the household feel most at ease. The household or its representative must be given adequate opportunity to:

(1) Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. The contents of the case file including the application form and documents of verification used by the State agency to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the State agency shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

(2) Present the case or have it presented by a legal counsel or other person.

(3) Bring witnesses.

(4) Advance arguments without undue interference.

(5) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

(6) Submit evidence to establish all pertinent facts and circumstances in the case.

(q) *Hearing decisions.* (1) Decisions of the hearing authority shall comply with Federal law and regulations and shall be based on the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for a final decision by the hearing authority. This record shall be retained in accordance with § 272.1(f). This record shall also be available to the household or its representative at any reasonable time for copying and inspection.

(2) A decision by the hearing authority shall be binding on the State agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent Federal regulations. The decision shall become a part of the record.

(3) The household and the local agency shall each be notified in writing of: The decision; the reasons for the decision in accordance with paragraph (q)(2) of this section; the available appeal rights; and that the household's benefits will be issued or terminated as decided by the hearing authority. The notice shall also state that an appeal may result in a reversal of the decision. The following are additional notice requirements and the available appeal rights:

(i) After a State level hearing decision which upholds the State agency action, the household shall be notified of the right to pursue judicial review of the decision. In addition, in States which provide for rehearings of State level decisions, the household shall be notified of the right to pursue a rehearing.

(ii) After a local level hearing decision which upholds the State agency action, the household shall be notified of the right to request a completely new State agency level hearing, and that a reversal of the decision may result in the restoration of lost benefits to the household. In addition, the household shall be advised that if a new hearing would pose an inconvenience to the household, a State level review of the decision based on the hearing record may be requested instead of a new hearing. A clear description of the two appeal procedures must be included to enable the household to make an informed choice, if it wishes to appeal. If the household indicates that it wishes to appeal, but does not select the method, the State agency shall proceed with a new State level hearing.

(4) If the household wishes to appeal a local level hearing decision, the appeal request must be filed within 15 days of the mailing date of the hearing decision notice. Within 45 days of receipt of any request for a State level review of the decision or for a new State level hearing, the State agency shall assure that the review or the hearing is conducted, and that a decision is reached and reflected in the coupon allotment. If a new hearing will not be held, the State level hearing official will review the local level hearing record to determine if the local decision was supported by substantial evidence. State level review procedures shall provide for notifying the local agency and the household that each may file a summary of arguments which shall become a part of the record if timely received. Both parties shall be advised that failure to file a summary will not be considered in deciding the case and that the summary must be postmarked within 10 days of receipt of the notice.

(5) All State agency hearing records and decisions shall be available for public inspection and copying, subject to the disclosure safeguards provided in § 272.1(c), and provided identifying names and addresses of household members and other members of the public are kept confidential.

(r) *Implementation of local level hearing decision.* (1) In the event the local hearing decision upholds the State agency action, any benefits to the household which were continued pending the hearing shall be discontinued beginning with the next scheduled issuance, regardless of whether or not an appeal is filed. Collection action for any claims against the household for overissuances shall be postponed until

the 15-day appeal request period has elapsed, or if an appeal is requested, until the State agency upholds the decision of the local hearing authority.

(2) In the event the local hearing authority decides in favor of the household, benefits to the household shall begin or be reinstated, as required by the decision, within the 45-day time limit allowed for local hearing procedures. Any lost benefits due to the household shall be issued as soon as administratively feasible. The State agency shall restore benefits to households which are leaving the project area before the departure whenever possible. If benefits are not restored prior to the household's departure, the State agency shall forward an authorization to the benefits to the household or to the new project area if this information is known. The new project area shall accept an authorization and issue the appropriate benefits whether the notice is presented by the household or received directly from another project area.

(s) *Implementation of final State agency decisions.* The State agency is responsible for insuring that all final hearing decisions are reflected in the household's coupon allotment within the time limits specified in paragraph (c) of this section.

(1) When the hearing authority determines that a household has been improperly denied program benefits or has been issued a lesser allotment than was due, lost benefits shall be provided to the household in accordance with §273.17. The State agency shall restore benefits to households which are leaving the project area before the departure whenever possible. If benefits are not restored prior to the household's departure, the State agency shall forward an authorization to the benefits to the household or to the new project area if this information is known. The new project area shall accept an authorization and issue the appropriate benefits whether the notice is presented by the household or received directly from another project area.

(2) When the hearing authority upholds the State agency's action, a claim against the household for any overissuances shall be prepared in accordance with §273.18.

(t) *Review of appeals of local level decisions.* State agencies which adopt a local level hearing system shall establish a procedure for monitoring local level hearing decisions. The number of local level decisions overturned upon appeal to a State level hearing shall be examined. If the number of reversed decisions is excessive, the State agency shall take corrective action.

(u) *Departmental review of decisions contrary to Federal law and regulations.* [Reserved]

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 132, 44 FR 33385, June 8, 1979; Amdt. 146, 46 FR 1427, Jan. 6, 1981; Amdt. 269, 51 FR 10793, Mar. 28, 1986; Amdt. 356, 59 FR 29713, June 9, 1994]

### §273.16 Disqualification for intentional Program violation.

(a) *Administrative responsibility.* (1) The State agency shall be responsible for investigating any case of alleged intentional Program violation, and ensuring that appropriate cases are acted upon either through administrative disqualification hearings or referral to a court of appropriate jurisdiction in accordance with the procedures outlined in this section. Administrative disqualification procedures or referral for prosecution action should be initiated by the State agency in cases in which the State agency has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of intentional Program violation as defined in paragraph (c) of this section. If the State agency does not initiate administrative disqualification procedures or refer for prosecution a case involving an overissuance caused by a suspected act of intentional Program violation, the State agency shall take action to collect the overissuance by establishing an inadvertent household error claim against the household in accordance with the procedures in §273.18. The State agency should conduct administrative disqualification hearings in cases in which the State agency believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system, in cases previously referred for prosecution that were declined by the

appropriate legal authority, and in previously referred cases where no action was taken within a reasonable period of time and the referral was formally withdrawn by the State agency. The State agency shall not initiate an administrative disqualification hearing against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction, if the factual issues of the case arise out of the same, or related, circumstances. The State agency may initiate administrative disqualification procedures or refer a case for prosecution regardless of the current eligibility of the individual. For those persons not currently certified to participate in the Program at the time of the administrative disqualification or court decision, the disqualification period shall take effect immediately after the individual applies for and is determined eligible for Program benefits.

(2) Each State agency shall establish a system for conducting administrative disqualifications for intentional Program violation which conforms with the procedures outlined in paragraph (e) of this section. FCS shall exempt any State agency from the requirement to establish an administrative disqualification system if the State agency has already entered into an agreement, pursuant to paragraph (g)(1) of this section, with the State's Attorney General's Office or, where necessary, with county prosecutors. FCS shall also exempt any State agency from the requirement to establish an administrative disqualification system if there is a State law that requires the referral of such cases for prosecution and if the State agency demonstrates to FCS that it is actually referring cases for prosecution and that prosecutors are following up on the State agency's referrals. FCS may require a State agency to establish an administrative disqualification system if it determines that the State agency is not promptly or actively pursuing suspected intentional Program violation claims through the courts.

(3) The State agency shall base administrative disqualifications for intentional Program violations on the determinations of hearing authorities arrived at through administrative disqualification hearings in accordance with paragraph (e) of this section or on determinations reached by courts of appropriate jurisdiction in accordance with paragraph (g) of this section. However, any State agency has the option of allowing accused individuals either to waive their rights to administrative disqualification hearings in accordance with paragraph (f) of this section or to sign disqualification consent agreements for cases of deferred adjudication in accordance with paragraph (h) of this section. Any State agency which chooses either of these options may base administrative disqualifications for intentional Program violation on the waived right to an administrative disqualification hearing or on the signed disqualification consent agreement in cases of deferred adjudication.

(b) *Disqualification penalties.* (1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of six months for the first intentional Program violation, except as provided under paragraphs (b)(2) and (b)(3) of this section;

(ii) For a period of twelve months upon the second occasion of any intentional Program violation, except as provided in paragraphs (b)(2) and (b)(3) of this section; and

(iii) Permanently for the third occasion of any intentional Program violation.

(2) Individuals found by a Federal, State or local court to have used or received coupons in a transaction involving the sale of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) shall be ineligible to participate in the Program:

(i) For a period of twelve months upon the first occasion of such violation; and

(ii) Permanently upon the second occasion of such violation.

(3) Individuals found by a Federal, State or local court to have used or received coupons in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the Program upon the first occasion of such violation.

(4) The penalties in paragraphs (b)(2) and (b)(3) of this section shall also apply in cases of deferred adjudication as described in paragraph (h) of this section, where the court makes a finding that the individual engaged in the conduct described in paragraph (b)(2) or (b)(3) of this section.

(5) If a court fails to impose a disqualification or a disqualification period for any intentional Program violation, the State agency shall impose the appropriate disqualification penalty specified in paragraphs (b)(1), (b)(2) or (b)(3) of this section unless it is contrary to the court order.

(6) One or more intentional Program violations which occurred prior to April 1, 1983 shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration.

(7) Regardless of when an action taken by an individual which caused an intentional Program violation occurred, the disqualification periods specified in paragraphs (b)(2) and (b)(3) of this section shall apply to any case in which the court makes the requisite finding on or after September 1, 1994.

(8) State agencies shall disqualify only the individual found to have committed the intentional Program violation, or who signed the waiver of the right to an administrative disqualification hearing or disqualification consent agreement in cases referred for prosecution, and not the entire household.

(9) Even though only the individual is disqualified, the household, as defined in § 273.1, is responsible for making restitution for the amount of any overpayment. All intentional Program violation claims shall be established and collected in accordance with the procedures set forth in § 273.18.

(c) *Definition of intentional Program violation.* For purposes of determining through administrative disqualification hearings whether or not a person has committed an intentional Program violation, intentional Program violations shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts, or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or ATP's.

(d) *Notification to applicant households.* The State agency shall inform the household in writing of the disqualification penalties for intentional Program violation each time it applies for Program benefits. The penalties shall be in clear, prominent, and boldface lettering on the application form.

(e) *Disqualification hearings.* The State agency shall conduct administrative disqualification hearings for individuals accused of intentional Program violation in accordance with the requirements outlined in this section.

(1) *Consolidation of administrative disqualification hearing with fair hearing.* The State agency may combine a fair hearing and an administrative disqualification hearing into a single hearing if the factual issues arise out of the same, or related, circumstances and the household receives prior notice that hearings will be combined. If the disqualification hearing and fair hearing are combined, the State agency shall follow the timeframes for conducting disqualification hearings. If the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not intentional Program violation has occurred, the household shall lose its right to a subsequent fair hearing on the amount of the claim. However, the State agency shall, upon household request, allow the household to waive the 30-day advance notice period required by paragraph (e)(3)(i) of this section when the disqualification hearing and fair hearing are combined.

(2) *Disqualification hearing procedures.* (i) State agencies have the option of using the same hearing officials for disqualification hearings and fair hearings

or designating hearing officials to conduct only disqualification hearings.

(ii) The provisions of § 273.15 (m), (n), (o), (p), and (q)(1) are also applicable for disqualification hearings.

(iii) At the disqualification hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(iv) Within 90 days of the date the household member is notified in writing that a State or local hearing initiated by the State agency has been scheduled, the State agency shall conduct the hearing, arrive at a decision and notify the household member and local agency of the decision. The household member or representative is entitled to a postponement of the scheduled hearing, provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. However, the hearing shall not be postponed for more than a total of 30 days and the State agency may limit the number of postponements to one. If the hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

(v) The State agency shall publish clearly written rules of procedure for disqualification hearings, and shall make these procedures available to any interested party.

(3) *Advance notice of hearing.* (i) The State agency shall provide written notice to the individual suspected of committing an intentional Program violation at least 30 days in advance of the date a disqualification hearing initiated by the State agency has been scheduled. If mailed, the notice shall be sent either first class mail or certified mail-return receipt requested. The notice may also be provided by any other reliable method. If the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held.

(ii) If no proof of receipt is obtained, a timely (as defined in paragraph (e)(4) of this section) showing of nonreceipt by the individual due to circumstances specified by the State agency shall be considered good cause for not appearing at the hearing. Each State agency shall establish the circumstances in which non-receipt constitutes good cause for failure to appear. Such circumstances shall be consistent throughout the State agency.

(iii) The notice shall contain at a minimum:

(A) The date, time, and place of the hearing;

(B) The charge(s) against the individual;

(C) A summary of the evidence, and how and where the evidence can be examined;

(D) A warning that the decision will be based solely on information provided by the State agency if the individual fails to appear at the hearing;

(E) A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

(F) A warning that a determination of intentional Program violation will result in disqualification periods as determined by paragraph (b) of this section, and a statement of which penalty the State agency believes is applicable to the case scheduled for a hearing;

(G) A listing of the individual's rights as contained in § 273.15(p);

(H) A statement that the hearing does not preclude the State or Federal Government from prosecuting the individual for the intentional Program violation in a civil or criminal court action, or from collecting any overissuance(s); and

(I) If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

(iv) A copy of the State agency's published hearing procedures shall be attached to the 30-day advance notice or the advance notice shall inform the individual of his/her right to obtain a copy of the State agency's published hearing procedures upon request.

(v) Each State agency shall develop an advance notice form which contains the information required by this section.

(4) *Scheduling of hearing.* The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of

intentional Program violation. If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence. If the household member is found to have committed an intentional Program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. In instances where good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice as specified in paragraph (e)(3)(ii) of this section, the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

(5) *Participation while awaiting a hearing.* A pending disqualification hearing shall not affect the individual's or the household's right to be certified and participate in the Program. Since the State agency cannot disqualify a household member for intentional Program violation until the hearing official finds that the individual has committed intentional Program violation, the State agency shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household. For example, if the misstatement or action for which the household member is suspected of intentional Program violation does not affect the household's current circumstances, the household would continue to receive its allotment based on the latest certification action or be recertified based on a new application and its current circumstances. However, the household's benefits shall be terminated if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply. The State agency shall also reduce or terminate the household's benefits if the State agency has documentation which substantiates that the household is ineligible or eligible for fewer benefits (even if these facts led to the suspicion of intentional Program violation and the resulting disqualification hearing) and the household fails to request a fair hearing and continuation of benefits pending the hearing. For example, the State agency may have facts which substantiate that a household failed to report a change in its circumstances even though the State agency has not yet demonstrated that the failure to report involved an intentional act of Program violation.

(6) *Criteria for determining intentional Program violation.* The hearing authority shall base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional Program violation as defined in paragraph (c) of this section.

(7) *Decision format.* The hearing authority's decision shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent FCS regulation, and respond to reasoned arguments made by the household member or representative.

(8) *Imposition of disqualification penalties.* (i) If the hearing authority rules that the household member has committed intentional Program violation, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) on this section beginning with the first month which follows the date the household member receives written notification of the hearing decision. However, if the act of intentional Program violation which led to the disqualification occurred prior to notification of the disqualification periods specified in paragraph (b) of this section, the household member shall be

disqualified in accordance with the disqualification periods in effect at the time of the offense. The same act of intentional Program violation repeated over a period of time shall not be separated so that separate penalties can be imposed.

(ii) No further administrative appeal procedure exists after an adverse State level hearing. The determinaton of intentional Program violation made by a disqualification hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(iii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately after the individual applies for and is determined eligible for benefits.

(iv) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualifed member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(9) *Notification of hearing decision.* (i) If the hearing official finds that the household member did not commit intentional Program violation, the State agency shall provide a written notice which informs the household member of the decision.

(ii) If the hearing official finds that the household member committed intentional Program violation, the State agency shall provide written notice to the household member prior to disqualification. The notice shall inform the household member of the decision and the reason for the decision. In addition, the notice shall inform the household member of the date the disqualification will take effect. If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for Program benefits. The State agency shall also provide written notice to the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). A written demand letter for restitution, as described in § 273.18(d)(3), shall also be provided.

(iii) Each State agency shall develop a form for notifying individuals that they have been found by an administrative disqualification hearing to have committed intentional Program violation. The form shall contain the information required by this section.

(10) *Local level hearings.* (i) The State agency may choose to provide administrative disqualification hearings at the local level in some or all of its project areas with a right to appeal to a State level hearing. If a local level disqualification hearing determines that a household member committed intentional Program violation, the notification of hearing decision described in paragraph (e)(9) of this section shall also inform the household member of the right to appeal the decision within 15 days after the receipt of the notice, the date the disqualification will take effect unless a State level hearing is requested, and that benefits will be continued pending a State level hearing if the household is otherwise eligible. If the household member appeals the local level decision, the advance notice of hearing, as described in paragraph (e)(3) of this section, shall be provided at least 10 days in advance of the scheduled State level hearing and shall also inform the household member that the local hearing decision will be upheld if the household or its representative fails to appear for the hearing without good cause. When a local level decision is appealed, the State agency shall conduct the State level hearing, arrive at a decision, and notify the household member and local

agency of the decision within 60 days of the date the household member appealed its case. The prior decision shall not be taken into consideration by the State hearing officer in making the final determination. In all other respects, local level disqualification hearings shall be handled in accordance with the procedures specified in this section for State level hearings.

(ii) The State agency shall develop appropriate forms which contain the information required by this section for notification of a local level hearing decision and advance notice of a scheduled State level hearing for appeal of a local level decision.

(f) *Waived hearings.* Each State agency shall have the option of establishing procedures to allow accused individuals to waive their rights to an administrative disqualification hearing. For State agencies which choose the option of allowing individuals to waive their rights to an administrative disqualification hearing, the procedures shall conform with the requirements outlined in this section.

(1) *Advance notification.* (i) The State agency shall provide written notification to the household member suspected of intentional Program violation that the member can waive his/her right to an administrative disqualification hearing. Prior to providing this written notification to the household member, the State agency shall ensure that the evidence against the household member is reviewed by someone other than the eligibility worker assigned to the accused individual's household and a decision is obtained that such evidence warrants scheduling a disqualification hearing.

(ii) The written notification provided to the household member which informs him/her of the possibility of waiving the administrative disqualification hearing shall include, at a minimum:

(A) The date that the signed waiver must be received by the State agency to avoid the holding of a hearing and a signature block for the accused individual, along with a statement that the head of household must also sign the waiver if the accused individual is not the head of household, with an appropriately designated signature block;

(B) A statement of the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against him/her in a court of law;

(C) The fact that a waiver of the disqualification hearing will result in disqualification and a reduction in benefits for the period of disqualification, even if the accused individual does not admit to the facts as presented by the State agency;

(D) An opportunity for the accused individual to specify whether or not he/she admits to the facts as presented by the State agency. This opportunity shall consist of the following statements, or statements developed by the State agency which have the same effect, and a method for the individual to designate his/her choice:

(*1*) I admit to the facts as presented, and understand that a disqualification penalty will be imposed if I sign this waiver; and

(*2*) I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result;

(E) The telephone number and, if possible, the name of the person to contact for additional information; and

(F) The fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim.

(iii) The State agency shall develop a waiver of right to an administrative disqualification hearing form which contains the information required by this section as well as the information described in paragraph (e)(3) of this section for advance notice of a hearing. However, if the household member is notified of the possibility of waiving his/her right to an administrative disqualification hearing before the State agency has scheduled a hearing, the State agency is not required to notify the household member of the date, time and place of the hearing at that point as required by paragraph (e)(3)(i)(A) of this section.

(2) *Imposition of disqualification penalties.* (i) If the household member suspected of intentional Program violation signs the waiver of right to an administrative disqualification hearing and the signed waiver is received within the timeframes specified by the State agency, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of this section. The period of disqualification shall begin with the first month which follows the date the household member receives written notification of the disqualification. However, if the act of intentional Program violation which led to the disqualification occurred prior to the written notification of the disqualification periods specified in paragraph (b) of this section, the household member shall be disqualified in accordance with the disqualification periods in effect at the time of the offense. The same act of intentional Program violation repeated over a period of time shall not be separated so that separate penalties can be imposed.

(ii) No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannot be changed by a subsequent fair hearing decision. The household member, however is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(iii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately after the individual applies for and is determined eligible for benefits.

(iv) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(3) *Notification of disqualification.* The State agency shall provide written notice to the household member prior to disqualification. The State agency shall also provide written notice to any remaining household members of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The notice(s) shall conform to the requirements for notification of a hearing decision specified in paragraph (e)(9) of this section. A written demand letter for restitution, as described in § 273.18(d)(3), shall also be provided.

(4) *Waiver of hearing at local level.* Any State agency which has adopted the two-tiered approach for administrative disqualification hearings may also provide for waiver of the right to disqualification hearing procedures outlined in this section.

(g) *Court referrals.* Any State agency exempted from the requirement to establish an administrative disqualification system in accordance with paragraph (a) of this section shall refer appropriate cases for prosecution by a court of appropriate jurisdiction in accordance with the requirements outlined in this section.

(1) *Appropriate cases.* (i) The State agency shall refer cases of alleged intentional Program violation for prosecution in accordance with an agreement with prosecutors or State law. The agreement shall provide for prosecution of intentional Program violation cases and include the understanding that prosection will be pursued in cases where appropriate. This agreement shall also include information on how, and under what circumstances, cases will be accepted for possible prosecution and any other criteria set by the prosecutor for accepting cases for prosecution, such as a minimum amount of overissuance which resulted from intentional Program violation.

(ii) State agencies are encouraged to refer for prosecution under State or local statutes those individuals suspected of committing intentional Program violation, particularly if large

amounts of food stamps are suspected of having been obtained by intentional Program violation, or the individual is suspected of committing more than one act of intentional Program violation. The State agency shall confer with its legal representative to determine the types of cases which will be accepted for possible prosecution. State agencies shall also encourage State and local prosecutors to recommend to the courts that a disqualification penalty as provided in section 6(b) of the Food Stamp Act be imposed in addition to any other civil or criminal penalties for such violations.

(2) *Imposition of disqualification penalties.* (i) State agencies shall disqualify an individual found guilty of intentional Program violation for the length of time specified by the court. If the court fails to impose a disqualification period, the State agency shall impose a disqualification period in accordance with the provisions in paragraph (b) of this section, unless contrary to the court order. If disqualification is ordered but a date for initiating the disqualification period is not specified, the State agency shall initiate the disqualification period for currently eligible individuals within 45 days of the date the disqualification was ordered. Any other court-imposed disqualification shall begin within 45 days of the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud.

(ii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately after the individual applies for and is determined eligible for benefits.

(iii) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(3) *Notification of disqualification.* If the court finds that the household member committed intentional Program violation, the State agency shall provide written notice to the household member. The notice shall be provided prior to disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date the disqualification will take effect. The State agency shall also provide written notice to the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). In addition, the State agency shall provide the written demand letter for restitution described in § 273.18(d)(3).

(h) *Deferred adjudication.* Each State agency shall have the option of establishing procedures to allow accused individuals to sign disqualification consent agreements for cases of deferred adjudication. State agencies are encouraged to use this option for those cases in which a determination of guilt is not obtained from a court due to the accused individual having met the terms of a court order or which are not prosecuted due to the accused individual having met the terms of an agreement with the prosecutor. For State agencies which choose the option of allowing individuals to sign disqualification consent agreements in cases referred for prosecution, the procedures shall conform with the requirements outlined in this section.

(1) *Advance notification.* (i) The State agency shall enter into an agreement with the State's Attorney General's Office or, where necessary, with county prosecutors which provides for advance written notification to the household member of the consequences of consenting to disqualification in cases of deferred adjudication.

(ii) The written notification provided to the household member which informs him/her of the consequences of consenting to disqualification as a part of deferred adjudication shall include, at a minimum:

(A) A statement for the accused individual to sign that the accused individual understands the consequences of consenting to disqualification, along with a statement that the head of household must also sign the consent agreement if the accused individual is not the head of household, with an appropriately designated signature block.

(B) A statement that consenting to disqualification will result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not found guilty of civil of criminal misrepresentation or fraud.

(C) A warning that the disqualification periods for intentional Program violations under the Food Stamp Program are as specified in paragraph (b) of this section, and a statement of which penalty will be imposed as a result of the accused individual having consented to disqualification.

(D) A statement of the fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim, unless the accused individual has already repaid the claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

(iii) The State agency shall develop a disqualification consent agreement, or language to be included in the agreements reached between the prosecutors and accused individuals or in the court orders, which contains the information required by this section for notifying a household member suspected of intentional Program violation of the consequences of signing a disqualification consent agreement.

(2) *Imposition of disqualification penalties.* (i) If the household member suspected of intentional Program violation signs the disqualification consent agreement, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of this section, unless contrary to the court order. The period of disqualification shall begin within 45 days of the date the household member signed the disqualification consent agreement. However, if the court imposes a disqualification period or specifies the date for initiating the disqualification period, the State agency shall disqualify the household member in accordance with the court order.

(ii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately after the individual applies for and is determined eligible for benefits.

(iii) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(3) *Notification of disqualification.* If the household member suspected of intentional Program violation signs the disqualification consent agreement, the State agency shall provide written notice to the household member. The notice shall be provided prior to disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date the disqualification will take effect. The State agency shall also provide written notice to the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). In addition, the State agency shall provide the written demand letter for restitution described in § 273.18(d)(3).

(i) *Reporting requirements.* (1) Each State agency shall report to FCS information concerning individuals disqualified for intentional Program violation, including those individuals disqualified based on the determination of an administrative disqualification hearing official or a court of appropriate jurisdiction and those individuals disqualified as a result of signing either a waiver of right to a disqualification hearing or a disqualification

consent agreement in cases referred for prosecution. This information shall be submitted to FCS so that it is received no later than 30 days after the date the disqualification took effect, or would have taken effect for a currently ineligible individual whose disqualification is pending future eligibility.

(2) Each State agency shall report information concerning each individual disqualified for intentional Program violation in a format designed by FCS. This format shall include the individual's social security number, date of birth, and full name, the number of the disqualification (1st, 2nd, or 3rd), the State and county in which the disqualification took place, the date on which the disqualification took effect, and the length of the disqualification period imposed.

(3) Each State agency shall submit the required information on each individual disqualified for intentional Program violation through a reporting system in accordance with procedures specified by FCS.

(4) All the data submitted by State agencies will be available for use by any State Welfare Agency.

(i) State agencies shall, at a minimum, use the data for the following:

(A) To determine the eligibility of individual Program applicants prior to certification in cases where the State agency has reason to believe a household member is subject to disqualification in another political jurisdiction, and

(B) To ascertain the appropriate penalty to impose, based on past disqualifications, in a case under consideration.

(ii) State agencies may also use the data in other ways, such as the following:

(A) To screen all program applicants prior to certification, and

(B) To periodically match the entire list of disqualified individuals against their current caseloads.

(5) The disqualification of an individual for intentional Program violation in one political jurisdiction shall be valid in another. However, one or more intentional Program violations which occurred prior to April 1, 1983 shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration, regardless of where the disqualification(s) took place. State agencies are required to identify any individuals disqualified for fraud prior to implementation of this rule and to submit the information required by this section on such individuals.

(6) In cases where the imposition of a disqualification penalty is being held pending the future eligibility of a household member found to have committed intentional Program violation, the State agency shall submit a report revising the original disqualification report once the individual begins the period of disqualification in accordance with instructions provided by FCS.

(7) In cases where the disqualification for intentional Program violation is reversed by a court of appropriate jurisdiction, the State agency shall submit a report to purge the file of the information relating to the disqualification which was reversed in accordance with instructions provided by FCS.

(j) *Reversed disqualifications.* In cases where the determination of intentional program violation is reversed by a court of appropriate jurisdiction, the State agency shall reinstate the individual in the program if the household is eligible. The State agency shall restore benefits that were lost as a result of the disqualification in accordance with the procedures specified in §273.17(e).

[Amdt. 242, 48 FR 6855, Feb. 15, 1983, as amended by Amdt. 269, 51 FR 10793, Mar. 28, 1986; Amdt. 357, 60 FR 43515, Aug. 22, 1995]

### §273.17 Restoration of lost benefits.

(a) *Entitlement.* (1) The State agency shall restore to households benefits which were lost whenever the loss was caused by an error by the State agency or by an administrative disqualification for intentional Program violation which was subsequently reversed as specified in paragraph (e) of this section, or if there is a statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits. Furthermore, unless there is a statement elsewhere in the regulations that a household is entitled to lost benefits for a longer period, benefits shall be restored

for not more than twelve months prior to whichever of the following occurred first:

(i) The date the State agency receives a request for restoration from a household; or

(ii) The date the State agency is notified or otherwise discovers that a loss to a household has occurred.

(2) The State agency shall restore to households benefits which were found by any judicial action to have been wrongfully withheld. If the judicial action is the first action the recipient has taken to obtain restoration of lost benefits, then benefits shall be restored for a period of not more than twelve months from the date the court action was initiated. When the judicial action is a review of a State agency action, the benefits shall be restored for a period of not more than twelve months from the first of the following dates:

(i) The date the State agency receives a request for restoration:

(ii) If no request for restoration is received, the date the fair hearing action was initiated; but

(iii) Never more than one year from when the State agency is notified of, or discovers, the loss.

(3) Benefits shall be restored even if the household is currently ineligible.

(b) *Errors discovered by the State agency*. If the State agency determines that a loss of benefits has occurred, and the household is entitled to restoration of those benefits, the State agency shall automatically take action to restore any benefits that were lost. No action by the household is necessary. However, benefits shall not be restored if the benefits were lost more than 12 months prior to the month the loss was discovered by the State agency in the normal course of business, or were lost more than 12 months prior to the month the State agency was notified in writing or orally of a possible loss to a specific household. The State agency shall notify the household of its entitlement, the amount of benefits to be restored, any offsetting that was done, the method of restoration, and the right to appeal through the fair hearing process if the household disagrees with any aspect of the proposed lost benefit restoration.

(c) *Disputed benefits.* (1) If the State agency determines that a household is entitled to restoration of lost benefits, but the household does not agree with the amount to be restored as calculated by the State agency or any other action taken by the State agency to restore lost benefits, the household may request a fair hearing within 90 days of the date the household is notified of its entitlement to restoration of lost benefits. If a fair hearing is requested prior to or during the time lost benefits are being restored, the household shall receive the lost benefits as determined by the State agency pending the results of the fair hearing. If the fair hearing decision is favorable to the household, the State agency shall restore the lost benefits in accordance with that decision.

(2) If a household believes it is entitled to restoration of lost benefits but the State agency, after reviewing the case file, does not agree, the household has 90 days from the date of the State agency determination to request a fair hearing. The State agency shall restore lost benefits to the household only if the fair hearing decision is favorable to the household. Benefits lost more than 12 months prior to the date the State agency was initially informed of the household's possible entitlement to lost benefits shall not be restored.

(d) *Computing the amount to be restored.* After correcting the loss for future months and excluding those months for which benefits may have been lost prior to the 12-month time limits described in paragraphs (b) and (c) of this section, the State agency shall calculate the amount to be restored as follows:

(1) If the household was eligible but received an incorrect allotment, the loss of benefits shall be calculated only for those months the household participated. If the loss was caused by an incorrect delay, denial, or termination of benefits, the months affected by the loss shall be calculated as follows:

(i) If an eligible household's application was erroneously denied, the month the loss initially occurred shall be the month of application, or for an eligible household filing a timely reapplication, the month following the expiration of its certification period.

(ii) If an eligible household's application was delayed, the months for which benefits may be lost shall be calculated in accordance with procedures in § 273.2(h).

(iii) If a household's benefits were erroneously terminated, the month the loss initially occurred shall be the first month benefits were not received as a result of the erroneous action.

(iv) After computing the date the loss initially occurred, the loss shall be calculated for each month subsequent to that date until either the first month the error is corrected or the first month the household is found ineligible.

(2) For each month affected by the loss, the State agency shall determine if the household was actually eligible. In cases where there is no information in the household's case file to document that the household was actually eligible, the State agency shall advise the household of what information must be provided to determine eligibility for these months. For each month the household cannot provide the necessary information to demonstrate its eligibility, the household shall be considered ineligible.

(3) For the months the household was eligible, the State agency shall calculate the allotment the household should have received. If the household received a smaller allotment than it was eligible to receive, the difference between the actual and correct allotments equals the amount to be restored.

(4) If a claim against a household is unpaid or held in suspense as provided in § 273.18, the amount to be restored shall be offset against the amount due on the claim before the balance, if any, is restored to the household. At the point in time when the household is certified and receives an initial allotment, the initial allotment shall not be reduced to offset claims, even if the initial allotment is paid retroactively.

(e) *Lost benefits to individuals disqualified for intentional Program violation*. Individuals disqualified for intentional Program violation are entitled to restoration of any benefits lost during the months that they were disqualified, not to exceed twelve months prior to the date of State agency notification, only if the decision which resulted in disqualification is subsequently reversed. For example, an individual would not be entitled to restoration of lost benefits for the period of disqualification based solely on the fact that a criminal conviction could not be obtained, unless the individual successfully challenged the disqualification period imposed by an administrative disqualification in a separate court action. For each month the individual was disqualified, not to exceed twelve months prior to State agency notification, the amount to be restored, if any, shall be determined by comparing the allotment the household received with the allotment the household would have received had the disqualified member been allowed to participate. If the household received a smaller allotment than it should have received, the difference equals the amount to be restored. Participation in an administrative disqualification hearing in which the household contests the State agency assertion of intentional Program violation shall be considered notification that the household is requesting restored benefits.

(f) *Method of restoration*. Regardless of whether a household is currently eligible or ineligible, the State agency shall restore lost benefits to a household by issuing an allotment equal to the amount of benefits that were lost. The amount restored shall be issued in addition to the allotment currently eligible households are entitled to receive. The State agency shall honor reasonable requests by households to restore lost benefits in monthly installments if, for example, the household fears the excess coupons may be stolen, or that the amount to be restored is more than it can use in a reasonable period of time.

(g) *Changes in household composition*. Whenever lost benefits are due a household and the household's membership has changed, the State agency shall restore the lost benefits to the household containing a majority of the individuals who were household members at the time the loss occurred. If the State agency cannot locate or determine the household which contains a majority of household members the State agency shall restore the lost benefits to the

household containing the head of the household at the time the loss occurred.

(h) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for documenting a household's entitlement to restoration of lost benefits and for recording the balance of lost benefits that must be restored to the household. Each State agency shall at a minimum, document how the amount to be restored was calculated and the reason lost benefits must be restored. The accounting system shall be designed to readily identify those situations where a claim against a household can be used to offset the amount to be restored.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 225, 48 FR 16831, Apr. 19, 1983; Amdt. 314, 54 FR 24518, June 7, 1989; Amdt. 356, 59 FR 29713, June 9, 1994]

### § 273.18 Claims against households.

(a) *Establishing claims against households.* All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.

(1) *Inadvertent household error claims.* A claim shall be handled as an inadvertent household error claim if the overissuance was caused by:

(i) A misunderstanding or unintended error on the part of the household;

(ii) A misunderstanding or unintended error on the part of a categorically eligible household provided a claim can be calculated based on a change in net income and/or household size amount;

(iii) SSA action of failure to take action which resulted in the household's categorical eligibility provided a claim can be calculated based on a change in net income and/or household size.

(2) *Administrative error claims.* A claim shall be handled as an administrative error claim if the overissuance was caused by State agency action or failure to take action or, in the case of categorical eligibility, an action by an agency of the State or local government which resulted in the household's improper eligibility for public assistance or general assistance provided a claim can be calculated based on a change in net income and/or household size.

(3) *Intentional Program violation claims.* A claim shall be handled as an intentional Program violation claim only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member committed intentional Program violation as defined in § 273.16(c), or an individual is disqualified as a result of signing either a waiver of his/her disqualification hearing as discussed in § 273.16(f) or a disqualification consent agreement in cases referred for prosecution as discussed in § 273.16(h). Prior to the determination of intentional Program violation or the signing of either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases of deferred adjudication, the claim against the household shall be handled as an inadvertent household error claim.

(b) *Criteria for establishing inadvertent household and administrative error claims.* The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error if the criteria specified in this paragraph have been met. At a minimum, the State agency shall take action on those claims for which 12 months or less have elasped between the month an overissuence occurred and the month the State agency discovered a specific case involving an overissuance. The State agency may choose to take action on those claims for which more than 12 months have elasped. However, the State agency shall not take action on claims for which more than six years have elasped between the month an overissuance occurred and the month the State agency discovered a specific case involving an overissuance.

(1) Instances of inadvertent household error which may result in a claim

include, but are not limited to, the following:

(i) The household unintentionally failed to provide the State agency with correct or complete information;

(ii) The household unintentionally failed to report to the State agency changes in its household circumstances; or

(iii) The household unintentionally received benefits or more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to such benefits.

(iv) The household was receiving food stamps solely because of categorical eligibility and the household was subsequently determined ineligible for PA, or GA and/or SSI at the time they received it.

(v) The SSA took an action or failed to take the appropriate action, which resulted in the household improperly receiving SSI.

(2) Instances of administrative error which may result in a claim include, but are not limited to, the following:

(i) A State agency failed to take prompt action on a change reported by the household;

(ii) A State agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;

(iii) A State agency incorrectly issued duplicate ATP's to a household which were subsequently transacted;

(iv) The State agency continued to provide household food stamp allotments after its certification period had expired without benefit of a reapplication determination; or

(v) The State agency failed to provide a household a reduced level of food stamp benefits because its public assistance grant changed.

(vi) An agency of the State or local government took an action or failed to take an appropriate action, which resulted in the household improperly receiving PA or GA.

(3) Neither an administrative error claim nor an inadvertent household error claim shall be established if an overissuance occurred as a result of the following:

(i) A State agency failed to insure that a household fulfilled the following procedural requirements:

(A) Signed the application form,

(B) Completed a current work registration form, or

(C) Was certified in the correct project area;

(ii) The household transacted an expired ATP, unless the household altered its ATP.

(c) *Calculating the amount of claims*—(1) *Inadvertent household and administrative error claims.* (i) For each month that a household received an overissuance due to an inadvertent household or administrative error, the State agency shall determine the correct amount of food stamp benefits the household was entitled to receive. The amount of the inadvertent household or administrative error claim shall be calculated based, at a minimum, on the amount of overissuance which occurred during the 12 months preceding the date the overissuance was discovered. The State agency may choose to calculate the amount of the claim back to the month the inadvertent household or administrative error occurred, regardless of the length of time that elapsed until the inadvertent household or administrative error was discovered. However, the State agency shall not include in its calculation any amount of the overissuance which occurred in a month more than six years from the date the overissuance was discovered. In cases involving reported changes, the State agency shall determine the month the overissuance initially occurred as follows:

(A) If, due to an inadvertent error on the part of the household, the household failed to report a change in its circumstances within the required timeframes, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been timely reported. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

(B) If the household timely reported a change, but the State agency did not

act on the change within the required timeframes, the first month affected by the State's failure to act shall be the first month the State agency would have made the change effective had it timely acted. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred. If a notice of adverse action was required but was not provided, the State agency shall assume for the purpose of calculating the claim that the maximum advance notice period as provided in § 273.13(a)(1) would have expired without the household requesting a fair hearing.

(ii) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received. For categorically eligible households, a claim will only be determined when it can be computed on the basis of changed household net income and/or household size. A claim shall not be established if there was not a change in net income and/or household size.

(iii) After calculating the amount of the inadvertent household or administrative error claim, the State agency shall offset the amount of the claim against any amounts which have not yet been restored to the household in accordance with § 273.17. The State agency shall then initiate collection action for the remaining balance, if any.

(2) *Intentional Program violation claims.* (i) For each month that a household received an overissuance due to an act of intentional Program violation, the State agency shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of the intentional Program violation claim shall be calculated back to the month the act of intentional Program violation occurred, regardless of the length of time that elapsed until the determination of intentional Program violation was made. However, the State agency shall not include in its calculation any amount of the overissuance which occurred in a month more than six years from the date the overissuance was discovered. If the household member is determined to have committed intentional Program violation by intentionally failing to report a change in its household's circumstances, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been reported. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

(ii) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received. In calculating IPV claims involving unreported earned income, the State agency shall not apply the earned income deduction specified in § 273.9(d)(2) to that part of any earned income which a household willfully or fraudulently failed to report in a timely manner as determined by one of the disqualification procedures specified in § 273.16, which are: an administrative disqualification hearing; a waiver to such a hearing; a court order; or a deferred adjudication.

(iii) Once the amount of the intentional Program violation claim is established, the State agency shall offset the claim against any amount of lost benefits that have not yet been restored to the household in accordance with § 273.17.

(d) *Collecting claims against households—(1) Criteria for initiating collection action on inadvertent household and administrative error claims.*

(i) State agencies shall initiate collection action against the household on all inadvertent household or administrative error claims unless the claim is collected through offset or one of the following conditions apply:

(A) The total amount of the claim is less than $35, and the claim cannot be

recovered by reducing the household's allotment. However, any State agency shall have the option to initiate collection action for other claims under $35 at such time that multiple overissuances for a household total $35 or more. If the State agency chooses this option, households shall be informed of this policy.

(B) The State agency has documentation which shows that the household cannot be located.

(ii) The State agency may postpone collection action on inadvertent household error claims in cases where an overissuance is being referred for possible prosecution or for administrative disqualification, and the State agency determines that collection action will prejudice the case.

(2) *Criteria for initiating collection action on intentional Program violation claims.* If a household member is found to have committed intentional Program violation (by an administrative disqualification hearing official or a court of appropriate jurisdiction) or has signed either a waiver as discussed in § 273.16(f) or a consent agreement as discussed in § 273.16(h), the State agency shall initiate collection action against the individual's household. In addition, a personal contact with the household shall be made, if possible. The State agency shall initiate such collection unless the household has repaid the overissuance already, the State agency has documentation which shows the household cannot be located, or the State agency determines that collection action will prejudice the case against a household member referred for prosecution. The State agency shall initiate collection action for an unpaid or partially paid claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. In cases where a household member was found guilty of misrepresentation or fraud by a court or signed a disqualification consent agreement in cases referred for prosecution, the State agency shall request that the matter of restitution be brought before the court or addressed in the agreement reached between the prosecutor and accused individual.

(3) *Initiating collection on claims.* Each State agency shall develop a written demand letter for initiating collection action on claims which contains the information required by this paragraph. A model letter is available from FCS. If the claim was not established by a fair hearing, the State agency shall provide a notice of adverse action as part of or along with the demand letter, as specified in § 273.13. The notice of adverse action shall be sent on all claims established after March 26, 1990 and on any preexisting claims if at any time after the effective date of these provisions a follow-up demand letter is sent on that claim. A one-time adverse action notice accompanying the original demand letter, or incorporated into it, which informs recipients they have 90 days to appeal the claim, satisfies the notice provisions.

(i) The demand letter shall inform the household of the amount owed, the reason for the claim, the period of time the claim covers, any offset which reduces the claim and how the household may pay the claim. If the amount of the claim was not established at a fair hearing, including one consolidated with an administrative disqualification hearing, the latter shall notify the household that it may request a fair hearing on the amount of the claim.

(ii) The demand letter shall advise the household of the availability of any individual or organization which provides households free legal representation.

(iii) For inadvertent household error claims, the first demand letter to a participating household shall inform the household:

(A) That unless it elects a method of repayment and informs the State agency of its election within the time specified in paragraph (d)(4)(i) of this section, or timely requests a fair hearing and continued benefits, its allotment will be reduced;

(B) How allotment reduction will affect household benefits, if the State agency has not otherwise informed the household about this matter;

(C) That if the household timely elects allotment reduction, such reduction will begin with the first allotment issued after such election, as provided in § 273.12(c)(2) of this part; and

(D) That if the household fails to make a timely election, or to timely request a fair hearing and continued benefits, the reduction will begin with the first allotment issued after timely notice of such election or request is due to the State agency, as provided in § 273.12(c)(2) of this part.

(iv) For inadvertent household error claims, a demand letter provided to a participating household subsequent to a fair hearing which sustains the claim shall inform the household:

(A) That unless it elects a method of repayment and informs the State agency of its election within the time specified in paragraph (d)(4)(i) of this section, its allotment will be reduced;

(B) How allotment reduction will affect household benefits, if the State agency has not otherwise informed the household about this matter;

(C) That if the household timely elects allotment reduction, such reduction will begin with the first allotment issued after such election, as provided in § 273.12(c)(2) of this part; and

(D) That if the household fails to make a timely election, the reduction will begin with the first allotment issued after timely notice of such election is due to the State agency, as provided in § 273.12(c)(2) of this part.

(v) For intentional Program violation claims, the first demand letter provided a participating household following the action which establishes the claim, as required in § 237.16 of this part, shall inform the household:

(A) That it must elect a method of repayment and inform the State agency of its election within the time specified in paragraph (d)(4)(ii) of this section, or its allotment will be reduced;

(B) How allotment reduction will affect household benefits, if the State agency has not otherwise informed the household;

(C) That if the household timely elects allotment reduction, such reduction will begin with the first allotment issued after such election, as provided in § 273.12(c)(2) of this part; and

(D) That if the household fails to make a timely election, the reduction will begin with the first allotment issued 10 days after the date of the demand letter, as provided in § 273.12(c)(2) of this part.

(vi) If the State agency has implemented the intercept of unemployment compensation benefits as provided in paragraph (g)(3) of this section, the demand letter shall inform the household of this voluntary method of repayment of claims for intentional program violations.

(vii) If the State agency is required to use other means of collecting claims for intentional Program violations as specified in paragraph (d)(4)(iii) of this section, the letter shall inform the household of those other means and the circumstances in which they may be used by the State agency.

(viii) The demand letter shall inform the household of the availability of allotment reduction as a voluntary method of repayment of administrative error claims.

(ix) The demand letter shall inform a household against which the State agency has initiated collection action of its right to request renegotiation of any repayment schedule to which the household has agreed in accordance with paragraph (g)(2) of this section in the event the household's economic circumstances change.

(x) The demand letter shall provide space for the household to indicate its preferred method of repayment and for the signature of a household member.

(4) *Further collection actions.* (i) *Inadvertent household error claims.* Participating households which are liable for inadvertent household error claims shall be deemed to have elected allotment reduction unless they notify the State agency of their choice of repayment method within 20 days of the date an initial demand letter, or a demand letter for payment following a fair hearing which sustains the claim, is mailed or otherwise delivered to them.

(ii) *Intentional Program violation claims.* Participating households which are liable for intentional Program violation claims shall elect a method of repayment on the date of receipt of the demand letter required in § 273.16(e)(9) and (g)(3) of this part (or if the date of receipt is not a business day, on the next business day) or be deemed to have elected allotment reduction. Each State agency shall determine a deadline for receipt of such elections for them to be considered timely. In no

event shall that deadline exceed 10 days from the date the demand letter is mailed or otherwise delivered to liable households.

(iii) If any nonparticipating household or if any currently participating household against which collection action has been initiated for repayment of an administrative error claim does not respond to the first demand letter, additional demand letters shall be sent at reasonable intervals, such as 30 days, until the household has responded by paying or agreeing to pay the claim, until the criteria for suspending collection action specified in paragraph (e) of this section have been met, or until the State agency initiates other collection actions.

(iv) The State agency shall pursue other means of collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of any intentional program violation claim unless the State agency can determine that such other means are generally not cost effective. The State agency may also pursue other collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of any inadvertent household error or administrative error claim. If the State agency chooses to pursue other collection actions and the household pays the claim, payments shall be submitted to FCS in accordance with the procedures outlined in paragraph (h) of this section and the State agency's retention shall be based on the actual amount collected from the household through such collection actions.

(e) *Suspending and terminating collection of claims*—(1) *Suspending collection of inadvertent household and administrative error claims.* An inadvertent household or administrative error claim may be suspended if no collection action was initiated because of conditions specified in paragraph (d)(1)(i) of this section. If collection action was initiated, and at least one demand letter has been sent, further collection action of an inadvertent household error claim against a nonparticipating household or of any administrative error claim may be suspended when:

(i) The household cannot be located; or

(ii) The cost of further collection action is likely to exceed the amount that can be recovered.

(2) *Suspending collection of intentional Program violation claims.* The State agency may suspend collection action on intentional Program violation claims at any time if it has documentation that the household cannot be located. If the State agency has sent at least one demand letter for claims under $100, at least two demand letters for claims between $100 and $400, and at least three demand letters for claims of more than $400, further collection action of any intentional Program violation claim against a nonparticipating household may be suspended when the cost of further collection action is likely to exceed the amount that can be recovered.

(3) *Terminating collection of claims.* A claim may be determined uncollectible after it is held in suspense for 3 years. The State agency may use a suspended or terminated claim to offset benefits in accordance with § 273.17.

(f) *Change in household composition.* State agencies shall initiate collection action against any or all of the adult members of a household at the time an overissuance occurred. Therefore, if a change in household composition occurs, State agencies may pursue collection action against any household which has a member who was an adult member of the household that received the overissuance. The State agency may also offset the amount of the claim against restored benefits owed to any household which contains a member who was an adult member of the original household at the time the overissuance occurred. Under no circumstances may a State agency collect more than the amount of the claim. In pursuing claims, the State agency may use any of the appropriate methods of collecting payments in § 273.18(g).

(g) *Method of collecting payments.* As specified in paragraph (d) of this section, State agencies shall collect payments for claims against households as follows:

(1) *Lump sum.* (i) If the household is financially able to pay the claim at one time, the State agency shall collect a lump sum cash payment. However, the household shall not be required to liquidate all of its resources to make this one lump sum payment.

(ii) If the household is financially unable to pay the entire amount of the claim at one time and prefers to make a lump sum cash payment as partial payment of the claim, the State agency shall accept this method of payment.

(iii) If the household chooses to make a lump sum payment of food stamp coupons as full or partial payment of the claim, the State agency shall accept this method of repayment.

(2) *Installments.* (i) The State agency shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment. Payments shall be accepted by the State agency in regular installments. The household may use food stamp coupons as full or partial payment of any installment. If the full claim or remaining amount of the claim cannot be liquidated in 3 years, the State agency may compromise the claim by reducing it to an amount that will allow the household to pay the claim in 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17.

(ii) If the household fails to make a payment in accordance with the established repayment schedule (either a lesser amount or no payment), the State agency shall send the household a notice explaining that no payment or an insufficient payment was received. The notice shall inform the household that it may contact the State agency to discuss renegotiation of the payment schedule. The notice shall also inform the household that unless the overdue payments are made or the State agency is contacted to discuss renegotiation of the payment schedule, the allotment of a currently participating household against which an inadvertent household error or intentional Program violation claim has been established may be reduced without a notice of adverse action.

(iii) If the household responds to the notice, the State agency shall take one of the following actions as appropriate:

(A) If the household makes the overdue payments and wishes to continue payments based on the previous schedule, permit the household to do so;

(B) If the household requests renegotiation, and if the State agency concurs with the request, negotiate a new payment schedule;

(C) If the household requests renegotiation of the amount of its repayment schedule but the State agency believes that the household's economic circumstances have not changed enough to warrant the requested settlement, the State agency may continue renegotiation until a settlement can be reached. The State agency shall have the option to invoke allotment reduction against a currently participating household for repayment of an inadvertent household error or intentional Program violation claim if a settlement cannot be reached.

(iv) If a currently participating household against which an inadvertent household error or intentional Program violation claims has been established fails to respond to the notice, the State agency shall invoke allotment reduction. The State agency may also invoke allotment reduction if such a household responds by requesting renegotiation of the amount of its repayment schedule but the State agency believes that the household's economic circumstances have not changed enough to warrant the requested settlement. If allotment reduction is invoked, no notice of adverse action is required.

(v) In cases where the household is currently participating in the program and a payment schedule is negotiated for repayment of an inadvertent household error or intentional Program violation claim, the State agency shall ensure that the negotiated amount to be repaid each month through installment payments is not less than the amount which could be recovered through allotment reduction. Once negotiated, the amount to be repaid each month through installment payments shall remain unchanged regardless of subsequent changes in the household's monthly allotment. However, both the

State agency and the household shall have the option to initiate renegotiation of the payment schedule if they believe that the household's economic circumstances have changed enough to warrant such action.

(3) *Intercept of unemployment compensation benefits.* State agencies which have an approved attachment to their Plan of Operation permitting the intercept of unemployment compensation benefits for the collection of claims for intentional program violations may arrange for such intercept as provided in § 272.12. Collections made by such intercepts shall be treated as lump sum or installment payments as discussed in paragraph (g) (1) and (2) of this section.

(4) *Reduction in food stamp allotment.* State agencies shall collect payments for inadvertent household error claims and intentional Program violation claims from households currently participating in the program by reducing the household's food stamp allotments. State agencies shall collect payments for administrative error claims from households currently participating in the program by reducing the household's food stamp allotments if the household prefers to use this method of repayment. Prior to reduction, the State agency shall inform the household of the appropriate formula for determining the amount of food stamps to be recovered each month and the effect of that formula on the household's allotment (i.e., the amount of food stamps the State agency expects will be recovered each month), and of the availability of other methods of repayment. If the household requests to make a lump sum cash and/or food stamp coupon payment as full or partial payment of the claim, the State agency shall accept this method of payment. The State agency shall reduce the household's allotment to recover any amounts of an inadvertent household error or intentional Program violation claim not repaid through a lump sum cash and/or food stamp coupon payment, unless a payment schedule has been negotiated with the household. The provision for the minimum benefit for households with one and two members only, as described in § 273.10(e)(2)(ii)(C), shall apply to the allotment prior to reduction in accordance with this paragraph. If the full or remaining amount of the claim cannot be liquidated in 3 years, the State agency may compromise the claim by reducing it to an amount that will allow the household to make restitution within 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17. The amount of food stamps to be recovered each month through allotment reduction shall be determined as follows:

(i) *Inadvertent household error claims.* For inadvertent household error claims, the amount of food stamps shall be the greater of 10 percent of the household's monthly allotment *or* $10 per month.

(ii) *Administrative error claims.* For administrative error claims, the amount of food stamps to be recovered each month from a household choosing to use this method shall be negotiated with the household. Choice of this option is entirely up to the household and no household shall have its allotment reduced by an amount with which it does not agree for payment of an administrative error claim.

(iii) *Intentional Program violation claims.* For intentional Program violation claims, the amount of food stamps shall be the greater of 20 percent of the household's monthly entitlement *or* $10 per month.

(5) *Federal income tax refund offset program*—(i) *General requirements.* State agencies which choose to implement the Federal income tax refund offset program (FTROP) shall:

(A) Submit an amendment to their Plan of Operation as specified in Section 272.2(d)(1)(xii) of this chapter stating that they will comply with the requirements for FTROP and with the requirements for the Federal Salary Offset Program (salary offset). Such amendments shall be submitted to the appropriate FCS regional office no later than twelve months before the beginning of a State agency's first offset year.

(B) Submit data for FTROP to FCS in the record formats specified by FCS and/or the Internal Revenue Service (IRS), and according to schedules and by means of magnetic tape, electronic

data transmission or other method specified by FCS.

(ii) *Claims referable for offset.* State agencies may submit for collection from Federal income tax refunds recipient claims which are past due and legally enforceable.

(A) Such claims must be:

(*1*) Only inadvertent household error claims or intentional Program violation claims. These claims shall be properly established according to the requirements of this section (which pertains to claims against households) and the requirements of section 273.16 (which pertains to disqualification for intentional Program violations). In addition, these claims shall be properly established no later than the date the State transmits its final request for IRS addresses for the particular offset year. Furthermore, the State agency shall have electronic records and/or paper documents showing that the claim was properly established. These records and documents include such items as claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, and records of payments.

(*2*) Claims for which the State agency has verified that no individual who is jointly and severally liable as specified in paragraph (a) of this section is also currently participating in the FSP in the State.

(*3*) Claims which meet at least the minimum dollar amount established by the IRS.

(*4*) Claims for which the date of the initial demand letter is within 10 years of January 31 of the offset year, except that claims reduced to final court judgments ordering individuals to pay the debt are not subject to this 10-year limitation.

(*5*) Claims for which the State agency is receiving neither regular voluntary payments nor regular, involuntary payments such as wage garnishment. Claims for which a State agency has been receiving regular payments under paragraph (g)(2) of this section are considered past due and legally enforceable if the individual does not respond to a notice of default as specified in paragraph (g)(2) of this section.

(*6*) Claims for which collection is not barred by a bankruptcy.

(*7*) Claims for which the State agency has provided the individual with all of the notification and opportunities for review as specified in paragraphs (g)(5)(iii), (g)(5)(iv), (g)(5)(v) and (g)(5)(vi) of this section.

(B) In addition:

(*1*) All claims to be submitted for collection under FTROP shall be reduced by any amounts subject to collection from State income tax refunds or from other sources which may result in collections during the offset year.

(*2*) If a claim to be submitted for collection under FTROP is a combination of two or more recipient claims, the date of the initial demand letter for each claim combined shall be within the 10-year range specified in paragraph (g)(5)(ii)(A)(*4*) of this section. Claims reduced to judgment shall not be combined with claims which are not reduced to judgment.

(*3*) If a claim to be submitted under FTROP is apportioned between two or more individuals who are jointly and severally liable for the claim pursuant to paragraphs (a) and (f) of this section, the sum of the amounts submitted shall not exceed the total amount of the claim.

(iii) *60-Day notice to individuals.* (A) Prior to referring claims for collection under FTROP, the State agency shall provide individuals from whom it seeks to collect such claims with a notice, called a 60-day notice. For offset year 1996, State agencies have the option of providing the 60-day notice specified in paragraph (g)(5)(iv) of this section or in paragraph (g)(5)(x) of this section. For offset year 1997 and subsequent years, State agencies shall provide the 60-day notice specified in paragraph (g)(5)(iv).

(B) With the exception of such State-specific information as names and job titles and information required for State agency contacts, a State agency's 60-day notice shall contain only the information specified in paragraph (g)(5)(iv) of this section. In the certification letter required in paragraph (g)(5)(vii) of this section, the State agency shall include a statement that its 60-day notice conforms to this requirement. This requirement shall not apply to State agencies which choose to use the 60-day specified in paragraph

(g)(5)(x) of this section for offset year 1996.

(C) Unless otherwise notified by FCS, the State agency shall mail 60-day notices for claims to be referred for collection through FTROP no later than October 1 preceding the offset year during which the claims would be offset.

(D) The State agency shall mail 60-day notices using the address information provided by the IRS unless the State agency receives clear and concise notification from the taxpayer that notices from the State agency are to be sent to an address different from the address obtained from the IRS. Such clear and concise notification shall mean that the taxpayer has provided the State agency with written notification including the taxpayer's name and identifying number (which is generally the taxpayer's SSN), the taxpayer's new address, and the taxpayer's intent to have notices from the State agency sent to the new address. Claims for which 60-day notices addressed as required in this paragraph are returned as undeliverable may be referred for collection under FTROP.

(iv) *Contents of the 60-day notice.* Except that the language set out in paragraph (g)(5)(iv)(C) of this section shall not be included in the notice for offset year 1996, the State agency's 60-day notice shall state that:

(A) [Name of the State agency or an equivalent phrase] has records documenting that you, [the name of the individual], Social Security Number: [the individual's Social Security Number] are liable for [the unpaid balance of the recipient claim(s) the State agency intends to refer] resulting from overissued food stamp benefits. [The name of the State agency or equivalent phrase] has previously mailed or otherwise delivered demand letters notifying you about the claim, including the right to a fair hearing on the claim, and has made any other required collection efforts.

(B) The Deficit Reduction Act of 1984, as amended, authorizes the Internal Revenue Service (IRS) to deduct such debts from tax refunds if they are past due and legally enforceable. [Name of the State agency or an equivalent phrase] has determined that your debt is past due and legally enforceable as specified by the Deficit Reduction Act of 1984, the IRS regulations, and Food Stamp Program (FSP) regulations. We intend to refer the claim for deduction from your Federal income tax refund unless you pay the claim within 60 days of the date of the notice or make other repayment arrangements acceptable to us.

(C) If we refer your claim to the IRS, a charge for the administrative cost of collection will be added to your claim and that amount will also be deducted if the claim, or any portion of the claim, is deducted from your tax refund. This charge will be approximately [the amount provided by FCS].

(D) All adults who were household members when excess food stamp benefits were issued to the household are jointly and severally liable for the value of those benefits, and collection of claims for such benefits may be pursued against all such individuals.

(E) Our records do not show that the claim is being paid according to either a voluntary agreement with us or through scheduled, involuntary payments. To pay the claim voluntarily or to discuss it, you should contact: [an office, administrative unit and/or individual, the contact's street address or post office box, and a toll-free or collect telephone number].

(F) You are entitled to request a review of the intended collection action. We must receive your request for review within 60 days of the date of this notice. Such a request must be written, must be submitted to the address provided in this notice and must contain your Social Security Number. We will not refer your claim for offset while our review is pending.

(G) The claim is not legally enforceable if a bankruptcy prevents collection of the claim.

(H) You may want to contact your local office of the IRS before filing your Federal income tax return. This is true where you are filing a joint return, and your spouse is not liable for the food stamp claim and has income and withholding and/or estimated Federal income tax payments. In such circumstances your spouse may be entitled to receive his or her portion of any joint refund. Your own liability for this

claim, including any charge for administrative costs, may still be collected from your share of such a joint refund.

(I) If you request a review of our intent to collect the claim from your income tax refund, you should provide documentation showing that at least one of the items listed below is incorrect for the claim cited in this notice. If you do not have such documentation, for example a cancelled check, you should explain in detail why you believe that the claim is not collectible under the Federal Income Tax Refund Offset Program.

(J) The claim cited in this notice is subject to collection from your tax refund for the following reasons:

(*1*) The claim was properly established according to Food Stamp Program regulations and was caused by an inadvertent household error or an intentional Program violation;

(*2*) No individual who is jointly and severally liable for the claim is also currently participating in the Food Stamp Program in [the name of State initiating the collection action];

(*3*) The claim is for at least [the minimum dollar amount required by the IRS];

(*4*) The date of the initial demand letter for the claim is within 10 years of January 31, [the offset year]. If the claim was reduced to a final court judgment ordering you to pay the debt, this 10-year period does not apply, and the date of the initial demand letter may be older than 10 years; and

(*5*) We are neither receiving voluntary payments pursuant to an agreed upon schedule of payments as provided in current Food Stamp Program regulations nor are we receiving scheduled, involuntary payments such as wage garnishment. Claims for which we have been receiving regular payments under current Food Stamp Program regulations are considered past due and legally enforceable if you did not respond to a notice of default.

(K) In addition, collection of the claim is not barred by bankruptcy.

(v) *State agency action on requests for review*. (A) For all written requests for review received within 60 days of the date of the 60-day notice, the State agency shall determine whether or not the subject claims are past due and legally enforceable, and shall notify individuals in writing of the result of such determinations.

(B) The State agency shall determine whether or not claims are past due and legally enforceable based on a review of its records, and of documentation, evidence or other information the individual may submit.

(C) If the State agency decides that a claim for which a review request is received is past due and legally enforceable, it shall notify the individual that:

(*1*) The claim was determined past due and legally enforceable, and the reason for that determination. Acceptable reasons for such a determination include the individual's failure to provide adequate documentation that the claim is not past due or legally enforceable;

(*2*) The State agency intends to refer the claim to the IRS for offset;

(*3*) The individual may ask FCS to review the State agency decision. FCS must receive the request for review within 30 days of the date of the State agency decision. FCS will provide the individual a written response to such a request stating its decision and the reasons for its decision. The claim will not be referred to the IRS for offset pending the FCS decision; and

(*4*) A request for an FCS review must include the individual's SSN and must be sent to the appropriate FCS regional office. The State agency decision shall provide the address of that regional office, including in that address the phrase ''Tax Offset Review.''

(D) If the State agency determines that the claim is not past due or legally enforceable, in addition to notifying the individual that the claim will not be referred for offset, the State agency shall take any actions required by food stamp regulations with respect to establishing the claim, including holding appropriate hearings and initiating collection action.

(E) The State agency shall not refer for offset a claim for which a timely State agency review request is received unless by October 31 preceding the offset year the State agency determines the claim past due and legally enforceable, and notifies the individual of that decision as specified in paragraphs

(g)(5)(v)(C)(*1*), (g)(5)(v)(C)(*2*), and (g)(5)(v)(C)(*3*) of this section.

(vi) *FCS action on appeals of State agency reviews.*

(A) FCS shall act on all timely requests for FCS reviews of State agency review decisions as specified in paragraph (g)(5)(v)(C) of this section. A request for FCS review is timely if it is received by FCS within 30 days of the date of the State agency's review decision.

(B) If a timely request for FCS review is received, and the State agency's decision is dated on or before October 31 of the year prior to the offset year, FCS shall:

(*1*) Complete a review and notification as specified in paragraphs (g)(5)(vi)(C), (g)(5)(vi)(D), and (g)(5)(vi)(E) of this section, including providing State agencies and individuals the required notification of its decision; or

(*2*) Notify the State agency that it has not completed its review and that the State agency must delete the claims in question from files to be certified to FCS according to paragraph (g)(5)(vii) of this section. If FCS fails to timely notify the State agency and because of that failure a claim is offset which FCS later finds does not meet the criteria specified in paragraph (g)(5)(ii) of this section, FCS will provide funds to the State agency for refunding the charge for the offset fee.

(C) If a timely request for FCS review is received, and the State agency's decision is dated after October 31 of the year prior to the offset year, FCS shall complete a review as specified in paragraphs (g)(5)(vi)(D), (g)(5)(vi)(E) and (g)(5)(vi)(F) of this section, but the claim shall not be referred for offset as specified in paragraph (g)(5)(v)(E) of this section.

(D) When FCS receives an individual's request to review a State agency decision, FCS shall:

(*1*) Request pertinent documentation from the State agency about the claim. Such documentation shall include such things as printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, 60-day notices, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations; and

(*2*) Decide whether the State agency correctly determined the claim in question is past due and legally enforceable.

(E) If FCS finds that the State agency correctly determined that the claim is past due and legally enforceable, FCS will notify the State agency and individual of its decision, and the reason(s) for that decision, including notice to the individual that any further appeal must be made through the courts.

(F) If FCS finds that the State agency incorrectly determined that the claim is past due and legally enforceable, FCS will notify the State agency and individual of its decision, and the reason(s) for that decision. FCS will also notify the State agency about any corrective action the State agency must take with respect to the claim and related procedures.

(vii) *Referral of claims for offset.* (A) State agencies shall submit to FCS a certified file of claims for collection through FTROP by the date specified by FCS in schedules which FCS will provide as stated in paragraph (g)(5)(i) of this section. At the same time State agencies shall also provide to their FCS regional office a letter which specifically certifies that all claims contained in that certified file meet the criteria for claims referable for FTROP as specified in paragraph (g)(5)(ii) of this section, and that for all such claims a notice and opportunity to request a review as required in paragraphs (g)(5)(iii), (g)(5)(iv), (g)(5)(v) and (g)(5)(vi) of this section have been provided. The certification letter shall also state that the State agency has not included in the certified file of claims any claim which, as provided in paragraph (g)(5)(vi) of this section, FCS notified the State agency is not past due or is not legally enforceable, or any claim for which FCS notified the State agency that it has not completed a timely requested review, or for which the State agency has not completed a timely requested review. Finally, the certification letter shall also state that

with the exception of State-specific information such as names and positions and State-specific information required for State agency contacts, the State agency's 60-day notice contains only the information specified in paragraph (g)(5)(iv) of this section.

(B) The State agency shall provide to FCS the name, address and toll-free or collect telephone numbers of State agency contacts to be included in IRS notices of offset. State agencies shall state in the letter required in paragraph (g)(5)(vii)(A) of this section how they determined that such information is accurate and shall provide FCS updates of that information if and when that information changes.

(viii) *State agency actions on offsets made.* (A) Promptly after receiving notice from FCS that offsets have been made, the State agency shall notify affected individuals of offsets made, including the amount charged for offset fees, and the status of the claims in question.

(B) As close in time as possible to the notice of offset required in paragraph (g)(5)(viii)(A) of this section, the State agency shall refund to the individual (as required by paragraph (i)(4) of this section) any over collection which resulted from the offset of the individual's Federal income tax refund.

(C) If an offset results from a State agency including in the certified file of claims required by paragraph (g)(5)(vii)(A) of this section a claim which does not meet the criteria specified in paragraph (g)(5)(ii) of this section, the State agency shall refund the amount offset to the individual, including any amounts collected to pay for the offset fee charged by the IRS. The State agency may claim any such latter amount as an allowable administrative cost under part 277 of this chapter. The State agency shall not be responsible for refunding any portion of the charges for offset fees incurred for IRS reversals of offsets when, for example, the IRS refunds amounts offset, including offset fees, to taxpayers who properly notified the IRS that they are not liable for claims which were collected in whole or part from their share of a joint Federal income tax refund.

(ix) *Monitoring and reporting offset activities.* State agencies shall monitor FTROP activities and shall take all necessary steps to:

(A) Update IRS files, reducing the amounts of or deleting claims from those files to reflect payments made after referral to FCS, or deleting claims which for other reasons no longer meet the criteria for being collectible under FTROP.

(B) Promptly refund to the individual any over collection of claims as required in paragraph (g)(5)(viii)(B) of this section.

(C) Annually and no later than the tenth of October of the year prior to the offset year report in writing to the FCS regional office the number of 60-day notices mailed and the total dollar value of the claims associated with those notices.

(D) Submit data security and voluntary payment reports as required by FCS and the IRS.

(E) Report collections of all recipient claims collected under the procedures of paragraph (g)(5) of this section as required by paragraph (i)(2) of this section.

(x) *Contents of the alternate 60-day notice.* As specified in paragraph (g)(5)(iii)(A) of this section, for offset year 1996 State agencies may use a 60-day notice specifying the following information:

(A) The State agency has records documenting that the individual, identified with his or her Social Security Number, is liable for a specified, unpaid balance of a claim for overissued food stamp benefits, and that the State agency has notified the individual about the claim and made prior collection efforts as required by the Food Stamp Program. The notice must also state that the claim is past due and legally enforceable.

(B) The Deficit Reduction Act of 1984, as amended by the Emergency Unemployment Act of 1991, authorizes the Internal Revenue Service to deduct such debts from tax refunds, and the State agency intends to refer the claim for such deduction unless the individuals pays the claim within 60 days of the date of the notice, or makes other repayment arrangements acceptable to the State agency.

(C) Instructions about how to pay the claim, including the name, address and

telephone number of an office, administrative unit or person in the State agency who can discuss the claim and the intended offset with the individual.

(D) The following information about requesting a review of the intended offset:

(*1*) The individual is entitled to request a review of the intended referral for offset;

(*2*) The State agency will not act on review requests which it receives later than 60 days after the date of the 60-day notice;

(*3*) Claims for which timely review requests have been received will not be referred for offset while under review;

(*4*) A review request must provide evidence or documentation why the individual believes that the claim is not past due or is not legally enforceable;

(*5*) A review request is not considered received until the State agency receives such evidence or documentation; and

(*6*) A review request must contain the individual's Social Security Number.

(E) The individual should contact the State agency if he or she believes that a bankruptcy proceeding prevents collection of the claim or if the claim has been discharged in bankruptcy.

(F) The individual may want to contact the Internal Revenue Service before filing his or her Federal income tax return if the individual is married, filing a joint return, and if his or her spouse is not liable for the food stamp claim and has income and withholding and/or estimated Federal income tax payments. In such circumstances the spouse may be entitled to receive his or her portion of any joint refund. False claims concerning such liability may subject individuals to legal action.

(G) All individuals are jointly and severally liable for overpayment of food stamps if they were adult household members when the food stamps were overissued.

(6) *Federal salary offset program*—(i) *Claims subject to salary offset.* All recipient claims submitted by State agencies participating in the Federal income tax refund offset program (FTROP) shall be subject to the matching procedures specified in this paragraph. Individuals identified by the match shall be subject to the salary offset procedures specified in this paragraph.

(ii) *Identification of recipient claims owed by Federal employees.* (A) FCS will match all recipient claims submitted by State agencies participating in FTROP against Federal employment records maintained by the Department of Defense and the United States Postal Service. FCS will remove recipient claims matched during this procedure from the list of recipient claims to be referred to the Internal Revenue Service (IRS) for collection through FTROP.

(B) When FCS receives a list of Federal employees matched against recipient claims for a particular State agency, it will notify the State agency in writing accompanied by a data security and confidentiality agreement containing the requirements specified in paragraph (g)(6)(ii)(C) of this section for the State agency to sign and return. When that agreement is returned, signed by an appropriate official of the State agency, FCS will provide the list of matched Federal employees to the State agency.

(C) State agencies which receive lists of matched employees shall take the actions specified in this paragraph to ensure the security and confidentiality of information about those employees and their apparent debts, and shall ensure that any contractors or other non-State agency entities to which the records may be disclosed also take these actions:

(*1*) By such means as card keys, identification badges and security personnel, limit access to computer facilities handling the data to persons who need to perform official duties related to the salary offset procedures. By means of a security package, limit access to the computer system itself to such persons;

(*2*) During off-duty hours, keep magnetic tapes and other hard copy records of data in locked cabinets in locked rooms. During on-duty hours, maintain those records under conditions that restrict access to persons who need them in connection with official duties related to salary offset procedures;

(*3*) Use the data solely for salary offset purposes as specified in paragraph (g)(6) of this section, including not extracting, duplicating or disseminating

the data except for salary offset purposes;

(*4*) Retain the data only as long as needed for salary offset purposes as specified in paragraph (g)(6) of this section, or as otherwise required by FCS;

(*5*) Destroy the data by shredding, burning or electronic erasure; and

(*6*) Advise all personnel having access to the data about the confidential nature of the data and their responsibility to abide by the security and confidentiality provisions stated in paragraph (g)(6)(ii)(C) of this section.

(D) Prior to taking any action to collect recipient claims as specified in paragraph (g)(6)(iii) of this section, State agencies shall review the claims records of matched Federal employees to verify the amount of the recipient claim owed, and to remove from the list of claims any recipient claims which have been paid, which are being paid according to an agreed to schedule, or which for other reasons are not collectible.

(iii) *State agency advance notice of salary offset.* (A) Following the review specified in paragraph (g)(6)(ii)(D) of this section, State agencies shall provide each Federal employee verified as owing a recipient claim (debtor) with an advance notice of salary offset (advance notice). This advance notice shall be mailed to the debtor at the address provided by FCS, or shall be otherwise provided, within 60 days of State agency receipt of the list specified in paragraph (g)(6)(ii)(B) of this section.

(B) Within 90 days of the date of the advance notice, the State agency shall refer to FCS all claims for which the State agency does not receive timely and adequate response as specified in the advance notice. Such referrals shall consist of a copy of the advance notice sent to the debtor and copies of records relating to the recipient claim. Records relating to the recipient claims include such things as copies of printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations.

(C) The advance notice shall state that:

(*1*) According to State agency records the debtor is liable for a claim for a specified dollar amount due to receiving excess food stamp benefits. State agencies are encouraged to include as much other information about the claim as possible, including such things as whether it was caused by household error or intentional Program violation, the date of the initial demand letter, any hearings or court actions which relate to the claim, and what, if any, payments have reduced the amount of the original claim;

(*2*) Through a computer match the debtor was found to be employed by [the name and address of the employing agency of the debtor]. The computer match was conducted under the authority of and according to procedures required by the Privacy Act of 1974, as amended;

(*3*) Collection from the wages of Federal and USPS employees for debts such as food stamp recipient claims is authorized by the Debt Collection Act of 1982. The claim will be referred to FCS for such collection action unless within 30 days of the date of the advance notice the State agency receives either:

(*i*) Payment of the claim in full. Claims of $50 or less shall be paid in full within 30 days or they will be referred to FCS for collection from the individual's Federal salary; or

(*ii*) The first installment payment for the claim. Claims of more than $50, if not paid in full within 30 days, must be paid in installments of at least $50 a month. Debtors may pay more than $50 on any installment payment. The advance notice shall state the monthly due date of installment payments and that if a monthly installment payment of at least $50 is not received by the due date, the claim will be referred to FCS for offset from the individual's Federal salary with no further opportunity to enter a voluntary repayment agreement;

(*4*) The name, address and a toll-free or collect telephone number of a State agency contact (an individual or unit) for repayment and/or discussion of the claim; and

(*5*) Debtors may submit documentation to State agencies showing such things as payments of claims or other circumstances which would prevent collection of claims. Unless the State agency receives such documentation within 30 calendar days of the date of the advance notice and the documentation clearly shows that the claim has been paid or is not legally collectible, the State agency shall refer the claim to FCS for collection from the debtor's salary. The State agency shall notify debtors in writing when claims for which an advance notice was issued will not be referred for collection from salaries. Debtors have the right to a formal appeal to FCS. Notification about how to make such appeals is required and will be provided to debtors before any collection action from salaries is taken.

(iv) *State agency retention and reporting of collections.* (A) State agencies shall retain collections of recipient claims paid voluntarily to State agencies and to FCS through salary offsets at the rates specified in paragraph (h) of this section for the appropriate reporting period. From time to time as volume warrants, FCS will report and transfer amounts collected from salaries to State agencies. Collections by State agencies and by FCS on all such claims shall be reported as appropriate.

(B) If a debtor fails to make an installment payment, within 60 days of the date the payment was due, State agencies shall refer the claim to FCS, reporting the default, the dollar amount collected and the balance due.

(v) *FCS actions on claims referred by State agencies.* Departmental procedures at 7 CFR 3.51–3.68 shall apply to claims referred by State agencies to FCS as required by paragraphs (g)(6)(iii)(B) and (g)(6)(iv)(B) of this section subject to the following modifications:

(A) In addition to the definitions set forth at 7 CFR 3.52, the term ''debts'' shall further be defined to include recipient claims established according to this section; and the terms ''State agency'' and ''FCS'' shall be defined as set forth in section 271.2 of this chapter.

(B) Pursuant to 7 CFR 3.34(c)(4) and 7 CFR 3.55(d), the Secretary has determined that collection of interest, penalties and administrative costs provided at 7 CFR 3.65 is not in the best interests of the United States and hereby waives collection of such charges.

(C) In addition to providing the right to inspect and copy Departmental records as specified at 7 CFR 3.60(a), the Secretary shall provide copies of records relating to the debt in response to timely requests. For a request to be timely, FCS must receive it within 30 calendar days of the date of the notice of intent.

(D) Pursuant to 5 CFR 550.1104(d)(6), an opportunity to establish a written repayment agreement provided at 7 CFR 3.61 shall not be provided.

(E) The notice of intent for FSP salary offset shall comply with the requirements of the Departmental notice of intent which are set forth at 7 CFR 3.55, subject to the following modifications:

(*1*) In addition to the statement that the debtor has the right to inspect and copy Departmental records relating to the debt, the notice of intent shall state that if timely requested by the debtor, the Secretary shall provide the debtor copies of such records. It shall further advise, as required by 7 CFR 3.60(a), that to be timely such requests must be received within 30 days of the date of the notice of intent; and

(*2*) The statement of the right to enter a written repayment agreement provided by 7 CFR 3.55(f) shall not be included.

(h) *Retention rates.* The following retention rates shall apply for claims collected by the State agency, including the value of allotment reductions for the purpose of collecting claims but not allotment reductions due to disqualification:

(1) For amounts collected prior to October 1, 1990, the State agency shall retain 25 percent of the value of inadvertent household error claims collected and 50 percent of the value of intentional Program violation claims collected;

(2) For amounts collected during the period October 1, 1990 through September 30, 1995, the State agency shall retain 10 percent of the value of inadvertent household error claims collected

and 25 percent of the value of intentional Program violation claims collected;

(3) For amounts collected on or after October 1, 1995, the State agency shall retain 25 percent of the value of inadvertent household error claims collected and 50 percent of the value of intentional Program Violation claims collected;

(4) The State agency shall not retain any percentage of the value of administrative error claims collected.

(i) *Submission of payments.* (1) The State agency shall retain the value of funds collected for inadvertent household error, intentional Program violation, or administrative error claims rather than forwarding the payments to FCS. This amount includes the total value of allotment reductions to collect claims, but does not include the value of benefits not issued as a result of a household member being disqualified. The State's grant and letter of credit will be established or amended on a quarterly basis to reflect the State agency's retention of the value of claims collected as specified in paragraph (h) of this section unless the State agency requests or has requested that payment be by check. The State agency may request that FCS accept checks from the State for FCS–209 amounts due FCS, or that FCS pay the State by check for FCS–209 amounts due the State. If the State agency fails to pay FCS the amount due as reported on the FCS–209, FCS shall offset the amount due from the State's letter of credit. For FCS–209 reporting purposes, State agencies shall calculate the retention amount using the appropriate rate specified in paragraph (h) of this section which is in effect during the reporting period for the report. For those claims collected in Fiscal Year 1990 or earlier for which adjustments are made and reported in Fiscal Year 1991 or 1992, States may request a correction to reflect the difference between the old, higher rate (paragraph (h)(1) of this section) which is applicable to those claims, and the new, lower rate (paragraph (h)(2) of this section) at which the adjustments to those claims were reported on the FCS–209. One request for correction for each of fiscal years 1991 and 1992 may be filed with FCS after the fiscal year, but no later than November 30, 1991, for Fiscal Year 1991 reporting and no later than November 30, 1992, for Fiscal Year 1992 reporting. The request must be in writing, must include appropriate verifying documentation, and must reflect the net effect of all increases and decreases resulting from the application of the old retention rate.

(2) Each State agency shall submit quarterly a Form FCS–209, Status of Claims Against Households, to detail the State's activities relating to claims against households. This report is due no later than 30 days after the end of each calendar year quarter and shall be submitted to FCS even if the State agency has not collected any payments. In addition to reporting the amount of funds recovered from inadvertent household error and intentional Program violation claims each quarter on Form FCS–209, the State agency shall also report these amounts on other letter of credit documents as required. In accounting for inadvertent household error and intentional Program violation claims collections, the State agency shall include cash or coupon repayments and the value of allotments recovered or offset by restoration of lost benefits. However, the value of benefits not issued during periods of disqualification shall not be considered recovered allotments and shall not be used to offset an intentional Program violation claim. In addition, each State agency shall establish controls to ensure that officials responsible for intentional Program violation determinations will not benefit from the State share of recoveries.

(3) The State agency may retain any amounts recovered on a claim being handled as an inadvertent household error claim prior to obtaining a determination by an administrative disqualification hearing offical or a court of appropriate jurisdiction that intentional Program violation was committed, or receiving from an individual either a signed waiver or consent agreement, at the rate applicable to intentional Program violation claims, once the determination or signed document is obtained. In such cases, the State agency shall include a note in an attachment to the quarterly reporting

form specified in paragraph (h)(2) of this section which shows the additional amounts being retained on amounts already recovered as a result of the change in status of the claim.

(4) If a household has overpaid a claim, the State agency shall pay the household any amounts overpaid as soon as possible after the overpayment becomes known. The household shall be paid by whatever method the State agency deems appropriate considering the household's circumstances. Overpaid amounts of a claim which have previously been reported as collected via the FCS–209 and which have been repaid to the household shall be reported in the appropriate column on the FCS–209 for the quarter in which the repayment occurred. The amount of the repayment shall be subtracted from the total amount collected. The appropriate retention rate shall be applied to the reduced collection total.

(5) In cases where FCS has billed a State agency for negligence, any amounts collected from households which were caused by the State's negligence will be credited by FCS. When submitting these payments, the State agency shall include a note as an attachment to the quarterly reporting form specified in paragraph (h)(2) of this section which shows the amount that should be credited against the State's bill.

(j) *Returned coupons.* If coupon books collected from households as payment for claims are returned intact and in usable form, the State agency may return them to coupon inventory. The State agency shall destroy any coupons or coupon books which are not returned to inventory in accordance with the procedures outlined in § 274.7(f).

(k) *Claims discharged through bankruptcy.* State agencies shall act on behalf of, and as, FCS in any bankruptcy proceeding against bankrupt households owing food stamp claims. State agencies shall possess any rights, priorities, interests, liens or privileges, and shall participate in any distribution of assets, to the same extent as FCS. Acting as FCS, State agencies shall have the power and authority to file objections to discharge, proofs of claims, exceptions to discharge, petitions for revocation of discharge, and any other documents, motions or objections which FCS might have filed. Any amounts collected under this authority shall be transmitted to FCS as provided in paragraph (h) of this section.

(l) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for monitoring claims against households. At a minimum, the accounting system shall be designed to readily accomplish the following:

(1) Document the circumstances which resulted in a claim, the procedures used to calculate the claim, the methods, used to collect the claim and, if applicable, the circumstances which resulted in suspension or termination of collection action.

(2) Identify those situations in which an amount not yet restored to a household can be used to offset a claim owed by the household.

(3) Identify those households that have failed to make installment payments on their claims.

(4) Document how much money was collected in payment of a claim and how much was submitted to FCS.

(5) Identify at certification household that owe outstanding payments on a previously issued claim determination. At the time the household is certified and receives an initial allotment (as specified at § 273.17(d)(4)), the initial allotment, whether paid retroactively or prospectively, shall not be reduced to offset claims.

(m) *Interstate claims collection.* In cases where a household moves out of the area under a State agency's jurisdiction, the State agency should initiate or continue collection action against the household for any overissuance to the household which occurred while it was under the State agency's jurisdiction. The State agency which overissued benefits to the household shall have the first opportunity to collect any overissuance. However, if the State agency which overissued benefits to the household does not take prompt action to collect, then the State agency which administers the area into which the household moves should initiate action to collect the overissuance. Prior to initiating action to collect such overissuances, the State agency which administers the area into

which the household moves shall contact the State agency which overissued benefits to ascertain that it does not intend to pursue prompt collection. The State share of any collected claims, as provided in § 273.18(h), shall be retained by the State agency which collects the overissuance.

[Amdt. 242, 48 FR 6861, Feb. 15, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.18, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### § 273.19 [Reserved]

### § 273.20 SSI cash-out.

(a) *Ineligibility*. No individual who receives supplemental security income (SSI) benefits and/or State supplementary payments as a resident of California is eligible to receive food stamp benefits. The Secretary of the Department of Health and Human Services has determined that the SSI payments in California have been specifically increased to include the value of the food stamp allotment.

(b) *Receipt of SSI benefits.* In California, an individual must actually receive, not merely have applied for, SSI benefits to be determined ineligible for the food stamp program. If the State agency provides payments at least equal to the level of SSI benefits to individuals who have applied for but are awaiting an SSI eligibility determination, receipt of these substitute payments will terminate the individual's eligibility for food stamp benefits. Once SSI benefits are received, the individual will remain ineligible for food stamp benefits, even during months in which receipt of the SSI benefits is interrupted, or suspended, until the individual is terminated from the SSI program.

(c) *Income and resources.* In California, the income and resources of the SSI recipient living in a household shall not be considered in determining eligibility or level of benefits of the household, as specified in § 273.11(d).

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 132, 44 FR 33383, June 8, 1979. Redesignated at 45 FR 7217, Jan. 31, 1980, and amended by Amdt. 237, 47 FR 57669, Dec. 28, 1982; Amdt. 269, 51 FR 10793, Mar. 28, 1986; Amdt. 356, 59 FR 29713, June 9, 1994; Amdt. 364, 61 FR 54320, Oct. 17, 1996]

### § 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

(a) *System design*. This section provides for an MRRB system for determining household eligibility and benefits. For included households, this system replaces the prospective budgeting system provided in the preceding sections of this part. The MRRB system provides for the use of retrospective information in calculating household benefits, normally based on information submitted by the household in monthly reports. The State agency shall establish an MRRB system as follows:

(1) In establishing either a one-month or a two-month MRRB system, the State agency shall use the same system it uses in its AFDC Program unless it has been granted a waiver by FCS. Differences between a one-month and a two-month system are described in paragraph (d) of this section.

(2) The State agency shall determine eligibility, either prospectively or retrospectively, on the same basis that it uses for its AFDC program, unless it has been granted a waiver by FCS.

(3) The household shall be certified for a continuous period of up to twelve months, but for no less than six months. These limits may be waived for certain categories of households if the State agency can demonstrate that the waiver will improve the administration of the program.

(4) *Budgeting waivers.* FCS may approve waivers of the budgeting requirements of this section to conform to budgeting procedures in the AFDC program, except for households excluded from retrospective budgeting under paragraph (b) of this section.

(b) *Included and excluded households.* The establishment of either a monthly reporting or retrospective budgeting system is a State agency option. Certain households are specifically excluded from both monthly reporting and retrospective budgeting. A household that is included in a monthly reporting system must be retrospectively budgeted. Households not required to submit monthly reports may have their benefits determined on either a

prospective or retrospective basis at the State agency's option, unless specifically excluded from retrospective budgeting.

(1) The following households are excluded from both monthly reporting and retrospective budgeting:

(i) Migrant or seasonal farmworker households.

(ii) Households in which all members are homeless individuals.

(iii) Households with no earned income in which all adult members are elderly or disabled.

(2) Households residing on an Indian reservation where there was no monthly reporting system in operation on March 25, 1994 are excluded from monthly reporting.

(c) *Information on MRRB.* At the certification and recertification interview, the State agency shall provide the household with the following:

(1) An oral explanation of the purpose of MRRB;

(2) A copy of the monthly report and an explanation of how to complete and file it;

(3) An explanation that information required to be reported on the monthly report is the only reporting requirement for such information;

(4) An explanation of what the household shall verify when it submits a monthly report and how it will verify it;

(5) A telephone number (toll-free number or a number where collect calls will be accepted outside the local calling area) which the household may call to ask questions or to obtain help in completing the monthly report; and

(6) Written explanations of this information.

(7) *Special assistance.* The State agency shall provide special assistance in completing and filing monthly reports to households whose adult members are all either mentally or physically handicapped or are non–English speaking or otherwise lacking in reading and writing skills such that they cannot complete and file the required reports.

(d) *One and two-month systems.* Each State agency shall adopt either a one-month or two-month MRRB system. A one-month system shall have either one or two beginning months in the certification period and a two-month system shall have two beginning months. Except for beginning months in sequence as described in the preceding sentence, the State agency shall not consider as a beginning month any month which immediately follows a month in which a household is certified.

(1) *One-month system.* In the one-month system, the issuance month immediately follows its corresponding budget month.

(2) *Two-month system.* In the two-month system, the issuance month is the second month following its corresponding budget month. There are two beginning months of participation in this system, the first month and the following month.

(e) *Determining eligibility for households not certified under the beginning months' procedures of § 273.21(g).* The State agency shall determine eligibility consistent with paragraph (a)(2) of this section and in accordance with either of the following options.

(1) *Prospective eligibility.* The State agency shall determine eligibility by considering all factors of eligibility prospectively for each of the issuance months.

(2) *Retrospective eligibility.* The State agency shall determine eligibility by considering all factors of eligibility retrospectively using the appropriate budget month except for residency and compliance with the requirements regarding social security numbers. Compliance with work registration provisions shall be considered as of the issuance month or month of application. The 60-day time frame for determining the applicability of the voluntary quit provision of § 273.7(n) shall be measured by the State agency from the date of application.

(f) *Calculating allotments for households following the beginning months*—(1) *Household composition.* (i) If eligibility is determined retrospectively the State agency shall determine the household's composition as of the last day of the budget month.

(ii) If eligibility is determined prospectively (during the beginning months or for households processed under paragraph (e)(1) of this section), the State agency shall determine the

household's composition as of the issuance month.

(iii) In a two-month system, the following provisions shall apply with regard to a household which reports, in the month between the budget month and the corresponding issuance month, that it has gained a new member.

(A) The State agency shall use the same household composition for determining the household's eligibility that it uses for calculating the household's benefit level.

(B) If the new member is not already certified to receive food stamps in another household participating within the State, the new member's income, deductible expenses, and resources from the issuance month shall be considered in determining the household's eligibility and benefit level. If the new member had been providing income to the household on an ongoing basis prior to becoming a member of the household, the State agency shall exclude the previously provided income in determining the household's issuance month benefits and eligibility.

(C) If the individual has moved out of one household receiving food stamps within the State and into another, with no break in participation, the State agency shall use the individual's income, deductible expenses, and resources from the budget month in determining benefits to be provided in the issuance month. The State agency shall include such an individual and the individual's income, deductible expenses, and resources in determining the issuance month eligibility and benefit level of either the household from which the individual has moved or the household into which the individual has moved, but not both. In determining the issuance month eligibility and benefit level of the household into which the individual has moved, the State agency shall disregard budget month income received by the new member from a terminated source.

(D) The State agency may add new members to the household effective either the month the household reports the gain of a new household member or the first day of the issuance month following the month the household reports the gain of a new member. The benefits shall not be prorated.

(iv) The State agency shall add a previously excluded member who was disqualified for an intentional program violation or failure to comply with workfare or work requirements, was ineligible because of failure to comply with the social security number requirement, or was previously an ineligible alien retrospectively to the household the month after the disqualification period ends. All other previously excluded members shall be added in accordance with the procedures in paragraph (f)(1)(iii)(B) of this section, using the new member's issuance month income and expenses.

(2) *Income and deductions.* For the household members as determined in accordance with paragraph (f)(1) of this section, the State agency shall calculate the allotment using the household members' income and deductions from the budget month, except as follows:

(i) The State agency shall annualize self-employment income which is received other than monthly, in accordance with § 273.11(a). Such income shall be budgeted either prospectively or retrospectively and shall not affect more benefit months than the number of months in the period over which it is annualized or prorated. Except that, households which receive self-employment income from a farm operation monthly but incur irregular expenses to produce such self-employment farm income shall be given the option to annualize the self-employment farm income and expenses over a 12-month period.

(ii) The State agency shall prorate contract income received over a period of less than one year and either prospectively or retrospectively budget such income. Such income shall not effect more benefit months than the number of months in the period over which it is prorated.

(iii) Earned and unearned educational income shall be prorated over the period it is intended to cover in accordance with § 273.10(c)(3)(iii), and it shall be budgeted either prospectively or retrospectively. Such income shall not effect more benefit months than the

number of months in the period over which it is prorated.

(iv) The State agency shall budget deductible expenses prorated over two or more months, except medical expenses, either prospectively or retrospectively, *provided* That such deductions are not budgeted over more months than they are intended to cover, and the total amount deducted does not exceed the total amount of the expenses. Medical expenses shall be budgeted prospectively. The State agency shall continue to allow deductions for expenses incurred even if billed on other than a monthly basis unless the household reports a change in the expense. The State agency may average the child support expense and budget it prospectively or retrospectively.

(v) The State agency shall budget stable income regularly received as a single monthly payment for the month such income is intended to cover. The State agency shall budget deductions regularly billed as a single monthly payment for the month such deductions are intended to cover.

(vi) The State agency may budget interest income using one of the following methods in paragraphs (f)(2)(vi) (A), (B), or (C) of this section. The State agency shall either establish categories of interest to be handled by each of the methods or shall offer each household the option of which method to budget the interest income.

(A) Actual interest income received in the budget month.

(B) Prorated interest income calculated by dividing the amount of interest anticipated during the certification period by the number of months in the certification period.

(C) An averaged amount adjusted for anticipated changes.

(vii) For a new household member described under paragraph (f)(1)(iii)(B) of this section, the State agency shall consider the new member's income and deductible expenses prospectively until the new member's first month living with the household becomes the budget month.

(viii) The options provided under paragraph (j)(1)(vii) of this section may affect the calculation of income and deductions.

(g) *Determining eligibility and allotments in the beginning months.* The State agency shall use the prospective budgeting procedures of this paragraph for determining the allotments and eligibility of households in the MRRB system during this first month, or first and second month of participation. The State agency shall not apply the procedures of this paragraph to the month(s) following the month of termination resulting from a temporary one-month change.

(1) *Determining eligibility during the beginning months.* The State agency shall determine eligibility prospectively in the beginning month(s).

(2) *Calculating allotments during the beginning months.* the State agency shall calculate allotments prospectively in the beginning month(s).

(3) *The first months of retrospective budgeting following the beginning months.* The State agency shall begin to base issuances to the household on retrospective budgeting during the first month for which the State's system can use the month of application as a budget month. In a one-month system, the first month for which the issuance is based on retrospective budgeting shall be the second month of participation. In a two-month system, the first month for which the issuance is based on retrospective budgeting shall be the third month of participation. If the State agency had been averaging income or converting weekly or biweekly income to a monthly amount in the beginning months, it may begin using the household's actual budget month income when the household becomes subject to retrospective budgeting. For purposes of this paragraph, any income received in either or both of the beginning months from a source which no longer provides income to the household (terminated income), which was included in the household's prospective budget, shall be disregarded when the beginning month becomes the budget month.

(h) *The monthly report form*—(1) *General.* (i) The State agency shall give the household a reasonable period of time after close of the budget month to submit the monthly reports.

(ii) The State agency shall require each household in the MRRB system to

report on household circumstances on a monthly basis as a condition of continuing eligibility.

(iii) The State agency shall provide an individual or agency unit which a household may contact to receive prompt answers about the completion of the form. A telephone number (toll free for households outside the local calling area) which a household may use to obtain further information shall also be available.

(iv) The State agency shall ensure that households are informed about the availability and amount of the standard utility allowances, if the State agency offers them.

(2) *Monthly report form.* The State agency's monthly report form shall meet the following requirements:

(i) Be written in clear, simple language;

(ii) Meet the bilingual requirements described in § 272.4(b) of this chapter;

(iii) Specify the date by which the agency must receive the form and the consequences of a late or incomplete form, including whether the State agency shall delay payment if the form is not received by the specified date;

(iv) Specify the verification which the household must submit with the form, in accordance with § 273.21(i);

(v) Identify the individual or agency unit available to assist in completing the form:

(vi) Include a statement to be signed by a member of the household, indicating his or her understanding that the provided information may result in changes in the level of benefits, including reduction and termination;

(vii) Include, in prominent and boldface lettering, an understandable description of the Act's civil and criminal penalties for fraud.

(viii) If the form requests Social Security numbers, include a statement of the State agency's authority to require Social Security numbers (SSN's) (including the statutory citation, the title of the statute, and the fact that providing SSN's is mandatory), the purpose of requiring SSN's, the routine uses for SSN's, and the effect of not providing SSN's. This statement may be on the form itself or included as an attachment to the form.

(3) *Reported information.* The State agency may determine the information relevant to eligibility and benefit determination to be included on the monthly report form except that the State agency shall not require households to monthly report medical expenses. Medical expenses may be reported in accordance with § 273.10(d)(4).

(4) *Combined form.* If the State agency uses a combined monthly report for food stamps and AFDC, the State agency shall clearly indicate on the form that non-AFDC food stamp households need not provide AFDC-only information.

(i) *Verification.* Each month the household shall verify information for those items designated by the State agency. The State agency may designate that verification be submitted for any item that has changed or appears questionable. If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with § 273.2(f)(8)(ii) before acting on it if the change would increase the household's allotment. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without requiring verification, though verification which is required by § 273.2(f)(8)(i) shall be obtained prior to the household's recertification.

(j) *State agency action on reports*—(1) *Processing.* Upon receiving a monthly report, the State agency shall:

(i) Review the report to ensure accuracy and completeness.

(ii) Consider the report incomplete only if:

(A) It is not signed by the head of the household, an authorized representative or a responsible member of the household;

(B) It is not accompanied by verification required by the State agency on the monthly report;

(C) It omits information required by the State agency on the monthly report necessary either to determine the household's eligibility or to compute the household's level of food stamp benefits.

(iii) Determine those items which will require additional verification, in

accordance with paragraph (i) of this section.

(iv) Contact the household directly, and take action as needed, to obtain further information on specific items. These items include:

(A) The effect of a reported change in resources on a household's total resources; and

(B) The effect of a reported change in household composition or loss of a job or source of earned income on the applicability of the work registration requirement.

(v) Notify the household, in accordance with paragraph (j)(3)(ii) of this section, of the need to submit a report, correct an incomplete or inaccurate report, or submit the necessary verification within the extension period.

(vi) Determine the household's eligibility by considering all factors, including income, in accordance with paragraphs (e) or (g) of this section.

(vii) Determine the household's level of benefits in accordance with § 273.10(e) based on the household composition determined in accordance with paragraph (f)(1) of this section. For those household members the following (except as provided in paragraph (f)(2) of this section) income and deductions shall be considered:

(A) Earned and unearned income received in the corresponding budget month, including income that has been averaged in accordance with paragraph (f) of this section. The earned income of an elementary or secondary school student excluded in accordance with § 273.9(c)(7) shall be excluded until the budget month following the budget month in which the student turns 22. The State agency has the option of converting to a regular monthly amount the income that a household receives weekly or biweekly. If the State agency elects to convert weekly or biweekly income for MRRB households, it shall do so for all households in its MRRB caseload. The State agency may convert or average income in the beginning months and use actual earned or unearned income received in the budget month following the beginning months of participation.

(B) The PA grant paid in the corresponding budget month or the PA grant to be paid in the issuance month. If the State agency elects to use the PA grant to be paid in the issuance month, the State agency shall ensure that:

(*1*) Any additional or corrective payments are counted, either prospectively or retrospectively; and

(*2*) the State agency shall disregard income received in the budget month from a terminated source which results in an increase in the PA grant, provided the household has reported the termination of the income either in the monthly report for the budget month or in some other manner which, as determined by the State agency, allows the State agency sufficient time to process the change and affect the allotment in the issuance month.

A State agency which elects to use the PA grant to be paid in the issuance month shall implement mass changes in accordance with the procedures at § 273.12(e)(2).

(C) Deductions as billed or averaged from the corresponding budget month, including those shelter costs billed less often than monthly which the household has chosen to average.

(viii) Issue benefits in accordance with part 274 of this chapter and on the time schedule set forth in paragraph (k) of this section.

(ix) Provide specific information on how the State agency calculated the benefit level if it has changed since the preceding month, either with the issuance or in a separate notification.

(2) *Notices.* (i) All notices regarding changes in a household's benefits shall meet the definition of adequate notice as defined in § 271.2.

(ii) The State agency shall notify a household of any change from its prior benefit level and the basis for its determination. If the State agency reduces, suspends or terminates benefits, it shall send the notice so the household receives it no later than either the date the resulting benefits are to be received or in place of the benefits.

(iii) The State agency shall notify a household, in accordance with paragraph (j)(3)(iii), if its monthly report is late or incomplete, or further information is needed.

(3) *Incomplete filing.* (i) If a household fails to file a monthly report, or files an incomplete report, by the specified

filing date, the State agency shall give the household at least ten more days, from the date the State agency mails the notice to file a complete monthly report.

(ii) The State agency shall notify the household within five days of the filing date:

(A) That the monthly report is either overdue or incomplete;

(B) What the household must do to complete the form;

(C) If any verification is missing and the lack of that verification will adversely affect the household's allotment;

(D) That the Social Security number of a new member must be reported, if the household has reported a new member but not the new member's Social Security number;

(E) What the extended filing date is;

(F) That the State agency will assist the household in completing the report.

(iii) When a State agency requires verification for the item listed and the household does not provide the verification, the State agency shall take the following actions:

(A) If the household does not verify earned income, the State agency shall regard the household's report as incomplete, take action in accordance with paragraphs (j)(3)(i) and (j)(3)(ii) of this section and, if appropriate, terminate the household in accordance with paragraph (m) of this section.

(B) If the household is using its actual utility costs to establish its shelter cost deduction in accordance with § 273.9(d) and it does not verify a change in its actual utility expenses, the State agency shall not allow a deduction for such costs.

(C) If a household fails to verify a change in reported medical expenses in accordance with § 273.2(f)(8), and that change would increase the household's allotment, the State agency shall not make the change. The State agency shall act on reported changes without requiring verification if the changes would decrease the household's allotment, or make the household ineligible.

(D) If the household does not verify other items for which verification is required, the State agency shall:

(*1*) Act on the reported change if it would decrease benefits.

(*2*) Not act on the reported change if it would increase benefits.

(E) If the household does not report or verify changes in child support, the State agency shall not allow a child support deduction.

(k) *Issuance of benefits*—(1) *Timely issuance.* (i) For an eligible household which has filed a complete monthly report by the scheduled filing date, the State agency shall provide an opportunity to participate within the month following the budget month in a one-month system, or within the second month following the budget month in a two-month system.

(ii) The State agency shall provide each household with an issuance cycle so that the household receives its benefits at about the same time each month and has an opportunity to participate before the end of each issuance month.

(2) *Delayed issuance.* (i) If an eligible household files a complete monthly report during its extension period, the State agency shall provide it with an opportunity to participate no later than ten days after its normal issuance date.

(ii) If an eligible household which has been terminated for failure to file a complete report files a complete report after its extended filing date, but before the end of the issuance month, the State agency may choose to reinstate the household by providing it with an opportunity to participate. If the household has requested a fair hearing on the basis that a complete monthly report was filed, the State agency shall reinstate the household if a completed monthly report is filed before the end of the issuance month.

(iii) If an eligible household files a complete report after the issuance month, the State agency shall not provide the household with an opportunity to participate for that month.

(l) *Other reporting requirements.* (1) *Information reported on the monthly report.* The monthly report shall be the sole reporting requirement for information required to be included in the monthly report. Changes in household circumstances not subject to monthly reporting shall be reported in accordance with § 273.12.

(2) *Households excluded from monthly reporting.* Households which are excluded from monthly reporting shall report changes in accordance with § 273.12.

(m) *Termination.* (1) The State agency shall terminate a household's food stamp participation if the household:

(i) Is ineligible for food stamps, unless suspended in accordance with paragraph (n) of this section:

(ii) Fails to file a complete report by the extended filing date; or

(iii) Fails to comply with a nonfinancial eligibility requirement, such as registering for employment.

(2) The State agency shall issue a notice to the household which:

(i) Complies with the requirements of § 271.2 for adequate notice;

(ii) Informs the household of the reason for its termination;

(iii) If the State agency allows reinstatement under paragraph (k)(2)(ii), explains how the household may be reinstated;

(iv) Informs the household of its rights to request a fair hearing and to receive continued benefits. If termination is for failure to submit a monthly report and the household states that a monthly report has been filed, the notice must advise the household that a completed monthly report must be filed prior to the end of the issuance month as a condition for continued receipt of benefits.

(3) The State agency shall issue the notice to the household so that it receives the notice no later than the household's normal or extended issuance date.

(n) *Suspension.* The State agency may suspend a household's issuance in accordance with this paragraph. If the State agency does not choose this option, it shall instead terminate households in accordance with paragraph (m) of this section.

(1) The State agency may suspend a household's issuance for one month if the household becomes temporarily ineligible due to a periodic increase in recurring income or other change not expected to continue in the subsequent month. The State agency may on a Statewide basis either suspend the household's certification prospectively for the issuance month or retrospectively for the issuance month corresponding to the budget month in which the noncontinuing circumstance occurs.

(2) The State agency shall continue to supply monthly reports to the household for one month.

(3) If the suspended household again becomes eligible, the State agency shall issue benefits on the household's normal issuance date.

(4) If the suspended household does not become eligible after one month, the State agency shall terminate the household.

(o) If a household has been terminated or suspended based on an anticipated change in circumstances, the State agency shall not count any noncontinuing circumstances which caused the prospective ineligibility when calculating the household's benefits retrospectively in a subsequent month.

(p) *Fair hearings*—(1) *Entitlement.* All households participating in a MRRB system shall be entitled to fair hearings in accordance with § 273.15.

(2) *Continuation of benefits.* (i) Any household which requests a fair hearing and does not waive continuation of benefits, and is otherwise eligible for continuation of benefits, shall have its benefits continued until the end of the certification period or the resolution of the fair hearing, whichever is first. If the State agency did not receive a monthly report from the household by the extended filing date and the household states that a monthly report was submitted, the household is entitled to continued benefits, *provided* That a completed report is submitted no later than the last day of the issuance month.

(ii) The State agency shall provide continued benefits no later than five working days from the day it receives the household's request.

(iii) A household whose benefits have been continued shall file montly reports until the end of the certification period. If the fair hearing is with regard to termination for nonreceipt of the monthly report by the State agency, a completed monthly report for the month in question shall be submitted by the household no later than the last day of the issuance month.

(iv) During the fair hearing period the State agency shall adjust allotments to take into account reported changes, except for the factor(s) on which the fair hearing is based.

(q) *Recertification*—(1) *Timeliness.* The State agency shall recertify an eligible household which timely reapplies and provides it with an opportunity to participate in the household's normal issuance cycle.

(2) *Retrospective Recertification.* (i) The State agency shall recertify the household using retrospective information to determine the household's benefit level for the first month of the new certification period.

(ii) If the State agency is operating a two-month MRRB system, the State agency may delay reflecting information from the recertification interview in the household's eligibility and benefit level until the second month of the new certification period.

(iii) The State agency shall recertify households according to one of the three options set forth in paragraphs (q) (3), (4), or (5) of this section.

(3) *Option One: Recertification form.* (i) The State agency shall provide each household with a recertification form to obtain all necessary information about the household's circumstances for the budget month.

(ii) The State agency shall mail the form to the household, along with a notice of expiration, in place of the monthly report form. The State agency shall either: Mail the recertification form along with the notice of expiration; use a recertification form which contains a notice of expiration; or mail the recertification form and the notice of expiration separately, as long as the forms are mailed at the same time.

(iii) The household shall submit the form to the State agency in accordance with paragraph (h)(1)(i) of this section.

(4) *Option Two: Monthly report and addendum.* (i) The State agency shall provide each household with a notice of expiration and monthly report form and an addendum to obtain all additional information necessary for recertification.

(ii) The State agency shall either: Mail the monthly report form along with the notice of expiration; use a monthly report form which contains a notice of expiration; or mail the monthly report form and the notice of expiration separately, as long as the forms are mailed at the same time.

(iii) The household shall submit the monthly report to the State agency in accordance with paragraph (h)(1)(i) of this section.

(iv) The State agency shall deliver the recertification addendum to the household along with the monthly report form or obtain the necessary information from the household at the interview.

(v) The household shall submit the addendum to the State agency no later than the time of the interview.

(5) *Option Three: Signed Statement.* (i) The State agency shall recertify households based on the monthly report and the interview.

(ii) At the interview, the State agency shall obtain all of the information not provided in the monthly report which is necessary for recertification.

(iii) The State agency shall ensure that it has on file a statement signed by the appropriate household member that the household has applied for recertification.

(6) *Interview.* (1) The State agency shall conduct a complete interview with a household member or an authorized representative.

(ii) The State agency shall schedule the interview at any time during the last month of the old certification period.

(iii) If the State agency schedules the interview for a date on or before the normal filing due date of the monthly report, the State agency shall permit the household member and authorized representative to bring the recertification form or monthly report to the interview.

(r) *Procedures for households that change their reporting and budgeting status.* The State agency shall use one of the following procedures for households subject to change in reporting/budgeting status.

(1) *Households which become subject to MRRB.* The State agency may change the reporting/budgeting status of households which become subject to monthly reporting at any time following the change in household circumstances which results in the

change in the household's reporting/budgeting status, subject to the following conditions:

(i) The State agency shall provide the household with information provided to MRRB households under paragraph (c) of this section. If the State agency elects to implement the change during the certification period, it may omit the oral explanation of MRRB required under paragraph (c)(1).

(ii) The State agency shall not require the household to submit a monthly report during any month in which the household was subject to the change reporting requirements of § 273.12.

(2) *Households which are no longer subject to MRRB.* The agency shall use one of the following procedures to remove households from the MRRB system.

(i) *Procedures for households exempt from MRRB.* For any household which becomes exempt from MRRB under paragraph (b) of this section, the State agency shall notify the household within 10 days of the date the State agency becomes aware of the change that the household has become exempt from monthly reporting and is no longer required to file any future monthly reports and has also become exempt from retrospective budgeting and when the change in budgeting will go into effect. The State agency shall begin determining the household's benefits prospectively no later than the first issuance month for which a household has not submitted a monthly report for the budget month.

(ii) *Other households moving from MRRB to change reporting and prospective budgeting.* When a household is no longer subject to MRRB under a State agency's system, the State agency may begin determining the household's benefits prospectively in any month following the month the State agency becomes aware of the changed circumstances which necessitate the need to change the household's reporting/budgeting status. If the State agency elects to change the household's reporting/budgeting status prior recertification it shall provide the household with a notice explaining the change in the month prior to the month the change is effective. If the State agency elects to change the household's status at recertification it shall advise the household at the recertification interview that its reporting/budgeting status is being changed.

(iii) *Households moving from MRRB to retrospective budgeting and change reporting.* If a household's status necessitates changing it from a monthly reporter to a change reporter while continuing to be budgeted retrospectively, the State agency may change the household's status at any time. If the State agency elects to change the household immediately, the State agency shall provide the household with a notice that it is no longer subject to monthly reporting. The notice shall include information about the household's reporting requirements under § 273.12.

(s) *Implementation of Regulatory Changes.* The State agency shall implement changes in regulatory provisions for households subject to MRRB prospectively based on the effective date and implementation time frame published in the FEDERAL REGISTER. Rules are effective as of the same date for all households regardless of the budgeting system.

(t) *Monthly reporting requirements for households residing on reservations.* The following procedures shall be used for households which reside on reservations and are required to submit monthly reports:

(1) *Definition of a reservation.* For purposes of this section, the term ''reservation'' shall mean the geographically defined area or areas over which a tribal organization exercises governmental jurisdiction. The term ''tribal organization'' shall mean the recognized governing body of an Indian tribe (including the tribally recognized intertribal organization of such tribes), as well as any Indian tribe, band, or community holding a treaty with a State government.

(2) *Certification periods.* Any household residing on a reservation that is required to submit a monthly report shall be certified for two (2) years.

(i) A State agency may request a waiver from FCS to allow it to establish certification periods of less than two (2) years if it is able to justify the need for the shorter periods. Any request for a waiver shall include input

from the affected Indian tribal organization(s) and quality control error rate information for the affected households.

(ii) The State agency may opt to continue the two-year certification period for any household that moves off the reservation. If the State agency adopts this option and the household is still living off the reservation at the time it is subject to required recertification, the household shall be subject to the certification period requirements in § 273.10(f)(4). If the State agency does not adopt this option, any household that moves off the reservation shall have its certification period shortened. A household continuing to be subject to monthly reporting shall not have its certification period shortened to less than six months. A household becoming subject to change reporting shall not have its certification period end any earlier than the month following the month in which the State agency determines that the certification period shall be shortened.

(3) *Benefit determination for missing reports.* The State agency shall not delay, reduce, or suspend the allotment of a household that fails to submit a report by the issuance date.

(4) *Reinstatement.* If a household is terminated for failing to submit a monthly report, the household shall be reinstated without being required to submit a new application if a monthly report is submitted no later than the last day of the month following the month the household was terminated.

(5) *Notices.* (i) All notices regarding changes in a household's benefits shall meet the definition of adequate notice as defined in § 271.2 of this chapter.

(ii) If a household fails to file a monthly report by the specified filing date, the State agency shall notify the household within five days of the filing date:

(A) That the monthly report is either overdue or incomplete;

(B) What the household must do to complete the form;

(C) If any verification is missing;

(D) That the Social Security number of a new member must be reported, if the household has reported a new member but not the new member's Social Security number;

(E) What the extended filing date is;

(F) That the State agency will assist the household in completing the report; and

(G) That the household's benefits will be issued based on the previous month's submitted report without regard to any changes in the household's circumstances if the missing report is not submitted.

(iii) Simultaneously with the issuance, the State agency shall notify a household, if its report has not been received, that the benefits being provided are based on the previous month's submitted report and that this benefit does not reflect any changes in the household's circumstances. This notice shall also advise the household that, if a complete report is not filed timely, the household will be terminated.

(iv) If the household is terminated, the State agency shall send the notice so the household receives it no later than the date benefits would have been received. This notice shall advise the household of its right to reinstatement if a complete monthly report is submitted by the end of the month following termination.

(6) *Supplements and claims.* If the household submits the missing monthly report after the issuance date but in the issuance month, the State agency shall provide the household with a supplement, if warranted. If the household submits the missing monthly report after the issuance date or the State agency becomes aware of a change that would have decreased benefits in some other manner, the State agency shall file a claim for any benefits overissued.

[48 FR 54965, Dec. 8, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.21, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### § 273.22 Optional workfare program.

(a) *General.* This section contains rules which are to be followed in operating a Food Stamp Workfare Program. Under this program, nonexempt food stamp recipients may be required to perform work in a public service capacity as a condition of eligibility to receive the coupon allotment to which their household is normally entitled.

The primary goal of workfare is to improve employability and enable individuals to move into regular employment.

(b) *Program administration*. (1) A food stamp workfare program may be operated as part of a State's employment and training program, required in § 273.7(f) or may be operated independent of such a program. If the workfare program is part of the State's employment and training program it shall be included as a component in the State's employment and training plan in accordance with the requirements of § 273.7(c). If it is operated independent of the E&T program, the State must submit a workfare plan to FCS for its approval in accordance with the requirements of this section. For the purpose of this section, a political subdivision is any local government, including, but not limited to, any county, city, town or parish. A State agency may implement a workfare program statewide or in only some areas of the State. The areas of operation must be identified in the State workfare or employment and training plan.

(2) Political subdivisions are encouraged, but not required, to submit their plans to FCS through their respective State agencies. At a minimum, however, plans shall be submitted to the State agencies concurrent with their submission to FCS. Workfare plans and subsequent amendments shall not be implemented prior to their approval by FCS.

(3) When a State agency chooses to sponsor a workfare program by submitting a plan to FCS, it shall incorporate the approved plan into its State Plan of Operations. When a political subdivision chooses to sponsor a workfare program by submitting a plan to FCS, the State agency shall be responsible as a facilitator in the administration of the program by disbursing Federal funding and meeting the requirements identified in paragraph (d) of this section. Upon notification that FCS has approved a workfare plan submitted by a political subdivision in its State, the State agency shall append that political subdivision's workfare plan to its own State Plan of Operations.

(4) The operating agency is that administrative organization which has been identified in the workfare plan as being responsible for establishing job sites, assigning eligible recipients to the job sites, and meeting the requirements of this section. The operating agency may be any public or private, nonprofit organization. The State agency or political subdivision which submitted the workfare plan shall be responsible for monitoring the operating agency's compliance with the requirements of this section or of the workfare plan. The Secretary may suspend or terminate some or all workfare program funding, or withdraw approval of the workfare program from the State agency or political subdivision which submitted the workfare plan upon finding that that State agency or political subdivision, or their respective operating agencies have failed to comply with the requirements of this section or of the workfare plan.

(5) State agencies or other political subdivisions shall describe in detail in the plan how the political subdivision, working with the State agency and any other cooperating agencies that may be involved in the program, shall fulfill the provisions of this section. The plan shall include workload projections, staffing plans, interagency communication plans, and specific operational agreements developed by the agencies involved. The plan shall be a one-time submittal, with amendments submitted as needed to cover any changes in the workfare program as they occur.

(6) State agencies or political subdivisions submitting a workfare plan shall submit with the plan an operating budget covering the period from the initiation of the workfare program's implementation schedule to the close of the Federal fiscal year. In addition, an estimate of the cost for one full year of operation shall be submitted together with the workfare plan. For subsequent fiscal years, the workfare program budget shall be included in the State agency's budget.

(7) If workfare plans are submitted by more than one political subdivision, each representing the same population (such as a city within a county), the Department shall determine which political subdivision will have its plan approved. Under no circumstances shall a food stamp recipient be subject

to more than one food stamp workfare program. If a political subdivision chooses to operate a workfare program and represents a population which is already, at least in part, subject to a food stamp workfare program administered by another political subdivision, it must establish in its workfare plan how food stamp recipients will not be subject to more than one food stamp workfare program.

(c) *Operating agency responsibilities.* (1) The operating agency, as designated by the State agency or other political subdivision which submits a plan, shall be responsible for establishing and monitoring job sites, interviewing and assessing eligible recipients, assigning eligible recipients to appropriate job sites, monitoring participant compliance, making initial determinations of good cause for household noncompliance, and otherwise meeting the requirements of this section.

(2) *Establishment of job sites.* Workfare job slots may only be located in public or private, nonprofit agencies. Contractual agreements must be established between the operating agency and organizations providing jobs which include but are not limited to designation of the slots available and designation of responsibility for provision of benefits, if any are required, to the workfare participant.

(3) *Notifying State agency of noncompliance.* The operating agency shall notify the State agency of noncompliance by a household with a workfare obligation when it has determined that the household did not have good cause for the non-compliance. This notification shall occur within five days of such determination so that the State agency may make a final determination as provided in paragraph (d)(4) of this section.

(4) *Notifications.* Notices shall be established to be used as follows: (i) For the State agency to notify the operating agency of workfare-eligible households. Included in this notice shall be the case name, case number, names of workfare-eligible household members, address of the household, certification period, and indication of any part-time work. If the State agency is calculating the hours of obligation, this shall also be included in this notice. If the operating agency is computing the hours to be worked, the monthly allotment shall be included.

(ii) For operating agencies to notify the workfare participant of where and when the participant is to report, to whom the participant is to report, a brief description of duties for the particular placement, and the number of hours to be worked.

(iii) For operating agencies to notify the State agency of failure by a household to meet its workfare obligation.

(5) *Recordkeeping requirements.* (i) Files must be maintained which record activity by workfare participants. At a minimum, these records must contain job sites and hours assigned, hours completed, and communications with the State agency and job sites.

(ii) Program records shall be maintained in an orderly fashion, for audit and review purposes, for a period of 3 years from the month of origin of each record. Fiscal records and accountable documents shall be retained for 3 years from the date of fiscal or administrative closure of the workfare program. Fiscal closure, as used in this paragraph, means that workfare program obligations for or against the Federal government have been liquidated. Administrative closure, as used in this paragraph, means that the operating agency or Federal government has determined and documented that no further action to liquidate the workfare program obligation is appropriate. Fiscal records and accountable records shall be kept in a manner which will permit verification of direct monthly reimbursements to recipients, in accordance with paragraph (f)(4) of this section.

(6) *Reporting requirements.* The operating agency shall be responsible for providing information needed by the State agency to fulfill the reporting requirements stated in paragraph (d)(6) of this section.

(7) *Disclosure.* The provisions of § 272.1(c) restricting the use and disclosure of information obtained from food stamp households shall be applicable to the administration of the workfare program.

(8) *Grievance procedures.* The operating agency may establish a system for handling complaints filed by workfare participants regarding their working

conditions, perceived noncompliance by job sites with the provisions of this section, or any other area related to their workfare participation. This procedure need not handle complaints that can be pursued through a fair hearing nor may choosing not to use this procedure preclude a participant from requesting a fair hearing. If established, a description of this system shall be included in the workfare plan. Complaints which have not been resolved through this system and those against the operating agency shall be forwarded to the State agency and handled by the State agency according to the provisions of § 271.6. Workfare participants shall be informed of the grievance procedure.

(d) *State agency responsibilities.* (1) If a political subdivision chooses to operate a workfare program, the State agency shall cooperate with the political subdivision in developing a plan. This includes providing caseload and cost estimates, as well as being available for consultation on the design of the administrative structure and interagency communications for the program. The State agency may decide what its workfare policy shall be in three areas. They are the definition of reimbursable expenses, the definition of good cause, and the sanctioning of members of divided households (paragraphs (f)(4), (f)(5), and (f)(6)(ii) of this section, respectively). The State agency may either accept the policies contained in these paragraphs or determine its own policies, subject to the requirements of section 20 of the Food Stamp Act of 1977, as amended, and the approval of FCS. Until the Food and Consumer Service approves any alternate policies of the State agency, the provisions of paragraphs (f)(4), (f)(5), and (f)(6)(ii) of this section shall apply.

(2) The State agency shall determine at certification or recertification which household members are eligible for the workfare program and inform the household representative of the nature of the program and of the penalties for noncompliance. If the State agency is not the operating agency, each member of a household who is subject to workfare under paragraph (e)(1) of this section shall be referred to the organization which is the operating agency. The information identified in paragraph (c)(4)(i) of this section shall be forwarded to the operating agency within 5 days after the date of household certification. Computation of hours to be worked may be delegated to the operating agency.

(3) The State agency shall inform the household and the operating agency of the effect of any changes in a household's circumstances on the household's workfare obligation. This includes changes in benefit levels or workfare eligibility.

(4) Upon notification by the operating agency that a participant has failed to comply with the workfare requirement without good cause, the State agency shall make a final determination as to whether or not such failure occurred and whether there was good cause for any such failure. If the State agency determines that the participant did not have good cause for noncompliance, a sanction shall be processed as provided in paragraph (f)(6) of this section. The State agency shall immediately inform the operating agency of the months during which the sanction shall apply.

(5) The State agency shall maintain in each household's casefile all workfare-related forms used by the State agency in meeting the requirements of this section.

(6) The State agency shall submit quarterly reports to FCS within 45 days of the end of each quarter identifying for that quarter for that State:

(i) The number of households referred to the operating agency as containing workfare-eligible recipients. A household shall be counted as referred each time it is referred to the operating agency.

(ii) The number of households assigned to jobs each month by the operating agency.

(iii) The number of individuals assigned to jobs each month by the operating agency.

(iv) The total number of hours worked by participants.

(v) The number of households against which sanctions were applied. A household being sanctioned over two quarters should only be reported as sanctioned for the earlier quarter.

(7) The State agency may, at its option, assume responsibility for monitoring all workfare programs in its State to assure that there is compliance with this section and with the plan submitted and approved by FCS. Should the State agency assume this responsibility, it would act as agent for FCS which is ultimately responsible for ensuring such compliance. Should the State agency determine that noncompliance exists, it may withhold funding until compliance is achieved or FCS directs otherwise. FCS shall be notified prior to the withholding of funds of the circumstances leading to that action. At a minimum, the State agency shall perform onsite reviews of each workfare program once within six months of the program's implementation and then in accordance with the Management Evaluation review schedule for that program area.

(e) *Household responsibilities*—(1) *Persons subject to workfare.* Household members subject to the work registration requirements as provided in § 273.7(a) shall also be subject to the workfare requirements. In addition:

(i) Those recipients exempt from work registration requirements due to being subject to the work incentive program (WIN) under title IV of the Social Security Act shall be subject to workfare if they are currently involved less than 20 hours a week in WIN. Those recipients involved 20 hours a week or more may be subject to workfare at the option of the political subdivision.

(ii) Those recipients exempt from work registration requirements due to the application for or receipt of unemployment compensation shall be subject to workfare requirements; and

(iii) Those recipients exempt from work registration requirements due to being a parent or other household member responsible for the care of a dependent child between the ages of six and twelve shall be subject to workfare requirements. If the child has its sixth birthday within a certification period, the individual responsible for the care of the child shall be subject to the workfare requirement as part of the next scheduled recertification process, unless the individual qualifies for another exemption.

(2) *Household obligation.* The maximum total number of hours of work required of a household each month shall be determined by dividing the household's coupon allotment by the Federal or State minimum wage, whichever is higher. Fractions of hours of obligation may be rounded down. The household's hours of obligation for any given month may not be carried over into another month except when the household wishes to end a disqualification due to noncompliance with workfare in accordance with paragraph (f)(8) of this section.

(f) *Other program requirements*—(1) *Priority placements.* The State agency or political subdivision submitting the plan shall indicate in the plan how it will determine priority for placement at job sites when the number of eligible participants is greater than the number of available positions at job sites.

(2) *Conditions of employment.* (i) Recipients may be required to work up to, but not to exceed, 30 hours per week. In addition, the total number of hours worked by a recipient under workfare together with any other hours worked in any other compensated capacity, including hours of participation in a WIN training program, by such recipient on a regular or predictable part-time basis, shall not exceed thirty hours a week. With the recipient's consent, the hours to be worked may be scheduled in such a manner that more than thirty hours are worked in one week, as long as the total for that month does not exceed the weekly average of thirty hours a week.

(ii) No participant shall be required to work more than eight hours on any given day, except that with the recipient's consent, more than eight hours may be scheduled.

(iii) No participant shall be required to accept an offer of workfare employment if such employment fails to meet the criteria established in § 273.7(i)(1)(iii) and (iv); and § 273.7(i)(2) (i), (ii), (iv), and (v).

(iv) If the workfare participant is unable to report for job scheduling, to appear for scheduled workfare employment, or to complete the entire workfare obligation due to compliance

with Unemployment Insurance requirements, the additional work requirements established in § 273.7(e) (1), (2), (3), or (4), or the job search requirements established in § 273.7(f), such inability shall not be considered a refusal to accept workfare employment. If the workfare participant informs the operating agency of the time conflict, the operating agency shall, if possible, reschedule the missed activity. If such rescheduling cannot be completed before the end of the month, this shall not be cause for disqualification.

(v) The operating agency shall assure that all persons employed in workfare jobs receive job-related benefits at the same levels and to the same extent as similar non-workfare employees. These shall be benefits related to the actual work being performed, such as workers' compensation, and not to the employment by a particular agency, such as health benefits. Of those benefits required to be offered, any elective benefit which requires a cash contribution by the participant shall be optional at the discretion of the participant.

(vi) All persons employed in workfare jobs shall be assured by the operating agency of working conditions provided other employees similarly employed.

(vii) The provisions of section 2(a)(3) of the Service Contract Act of 1965 (Pub. L. 89–286), relating to health and safety conditions, shall apply to the workfare program.

(viii) Operating agencies shall not provide work to a workfare participant which has the effect of replacing or preventing the employment of an individual not participating in the workfare program. Vacancies, due to hiring freezes, terminations, or layoffs, shall not be filled by a workfare participant unless it can be demonstrated that such vacancies are a result of insufficient funds to sustain former staff levels.

(ix) The workfare jobs shall in no way infringe upon the promotional opportunities which would otherwise be available to regular employees.

(x) Workfare jobs shall not be related in any way to political or partisan activities.

(xi) Workfare assignments should, to the greatest extent possible, take into consideration previous training, experience, and skills of a participant.

(xii) The cost of workers' compensation or comparable protection provided to workfare participants by the State agency, political subdivision, or operating agency is a matchable cost under paragraph (g) of this section. Whether or not this coverage is provided, in no case is the Federal government the employer in these workfare programs (unless a Federal agency is the job site), and therefore, USDA does not assume liability for any injury to or death of a workfare participant while on the job.

(xiii) The nondiscrimination requirement provided in § 272.6(a) shall apply to all agencies involved in the workfare program.

(3) *Job search period.* The operating agency may establish a job search period of up to 30 days following certification prior to making a workfare assignment during which the potential participant is expected to look for a job. This period may only be established at household certification, not at recertification. The potential participant would not be subject to any job search requirements beyond those required under § 273.7 during this time.

(4) *Participant reimbursement.* Participants shall be reimbursed by the operating agency for transportation and other costs that are reasonably necessary and directly related to participation in the program. These other costs may include the cost of child care, or the cost of personal safety items or equipment required for performance of work if these items are also purchased by regular employees. These other costs shall not include the cost of meals away from home. No participant cost which has been reimbursed under a workfare program operated under Title IV of the Social Security Act or any other workfare program shall be reimbursed under the food stamp workfare program. Only reimbursement of participant costs which are up to but not in excess of $25 per month for any participant will be subject to Federal cost sharing as provided in paragraph (g)(1) of this section. Child care costs which are reimbursed may not be claimed as expenses and used in calculating the child care deduction for determining household

benefits. Pursuant to paragraph (d)(1) of this section, a State agency may decide what its reimbursement policy shall be.

(5) *Good cause.* For the purpose of this section, unless a State agency has determined its good cause policy pursuant to paragraph (d)(1) of this section, good cause shall include:

(i) Circumstances beyond a household member's control, such as, but not limited to: Illness; the illness or incapacitation of another household member requiring the presence of the workfare participant; a household emergency; or the lack of transportation when transportation is not provided by the operating agency;

(ii) Necessity for a parent or other responsible household member to care for a child between the age of six and 12 because adequate child care is not otherwise available;

(iii) Becoming exempt from the workfare eligibility requirements under the terms established in paragraph (e)(1) of this section.

(iv) Household moving out of the area of the workfare project.

(v) Instances where cost of transportation and other costs have exceeded $25 per month and are not being reimbursed by the operating agency.

(6) *Failure to comply.* (i) Where a workfare participant has been determined by the State agency to have failed or refused without good cause to comply with the requirements of this section, the entire household shall be ineligible to participate. Such ineligibility shall continue until either the household meets the provisions of paragraph (f)(8) of this section or for 2 consecutive months, whichever occurs earlier. Within 10 days after receiving notification of the household's failure to comply with the requirements of this section, the State agency shall, if it determines that there is not good cause for the noncompliance, provide the household with a notice of adverse action, as specified in § 273.13. Such notification shall contain the proposed period of disqualification and shall specify the terms and conditions on which disqualification can be ended. Information shall also be included with the notification on the procedures and requirements contained in paragraph (f)(8) of this section. The disqualification period shall begin with the first month following the expiration of the adverse notice period, or following a fair hearing decision if a fair hearing is requested, in which the household would normally have received benefits. A household member shall not be required to perform work at a job site when the household is no longer receiving benefits unless the household has chosen to meet the conditions for ending disqualification specified in paragraph (f)(8) of this section. Until the disqualification is actually invoked, the household, if otherwise eligible, will continue to have a workfare obligation.

(ii) Should a household have two or more consecutive months of noncompliance while being certified for food stamps, the total corresponding months of sanction shall be a cumulative total; that is, two months of noncompliance shall entail a four-month sanction. Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow all the members of the household at the time of the noncompliance. None of those household members shall be eligible to participate in the food stamp program for the length of the sanction beginning at the point when the sanction can be placed against any one of them.

(iii) If a sanctioned household member joins another food stamp household, that household's eligibility and benefit level shall be determined as follows:

(A) *Income, resources, and deductible expenses.* The income and resources of the household member(s) disqualified for noncompliance with workfare shall count in their entirety, and the entire household's allowable earned income standard, medical, dependent care and excess shelter deductions shall apply to the remaining household members.

(B) *Eligibility and benefit level.* An individual disqualified for noncompliance with workfare shall not be included when determining the household's size for the purpose of assigning a benefit level to the household or of comparing the household's monthly income with income eligibility standards. The State

agency shall ensure that no household's coupon allotment is increased as a result of the disqualification of one or more household member for workfare noncompliance.

(7) *Fair hearings.* Each household has a right to a fair hearing to appeal a denial or termination of benefits due to a State agency determination of failure to comply with the requirements of this section. The fair hearing requirements provided in § 273.15 shall apply. If a fair hearing is scheduled, the operating agency shall be available to participate in the hearing. The State agency shall provide the operating agency sufficient advance notice to permit the attendance of an operating agency representative.

(8) *Ending disqualification.* Following the end of the 2-month disqualification period for noncompliance with the workfare provisions of this section, a household may resume participation in the program if it applies again and is determined eligible. Eligibility may be reestablished during a disqualification period and the household shall (if it makes application and is determined otherwise eligible) be permitted to resume participation if the member who failed to comply or any other workfare-eligible member of the household satisfies all outstanding workfare obligations. A workfare position shall be made available for a household which wishes to end disqualification in this manner.

(9) Benefit overissuances. If a benefit overissuance is discovered for a month or months in which a participant has already performed a workfare or work component requirement, the State agency shall follow claim recovery procedures specified below.

(i) If the person who performed the work is still subject to a work obligation, the State shall determine how may extra hours were worked because of the improper benefit. The participant should be credited that number of hours toward future work obligations.

(ii) If a workfare or work component requirement does not continue, the State agency shall determine whether the overissuance was the result of an intentional program violation, an inadvertent household error, or a State agency error. For an intentional program violation a claim should be established for the entire amount of the overissuance. If the overissuance was caused by an inadvertent household error or State agency error, the State agency shall determine whether the number of hours worked in workfare are more than the number which could have been assigned had the proper benefit level been used in calculating the number of hours to work. A claim shall be established for the amount of the overissuance not ''worked off,'' if any. If the hours worked equal the amount of hours calculated by dividing the overissuance by the minimum wage, no claim shall be established. No credit for future work requirements shall be given.

(g) *Federal financial participation*—(1) *Administrative costs.* Fifty percent of all administrative costs incurred by State agencies or political subdivisions in operating a workfare program shall be funded by the Federal government. Such costs include those related to recipient participation in workfare, up to $25 per month for any participant, as indicated in paragraph (f)(4) of this section. Such costs shall not include the costs of equipment, capital expenditures, tools or materials used in connection with the work performed by workfare participants, the costs of supervising workfare participants, the costs of reimbursing participants for meals away from home, or reimbursed expenses in excess of $25 per month for any participant.

(2) *Funding mechanism.* The State agencies shall have responsibility for disbursing Federal funds used for the workfare program through the State agencies' Letters of Credit. The State agency shall also assure that records are being maintained which support the financial claims being made to FCS. This will be for all programs, regardless of who submits the plan. Mechanisms for funding local political subdivisions which have submitted plans must be established by the State agencies.

(3) *Fiscal recordkeeping and reporting requirements.* Workfare-related costs shall be identified by the State agency on the Financial Status Report (Form SF–269) as a separate column. All financial records, supporting documents,

statistical records, negotiated contracts, and all other records pertinent to workfare program funds shall be maintained in accordance with § 277.12.

(4) *Sharing workfare savings*—(i) *Entitlement.* A political subdivision is entitled to share in the benefit reductions which occur when a workfare participant begins employment while participating in workfare for the first time, or within thirty days of ending the first participation in workfare.

(A) To begin employment means to appear at the place of employment and to begin working.

(B) First participation in workfare means performing work for the first time in a particular workfare program. The only break in participation which shall not end first participation shall be due to the participant's taking a job which does not affect the household's allotment by an entire month's wages and which is followed by a return to workfare.

(ii) *Calculating the benefit reductions.* The political subdivision shall calculate benefit reductions from each workfare participant's employment as follows.

(A) Unless the political subdivision knows otherwise, it shall presume that the benefit reduction equals the difference between the last allotment issued before the participant began the new employment and the first allotment which reflects a full months wages, earned income deduction, and dependent care deduction attributable to the new job.

(B) If the political subdivision knows of other changes besides the new job, which affect the household's allotment after the new job began, the political subdivision shall obtain the first allotment affected by an entire month's wages from the new job. The political subdivision shall then recalculate the allotment to account for the wages, earned income deduction, and dependent care deduction attributable to the new job. In recalculating the allotment the political subdivision shall also replace any AFDC grant received after the new job with the one received in the last month before the new job began. The difference between the first allotment that accounts for the new job and the recalculated allotment shall be the benefit reduction.

(C) The political subdivision's share of the benefit reduction is three times this difference, divided by two.

(D) If, during these procedures, an error is discovered in the last allotment issued before the new employment began, that allotment shall be corrected before the savings are calculated.

(iii) *Accounting.* The reimbursement from workfare shall be reported and paid as follows:

(A) The political subdivision shall report its enhanced reimbursement to the State agency in accordance with paragraph (g)(3) of this section.

(B) The Food and Consumer Service shall reimburse the political subdivision in accordance with paragraph (g)(2) of this section.

(C) The political subdivision shall, upon request, make available for review sufficient documentation to justify the amount of the enhanced reimbursement.

(D) The Food and Consumer Service shall reimburse only the political subdivision's reimbursed administrative costs in the fiscal year in which the workfare participant began new employment and which are acceptable according to paragraph (g)(1) of this section.

(h) *Coordination with other workfare-type programs.* State agencies and political subdivisions may operate workfare programs as provided in this section jointly with a workfare program operated under Title IV of the Social Security Act to the extent that provisions and protections of the statute are maintained or with other workfare programs operated by the subdivision to the extent that the provisions and protections of this section are maintained. Statutory provisions include, but are not limited to, eligible recipients as provided in paragraph (e)(1) of this section, maximum hours of work per week as provided in paragraph (f)(2)(i) of this section and the penalty for noncompliance as provided in paragraph (f)(6)(i) of this section. When a household receives benefits from more than one program with a workfare requirement and the household is determined to have a food stamp workfare obligation,

the food stamp obligation may be combined with the obligation from the other program. However, this may be done only to the extent that eligible food stamp workfare participants are not required to work more than 30 hours a week in accordance with paragraph (f)(2)(i) of this section. Any intent to coordinate programs should be described in the plan. Waivers of provisions in this section, for the purpose of operating workfare jointly with local general assistance workfare-type programs may be requested and provided in accordance with §272.3(c). Statutory provisions, shall not be waived.

(i) *Voluntary workfare program.* State agencies and political subdivisions may operate workfare programs whereby participation by food stamp recipients is voluntary. In such a program, the penalty for failure to comply as provided in paragraph (f)(6) of this section shall not apply for noncompliance. The amount of hours to be worked will be negotiated between the household and the operating agency, though not to exceed the limits provided under paragraph (f)(2) of this section. In addition, all protections provided under paragraph (f)(2) of this section shall continue to apply. Those State agencies and political subdivisions choosing to operate such a program shall indicate in their workfare plan how their staffing will adapt to anticipated and unanticipated levels of participation. The Department will not approve plans which do not show that the benefits of the workfare program, in terms of hours worked by participants and reduced food stamp allotments due to successful job attainment, are expected to exceed the costs of such a program. In addition, if the Department finds that an approved voluntary program does not meet this criteria, the Department reserves the right to withdraw approval.

[Amdt. 217, 47 FR 44697, Oct. 8, 1982, as amended by Amdt. 240, 48 FR 1173, Jan. 11, 1983; Amdt. 269, 51 FR 10793, Mar. 28, 1986, 53 FR 31646, Aug. 19, 1988; Amdt. 356, 59 FR 29713, June 9, 1994]

### §273.23 Simplified application and standardized benefit projects.

(a) *General.* This subpart establishes rules under which Simplified Application and Standardized Benefit Projects shall operate. State agencies and political subdivisions chosen as project operators may designate households containing members receiving AFDC, SSI, or Medicaid benefits as project eligible. Project eligible households shall have their food stamp eligibility determined using simplified application procedures. Food stamp eligibility shall be determined using information contained in their AFDC, or Medicaid application, or, in the case of SSI, on the State Data Exchange (SDX) tape, and any appropriate addendum. Project-eligible households shall be considered categorically food stamp resource eligible based on their eligibility for these other programs and shall be required to meet food stamp income eligibility standards. However, income definitions appropriate to the AFDC, SSI or Medicaid programs shall be used instead of food stamp income definitions in determining eligibility. In addition, such households shall, as a condition of program eligibility, meet and/or fulfill all food stamp nonfinancial eligibility requirements. (Project-eligible households defined as categorically eligible in §273.2 (j) and (k) of these regulations are not required to meet the income eligibility standards.) To further simplify program administration, benefits provided to such households may be standardized by category of assistance and household size.

(b) *Program administration.* (1) Simplified application and standardized benefit procedures are applicable in five States and five political subdivisions. For the purpose of this section, a political subdivision is a project area as defined in §271.2 of these regulations.

(2) State agencies and political subdivisions seeking to operate a Simplified Application and Standardized Benefit Project shall submit Work Plans to FCS in accordance with the requirements of this section.

(3) FCS shall evaluate Work Plans according to the criteria set forth in the Simplified Application/Standardized Benefit Notice of Intent.

(4) Political subdivisions shall submit their Work Plans to FCS through their respective State agencies for review and approval.

(5) A State agency selected by FCS to operate a Simplified Application and Standardized Benefit Project shall include the Work Plan in its State Plan of Operations. A political subdivision chosen to operate a Simplified Application and Standardized Benefit Project shall assure that the responsible State agency include that political subdivision's project Work Plan in its own State Plan of Operations. The Work Plan shall be updated, as needed, to reflect changes in the benefit methodology, subject to prior FCS approval.

(c) *Contents of the work plan.* The Work Plan submitted by each applicant shall contain the following information:

(1) Background information on the proposed site's characteristics, current operating procedures, and a general description of the proposed procedures;

(2) A description of the proposed project design, including the benefit methodology, households which will be project eligible, operational procedures, and the need for waivers;

(3) An implementation and monitoring plan describing tasks, staffing and a timetable for implementation;

(4) An estimate of project impacts including implementation costs and, on an annual basis, operating costs, administrative costs, error reduction, and benefit changes; and

(5) A statement signed by the State official with authority to commit the State or political subdivisions to the project's operation.

(d) *Project-eligible households.* Each operating agency shall decide which of the following categories of household shall be eligible to participate in the project.

(1) Households all of whose members receive AFDC benefits under part A of title IV of the Social Security Act;

(2) Households all of whose members receive SSI benefits under title XVI of the Social Security Act;

(3) Households all of whose members receive Medicaid benefits under title XIX of the Social Security Act;

(4) Households each of whose members receive one or more of the following: AFDC, SSI, or Medicaid benefits (multiple-benefit households); and

(5) Households only some of whose members receive AFDC, SSI, and/or Medicaid benefits (mixed households).

(e) *Determining Food Stamp Program eligibility.* Under the Simplified Application and Standardized Benefit Project, project eligible households shall have their food stamp eligibility determined using the following criteria.

(1) Certain households, at the operating agency's option, which contain members receiving AFDC, SSI, or Medicaid benefits, shall be designated project eligible and need not make separate application for food stamp benefits. Once such households indicate in writing a desire to receive food stamps, their eligibility will be determined based on information contained in their application for AFDC or Medicaid benefits or, in the case of SSI, on the State Data Exchange (SDX) tape. AFDC or Medicaid applications may need to be modified, or be subject to an addendum in order to accommodate any additional information required by the operating agency.

(2) The income definitions and resource requirements prescribed under §273.9 (b) and (c) and §273.8 are inapplicable to project-eligible households. Project-eligible households which have met the resource requirements of the AFDC, SSI, and/or Medicaid programs shall be considered to have satisfied the food stamp resource requirements. Gross income less any allowed exclusions, as defined by the appropriate categorical aid program, shall be used to determine food stamp income eligibility (unless the project household is categorically income eligible as defined in §273.2 (j) and (k)) and benefit levels. Deemed income, as defined under AFDC, SSI or Medicaid rules, shall be excluded to the extent that households with such income are part of the food stamp household providing the deemed income.

(3) Project-eligible households which are not categorically income eligible shall meet the gross and net income standards prescribed in §273.9(a). Net income shall be determined by subtracting from gross income either actual or standardized deduction amounts. If standardized deduction

amounts are used, they may be initially determined using recent historical data on deductions claimed by such households. Such deductions must be updated, as necessary, on at least an annual basis. Such deductions shall include:

(i) The current standard deduction for all households;

(ii) An excess shelter deduction and a dependent care deduction for households not containing an elderly or disabled member;

(iii) A dependent care deduction, an uncapped excess shelter deduction and a medical deduction for households containing a qualified elderly or disabled member; and

(iv) A standardized or actual earned income deduction for households containing members with earned income.

(4) All non-financial food stamp eligibility requirements shall be applicable to project-eligible households.

(f) *Benefit levels.* (1) In establishing benefits for project eligible households, either the appropriate State standard of need (maximum aid payment) or gross income as determined for the appropriate categorical aid program plus the value of any monetary categorical benefits received, if any, may be used as the gross income amount. If mixed households are designated project eligible, procedures shall be developed to include as household income the income of those household members not receiving categorical aid.

(2) If allotments are standardized, the average allotment for each category of household, by household size, shall be no less than average allotments would have been were the project not in operation.

(3) Benefit methodologies shall be constructed to ensure that benefits received by households having higher than average allotments under normal program rules are not significantly reduced as a result of standardization.

(4) Benefit methodologies shall be structured to ensure that decreases in household benefits are not reduced by more than $10 or 20%, whichever is less.

(5) The methodology to be used in developing benefit levels shall be determined by the operating agency but shall be subject to FCS approval.

(6) With FCS approval, operating agencies may develop an alternate methodology for standardizing allotments/deductions for specific sizes and categories of households where such size and category is so small as to make the use of average deductions and/or allotments impractical.

(7) FCS may require operating agencies to revise their standardized allotments during the course of the project to reflect changes in items such as household characteristics, the Thrifty Food Plan, deduction amounts, the benefit reduction rate, or benefit levels in AFDC or SSI. Such changes will be documented by revising the Work Plan amendment to the State Plan of Operations.

(g) *Household notification.* All certified project-eligible households residing in the selected project sites shall be provided with a notice, prior to project commencement, informing them of the revised procedures and household requirements under the project. If household allotments are to be standardized, the notice shall also provide specific information on the value of the newly computed benefit and the formula used to calculate the benefit. The notice shall meet the requirements of a notice of adverse action as set forth in §273.13(a)(2).

(h) *Application processing procedures.* (1) The operating agency shall allow project-eligible households to indicate in writing their desire to receive food stamps. Such households shall be notified in writing, at the time such indication is made, that information contained in their AFDC, SSI, or Medicaid application will be the basis of their food stamp eligibility determination. If mixed households are included in the project-eligible universe, the project operator shall develop a procedure to collect the necessary information on household members not receiving categorical aid.

(2) The operating agency may use simplified application and standardized benefit procedures only for those households containing at least one member certified to receive either AFDC, SSI, or Medicaid benefits. If simplified procedures are to be used, the State agency shall make all eligibility determinations for households

jointly applying for food stamps and AFDC, SSI, or Medicaid benefits within the 30-day food stamp processing period. If a household's eligibility for AFDC, SSI, or Medicaid cannot be established within the 30-day period, normal food stamp application, certification, and benefit determination procedures shall be used and benefits shall be issued within 30 days if the household is eligible. Households which are jointly applying for AFDC, SSI, or Medicaid, and which qualify for expedited service, shall be certified for food stamps using procedures prescribed at § 273.2(i). However, if the State agency can process the application of an expedited service household for categorical assistance within the expedited period prescribed at § 273.2(i), it may use simplified application and standardized benefit procedures to certify the household for food stamp benefits.

(i) *Regulatory requirements.* (1) All Food Stamp Program regulations shall remain in effect unless they are expressly altered by the provisions of this section or the provisions contained within the approved SA/SB Work Plan.

(2) *Certification periods for mixed households.* At the option of the operating agency, mixed households may be assigned certification periods of up to one year. Such households, if circumstances warrant, may be required to attend a face-to-face interview on a schedule which would conform to certification periods normally assigned such households as specified in § 273.10(f). At the time of the interview, the household shall be required to complete a modified application and provide additional information in accordance with § 273.2(f). If the household fails to comply with the interview review requirement or if information obtained indicates a revision in household eligibility or benefits, action will be taken in accordance with § 273.13, Notice of Adverse Action.

(j) *Quality control.* (1) Project eligible households selected for quality control review shall be reviewed by the State agency using special procedures, based on project requirements, which have been developed by the State agency and approved by FCS.

(2) The error rate(s) determined using the special quality control review procedures shall be included when determining the State agency's overall error rate.

(k) *Funding.* Operating agencies shall be reimbursed for project costs at the rates prescribed in § 277.4.

(l) *Evaluation.* Each project site shall conduct a self-evaluation of the project's impact on benefits, administrative costs and participation. Such evaluation shall be conducted within three months of project implementation. The results of the self-evaluation shall be sent to FCS within six months of project implementation. The impact of the project on project-eligible households' error rates shall be reported on an annual basis in accordance with § 273.23(m).

(m) *Reporting requirements.* Operating agencies shall be required to prepare and submit to FCS an annual report on the error rate attributable to project-eligible households. The timing of such reports shall coincide with the due date for the annual quality control report prescribed in § 275.21(d).

(n) *State agency monitoring.* Monitoring shall be undertaken to ensure compliance with these regulations and the Work Plan submitted to and approved by FCS. Project monitoring shall be conducted in accordance with the appropriate sections of part 275, Performance Reporting System, of these regulations. At a minimum, onsite reviews of the Simplified Application and Standardized Benefit Project shall be conducted once within six months of the project's implementation and then in accordance with the Management Evaluation review schedule for the project area.

(o) *Termination.* (1) FCS may terminate project operations for any reason and at any time on 60 days written notice to the administering State agency or political subdivision. State or local agencies may also choose to terminate their participation with 60 days written notice to FCS. In either such event, operating agencies shall be given sufficient time to return to normal operations in an orderly fashion.

(2) If termination occurs, FCS may select another site for project operations. Such selection shall be based on

either previously received project proposals or proposals received under a new solicitation.

[53 FR 26224, July 12, 1988]

# PART 274—ISSUANCE AND USE OF COUPONS

Sec.
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EDITORIAL NOTE: OMB control numbers relating to this part 274 are contained in §271.8.

## §274.1 State agency issuance responsibility.

(a) *Basic issuance requirements.* State agencies shall establish issuance and accountability systems which ensure that only certified eligible households receive benefits; that coupons are accepted, stored, and protected after delivery to receiving points within the State; that Program benefits are timely distributed in the correct amounts; and that coupon issuance and reconciliation activities are properly conducted and accurately reported to FCS.

(b) *Contracting or delegating issuance responsibilities.* State agencies may assign to others such as banks, savings and loan associations, the Postal Service, community action and migrant service agencies, and other commercial businesses, the responsibility for the issuance and storage of food coupons. State agencies may permit contractors to subcontract assigned issuance responsibilities.

(1) Any assignment of issuance functions shall clearly delineate the responsibilities of both parties. The State agency remains responsible, regardless of any agreements to the contrary, for ensuring that assigned duties are carried out in accordance with these regulations. In addition, the State agency is strictly liable to FCS for all losses of coupons, even if those losses are the result of the performance of issuance, security, or accountability duties by another party.

(2) All issuance contracts shall follow procurement standards set forth in part 277.

(3) The State agency shall not assign the issuance of coupons to any retail food firm unless the State agency provides evidence that such an arrangement is needed to maintain or increase the efficient and effective operation of the Program, as described below.

(i) Coupons may be issued inside or within a retail food store, if the issuance is performed by a bank, credit union or other financial organization independent of the retail food store.

(ii) Coupons may be issued on-site by a retail food store under the following conditions:

(A) The State agency adequately documents that unless the retail food store is permitted to issue coupons on-site there will be a hardship, not just an inconvenience, to recipients. The State agency shall contract directly with the retail food firm and shall provide oversight to such entity; or

(B) In the absence of the hardship documentation, a retail food firm itself may perform issuance as a subcontractor to a bank, credit union or other independent financial organization, with strict oversight by the financial organization.

(4) The State agency may contract with the U.S. Postal Service for the issuance of benefits. The Department and the Postal Service have signed an agreement which governs benefit issuance by the Postal Service. A State agency's contract with the Postal Service does not exempt the State agency from the requirement that it comply with these regulations. However, State agencies may negotiate contracts with the Postal Service on all terms and conditions as long as such provisions do not conflict with these regulations.

(5) In project areas or parts of project areas where FCS has required a Photographic identification (Photo ID) system to be used, the State agency shall include in any contract or agreement with an issuing agent a provision establishing the agent's liability to the State agency for the face value of coupons issued in any authorization document transaction where the authorization document is found to have been stolen or otherwise not received by the household certified as eligible, if the cashier has not fulfilled the requirements contained in § 274.10. This same provision shall apply to issuance contracts in project areas or parts of project areas where FCS has granted a waiver or waivers of any provision(s) of the Photo ID requirements based on a determination that State agency alternatives will not compromise the security of the ID system.

(c) *State monitoring of coupon issuers.* The State agency's accountability system shall include procedures for monitoring coupon issuers to assure that the day-to-day operations of all coupon issuers comply with these regulations, to identify and correct deficiencies, and to report violations of the Act or regulations to FCS.

(1) The State agency shall conduct an onsite review of each coupon issuer and bulk storage point at least once every three years. All offices or units of a coupon issuer are subject to this review requirement. The State agency shall base each review on the specific activities performed by each coupon issuer or bulk storage point. A physical inventory of coupons shall be taken at each location and that count compared with perpetual inventory records and the monthly reports of the coupon issuer or bulk storage point. This review may be conducted at branch sites as well as the main offices of each issuer and bulk storage point that operates in more than one office. Except in unusual circumstances, the Postal Inspection Service will conduct onsite reviews of Postal Service issuance operations.

(2) This review requirement may be fulfilled in part or in total by the performance reporting review system, part 275. The State agency may delegate this review responsibility to another unit of the State government or contract with an outside firm with expertise in auditing and accounting. State agencies may use the results of reviews of coupon issuers by independent audit or accounting firms as long as the food coupon issuance operations of the coupon issuer are included in the review.

(d) *Changes.* The State agency shall inform FCS whenever a project area, issuance point, reconciliation point, replacement point, bulk storage reporting point or coupon shipment receiving point is created, relocated, or terminated. The State agency shall report the change at least 30 days prior to the effective date of the change. Initial notification may be made by telephone but the State agency shall confirm the information in writing as soon as possible.

(e) *Advance planning documentation.* State agencies must comply with the procurement requirements of part 277 for the acquisition, design, development, or installation of automated data processing (ADP) equipment. With certain exceptions detailed in part 277, State agencies must receive prior approval for the design and acquisition of ADP systems through submission of advance planning documents (APD's).

### § 274.2 Providing benefits to participants.

(a) *General.* Each State agency is responsible for the timely and accurate issuance of benefits to certified eligible households in accordance with these regulations. Those households comprised of elderly or disabled members which have difficulty reaching issuance offices, and households which do not reside in a permanent dwelling or of a fixed mailing address shall be given assistance in obtaining their regular monthly benefits. State agencies shall assist these households by arranging for the mail issuance of coupons to them, by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means. Requirements to assure timely and accurate issuance of benefits to eligible households in rural areas are described in paragraph (g) of this section.

(b) *Availability of benefits.* All newly-certified households, except those that are given expedited service, shall be

given an opportunity to participate no later than 30 calendar days following the date the application was filed. An opportunity to participate consists of providing households with coupons or authorization documents and having issuance facilities open and available for the households to obtain their benefits. State agencies must mail authorization documents or coupons in time to assure that the documents can be transacted, or the coupons spent after they are received but before the 30-day standard expires. A household has not been provided an opportunity to participate within the 30-day standard if the authorization document or benefits are mailed on the 29th or 30th day. Neither has an opportunity to participate been provided if the authorization document is mailed on the 28th day but no issuance facility is open on the 30th day. For households entitled to expedited service, the State agency shall make benefits available to the household not later than the fifth calendar day following the date of application. Whatever system a State agency uses to ensure meeting this delivery standard shall be designed to allow a reasonable opportunity for redemption of ATPs no later than the fifth calendar day following the date of application.

(c) *Combined allotments.* For those households which are to receive a combined allotment, the State agency shall provide the benefits for both months as an aggregate (combined) allotment, or as two separate allotments, with the same validity period, made available at the same time, in accordance with the timeframes specified in § 273.2 of this chapter.

(d) *Ongoing households.* All households shall be placed on an issuance schedule so that they receive their benefits on or about the same date each month. The date upon which a household receives its initial allotment after certification need not be the date that the household must receive its subsequent allotments.

(1) State agencies that use direct-mail issuance shall stagger issuance over at least 10 days of the issuance month, and may stagger issuance over the entire issuance month. State agencies using a method other than direct-mail issuance may stagger issuance throughout the month, or for a shorter period. When staggering benefit delivery, however, State agencies shall not allow more than 40 days to elapse between the issuance of any two allotments provided to a household participating longer than two consecutive, complete months. Regardless of the issuance schedule used, the State agency shall adhere to the reporting requirements specified in § 274.4.

(2) Upon the request of the tribal organization that exercises governmental jurisdiction over a reservation, the State agency shall stagger the issuance of benefits for eligible households located on reservations for at least 15 days each month.

(3) When a participating household is transferred from one issuance system or procedure to another issuance system or procedure, the State agency shall not permit more than 40 days to elapse between the last issuance under the previous system or procedure, and the first issuance under the new system or procedure. The 40-day requirement does not apply to instances in which actions by recipients, such as failure to submit a monthly report, disrupt benefits. Transfers include, but are not limited to, households being moved into or out of a staggered issuance procedure, households on a fluctuating schedule within a staggered system, and households being moved from a direct-mail issuance system to an authorization document system. If the State agency determines that more than 40 days may elapse between issuances, the State agency shall divide the new issuance into two parts, with one part being issued within the 40-day period, and the second part, or supplemental issuance, being issued on the household's established issuance date in the new system or procedure. The supplemental issuance cannot provide the household more benefits than the household is entitled to receive.

(4) Notwithstanding the above provisions, in months in which benefits have been suspended under the provisions of § 271.7, State agencies may stagger issuance to certified households following the end of the suspension. In such situations, State agencies may, at their option, stagger issuance from the date issuance resumes through the end

of the month or over a five-day period following the resumption of issuance, even if this results in benefits being issued after the end of the month in which the suspension occurred.

(e) *Issuance services.* State agencies are responsible for determining the location and hours of operation of issuance services. In doing so, State agencies shall ensure that the issuance schedules set forth in paragraphs (b) and (c) of this section are met. In addition, issuance authorization documents, such as ATP cards, should be valid only in the geographic area within the State that is encompassed by the reconciliation system through which the issuance will be processed; however, the validity area may be extended within the State at the State agency's option. State agencies may also restrict the validity of these documents to smaller areas or particular issuance sites with minimal practicable inconvenience to affected households.

(f) *Issuance of coupons to households.* The State agency shall issue coupon books in accordance with a table for coupon-book issuance provided by FCS, except as provided in paragraphs (e)(1), (e)(2), and (e)(3) of this section. The State agency shall issue the coupon books in consecutive serial number order whenever possible, starting with the lowest serial number in each coupon book denomination. The household member whose name appears on the ID card shall sign the coupon books; if more than one name appears, any named member may sign the books.

(1) The State agency may deviate from the table if the specified coupon books are unavailable.

(2) Exceptions from the table are authorized for blind and visually-handicapped participants who request that all coupons be of one denomination. Recipients who have no fixed address (homeless), and residents of shelters for battered women and children, as defined in § 271.2, and which are not authorized by FCS to redeem through wholesalers, may request that all or part of their coupons be of the $1 denomination. State agencies are authorized to grant this request when feasible.

(3) If a household is eligible for an allotment of $1, $3, or $5, the State agency shall adjust those allotments to $2, $4, or $6, respectively.

(g) *Issuance in rural areas.* State agencies shall use direct-mail issuance in any rural areas where the State agency determines that recipients face substantial difficulties in obtaining transportation in order to obtain their food stamp benefits by methods other than direct-mail issuance. Exceptions shall be made for households which have exceeded the two allowable reported losses within a six-month period and replacements set forth in § 274.6 (b) and (g), and direct-mail issuance is not required in those localities where the direct mail loss rates exceed, or are likely to exceed, standards set by the Secretary at § 276.2(b) of this chapter. The State agency shall:

(1) Submit an attachment to the State Plan of Operation (§ 272.2(d)(1)(xi) of this chapter) which describes the State's exemption from this requirement, because the State agency uses direct-mail issuance throughout the State, or

(2) Submit an attachment to the State Plan of Operation (§ 272.2(d)(1)(xi) of this chapter) which describes:

(i) The areas designated by the State agency as rural;

(ii) The rural areas where direct-mail issuance will not be used because:

(A) Recipients do not face substantial difficulties in obtaining transportation to obtain their benefits, and/or;

(B) Direct-mail issuance losses exceed the loss tolerance levels, or there is evidence which indicates that direct-mail issuance, if used, would produce losses which would exceed the loss tolerance levels established under § 276.2(b)(4) of this chapter.

(iii) The State agency's criteria for designating an area as rural. Such criteria may include, but are not limited to: the use of the Bureau of the Census definition; the distances that recipients may need to travel to reach an issuance office; or, other criteria described by the State agency.

(iv) The State agency's minimum criteria for determining that recipients in an area designated as rural do not face substantial difficulties in obtaining transportation to obtain their benefits.

(v) The State agency's schedule for introducing direct-mail issuance into any rural areas requiring direct-mail issuance because of substantial transportation problems.

[54 FR 7004, Feb. 15, 1989, as amended at 54 FR 51351, Dec. 15, 1989; 60 FR 20182, Apr. 25, 1995]

**§274.3 Issuance systems.**

(a) *System classification.* State agencies may issue benefits to households through any of the following systems:

(1) An authorization document system that uses a document produced for each month's issuance. The intermediary document, such as an ATP, may be distributed on a monthly basis to each household and surrendered by the household to the coupon issuer, or provided monthly to issuers with either single household authorizations or multiple household authorizations on each (such as a computer-generated listing). For reconciliation and identification purposes, the authorization document shall contain the following:

(i) Serial number;

(ii) Case name and address;

(iii) Case number;

(iv) Allotment amount;

(v) Benefit month or expiration date;

(vi) Name of issuing project area; and,

(vii) Space for signature of household member. An additional space for an authorized representative may be included.

(2) A direct access system that directly accesses a master issuance file at the time that benefits are issued to households. This system shall use manual card access or an automated access to the master issuance file. Systems of this type include the manual Household Issuance Record (HIR) card system and on-line issuance terminals.

(3) A mail issuance system that directly delivers coupons through the mail to households.

(4) An on-line Electronic Benefit Transfer system in which food stamp benefits are stored in a central computer database and electronically accessed by households at the point-of-sale via reusable plastic cards.

(b) *Other systems.* A State agency may develop an issuance system which cannot be readily categorized into one of the systems described in paragraph (a) of this section. FCS shall prescribe the reporting and reconciliation requirements which apply to that system.

(c) *Alternative benefit issuance system.* (1) If the Secretary, in consultation with the Office of the Inspector General, determines that Program integrity would be improved by changing the issuance system of a State, the Secretary shall require the State agency to issue or deliver coupons using another method. The alternative method may be one of the methods described in paragraph (a) of this section, or the Secretary may require a State agency to issue, in lieu of coupons, reusable documents to be used as part of an automated data processing and information retrieval system and to be presented by, and returned to, recipients at retail food firms for the purpose of purchasing food. The determination of which alternative to use will be made by FCS after consultation with the State agency. The cost of conversion will be shared by the Department and the State agency in accordance with the cost accounting provision of part 277.

(2) The cost of documents or systems which may be required as a result of a permanent alternative issuance system pursuant to this section shall not be imposed upon retail food firms participating in the Program.

(d) *System requirements.* (1) The State agency shall establish a master issuance file which is a composite of the issuance records of all certified food stamp households. The State agency shall establish the master issuance file in a manner compatible with its system used for maintaining case record information and shall separate the information on the master issuance file into active and inactive case file categories. The master issuance file shall contain all the information needed to identify certified households, issue household benefits, record the participation activity for each household and supply all information necessary to fulfill the reporting requirements prescribed in §274.4.

(i) The master issuance file shall be kept current and accurate. It shall be updated and maintained through the use of documents such as notices of

change and controls for expired certification periods.

(ii) Before entering a household's data on the master issuance file, the State agency shall review the master issuance file to ensure that the household is not currently participating in, or disqualified from, the Program. If an authorization document is issued under the expedited service requirements of §§ 273.2(i) and 274.2(b), the State agency shall complete as much of the master issuance file review as possible prior to issuing the authorization document. Any uncompleted reviews shall be completed after issuance and appropriate corrective action shall be taken to recover overissuance.

(2) State agencies should divide issuance responsibilities between at least two persons to prevent any single individual from having complete control over the authorization of issuances and the issuances themselves. Responsibilities to be divided include maintenance of inventory records, assembly of benefits and preparation of envelopes for mailing. If issuance functions in an office are handled by one person, a second-party review shall be made to verify coupon inventory, the reconciliation of the mail log, and the number of mailings prepared.

(3) State agencies shall establish controls to prevent a household from concurrently receiving benefits through more than one issuance system.

(4) State agencies shall clearly identify issuances in their accountability systems as initial, supplemental, replacement, or restored benefits.

(5) State agencies shall establish a Statewide record of replacement issuances granted to households to prevent a household from receiving more than two countable replacement issuances as defined in § 274.6(b) in a six-month period.

(6) State agencies which issue benefits by mail shall, at a minimum, use first class mail and sturdy nonforwarding envelopes or packages to send benefits to households.

(e) *Validity periods.* (1) State agencies shall establish validity periods for issuances made in both authorization document and direct access systems. A validity period is the time frame during which a household may obtain benefits by transacting an authorization document, or receiving the benefits directly at an issuance point. Generally, the validity period coincides with the issuance month or the period of intended use, which may or may not be a calendar month. However, in instances in which authorization documents are distributed, or benefits become available for ongoing households late in the issuance month, the State agency shall extend the validity or availability period for either twenty (20) additional days, or until the end of the following issuance month, at the State agency's option. The State agency may also choose one of two dates which will initiate this extension of the validity or availability period. The State agency may choose to extend the period for authorization documents distributed or for benefits made available, on or after the 20th day of the issuance month or after the 15th day of the issuance month. Whichever date the State agency chooses to initiate the required extension, the State agency must use the date consistently for all extensions in this category. A household which does not transact its authorization document, or obtain the benefits directly from an issuance point during the issuance's validity period, shall lose its entitlement to the benefits, and the State agency shall not issue benefits to such a household for such a period.

(2) State agencies experiencing excessive issuance losses may develop systems that have authorization documents that expire in shorter time frames than those set forth in paragraph (e) of this section. However, such systems shall include methods that allow households the opportunity to obtain their benefits for the full validity period of a month's issuance.

[54 FR 7004, Feb. 15, 1989, as amended at 54 FR 51351, Dec. 15, 1989; 57 FR 11249, Apr. 1, 1992; 60 FR 20183, Apr. 25, 1995]

### § 274.4 Reconciliation and reporting.

(a) *Reconciliation.* State agencies shall account for all issuance through a reconciliation process. The manner in which this is done varies depending on the type of issuance system being used.

(1) Described below are the required reconciliation procedures for each type of system.

(i) In all issuance systems coupon issuers shall reconcile their issuances daily using daily tally sheets, cashiers' daily reports, tapes or printouts.

(ii) In systems where a record-for-issuance is used, all issuances authorized for the month shall be merged into one record-for-issuance at the end of each month. All issuances made during the month shall then be posted to the record-for-issuance. The record-for-issuance shall then be compared with the master issuance file. Findings from this comparison shall be reported on the Form *FCS–46* as prescribed in paragraph (b)(2) of this section.

(iii) In systems where no record-for-issuance is used, issuances made during each month shall be reconciled to the master issuance file. Findings from this reconciliation shall be reported on the Form *FCS–46* as prescribed in paragraph (b)(2) of this section.

(iv) In addition to the reconciliation activity prescribed in the paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section, the following steps shall be followed in authorization document systems:

(A) The State agency shall determine and verify the transacted value of authorized coupon issuances.

(B) Any batches of transacted authorization documents that do not reconcile shall be maintained intact by the State agency until the discrepancy is resolved with the coupon issuer and/or a review of the case files.

(C) The State agency shall compare all transacted authorization documents with the record-for-issuance or master issuance file as appropriate. Any documents that do not match with the record-for-issuance or master issuance file shall be identified and reported as required in paragraph (b)(2) of this section.

(b) *Required reports.* The State agency shall review and submit the following reports to FCS on a monthly basis:

(1) Form *FCS–250,* Food Coupon Accountability Report.

(i) This report, executed monthly by coupon issuers and bulk storage points, shall be signed by the coupon issuer or appropriate official, certifying that the information is true and correct to the best of that person's knowledge and belief.

(ii) Coupon issuers and bulk storage points shall submit supporting documentation to the State agency which will allow verification of the monthly report. At a minimum, such documentation shall include documents supporting coupon shipments, transfers, issuances, and destruction.

(iii) For those State agencies which use an authorization document issuance system, coupon issuers shall submit transacted authorization documents batched according to each day's activity in accordance with a schedule prescribed by the State agency, but not less often than monthly.

(iv) All mail issuance activity, including the value of mail issuance replacements, shall be reported. Original allotments (first benefits issued for a particular month to an ongoing household) subsequently recovered by the issuance office during the current month shall be returned to inventory and noted on the mail issuance log. When the original allotment is returned to inventory and the replacement issuance is issued during the current month (month in which original benefits were issued), the ''replacement'' shall not be reported.

(v) The Form *FCS–250* shall be reviewed by the State agency for accuracy, completeness and reasonableness. The State agency shall attest to the accuracy of these reports and shall submit the reports so they will be received by FCS by the 45th day after the report month. Any revisions to the Form *FCS–250* for a given month shall be submitted to FCS within 105 days after the end of the report month.

(vi) FCS shall review each form, submitted through the State agency, for completeness, accuracy and reasonableness and shall reconcile inventory with shipping records, and shall review State agency verification of coupon issuer and bulk storage point monthly reports. FCS may supplement the above reviews by unannounced spot checks of inventory levels and coupon security arrangements at coupon issuers and at bulk storage points.

(2) Form *FCS–46,* Issuance Reconciliation Report, shall be submitted by each State agency operating an issuance system. The report shall be

prepared at the level of the State agency where the actual reconciliation of the record-for-issuance and master issuance file occurs.

(i) The State agency shall identify and report the number and value of all issuances which do not reconcile with the record-for-issuance and/or master issuance file. All unreconciled issuances shall be identified as specified on this reporting document.

(ii) The report shall be received by FCS no later than 90 days following the end of the report month.

(3) Form *FCS–259,* Food Stamp Mail Issuance Report.

(i) Form *FCS–259* reports shall be submitted by State agencies for each unit using a mail issuance system as specified in the Mail Issuance Loss Reporting Plan required in § 272.2(d)(1)(iv). The State agency shall submit the Form *FCS–259* reports so that they are received in FCS by the 45th day following the end of each quarter.

(ii) The State agency shall verify the issuance by a comparison with issuance on the appropriate coupon issuer's Form *FCS–250.*

(4) Form *FCS–388,* State Coupon Issuance and Participation Estimates.

(i) State agencies shall telephone or transmit by computer the Form *FCS–388* data and mail the reports to the FCS regional office no later than the 19th day of each month. When the 19th falls on a weekend or holiday, the Form *FCS–388* data shall be reported by telephone or transmitted by computer and mailed on the first work day after the 19th. The Form *FCS–388* report shall be signed by the person responsible for completing the report or a designated State agency official.

(ii) The Form *FCS–388* report shall provide Statewide estimated or actual totals of issuance and participation for the current and previous month, and actual or final participation totals for the second preceding month. In addition to the participation totals for the second preceding months of January and July, provided on the March and September reports, non-assistance (NA) and public assistance (PA) household and person participation breakdowns shall be provided. As an attachment to the March and September Form *FCS–388* reports, State agencies shall provide project area breakdowns of the coupon issuance and NA/PA household and person participation data for the second preceding months of January and July.

(iii) State agencies shall submit any proposed changes in their estimation procedures to be used in determining the Form *FCS–388* data to the FCS regional office for review and comment. FCS shall monitor the accuracy of the estimated dollar value of coupons issued as reported on the Form *FCS–388* against the Statewide total dollar value of coupons as reported by the issuance agents on the Form *FCS–250,* Food Stamp Accountability Report, for the corresponding month. FCS shall monitor the accuracy of the Statewide estimated number of households and persons participating as reported on the Form *FCS–388* report against the Statewide actual total participation as reported on succeeding Form *FCS–388* reports and against the semiannual project area participation totals attached to the March and September Form *FCS–388* reports. The FCS accuracy standards for the issuance and participation estimates are that estimates for the current month be within (+) or (−) four (4) percent of actual levels, and the estimates for the previous month be within (+) or (−) two (2) percent of actual levels. State agencies shall explain any unusual circumstances that cause coupon issuance and/or participation data to not meet these accuracy standards. If a State agency fails to meet these accuracy standards, FCS shall notify the State agency and assist the State agency in revising its estimating procedures to improve its reporting.

(iv) A participating household is one that is certified and has been, or will be, issued benefits (whether or not the benefits are used), and households that have met the eligibility requirements, but will receive zero benefits.

[54 FR 7004, Feb. 15, 1989, as amended at 54 FR 51351, Dec. 15, 1989]

### § 274.5 Authorized representatives.

(a) *Household representation.* The head of household, spouse or any other responsible member of the household may designate an authorized representative to act on behalf of the household

in making application for the Program, in obtaining benefits and/or in using benefits at authorized firms. Rules pertaining to designating authorized representatives to apply for the Program on behalf of a household are in § 273.1(f). Specified below are the rules pertaining to the use of authorized representatives to obtain household benefits or to use household benefits:

(1) An authorized representative may be designated to obtain coupons. The designation shall be made at the time the application is completed and any authorized representative shall be named on the ID card. The authorlzed representative for coupon issuance may be the same individual designated to make application for the household or may be another individual. Even if a household member is able to make application and obtain benefits, the household should be encouraged to name an authorized representative for obtaining coupons in case of illness or other circumstances which might result in an inability to obtain benefits.

(2) The State agency shall ensure that authorized representatives are properly designated. The name of the authorized representative shall be contained in the household's case file. Limits shall not be placed on the number of households an authorized representative may represent. In the event employers, such as those that employ migrant or seasonal farmworkers, are designated as authorized representatives or that a single authorized representative has access to a large number of authorization documents or coupons, the State agency should exercise caution to assure that each household has freely requested the assistance of the authorized representative, the household's circumstances are correctly represented, the household is receiving the correct amount of benefits and that the authorized representative is properly using the benefits.

(3) State agency employees who are involved in the eligibility determination and/or issuance processes and employees of authorized food firms and meal services that are authorized to accept food coupons shall not be authorized representatives unless the State agency determines that no other representative is available.

(4) An individual disqualified for fraud shall not be an authorized representative during the period of disqualification unless the individual is the only adult in the household and the State agency is unable to arrange for another authorized representative. State agencies shall separately determine whether these individuals are needed to apply on behalf of the household, to obtain coupons for the household, and to use the household's coupons to purchase food.

(5) In the event the only adult living with a household is classified as a nonhousehold member as defined in § 273.1(b), that individual may be the authorized representative for the minor household members.

(6) Drug or alcohol treatment centers shall receive and spend the food stamp benefits for food prepared by and/or served to the residents of the center who are participating in the Food Stamp Program.

(7) The head of a group living arrangement which acts as the authorized representative for the residents, may either receive and spend the residents' benefits for food prepared by and/or served to each eligible resident or allow each resident to spend all or any portion of the benefits on his/her own behalf. Meal providers for the homeless may not be authorized representatives, as specified in § 273.1(f)(4)(iv).

(b) *Emergency representative for obtaining benefits.* The State agency shall develop a system by which a household may designate an emergency authorized representative to obtain the household's benefits for a particular month. At a minimum, the method developed by the State agency shall require that a household member whose signature is on the household's ID card sign a designation authorizing the particular emergency representative to receive the household's benefits and attesting to the validity of the emergency representative's signature which must also be on the designation. Households shall not be required to travel to a food stamp office to execute the designation. Additional provisions pertaining to the use of identification cards by emergency authorized representatives are contained in § 274.10(c).

(c) *Authorized representatives for using benefits.* A household may enlist any household member or a nonmember to use its ID card and benefits to purchase food or meals for the household. However, individuals disqualified from the Program because of their commission of an intentional Program violation may only act as authorized representatives for households if no other representative can be found.

(d) *Disqualification.* An authorized or emergency representative may be disqualified from representing a household in the Program for up to one year if the State agency has obtained evidence that the representative has misrepresented a household's circumstances and has knowingly provided false information pertaining to the household, or has made improper use of coupons. The State agency shall send written notification to the affected household and to the representative 30 days prior to the date of disqualification. The notification shall include the proposed action, the reason for the proposed action, the household's right to request a fair hearing, the telephone number of the office, and, if possible, the name of the person to contact for additional information. This provision is not applicable in the case of drug and alcohol treatment centers and to the heads of group living arrangements which act as authorized representatives for their residents. However, drug and alcohol treatment centers and the heads of group living arrangements that act as authorized representatives for their residents, and which intentionally misrepresent households' circumstances, may be prosecuted under applicable State fraud statutes for their acts.

### § 274.6 Replacement issuances to households.

(a) *Providing replacement issuance.* (1) Subject to the restrictions in paragraph (b) of this section, State agencies shall provide replacement issuances to a household when the household reports that:

(i) Its authorization document was not received in the mail or was stolen from the mail, was stolen after receipt, was destroyed in a household misfortune, or was improperly manufactured or mutilated;

(ii) Its coupons were not received in the mail, were stolen from the mail, were destroyed in a household misfortune, or were improperly manufactured or mutilated;

(iii) Food purchased with food stamps was destroyed in a household misfortune; or

(iv) It received a partial coupon allotment.

(2) State agencies shall not provide replacement issuances to households when coupons are lost, stolen or misplaced after receipt, authorization documents are lost or misplaced after receipt, when authorization documents or coupons are totally destroyed after receipt in other than a disaster or misfortune, or when coupons sent by registered or certified mail are signed for by anyone residing with or visiting the household. In addition, replacement issuances shall not be made if the household or its authorized representative has not signed and returned the household statement required in paragraph (c) of this section, where applicable.

(3) Where FCS has issued a disaster declaration and the household is eligible for disaster food stamp benefits under the provisions of part 280, the household shall not receive both the disaster allotment and a replacement allotment for a misfortune.

(4) In order for a replacement to be considered non-countable, the replacement must not result in a loss to the Program.

(b) *Replacement restrictions.* (1) Replacement issuances shall be provided only if a household timely reports a loss orally or in writing, and provides a statement of nonreceipt if the original authorization document or allotment has not been returned to the State agency at the time of the request for replacement. The report will be considered timely if it is made to the State agency within 10 days of the date an authorization document is stolen from the household, or an authorization document, coupons, or food purchased with food stamps is destroyed in a household misfortune. In mail issuance (ATPs or coupons), the report must be made within the period of intended use,

unless the original issuance was made after the 20th of the month, in which case the period of intended use is 20 days from original issuance, or the last day of the next month (State agency option).

(2) The number of replacement issuances which a household may receive shall be limited as follows:

(i) State agencies shall limit replacement issuances to a total of two countable replacements in six months for authorization documents or coupons not received in, or stolen from, the mail; authorization documents stolen after receipt; and partial coupon allotments. However, no limit shall be put on the number of replacements of partial allotments if the partial allotments were due to State agency error. Separate limits shall not apply for each of these types of loss.

(ii) State agencies shall limit replacement issuances per household to two countable replacements in six months for authorization documents or coupons reported as destroyed in a household misfortune. This limit is in addition to the limit in paragraph (b)(2)(i) of this section.

(iii) No limit on the number of replacements shall be placed on the replacement of authorization documents or coupons which were improperly manufactured or mutilated or food purchased with food stamp benefits which was destroyed in a household misfortune.

(iv) The replacement issuance shall *not* be considered a countable replacement if:

(A) The original or replacement issuance is returned or otherwise recouped by the State agency;

(B) The original authorization document is not transacted;

(C) The replacement authorization document is not transacted; or

(D) The replacement is being issued due to a State agency issuance error.

(3) Except for households certified under 7 CFR part 280, replacement issuances shall be provided in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits which shall be replaced up to their full value.

(c) *Household statement of nonreceipt.* (1) Prior to issuing a replacement, the State agency shall obtain from a member of the household a signed statement attesting to the household's loss. This statement shall not be required if the reason for the replacement is that the original authorization document or coupons were improperly manufactured or mutilated, or if the original issuance has already been returned. The required statement may be mailed to the State agency if the household member is unable to come into the office because of age, handicap or distance from the office and is unable to appoint an authorized representative.

(2) If the signed statement or affidavit is not received by the State agency within 10 days of the date of report, no replacement shall be made. If the 10th day falls on a weekend or holiday, and the statement is received the day after the weekend or holiday, the State agency shall consider the statement timely received.

(3) The statement shall be retained in the case record. It shall attest to the nonreceipt, theft, loss or destruction of the original issuance and specify the reason for the replacement. It shall also state that the original or replacement issuance will be returned to the State agency if the original issuance is recovered by the household and that the household is aware of the penalties for intentional misrepresentation of the facts, including but not limited to, a charge of perjury for a false claim. In addition, the statement shall advise the household that:

(i) The household may request to be placed on an alternate issuance system after one report of nonreceipt;

(ii) After two reports in a six-month period of loss or theft prior to receipt, the household shall be placed on an alternate delivery system;

(iii) After two reports in a six-month period of loss or theft prior to receipt and/or theft of an authorization document after receipt the State agency may delay or deny further replacements for such causes; and

(iv) If the statement of nonreceipt is not signed and returned within ten (10) days of the date the loss was reported, the State agency shall not replace the coupons or authorization document.

(d) *Time limits for making replacements.* (1) Replacement issuances shall be provided to households within 10 days after report of nondelivery or loss (15 days if issuance was by certified or registered mail) or within two (2) working days of receiving the signed household statement required in paragraph (c) of this section, whichever date is later.

(i) Replacement of mutilated coupons shall be delayed until a determination of the value of the coupons can be made in accordance with paragraph (f)(3) of this section.

(ii) If the household has already been issued the maximum allowable number of countable replacements, subsequent replacements shall be delayed until the agency has verified that the original issuance was returned or the original authorization document was not transacted. In a system using authorization documents, due to the time it takes to post and reconcile all authorization documents, it may not be known at the time of the replacement request whether prior replacements are countable replacements and, therefore, whether the household has reached its limit. In such cases, the allotment shall be restored when the State agency verifies that the limit on countable replacements has not been reached.

(iii) The State agency shall deny or delay replacement issuances in cases in which available documentation indicates that the household's request for replacement appears to be fraudulent.

(2) The household shall be informed of its right to a fair hearing to contest the denial or delay of a replacement issuance. Replacements shall not be made while the denial or delay is being appealed.

(e) *Replacing issuances lost in the mail or stolen prior to receipt by the household.* State agencies shall comply with the following procedures in replacing issuances reported lost in the mail or stolen prior to receipt by the household:

(1) Determine if the authorization documents or benefits were validly issued, if they were actually mailed, if sufficient time has elapsed for delivery or if they were returned in the mail. If a delivery of a partial allotment is reported, the State agency shall determine the value of the coupons not delivered and determine whether the report of receipt of a partial allotment is corroborated by evidence that the coupon loss was due to damage in the mail before delivery or by a discrepancy in the issuance unit's inventory;

(2) Determine, to the extent possible, the validity of the request for a replacement. This includes determining whether the original issuance has been returned to the State agency and, in a system utilizing authorization documents, whether the original authorization document has been transacted and, if so, whether the recipient's signature on the authorization document matches the signature on the ID card. In a Photo ID area, the State agency shall determine if the ID serial number annotated on the authorization document matches the serial number on the recipient's ID card;

(3) Issue a replacement in accordance with paragraphs (b), (c) and (d) of this section if the household is eligible;

(4) Place the household on an alternate delivery system, if warranted, in accordance with paragraph (g) of this section; and

(5) Take other action, such as correcting the address on the master issuance file, warranted by the reported nondelivery.

(f) *Replacing issuances after receipt by the household.* Upon receiving a request for replacement of an issuance reported as stolen or destroyed after receipt by the household, the State agency shall determine if the issuance was validly issued. The State agency shall also comply with all applicable provisions in paragraphs (b), (c) and (d) of this section, as well as the following procedures for each type of replacement:

(1) Prior to replacing an authorization document which was reported stolen after receipt by the household, the State agency shall determine, to the extent possible, the validity of the request for replacement. For example, the State agency may determine whether the original authorization document has been transacted and, if so, whether the signature on the original authorization document matches that on the household statement. In a Photo ID or serialized area, the State agency shall determine if the ID serial number

annotated on the authorization document matches the serial number on the recipient's ID card. Any replacement which results in duplicate participation shall be considered a household error, and the replacement countable, when the ID serial number shown on the authorization document matches the serial number on the recipient's card, unless the ID card was reported lost or stolen prior to the replacement. The State agency may require households, on a case-by-case basis, to report the theft to a law enforcement agency and to provide verification of such report.

(2) Prior to replacing destroyed coupons or authorization documents, or destroyed food that was purchased with food stamp benefits, the State agency shall determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. This shall be verified through a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit. The State agency shall provide replacements of coupons, authorization documents, and/or food in the actual amount of the loss, but not exceeding one month's allotment, unless the exception in paragraph (b)(3) of this section, applies.

(3) Households cannot receive a replacement for coupons lost or stolen after receipt.

(4) The State agency shall provide replacements for improperly manufactured or mutilated coupons or authorization documents as follows:

(i) Coupons received by a household, and subsequently mutilated or found to be improperly manufactured shall be replaced in the amount of the loss to the household. State agencies shall replace mutilated coupons when three-fifths of a coupon is presented by the household. The State agency shall examine the improperly manufactured or mutilated coupons to determine the validity of the claim and the amount of coupons to be replaced. If the State agency can determine the value of the improperly manufactured or mutilated coupons, the State agency shall replace the unusable coupons in a dollar-for-dollar exchange. After exchanging the coupons and completing a Form *FCS–135,* Affidavit of Return or Exchange of Food Coupons, the State agency shall destroy the coupons in accordance with the procedures contained in § 274.7(f). If the State agency cannot determine the value of the improperly manufactured or mutilated coupons, the State agency shall cancel the coupons by writing or stamping ''canceled'' across the face of the coupons and forward the coupons to FCS for a determination of the value by the U.S. Bureau of Engraving and Printing.

(ii) Authorization documents received by a household and subsequently mutilated or found to be improperly manufactured shall be replaced only if they are identifiable. ''Identifiable'' means that the State agency is able to determine the amount of the issuance and that the authorization document was validly issued to the household within the last 30 days. For example, if the authorization document serial number is legible, the State agency can determine from the record-for-issuance or manual authorization document log to which household the authorization document was issued, the date of issuance, and the amount. Similarly, if the case number and validity period are legible, the State agency may be able to determine to whom the authorization document was issued and the amount. If more than one authorization document was issued to the household and the State agency cannot determine which authorization document was mutilated, the replacement shall be issued in the lesser amount. Improperly manufactured or mutilated authorization documents shall be surrendered to the State agency.

(g) *Alternate issuance system for a household.* The State agency shall offer to place a household in an alternate issuance system after the first report of nonreceipt, or when circumstances exist that indicate that the household may not receive its benefits through the normal issuance system, such as when a household has a history of reported nonreceipt of ATP's. After two requests for replacement of original or replacement ATP's reported as non-delivered in a six-month period, the State agency shall issue benefits to that household under an alternate

issuance system. The two requests may be for either an original or a replacement ATP. The State agency shall keep the household on the alternate issuance system for the length of time the State agency determines to be necessary. The State agency may return the household to the regular issuance system if the State agency finds that the circumstances leading to the loss have changed and the risk of loss has lessened. The placement of a household on an alternate issuance system and the length of time the household is on this system is not subject to the fair hearing process.

(h) *Documentation and reconciliation of replacement issuances.* (1) The State agency shall document in the household's case file each request for replacement, the date, the reason, and whether or not the replacement was provided. This information may be recorded exclusively on the household statement required in paragraph (c) of this section.

(2) The State agency shall maintain, in readily-identifiable form, a record of the replacements granted to the household, the reason, the month, and whether the replacement was countable as defined in paragraph (b)(2)(iv) of this section. The record may be a case action sheet maintained in the case file, notations on the master issuance file, if readily accessible, or a document maintained solely for this purpose. At a minimum, the system shall be able to identify and differentiate among:

(i) Authorization documents or coupons not received in, or stolen from, the mail, and authorization documents stolen after receipt; and

(ii) Replacement issuances which are not subject to a replacement limit.

(3) Upon completion of reconciliation in a system utilizing authorization documents, the State agency shall update the record required in paragraph (h)(2) of this section to indicate whether both the original and replacement authorization documents were transacted. If both were not transacted, the record shall clearly indicate that the replacement authorization document was not a countable replacement.

(4) When a request for replacement is made late in an issuance month, the replacement will be issued in a month subsequent to the month in which the original authorization document was issued. All replacements shall be posted and reconciled to the month of issuance of the replacement and may be posted to the month of issuance of the original authorization document, so that all duplicate transactions may be identified.

(i) *Further action on replacement issuances.* The State agency shall take the following further actions on replacements:

(1) On at least a monthly basis, the State agency shall report to the appropriate office of the Postal Inspection Service all authorization documents reported as stolen or lost in the mail. The State agency shall assist the Postal Service during any investigation thereof and shall, upon request, supply the Postal Service with facsimiles of the original authorization document, if transacted, and the replacement authorization document and a copy of the nonreceipt statement.

The State agency shall advise the Postal Service if the original authorization document is not transacted.

(2) When a duplicate replacement authorization document is transacted, the State agency shall, at a minimum:

(i) Compare the handwriting on the authorization documents to documents contained in the household's case file, including the nonreceipt statement;

(ii) Establish a claim in accordance with § 273.18, where it appears that the household has transacted, or caused both authorization documents to be transacted; and

(iii) Refer the matter to the State agency's investigation unit, where indicated.

[54 FR 7004, Feb. 15, 1989, as amended at 54 FR 51351, Dec. 15, 1989; 56 FR 63617, Dec. 4, 1991]

### § 274.7 Coupon management.

(a) *Coupon inventory management.* State agencies shall establish coupon inventory management systems which ensure that coupons are requisitioned and inventories are maintained in accordance with the requirements of these regulations.

(1) State agencies shall monitor the coupon inventories of coupon issuers

and bulk storage points to ensure that inventories are neither excessive nor insufficient to meet the issuance needs and requirements. In determining reasonable inventory needs, State agencies shall consider, among other things, the ease and feasibility of resupplying such inventories from bulk storage points within the State. The inventory levels at coupon issuers and bulk storage points should not exceed a six-month supply, taking into account coupons on hand and on order.

(2) State agencies shall establish accounting systems for monitoring the inventory activities of coupon issuers. State agencies shall review the Form *FCS–250,* from coupon issuers and bulk storage points, to determine the propriety and reasonableness of the inventories. Forms *FCS–261,* Advice of Shipment, Forms *FCS–300,* Advice of Transfer (or an approved State agency form), and reports of returned mail-issued coupons, reports of replacements of mail-issued coupons, reports of improperly manufactured or mutilated coupons, reports of shortage or overage of food coupon books and physical inventory controls shall be used by State agencies to assure the accuracy of monthly reports, issuers' compliance with required inventory levels, and the accuracy and reasonableness of coupon orders.

(b) *Coupon controls.* State agencies shall establish control and security procedures to safeguard coupons that are similar to those used to protect currency. The exact nature of security arrangements will depend on State agency evaluation of local coupon issuance and storage facilities. These arrangements must permit the timely issuance of coupons while affording a reasonable degree of coupon security. The State agencies, as well as all persons or organizations acting on their behalf, shall:

(1) Safeguard coupons from theft, embezzlement, loss, damage, or destruction;

(2) Avoid unauthorized transfer, negotiation, or use of coupons;

(3) Avoid issuance and transfer of altered or counterfeit coupons; and

(4) Promptly report in writing to FCS any loss, theft, or embezzlement of coupons.

(c) *Coupon requisitioning, shipping and transferring.* (1) State agencies shall arrange for the ordering of coupons on the Form *FCS–260,* Requisition for Food Coupon Books, and the prompt verification and written acceptance of each coupon shipment. FCS shall be furnished with appropriate delivery hours and the names of the persons authorized to sign delivery acknowledgements.

(2) FCS shall assess the reasonableness and propriety of food stamp requisitions submitted by State agencies based on prior inventory changes and shall notify the State agency of any adjustments made to requisitions.

(3) FCS shall ship coupons, in such denominations as it may determine necessary, directly to State agency receiving points approved by FCS. FCS shall promptly advise the State agency in writing when coupons are shipped to receiving points using Form *FCS–261,* Advice of Shipment. Coupons shall be considered delivered to the State agency when FCS or its carrier has a signed receipt.

(4) Once coupons have been accepted by receiving points within the State, any further movement of the coupons between coupon issuers and bulk storage points within the State is at the risk of the State agency. To minimize the risk of loss, coupons should be shipped by armored vehicle or some other method of transportation that affords the State agency the maximum security available.

(5) In every instance when coupons are transported within a State, the person(s) transporting coupons shall:

(i) Acknowledge in writing the receipt of the coupons;

(ii) Provide as much protection for the coupons as is reasonable;

(iii) Advise issuance supervisors of the routes to be taken, the shipment departure time and the estimated arrival time. This information, if in written form, may be destroyed after the coupons have been received.

(d) *Specimen coupons.* FCS may provide upon written request, non-negotiable specimen coupons to State agencies for the administration of the Program and enforcement of the rules, and

to authorized food firms for the purpose of educating and training employees on Program operations.

(1) The State agency or firm shall store specimen coupons in secure storage with access limited to authorized personnel. The State agency or firm should maintain a record of specimen coupons received.

(2) Specimen coupons that are mutilated, improperly manufactured, or otherwise unusable, shall not be distributed by the State agency. Such coupons shall be destroyed by the State agency and the destruction shall be witnessed by two persons and noted on the perpetual inventory records maintained by the FCS regional offices for specimen coupons.

(3) Specimen coupons shall not be issued to private individuals or firms for the purpose of collection or display.

(e) *Replacement and destruction of coupons and authorization documents by issuance points.* (1) The State agency shall provide for the replacement to issuers of improperly manufactured or mutilated coupons as provided below. Replacement provisions pertaining to households are contained in § 274.6.

(i) The State agency shall examine the improperly manufactured or mutilated coupons to determine the validity of the claim and the amount of coupons to be replaced.

(ii) If the State agency can determine the value of an improperly manufactured or mutilated coupon, the State agency shall replace the unusable coupon, dollar for dollar, when at least three-fifths of the coupon is presented by the issuer. After the exchange, the State agency shall destroy the unusable coupon in accordance with the procedures contained in paragraph (f) of this section.

(iii) If the State agency cannot determine the value of the improperly manufactured or mutilated coupons, the State agency shall cancel the coupons by writing or stamping ''canceled'' across the face of the coupons and forward the coupons to FCS for a determination of the value by the U.S. Bureau of Engraving and Printing. The dollar amount shall be shown on the Form *FCS–250* report.

(2) The State agency shall void all authorization documents mutilated or otherwise rejected during the preparation process. The voided authorization documents shall either be filed for audit purposes or destroyed, provided destruction is witnessed by at least two persons and the State agency maintains a list of all destroyed authorization documents. Provisions pertaining to the replacement of authorized documents mutilated subsequent to receipt by a household are provided in § 274.6.

(f) *Destruction of unusable coupons found in inventory or received as claim payments.* (1) The State agency shall require coupon issuers, bulk storage points, and claims collection points to dispose of unusable coupons received from the manufacturer or received as payment for claims within 30 days after the close of the month in which unusable coupons shipped from the manufacturer are discovered, or are received from recipients as payment for claims. There is no dollar limit on the amount of coupons which may be disposed of by the State agency. Disposal shall be by one of the following two methods:

(i) Sending unusable coupons to the State agency for destruction; or

(ii) Holding the unusable coupons in secure storage pending examination and destruction by the State agency at the coupon issuance, bulk storage, or claims collection point.

(2) Prior to the destruction of improperly manufactured or mutilated coupons or coupon books that were exchanged, or collected from households for claims, the State agency shall:

(i) Verify that the coupons were improperly manufactured or mutilated.

If one or more boxes of coupons were improperly manufactured, the State agency shall contact FCS prior to disposition for instructions on the disposition of the coupons. If FCS has not responded within the 30-day time limit, the State agency shall destroy the box of coupons and document the manufacturing irregularity and the book numbers, and retain a copy of the State agency's request to FCS for permission to destroy.

(ii) If either the coupon issuer or bulk storage point, or the State agency cannot determine whether coupons or coupon books were in fact improperly

manufactured or cannot establish the value of the coupons involved, the State agency shall promptly forward a written statement of findings and the canceled coupon(s) or coupon book(s) to FCS for determination.

(3) The State agency shall destroy the coupons and coupon books by burning, shredding, tearing, or cutting so they are not negotiable. Two State agency officials shall witness and certify the destruction and report the destruction information as follows:

(i) The destruction of improperly manufactured, mutilated or exchanged coupons from coupon issuers and bulk storage points shall be reported on the Form *FCS–471,* Coupon Account and Destruction Report, and submitted with the Form *FCS–250* for the appropriate month. For coupons received from recipients, a Form *FCS–135* shall be completed and attached to the Form *FCS–471.*

(ii) The destruction of coupons received from claims collection points that are the result of the payment of household claims shall be reported on the Form *FCS–471* (with Form *FCS–135* documentation) and submitted with the Form *FCS–209,* Status of Claims Against Households, for the appropriate rnonths. A State agency may consolidate its monthly Form *FCS–471* for claims collection destruction reporting by providing one completed Form *FCS–471* that reflects the total claims destruction figure for each month. However, the State agency must attach a breakdown which reports the required Form *FCS–471* information for each reporting point. If a State agency chooses to submit a consolidated Form *FCS–471,* all individual Forms *FCS–471* must be retained by the State agency for future review and audit purposes. The Form *FCS–135* may not be consolidated, and all originals of that form must accompany a consolidated Form *FCS–471.*

(g) *Undeliverable or returned benefits.* The State agency shall exercise the following security and controls for authorization documents and coupons that are undeliverable or returned during the valid issuance period. Forms *FCS–471* and *FCS–135* shall be completed by the State agencies, as appropriate.

(1) Coupons which are in book form, complete, and with original and unsigned covers shall be returned to inventory and noted as such on the issuance log, and the Form *FCS–250.*

(2) Authorization documents shall be recorded in the control log noting the serial number, household name and case number. The documents shall be kept in secure storage with limited access. The documents may be voided as long as households which report nondelivery are provided an immediate replacement.

(h) *Old series coupon exchange.* Households which have old-series (no longer issued) coupons shall be entitled to a dollar-for-dollar exchange of old-series coupons for current series coupons. Households in possession of old-series coupons shall submit the coupons and a request for exchange to the State agency. State agencies may make direct exchange to claimants or request FCS to make the exchange. Forms *FCS–471* and *FCS–135* shall be completed by the State agencies, as appropriate.

[54 FR 7004, Feb. 15, 1989, as amended at 54 FR 51351, Dec. 15, 1989]

### § 274.8 Responsibilities of coupon issuers, and bulk storage and claims collection points.

(a) *Receipt of coupons.* Coupon issuers, and bulk storage and claims collection points shall promptly verify and acknowledge, in writing, the content of each coupon shipment or coupon transfer delivered to them and shall be responsible for the custody, care, control, and storage of coupons.

(b) *Inventory levels.* Coupon issuers and bulk storage points shall maintain a proper level of coupon inventory not in excess of reasonable needs, taking into consideration the ease and feasibility of resupplying such coupon inventories. Such inventory levels should not exceed the six-month supply provided for in § 274.7(a).

(c) *Monthly reporting.* Coupon issuers, and bulk storage and claims collection points shall report monthly to FCS, through the State agency, using Form *FCS–250,* as provided in § 274.4.

(d) *Supporting documentation.* Coupon issuers and bulk storage points shall submit to the State agency supporting

documentation which will allow verification of the monthly report as provided in § 274.4. At a minimum, such documentation shall include documents supporting coupon shipments, transfers, and issuances. In those States using issuance systems with authorization documents, coupon issuers shall submit transacted authorization documents batched according to each day's activity, in accordance with the schedule prescribed by the State agency but, in any case, not less often than monthly.

(e) *Handling of improperly manufactured or mutilated coupons.* Coupon issuers, and bulk storage and claims collection points shall cancel improperly manufactured or mutilated coupons or coupon books by writing or stamping ''canceled'' across the face of the coupon(s) and coupon book(s). Depending upon State agency policy, the coupon issuer or bulk storage point shall forward the coupons with the appropriate documentation (determined by the State agency) to the State agency, or hold the coupons in secure storage, pending examination and destruction by the State agency at the coupon issuer, bulk storage point or claims collection location. The documentation is not required if the State agency inspects the coupons at the issuance, storage or collection point. Additional requirements pertaining to the handling of these types of coupons by the State agency are provided in § 274.7(e).

**§ 274.9 Closeout of a coupon issuer.**

(a) *Definition of responsibilities.* Whenever the services of a coupon issuer or bulk storage point are terminated, the State agency shall perform the responsibilities described below. If a coupon issuer or bulk storage point has more than one functioning unit and one of these facilities is terminated, the coupon issuer or bulk storage point shall fulfill the responsibilities described in paragraphs (b) and (c) of this section. The coupon issuer or bulk storage point shall notify the State agency of the pending termination of any of its services prior to the actual termination. The State agency shall promptly notify FCS as provided in § 274.1(d).

(b) *Closeout accountability.* The State agency shall perform a closeout audit of a coupon issuer or bulk storage point within 30 days of termination of the issuance or storage point. The State agency shall report the findings of the audit to FCS immediately upon its completion. If the audit determines that the final Form *FCS–250* is incorrect, the State agency shall promptly provide a corrected report to FCS.

(c) *Transfer of coupon inventory.* (1) Prior to the transfer of coupon inventory to another coupon issuer or bulk storage point, the State agency shall perform an actual physical count of coupons on hand.

(2) The State agency shall transfer the inventory to another coupon issuer or bulk storage point, preferably within the same project area. The transfer of coupons shall be properly reported and documented by both the point being terminated and the point receiving the inventory.

(d) *Maintenance of participant service.* (1) At least 30 days before actual termination of a coupon issuer, the State agency shall notify project area participants of the impending closure. Notification shall include identification of alternative issuance locations and available public transportation. The State agency shall post notices at the offices of the coupon issuer of the impending closure and may use mass media or notices with allotments to advise participants about the expected closure of the issuance office.

(2) If closure of the issuer will affect a substantial portion of the caseload or a specific geographic area, the State agency shall take whatever action is necessary to maintain participant service without interruption.

(3) If a coupon issuer or bulk storage point is to be closed for noncompliance with contractual requirements and alternative issuance facilities or systems are not readily available, the State agency may continue to use the coupon issuer or bulk storage point for a limited time. In this situation, the State agency shall perform weekly onsite reconciliations of coupon issuance. The State agency shall continue to actively seek other issuance or storage alternatives.

**§274.10 Use of identification cards and redemption of coupons by eligible households.**

(a) *General provisions.* State agencies shall issue an ID card to each certified household as proof of Program eligibility. Upon request, the household or the authorized representative, shall present the household's ID card at issuance points, retail food stores or meal services in order to transact the allotment authorization or when exchanging benefits for eligible food. The household member or members whose name(s) appear on the ID card shall sign the coupon books issued to the household.

(1) All ID cards shall be issued in the name of the household member who is authorized to receive the household's issuance. In areas not designated by FCS as requiring Photo ID cards, the ID card shall contain space for the name and signature of the household member to whom the coupon allotment is to be issued and for any authorized representatives designated by the household. Section 274.5(b) provides further requirements pertaining to emergency authorized representatives. Any person listed on the ID card shall sign the ID card before that person can use it to obtain benefits. If the household does not name an authorized representative, the State agency shall void that area of the ID card to prevent names and signatures being entered at a later date. The ID card may be serially numbered.

(2) The State agency shall limit issuance of ID cards to the time of initial certification, with replacements made only in instances of loss, mutilation, destruction, changes in the person authorized to obtain coupons, or when the State agency determines that new ID cards are needed to keep the photographs up-to-date or if the State agency changes its ID card format or system. Whenever possible, the State agency shall collect the ID card that it is replacing.

(3) The State agency shall place an expiration date on all temporary ID cards, and on the regular ID cards issued to households certified for delivered meals for a specific period, and to homeless households certified for restaurant meals.

(4) Specially-marked ID cards shall be issued in the following circumstances:

(i) Eligible household members 60 years of age or over or members who are housebound, physically handicapped, or otherwise disabled to the extent that they are unable to adequately prepare all their meals, and their spouses, may use coupons to purchase meals prepared for and delivered to them by a nonprofit meal delivery service authorized by FCS. Any household eligible for and interested in using delivered meal services shall have its ID card marked with the letter ''M''.

(ii) Eligible household members 60 years of age or over and their spouses, or those receiving SSI and their spouses, may use coupons issued to them to purchase meals prepared especially for them at communal dining facilities authorized by FCS for that purpose. Any household eligible for and interested in using communal dining facilities in those States or project areas where restaurants are authorized to accept food stamps, shall have its ID card marked with the letters ''CD''. In areas where restaurants are not authorized to accept food stamps, the State or project area may mark such ID's with the letters ''CD''.

(iii) Eligible homeless households may use food stamp benefits to purchase meals from restaurants authorized by FCS for such purpose. Any homeless household eligible for, and interested in, using restaurants in those areas where restaurants are authorized to accept food stamp benefits shall have a specially-marked ID card. The State agency shall provide samples of specially-marked ID cards to authorized restaurants.

(iv) Eligible households residing in areas of Alaska determined by FCS as areas where access to retail food stores is difficult and which rely substantially on hunting and fishing for subsistence may use all or any part of the coupons issued to purchase hunting and fishing equipment such as nets, hooks, rods, harpoons and knives, but may not use coupons to purchase firearms, ammunition, and other explosives. Any household residing in a remote section of Alaska which has been determined by FCS to be an area in

which food coupons may be used to purchase hunting and fishing equipment shall have its ID card marked with the letters ''HF''.

(5) ID cards delivered to households by mail shall not be mailed in the same envelope with authorization documents or coupons.

(b) *Photo ID cards.* (1) Photo ID cards shall be issued in those project areas or portions thereof with 100,000 or more food stamp participants, except for those project areas serviced entirely by mail issuance or an Electronic Benefit Transfer system, or where FCS, in consultation with the Office of the Inspector General, approves a State agency's request for an exemption. FCS shall respond to a State agency's request for exemption within 30 days of its receipt of the request.

(i) FCS shall evaluate the January participation data reported as an attachment to the March Form *FCS–388* report. Based on the evaluation, FCS shall notify State agencies at the beginning of each fiscal year of any areas that either require or no longer require the use of Photo ID cards. In cases where an entire State is a single project area, FCS shall consult with the State agency to determine whether Photo IDs should be required in any specific parts of the project area. At the conclusion of this consultation, FCS shall inform the State agency whether the use of Photo IDs will be mandated in any parts of the State agency, based on the need to protect Program integrity, and the cost-effectiveness of Photo ID cards.

(ii) In cases where a project area serves between 100,000 and 110,000 participants, FCS shall inform the State agency in which the project area is located that it is prepared to mandate the use of Photo IDs in the project area. FCS shall also inform the State agency that it will not mandate use of Photo ID's if, within 30 days of being notified by FCS that Photo ID's must be used, the State agency demonstrates to FCS that participation in the project areas has fallen below the 100,000 participant level in the recent past, or justifies to FCS why participation is likely to fall below that level during the next year.

(2) FCS may, at any time, in consultation with the Office of the Inspector General, designate project areas or portions thereof with less than 100,000 participants as requiring the use of Photo ID cards if, in reviewing such factors as the level of duplicate issuances and results of management evaluation reviews, the Department determines that the issuance of Photo ID cards in such areas would be justified.

(3) A State agency may request that FCS require that Photo IDs be mandated throughout either the entire State or specified project areas. FCS shall respond to such requests within 30 days of the request and, if the request is not approved, FCS shall justify its reasons for the disapproval to the State agency.

(4) In project areas where issuance of Photo ID cards is mandatory, the State agency shall issue a Photo ID card at the time of certification to each eligible household except those listed in § 274.10(b)(4). Households exempt from mandated Photo ID cards shall be issued ID cards which meet the specifications in paragraph (d) of this section except that in lieu of a photograph, the State agency shall annotate the cards to show an exception was granted to the household and that the ID card is valid. The following households are exempt from the Photo ID requirement:

(i) Households certified by out-of-office interviews as specified in § 273.2(e)(2). However, the State agency shall replace the non-Photo ID card issued to such households with a Photo ID card when the appropriate household member or authorized representative visits the certification office. The State agency shall not require any member of such a household to visit the office exclusively for the purpose of issuing a Photo ID card;

(ii) Household members whose religion does not allow them to be photographed. The State agency shall require such a household to provide a signed statement to the effect that the members' religious beliefs do not allow them to be photographed;

(iii) Households entitled to expedited service if the State agency's Photo ID card system is incapable of producing a

Photo ID card in time for the household to participate as required by § 273.2(i). A Photo ID card shall be issued to the household prior to issuance of the household's next allotment;

(iv) Households certified under the SSA-food stamp joint processing rules in § 273.2(k). State agencies shall not require such households to obtain Photo IDs as long as they continue to be certified for food stamps at SSA offices. However, a household shall obtain a Photo ID if a household member or authorized representative reports to a food stamp office for recertification; and,

(v) Residents of drug/alcohol treatment and rehabilitation programs.

(5) In addition to the general provisions in paragraph (a) of this section, Photo ID cards shall include the photograph of the person who will receive the household's issuance; i.e., who will either transact the household's authorization document or pick up the household's allotment. A Photo ID card shall be signed by only the person pictured on the card, who may be the household member or authorized representative. Only the person photographed may obtain the household's coupons. All Photo ID card formats are subject to FCS approval.

(6) Photo ID cards shall be serially numbered and laminated after they are signed by the person whose photograph appears on the card. ID cards shall also include a color photograph of the person designated by the household to obtain coupons and the household's case number or other identifying information.

(7) A Photo ID card used to receive benefits under a welfare or public assistance program may be adapted for food stamp purposes if it meets the specifications contained in this section and can be annotated to indicate food stamp eligibility.

(8) The State agency shall provide a household with a reasonable opportunity to obtain a food stamp Photo ID card in any project area where its use is mandated.

(i) A household required to have a Photo ID card shall not participate until such time as a household member or a designated authorized representative obtains such a card. If a designated authorized representative does not obtain the required Photo ID, the household may designate a household member or another authorized representative to be photographed.

(ii) If the person whose photograph appears on the ID is unable to travel to the issuance point to obtain a particular allotment, the household may use the emergency authorized representative procedures provided in § 274.5 and in paragraph (c) of this section.

(9) State agencies which have the capability may develop systems to issue more than one household member a Photo ID card. These systems shall ensure that the safeguards provided by Photo ID cards, as specified in this section, are maintained.

(10) If a mutilated or altered Photo ID card is presented at the issuance point, the household shall obtain a replacement Photo ID card prior to issuance.

(11) A household shall be entitled to unobtained benefits, lost as a result of being unable to obtain a particular allotment, if the issuance month elapses between the time the household requested a replacement Photo ID card and the delivery of that card to the household.

(12) FCS may waive one or more of the requirements in this section if a State agency can demonstrate to FCS that its alternate ID card or system will provide adequate safeguards against fraudulent and/or duplicate issuances.

(c) *Emergency authorized representative and recipient identification.* State agencies shall develop a method by which a household may designate an emergency authorized representative to obtain the household's allotment when none of the persons specified on the ID is available.

(1) At a minimum, the method developed by the State agency shall require a document with the signature of the emergency authorized representative as well as a place for the household member named on the ID card to sign designating the emergency authorized representative and attesting to the signature of the emergency authorized representative. The designation may be

on the ID card or authorization document or a separate form. The household shall not be required to travel to a food stamp office to execute an emergency designation. The emergency authorized representative may present a separately written and signed statement from the head of the household or his or her spouse, authorizing the issuance of the certified household's food stamps to the authorized representative. The emergency representative shall sign the written statement from the household and present the statement and the household ID card to obtain the allotment. A separate written designation is required each time an emergency representative is authorized.

(2) In any issuance system, the cashier shall compare the signatures on the issuance document and on the ID card. If they do not match, issuance shall not be made.

(i) If the household is required by these regulations to present a Photo ID card, coupons shall be issued only when the person presenting the authorization document or requesting the coupons is pictured on the ID card. The cashier shall write the serial number of the Photo ID card on the authorization or issuance document.

(ii) If the Photo ID card appears to be mutilated or altered, the issuing agent shall not issue the coupons, but shall require the household to obtain a replacement ID card from the State agency.

(d) *Eligible food.* A household member should sign each coupon book issued to the household. The coupons may be used only by the household, or other persons the household selects, to purchase eligible food for the household, which includes, for certain households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with coupons. Uncanceled and unendorsed coupons of $1 denomination, returned as change by authorized retail food stores, may be presented as payment for eligible food. All other detached coupons may be accepted only if accompanied by the coupon book which bears the same serial number as the detached coupons. It is the right of the household or the authorized representative to detach the coupons from the book.

(e) *Meals-on-wheels.* Eligible household members 60 years of age or over or members who are housebound, physically handicapped, or otherwise disabled to the extent that they are unable to adequately prepare all their meals, and their spouses, may use coupons to purchase meals prepared for and delivered to them by a nonprofit meal delivery service authorized by FCS.

(f) *Residents of certain institutions.* (1) Members of eligible households who are narcotics addicts or alcoholics and who regularly participate in a drug or alcoholic treatment and rehabilitation program may use coupons to purchase food prepared for them during the course of such program by a private nonprofit organization or institution or a publicly operated community mental health center which is authorized by FCS to redeem the coupons through wholesalers in accordance with § 278.1, or which redeems coupons at retail food stores as the authorized representative of participating households in accordance with § 278.2(g).

(2) Eligible residents of a group living arrangement may use coupons issued to them to purchase meals prepared especially for them at a group living arrangement which is authorized by FCS to redeem coupons at wholesalers in accordance with § 278.1, or which redeems coupons at retail food stores as the authorized representative of participating households in accordance with § 278.2(g).

(3) Residents of shelters for battered women and children as defined in s271.2 may use their coupons to purchase meals prepared especially for them at a shelter which is authorized by FCS in accordance with § 278.1 to redeem at wholesalers, or which redeems at retailers as the authorized representative of participating household in accordance with § 278.2(g).

(g) *Homeless food stamp households.* Homeless food stamp households may use their food stamp benefits to purchase prepared meals from authorized homeless meal providers.

(h) *Use of ID cards.* Upon request, the household or the authorized representative shall present the household's ID

card to the retail food store or meal service when exchanging food coupons for eligible food.

(i) *Prior payment prohibition.* Coupons shall not be used to pay for any eligible food purchased prior to the time at which the coupons are presented to authorized retail food stores or meal services. Neither shall coupons be used to pay for any eligible food in advance of the receipt of food, except when prior payment is for food purchased from a nonprofit cooperative food purchasing venture.

(j) *Cash change.* When change in an amount less than $1 is required in a coupon transaction, the household shall receive the change in cash not to exceed 99 cents. However, in the case of homeless food stamp households, neither cash change nor credit slips shall be returned for coupons used for the purchase of prepared meals from authorized homeless meal providers. Such meal providers may use uncancelled and unmarked $1 coupons which were previously accepted for meals served to food stamp recipients when change is required for $5 and $10 coupons. However, in the case of homeless food stamp households, neither cash change nor credit slips shall be returned for food stamps used for the purchase of prepared meals from authorized public and private nonprofit homeless meal providers. Such meal providers may use the lowest denomination coupons that are uncancelled and unmarked for making change in food stamp transactions. Restaurants which are authorized by FCS under §278.1 to provide meals to homeless food stamp recipients shall return cash change to such recipients in food stamp transactions when the amount of change due is less than one dollar. If change of one dollar or more is due, uncancelled and unmarked one dollar coupons shall also be used for change.

[54 FR 7004, Feb. 15, 1989, as amended at 54 FR 51352, Dec. 15, 1989; 57 FR 11249, Apr. 1, 1992; 61 FR 53600, Oct. 15, 1996]

### §274.11 Issuance and inventory record retention, and forms security.

(a) *Availability of records.* The State agency shall maintain issuance, inventory, reconciliation, and other accountability records for a period of three years as specified in §272.1(f) of this chapter. This period may be extended at the written request of FNS.

(1) Issuance, inventory, reconciliation, and other accountability records shall include all Agency, State, and local forms involved in the State agency's receipt, storage, handling, issuance, and destruction of coupons completed by contract agents or any other individuals or entities involved in issuance or inventory, as well as those completed by the State agency.

(2) In lieu of the records themselves, easily retrievable microfilm, microfiche, or computer tapes which contain the required information may be maintained.

(b) *Control of issuance documents.* The State agency shall control all issuance documents which establish household eligibility while the documents are transferred and processed within the State agency. The State agency shall use numbers, batching, inventory control logs, or similar controls from the point of initial receipt through the issuance and reconciliation process. The State agency shall also ensure the security and control of authorization documents in transit from the manufacturer to the State agency.

(c) *Accountable documents.* (1) HIR cards, authorization documents, and mandated Photo ID cards shall be considered accountable documents. The State agency shall provide the following minimum security and control procedures for these documents:

(i) Preprinted serial numbers;

(ii) Secure storage;

(iii) Access limited to authorized personnel;

(iv) Bulk inventory control records;

(v) Subsequent control records maintained through the point of issuance or use, and

(vi) Periodic review and validation of inventory controls and records by parties not otherwise involved in maintaining control records.

(2) For notices of change which initiate, update or terminate the master issuance file, and blank ID cards, the State agency shall, at a minimum, provide secure storage and shall limit access to authorized personnel.

[54 FR 7004, Feb. 15, 1989, as amended at 60 FR 20183, Apr. 25, 1995]

**§ 274.12 Electronic Benefit Transfer issuance system approval standards.**

(a) *General.* This section establishes rules for the approval, implementation and operation of on-line Electronic Benefit Transfer (EBT) systems for the Food Stamp Program as an alternative to issuing food stamp coupons. An on-line EBT system is a computer-based system in which the benefit authorization is received from a central computer through a point-of-sale (POS) terminal. Eligible households utilize magnetic-stripe plastic cards and have accounts maintained at the central computer in lieu of food stamp coupons to purchase food items at authorized food retailers. Once certified, the household's benefits are electronically loaded into a central computer account for each month during the certification period. Checkout lanes at authorized food retailers are to be equipped with POS terminals. When the transaction occurs, the POS terminals connect on-line to the central computer database; verify the validity of the Personal Identification Number (PIN), card number, and the amount of available benefits in an EBT account; obtain authorization for each purchase and initiate the debiting of the household's account and the crediting of the retailer's account.

(b) *Program Administration.* (1) The State food stamp agency shall submit Planning and Implementation Advanced Planning Documents (APDs) for FCS approval in accordance with the requirements of § 277.18 of this chapter and this section. The State agency may implement an EBT system statewide or in only some areas of the State. However, the State agency shall implement EBT systems in a pilot area prior to expansion Statewide or to other project areas. The areas of pilot operation and full-scale operation shall be identified in the Planning APD when submitted to FCS for approval.

(2) The State agency shall be responsible for the coordination and management of the EBT system. The Secretary may suspend or terminate some or all EBT system funding or withdraw approval of the EBT system from the State agency upon a finding that the State agency or its contracted representative has failed to comply with the requirements of this section and/or § 277.18 of this chapter.

(3) All EBT systems within a State must follow a singular EBT APD and system architecture submitted by the State agency. Multiple EBT designs will be acceptable only if: such designs can be fully justified by the State agency; the system differences are transparent to participating households that move within the State; operating costs are the same or lower; and the ability of the different systems to readily communicate (transaction interchange) with one another.

(4) The State agency must provide written approval of the Planning and Implementation APDs from other participating Federal agencies or indicate that approval is being sought simultaneously from participating Federal agencies. The State agency shall indicate how it plans to incorporate additional programs into the EBT system if it anticipates the addition of other public assistance programs concurrent with or after implementation of the Food Stamp Program EBT system. The State agency shall also consult with the State agency officials responsible for administering the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) prior to submitting the Planning APD for FCS approval.

(c) *Pilot Project Approval Requirements*—(1) *EBT Planning APD.* The State agency shall comply with the two-stage approval process for APDs in submitting an EBT system proposal to FCS for approval. In addition to the requirements for a Planning APD specified under § 277.18(d)(1) of this chapter, the State agency shall commit itself to provide the following as part of the project planning activities to FCS for approval:

(i) Pilot Project Site and Expanded Site Descriptions. At a minimum, the proposed pilot project site and expanded site descriptions shall include the geographical boundaries, average number and characteristics of food

stamp program participants and households, the number and type of authorized food retailers and authorized retailers bordering the pilot and expanded areas, the food stamp redemption patterns of food retailers, the status of commercial POS deployment and the estimated number of checkout lanes that will require POS equipment; and

(ii) A Description of Major Contacts. A description of initial contacts the State agency has made in the proposed pilot area among food retailers, financial institutions and households or their representatives that may be affected by implementation of the EBT system. Written commitments from the retail grocer community (including supermarket chains, independent retailers, and convenience stores) and participating financial institutions in the pilot area shall be provided along with other documentation that demonstrates the willingness to support the proposed EBT system within the pilot area and expanded system area. The State agency shall submit evidence of contacts with recipient organizations and others.

(2) *EBT Implementation APD.* The EBT Implementation APD shall include the completed documents required under § 277.18 of this chapter for Implementation APDs, where appropriate. In addition, EBT Implementation APDs shall include the detailed pilot project site description and expanded site description, as described in this paragraph. Also, the State agency shall commit to completing and submitting the following documents for FCS approval and obtaining such approval prior to issuance of benefits to eligible households in the pilot project area:

(i) A Functional Demonstration Plan. The functional demonstration plan shall include:

(A) The schedule, procedures, and test data for performing the functional requirements prescribed in paragraph (e) of this section in combination with the system components described by the approved System Design;

(B) The procedures for performing the functional demonstration, each participant's responsibility during the demonstration, and procedures for collecting data to evaluate system functionality. The Department reserves the right to participate and conduct independent testing as necessary during the Functional Demonstration.

(ii) A Functional Demonstration Report. Upon the completion of the functional requirements demonstration test, the State agency shall submit a Functional Demonstration report. The report shall summarize the activities, describe major problems encountered and proposed solutions, and provide the timetable for completing any system revisions. Resolution of any problems identified during the functional demonstration shall be completed prior to advancing towards the acceptance test.

(iii) An Acceptance Test Plan. The Acceptance Test Plan for the pilot project shall describe the methodology to be utilized to verify that the EBT system complies with Food Stamp Program requirements and System Design specifications. At a minimum, the Acceptance Test Plan shall address:

(A) The types of testing to be performed;

(B) The organization of the test team and associated responsibilities, test database generation, test case development, test schedule, and the documentation of test results. Acceptance testing shall include functional requirements testing, error condition handling and destructive testing, security testing, recovery testing, controls testing, stress and throughput performance testing, and regression testing;

(C) A ''what-if'' component shall also be included to permit the opportunity for observers and participants to test possible scenarios in a free-form manner.

(D) The Department reserves the right to participate and conduct independent testing as necessary during the Acceptance testing and appropriate events during system design, development, implementation and operation.

(iv) An Acceptance Test Report. The State agency shall provide a separate

report after the completion of the acceptance test. The report shall summarize the activities, describe any discrepancies, describe the proposed solutions to discrepancies, and the timetable for their retesting and completion. In addition, the report shall contain the State agency's recommendations regarding implementation of the EBT system in the pilot site.

(v) A Prototype Food Retailer Agreement. The State agency shall enter an agreement with each food retailer that complies with the requirements of paragraph (g)(6) of this section.

(vi) A Pilot Project Implementation Plan. The pilot project implementation plan shall include the following:

(A) A description of the tools, procedures, detailed schedules, and resources needed to implement the pilot project;

(B) The equipment acquisition and installation requirements, ordering schedules, and system and component testing;

(C) A phase-in strategy which permits a measured and orderly transition to EBT. In describing this strategy, the plan shall address training schedules that avoid disruption of normal shopping patterns and operations of participating households and food retailers. Training of food stamp households, State agency personnel and retailers and/or their trainers shall be coordinated with the installation of equipment in retail stores;

(D) A description of on-going tasks associated with fine-tuning the system and making any corrective actions necessary to meet contractual requirements. The description shall also address those tasks associated with ongoing training, document updates, equipment maintenance, on-site support and system adjustments, as needed to meet Food Stamp Program requirements; and,

(E) A plan for orderly phase-out of the pilot project if it is demonstrated during the pilot project operations that the system is not acceptable.

(vii) A Contingency Plan. The State agency shall submit a written contingency plan for FCS approval. The contingency plan shall contain information regarding the back-up issuance system that will be activated in the event of an emergency shut-down which results in short-term or extended system inaccessibility, or total discontinuation of EBT system operations. The contingency plan shall be incorporated into the State system security plan after FCS approval as prescribed at § 277.18(p) of this chapter.

(3) *EBT Implementation APD Budget.* The Implementation APD budget shall be prepared and submitted for FCS approval in accordance with the requirements of paragraph (k) of this section and § 277.18(d)(2) of this chapter.

(i) Coupon Issuance Cap. The State agency shall provide an analysis of current statewide coupon issuance costs as compared to the projected costs of issuing benefits in the State after implementation of the EBT system, both for the EBT system and any remaining coupon issuance areas. The coupon issuance cap shall be determined as follows:

(A) The State agency shall utilize the statewide coupon issuance costs, which include State agency costs in paragraph (c)(3)(ii) of this section and Federal costs in paragraph (c)(3)(iii) of this section, calculated from issuance costs for the four Federal fiscal quarters prior to submitting the EBT Implementation APD. Case-month cost represents the average Federal share of administrative costs to issue program benefits to a case for one month. An alternative base period may be utilized, with approval from FCS, if the State agency can demonstrate that the alternative period would be more accurate or other circumstances prevent use of the previous four Federal fiscal quarters as the baseline.

(B) The annual Federal issuance cap, to be in place from the time benefits are first issued though EBT, shall be calculated by multiplying the case-month cost for the coupon system being replaced by the number of food stamp program case-months statewide for the year and by the appropriate inflation factor. The inflation factor shall be derived in accordance with paragraph (k) of this section. The issuance cap shall be effective from the date benefits are issued to households through the EBT system during the pilot project.

(ii) State Coupon Issuance Costs.

(A) Beginning at the point the household is established in the Issuance Authorization File, all direct State administrative costs of the current coupon issuance system shall be identified.

(B) State operating costs of coupon issuance shall include, but shall not be limited to, direct allowable costs for personnel, fringe benefits, travel, equipment, supplies, contracts, construction and other direct costs associated with coupon issuance. Indirect costs shall not be included in the determination of State issuance costs for purposes of calculating the coupon issuance cap. Such indirect costs are defined as costs which are included in the State agency's indirect cost proposal and approved for cost charging through an indirect cost rate. The State agency shall provide narrative explanations to clarify each category and how it was calculated.

(iii) Federal Coupon Issuance Costs. Federal costs associated with the issuance of coupons in a particular State are to be included in the coupon issuance cap. These Federal costs shall include:

(A) Case-month costs for coupon printing, shipping, processing, and reconciliation. The case-month figure associated with these costs will be available from FCS upon request;

(B) Monthly mail issuance losses up to the tolerance limit approved by FCS;

(C) Monthly duplicate issuance losses absorbed by FCS; and

(D) Fifty percent of the allowable State administrative costs pertaining to coupon issuance.

(iv) EBT Equipment and Start-up Costs.

(A) For the purpose of assigning the costs to the post-EBT implementation issuance cap, costs to design and develop the EBT system, incurred from the approval date of the Implementation APD but prior to actual issuance of benefits through the EBT system, shall be assigned over the life of the EBT system for a period not to exceed seven years. The seven year period shall begin when the initial household is issued benefits in the pilot project. Such design and development costs shall be assigned at the end of the period and claims shall be made for any assigned costs that exceed the total cap for the seven years. For a period of one year from the first issuance in the pilot, costs incurred during the pilot project that exceed the issuance cap may be treated in the same manner as these design and development costs and assigned to the cap at the end of the seven year period.

(B) For the purpose of claiming Federal financial participation in capital expenditures, such costs shall be charged from the time operations begin in accordance with 7 CFR 277.18(i)(3) and appendix A of 7 CFR 277.18. Equipment costs shall include the cost of installation and shall be applied to the issuance funding cap as amortized. EBT equipment costs shall be identified in the EBT system budget as a separate component, both for the pilot and the fully operational system.

(v) Costs of EBT Planning APD. The costs for EBT project planning activities shall be excluded from the case-month issuance cap described in paragraph (c)(3) of this section. Planning costs shall include costs attributed to the preparation of the Planning APD and the completion of the documentation contained in the FCS approved Planning APD.

(vi) EBT operational costs. In accordance with appendix A of §277.18 of this chapter, the State agency shall identify the allowable EBT operational costs for reimbursement. Operations costs shall begin from the date benefits are issued to recipients in the pilot project. The State agency shall provide cost information as follows:

(A) The State agency shall include EBT system operation costs which include, as appropriate, but are not limited to: labor hours and costs by job category and by program for each unit, direct non-labor costs by program for each agency, vendor charges, if any, computer usage (CPU, disk storage, tapes, printing), the equipment amortization/lease and maintenance (including POS hardware and installation costs), telecommunications installations, recurring telecommunications, benefit card stock and equipment, supplies, printing and reproduction, travel, postage, automated clearinghouse charges, wire transfer fees and other such settlement fees, and other direct

costs. Indirect costs shall not be included as EBT system operation costs.

(B) The State agency shall be responsible for the post-EBT implementation issuance costs that exceed the coupon issuance cap in any one year. These costs shall include all issuance costs incurred Statewide for food coupon and EBT issuance. The State agency shall document any issuance costs it projects to be above the cap in the budget submitted to FCS for approval.

(4) *Pilot Project Reporting.* (i) A quarterly report containing the following information delineated by month shall be provided to FCS by the end of the month following each Federal fiscal quarter. The quarterly report shall contain, at a minimum:

(A) A summary, by task, of major completed activities and scheduled activities for the upcoming period.

(B) The number of active cases for each month;

(C) The number and dollar amount of food stamp purchases in total and by store ID;

(D) The number and dollar amount of food stamp reversals, in total and by store ID;

(E) The total number and dollar amount of manual sales authorized;

(F) The total number and dollar amount of issuances posted to EBT accounts during the month, delineated by public assistance Food Stamp households and non-public assistance Food Stamp households;

(G) Total number and dollar amount of grocer credits during settlement (by day of month);

(H) Total number of retailers added to or deleted from the system as defined under part 278 of this chapter;

(I) Number and dollar amount of food stamp benefits converted to coupons;

(J) Total number of Food Stamp Program balance inquiries, by type of device such as Automated Teller Machines, POS terminals or Audio Response Units (ARUs) or hotline telephone numbers;

(K) Total number of rejected transactions, grouped by reasons (e.g., invalid PIN, insufficient funds, invalid transaction type for device, etc.);

(L) The number of access cards issued by the type of case (new, recertification, replacement for loss, damage or theft);

(M) Number of client calls and grocer calls to the ARU or hotline number;

(N) The average number of transactions by type;

(O) Average dollar value of purchases per case-month;

(P) Transactions utilized per day as a percentage of transactions through the system each month;

(Q) Problems encountered, their status, actions taken by the State agency and any support needed from FCS to resolve them; and

(R) Anticipated delays, reasons for the delays, and corrective actions planned or taken that require an amendment to the Project Work Plan. The Project Work Plan shall be updated and submitted with each quarterly report.

(ii) The State agency shall submit APD Updates as prescribed in § 277.18 of this chapter and paragraph (d) of this section.

(5) *Cost Analysis.* (i) The State agency shall be responsible for conducting a cost analysis comparing the actual EBT pilot project costs to the costs of the EBT system operations projected in the Implementation APD and the costs of the coupon issuance system being replaced.

(ii) The cost analysis may be conducted by State agency staff or by an independent contractor. The cost analysis shall represent the costs of the pilot as costs per case-month.

(iii) The State agency shall report in the cost analysis all start-up costs that shall be amortized under the issuance cap for the EBT system. At a minimum, the State agency shall identify:

(A) The labor hours and costs by job category for each unit (e.g., the Food Stamp Program Section, the financial assistance section, the EBT project section, etc.) of the State and local agencies and for each vendor;

(B) The direct costs for each agency and vendor. The line items to be included are computer usage (CPU, disk storage, tapes, printing), the equipment amortization/lease and maintenance (excluding POS hardware), telecommunications installations, recurring telecommunications, benefit card stock and equipment, supplies, printing

and reproduction, travel, postage, Automated Clearinghouse and wire transfer fees, in addition to other direct costs.

(iv) The State agency shall report the per case-month operating costs of the EBT and the coupon systems. Case-month costs shall be calculated by determining the average monthly issuance cost per system divided by the average monthly food stamp caseload issued benefits for the most recent four fiscal quarters or the most recent fiscal year. These costs shall be reported by function. The functions include: authorizing access to benefits; delivering benefits; crediting retailers; managing retailer participation; and reconciling and monitoring the issuance system. For each function the State agency shall report the information specified in paragraphs (c)(5)(iii) (A) and (B) of this section.

(v) The State agency shall report benefit loss per case month. For coupon losses the State agency shall utilize data from Form FCS–250 Food Coupon Accountability Report, Form FCS–259 Food Stamp Mail Issuance Report, and Form FCS–46 Issuance Reconciliation Report. Data from actual EBT system losses shall be included as a separate line in the cost analysis report.

(vi) EBT operational costs shall be measured after the EBT pilot project system has operated for a minimum of three months with the full caseload in the pilot area. The cost analysis shall be submitted to FCS after completion of the period of pilot operations with the full caseload.

(vii) The State agency shall measure any residual coupon costs resulting from households within the demonstration site that have not been converted to EBT, households from outside of the site that shop at stores within the pilot project area; and households leaving the pilot project area. If the State agency proposes to operate EBT on less than a statewide basis for an indefinite period of time, costs for the combined coupon and EBT systems shall be reported and compared to the coupon system costs.

(d) *Expansion Requirements.* After a minimum of three months of pilot project operation with the full pilot caseload, the State agency may decide to expand the EBT system. If expansion is selected, the State agency shall submit an APD Update to request FCS approval to implement and operate the EBT system in areas beyond the pilot area. The APD Update shall contain the following:

(1) A proposed expansion budget for FCS' review and approval;

(2) An Implementation Plan. At a minimum, the Expansion Implementation Plan shall address:

(i) The requirements of paragraphs (c)(2)(vi) (A) through (D) of this section as applied to the expansion activities; and,

(ii) The names, titles, addresses, and telephone numbers of the persons responsible for coordinating expansion activities;

(3) A description of any necessary system design changes, including software modifications and/or modifications of equipment configurations. The design changes shall be documented within the ADP Update or provided to FCS for approval separately upon completion;

(4) An assessment of the effects the EBT pilot project had, if any, on program participation during the pilot operation; and,

(5) A revised Contingency Plan as required in paragraph (c)(7) of this section to address the expanded scope of the system.

(e) *Functional Requirements.* The State agency shall ensure that the EBT system is capable of performing the following functional requirements prior to implementation:

(1) *Authorizing Household Benefits.* (i) Issuing and replacing EBT cards to eligible households;

(ii) Permitting eligible households to select a personal identification number (PINs) at least four digits in length;

(iii) Establishing benefit cards and accounts with the central computer database;

(iv) Maintaining the master household issuance record file data and current authorization information;

(v) Training households and other users in system usage;

(vi) Authorizing benefit delivery;

(vii) Posting benefits to each household's account for regular and supplemental issuances;

(viii) Providing households with access to information on benefit availability;

(ix) Ensuring the privacy of household data and providing benefit and data security;

(x) Inventorying and securing accountable documents; and

(xi) Zeroing out benefit accounts and other account authorization activity.

(2) *Providing Food Benefits to Households.* (i) Verifying the identity of authorized households or authorized household representatives at issuance terminals or POS;

(ii) Verifying the PIN and/or PIN offset, primary account number (PAN), terminal identification number and retailer identification number;

(iii) Determining the sufficiency of the household's account balance in order to debit or credit household benefit accounts at the point-of-sale;

(iv) Sending messages authorizing or rejecting purchases;

(v) Providing back-up purchase procedures when the system is unavailable;

(vi) Ensuring that benefits are available and carried over from month-to-month.

(vii) Converting EBT benefits to coupons in accordance with paragraph (f)(6) of this section; and

(viii) Responding to issuance problems in a timely manner.

(3) *Crediting Retailers and Financial Institutions for Redeemed Benefits.* (i) Verifying electronic transactions flowing to or from participating retailers' bank accounts;

(ii) Creating and maintaining a file containing the individual records of EBT transactions;

(iii) Totalling all credits accumulated by each retailer;

(iv) Providing balance information to retailers or third party processors from individual POS terminals, as needed;

(v) Providing each retailer information on total deposits in the system on a daily basis;

(vi) Preparing a daily tape in a National Automated Clearinghouse format or other process approved by FCS with information on benefits redeemed for each retailer and in summary;

(vii) Transmitting the automated clearinghouse (ACH) tape to a financial institution for transmission through the ACH or other method approved by FCS;

(viii) Transferring the information on the ACH tape or other process approved by FCS containing daily redemption activity of each retailer to the FCS Minneapolis Computer Support Center at least once weekly. Transmittal may be by tape, disc, remote job entry or other means acceptable to FCS.

(4) *Managing Retailer Participation.* The State agency shall:

(i) Convey retailer authorization information provided by FCS to the system operator and follow up on actions taken regarding any disqualification or withdrawal by an authorized food retailer from the Food Stamp Program within two business days after receipt;

(ii) Add newly authorized food retail stores or third party processors to the EBT system as prescribed under paragraph (g)(1)(ii) of this section.

(iii) Ensure that only currently authorized retailers can access the system;

(iv) Monitor food retailers to ensure that equipment deployment complies with paragraph (g)(4) of this section;

(v) Ensure that equipment and supplies are maintained in working order for retail stores equipped by the State agency or its contractor. Equipment shall be replaced or repaired within 24 hours;

(vi) Ensure that retail store employees are trained in system operation prior to implementation. Such training shall include the provision of appropriate written and program specific materials;

(vii) Provide a mechanism for compliance investigations which permits authorized invetigators to have access to the system in order to conduct investigations of program abuse and alleged violations.

(f) *Household Participation*—(1) *Transaction Limits.* No minimum dollar amount per transaction nor maximum limit on the number of transactions shall be established. In addition, no transaction fees shall be imposed on

food stamp households utilizing the EBT system to access their benefits.

(2) *Access to Balances.* Households shall be permitted to determine their food stamp account balances without making a purchase or standing in a checkout line. The State agency shall ensure that the EBT system is capable of providing a transaction history for a period of up two calendar months to households upon request.

(3) *Transaction Receipts.* Households shall be provided printed receipts at the time of transaction. At a minimum this information shall:

(i) State the date, merchant's name and location, transaction type, transaction amount and remaining balance for the food stamp account;

(ii) Comply with the requirements of 12 CFR part 205 (Regulation E) in addition to the requirements of this section; and

(iii) Identify the food stamp household member's account number (the PAN) or a coded transaction number. The household's name shall not appear on the receipt except when a signature is required when utilizing a manual transaction voucher.

(4) *Issuance of Benefits.* State agencies shall establish an availability date for household access to their benefits and inform households of this date. The State agency may make adjustments to benefits posted to household accounts after the posting process is complete but prior to the availability date for household access in the event benefits are erroneously posted. The appropriate management controls and procedures for accessing benefit accounts after the posting shall be instituted to ensure that no unauthorized adjustments are made in accordance with paragraph (f)(7)(iii) of this section.

(5) *Issuance and Replacement of Cards or PINs.* (i) The State agency shall permit food stamp households to select their Personal Identification Number (PIN). PIN assignment procedures shall not be permitted.

(ii) The State agency shall replace EBT cards within two business days following notice by the household to the State agency. The State may request a waiver from the Department to allow a longer replacement time.

(iii) The State agency shall ensure that a duplicate account is not established which would permit households to access more than one account in the system.

(iv) An immediate hold shall be placed on accounts at the time notice is received from a household regarding the need for card or PIN replacement. The State agency shall implement a reporting system which is continually operative. Once a household reports that their EBT card has been lost or stolen, the State agency shall assume liability for benefits subsequently drawn from the account and replace any lost or stolen benefits to the household. The State agency or its agent shall maintain a record showing the date and time of all reports by households that their card is lost or stolen.

(v) The State agency may impose a replacement fee with the approval of FCS. The fee shall not exceed the cost to replace the card. Any card replacement fee, the replacement threshold, frequency and circumstances to which the fee shall be applicable shall be identified when submitting the Advance Planning Document for FCS approval.

(6) *Benefit Conversion.* (i) Households leaving an EBT project area must be able to convert their electronic benefits to coupons. At State agency option, a household entering an EBT area may be required to spend any remaining food coupons prior to utilizing the EBT system to access their benefits. Conversion shall occur within one business day following notice to the State agency by the household when inventories of food coupons are stored at local agency locations. Conversion shall occur within three business days if the State maintains coupon inventories in a central location.

(ii) Requests for conversions to food coupons solely for purposes of shopping outside the pilot area shall be prohibited. However, the State agency may allow benefits in an EBT account to be converted to coupons for short-term absences from the EBT system area for family emergencies or similar isolated occurrences.

(iii) Splitting food stamp benefits between food coupons and an electronic

benefit access card at the time of issuance shall not be permitted.

(iv) At State agency option, a limit may be imposed on the number of conversions per household that may occur annually for the purposes prescribed under paragraph (f)(6)(ii) of this section. A limit on conversions to food coupons shall not be imposed on households moving from the EBT area.

(v) The State agency shall develop procedures for conversion whenever a household has left a State. These procedures shall not conflict with mailing restrictions regarding Authorization to Participate documents or other authorizing documents.

(vi) The State agency shall round EBT benefits remaining in an account down to the nearest dollar amount suitable for coupon issuance. The State agency shall require the household to spend any remaining balance that cannot be converted to food coupons. If a household fails to spend the remaining benefits within one week after conversion occurs, the State agency shall expunge the benefits from the account and report the adjustment to the Department.

(7) *Stale Account Handling.* Stale benefit accounts are those food stamp benefit accounts which are not accessed for three months or longer.

(i) If EBT accounts are inactive for three months or longer, the State agency may store such benefits off-line.

(A) Benefits stored off-line shall be made available upon reapplication or re-contact by the household;

(B) The State agency shall attempt to notify the household of this action before storage of the benefits off-line and describe the steps necessary to bring the benefits back on-line;

(ii) The State agency shall expunge benefits that have not been accessed by the household after a period of one year. Issuance reports shall reflect the adjustment to the State agency issuance totals to comply with monthly issuance reporting requirements prescribed under § 274.4 of this part.

(iii) Procedures shall be established to permit the appropriate managers to adjust benefits that have already been posted to a benefit account prior to the household accessing the account; or, after an account has become dormant or the household has not used the funds which remain after conversion. These procedures shall be utilized if an account has been erroneously debited or credited. The procedures shall also be applicable to removing stale accounts for off-line storage of benefits or when the benefits are expunged. Whenever benefits are expunged or stored off-line, the State agency shall document the date, amount of the benefits and storage location in the household case file.

(8) *Timely Benefit Availability.* The State agency shall ensure that the EBT system complies with the expedited service benefit delivery standard and the normal application processing standards prescribed by § 273.2 and § 274.2 of this chapter.

(9) *Access to Retail Stores.* The EBT system shall provide for minimal disruption of access to and service in retail stores by eligible households. The EBT system shall not result in a significant increase in the cost of food or cost of transportation to authorized food retail stores for food stamp households. Checkout lanes equipped with POS devices shall be made available to Food Stamp households during all retail store hours of operation.

(10) *Household Training.* The State agency shall provide training to each household prior to implementation and as needed during ongoing operation of the EBT system. Training functions for an EBT system may be incorporated into certification procedures. At a minimum, the household training shall include:

(i) Content which will familiarize each household with the provisions of paragraphs (f)(1) through (f)(9) of this section;

(ii) Hands-on experience for each household in the use of the EBT equipment necessary to access benefits and obtain balance information;

(iii) Notification to the household of the procedures for manual transactions and re-presentation;

(iv) The appropriate utilization and security of the Personal Identification Number;

(v) Each household's responsibilities for reporting loss or damage to the EBT card and who to report them to,

both during and outside business hours. Information on a 24 hour hotline telephone number shall be provided to each household during training;

(vi) Written materials and/or other information, including the specific rights to benefits in an EBT system, shall be provided as prescribed under 7 CFR 272.4(b) for bilingual households and for households with disabilities. Written materials shall be prepared at an educational reading level suitable for food stamp households;

(vii) Information on the signs or other appropriate indicators located in checkout lanes that enable the household to identify lanes equipped to accept EBT cards.

(g) *Retailer Participation*. (1) All authorized retailers must be afforded the opportunity to participate in the EBT system. An authorized food retailer shall not be required to participate in an EBT system.

(i) Retailers who do not have immediate access to telephones at the time of purchase shall be accommodated by an alternative system (e.g., manual vouchers with preliminary or delayed telephone verification) for redeeming food sales to eligible food stamp customers. These retailers include stationary food stores which opt to make home deliveries to food stamp households, house-to-house trade routes which operate on standing orders from customers, e.g. milk and bread delivery routes, food buying cooperatives authorized to participate as well as other food retailers authorized under § 278.1 of this chapter. Prior to delivery or upon returning to the store, the retailer shall telephone the EBT central computer or hotline number to log the transaction and obtain an authorization number. If authorization cannot be obtained before or at the time of purchase, the retailer assumes the risk for sufficient benefits being available in the household's account. Any alternate method cannot be burdensome on either the household or the retailer, and it must include acceptable privacy and security features. Such systems shall only be available to retailers that cannot be equipped with a POS terminal at the time of sale.

(ii) Newly authorized retailers shall have access to the EBT system within two weeks after the receipt of the FCS authorization notice. However, whenever a retailer chooses to employ a third party processor to drive its terminals or elects to drive its own terminals, access to the system shall be accomplished within a 30 day period or a mutually agreed upon time to enable the third party interface specifications and any State required functional certification to be performed by the State agency and/or its contractor. The FCS field office shall notify each new retailer at the time of application for authorization that an EBT system is operating in their store location(s). The field office shall also notify the State agency in a timely manner when a retailer is authorized to participate in the Food Stamp Program.

(2) Authorized retailers shall not be required to pay costs essential to and directly attributable to EBT system operations as long as the equipment or services are provided by the State agency or its contractor and are utilized solely for the Food Stamp Program. In addition, if Food Stamp Program equipment is deployed under contract to the State agency, the State agency may, with USDA approval, share appropriate costs with retailers if the equipment is also utilized for commercial purposes.

(3) The State agency shall ensure that a sufficient number of authorized food retailers have agreed to participate throughout the area in which the EBT system will operate to ensure that eligible food stamp households will not suffer a significant reduction in their choice of retail food stores and that a sufficient number of retail food stores serving minority language populations are participating.

(4) The EBT system shall be implemented and operated in a manner that maintains equal treatment for food stamp households in accordance with § 278.2(b) of this chapter. The following requirements for the equal treatment of food stamp households shall directly apply to EBT systems:

(i) Retailers shall not establish special checkout lanes which are only for food stamp households or welfare customers. If special lanes are designated for the purpose of accepting other electronic debit or credit cards and/or

other payment methods such as checks, food stamp customers with EBT cards may also be assigned to such lanes as long as other commercial customers are assigned there as well.

(ii) POS terminals shall be deployed as follows in EBT systems requiring food stamp households to participate:

(A) For an authorized food retail store with food stamp benefit redemption amounting to 15 percent or more of total food sales, all checkout lanes shall be equipped;

(B) For an authorized food retail store with Food Stamp benefit redemptions representing less than 15 percent of total food sales, supermarkets shall, at a minimum, receive one terminal for every $11,000 in monthly redemption activity up to the number of lanes per store. All other food retailers shall receive one terminal for every $8,000 in monthly redemption activity up to the number of lanes per store. However, a State agency may utilize an alternative deployment formula that permits equipment deployment at higher levels than required by this paragraph up to the number of lanes in each store. The State agency shall review terminal deployment on a yearly basis and shall be authorized to remove excess terminals if actual redemption activity warrants a reduction.

(C) For newly authorized food retailers and authorized food retailers bordering the EBT system area, the State agency and food retailer shall negotiate a mutually agreed level of terminal deployment up to the number of lanes per store. The State agency may consult with the appropriate FCS field office in order to determine the previous food stamp redemption activity that could be utilized in determining the initial number of terminals to deploy in newly authorized retailers or border stores. The State agency shall examine household shopping patterns in the EBT operating area in order to establish the needs for border store equipment. Redemption information shall remain confidential.

(D) Any food retailer shall be able to submit further evidence that it warrants additional terminals after the initial POS terminals are deployed. Food stamp households may also submit evidence to the State agency that additional POS terminals are needed.

(5) The State agency shall ensure that the EBT system provides credits to the financial institution holding the accounts for retailers or third party processors within two business days of the daily cut-over period for retailer settlement. The cut-over period is the time of day established by the system in which a transaction day is established for settlement and reconciliation.

(6) The State agency shall enter into an agreement with each authorized food retailer. The retailer agreement shall describe the terms and conditions of participation in the Food Stamp EBT system. At a minimum, the agreement shall:

(i) Describe all terms and conditions with respect to equipment ownership, lease arrangements, handling and maintenance for which the State agency and merchant are liable;

(ii) Describe the agreed upon procedures and policies for participation and withdrawal from the EBT system;

(iii) Comply with all Food Stamp Program regulations with respect to retailer participation in the program and treatment of Food Stamp Program households. This shall include specific requirements with respect to the deployment of terminals and the identification of checkout lanes for food stamp customers;

(iv) Delineate the liabilities during system downtime and the associated responsibilities of each party with respect to the use of off-line and/or manually entered data, paper vouchers, and re-presented vouchers.

(h) *Performance and Technical Standards.* The State agency shall ensure that EBT systems comply with Point of Sale (POS) technical standards established by the American National Standards Institute (ANSI) or International Organization for Standardization (ISO) where applicable. In addition, the State agency shall ensure that the EBT system meets performance and technical standards in the areas of system processing speeds, system availability and reliability, system security, system ease-of-use, minimum card and terminal requirements, performance bonding, and a minimum

transaction set. With prior written approval from FCS, the State agency may utilize the prevailing industry performance standards in its region in lieu of those identified in this section. The standards shall be included in all requests for proposals and contracts.

(1) *System Processing Speeds.* (i) For leased line systems, 98 percent of EBT transactions shall be processed within 10 seconds or less and all EBT transactions shall be processed within 15 seconds. Leased line systems rent telecommunications carriers specifically to connect to the central authorizing computer. For dial-up systems, 95 percent of the EBT transactions shall be processed within 15 seconds or less and all EBT transactions shall be processed within 20 seconds or less. Dial-up systems utilize existing telecommunications lines to dial up and connect to the central computer at the time of the transaction. Processing response time shall be measured at the POS terminal from the time the 'enter' or 'send' key is pressed to the receipt and display of authorization or disapproval information. Third party processors, as defined in paragraph (h)(5) of this section, shall be required by the State agency to comply with the same processing response times required of the primary processor.

(ii) The EBT system shall provide reports, as determined by the State agency, that document transaction processing response time and the number and type of problematic transactions that could not be processed within the standard response time.

(2) *System Availability and Reliability.* (i) The EBT system central computer shall be available 99.9 percent of scheduled up-time, 24 hours a day, seven days per week. Scheduled up-time shall mean the time the database is available for transactions excluding scheduled downtime for routine maintenance. The total system, including the system's central computer, any network or intermediate processing facilities and cardholder authorization processors, shall be available 98 percent of scheduled up-time, 24 hours per day, 7 days per week. Scheduled downtime for routine maintenance shall occur during non-peak transaction periods. State certification procedures shall determine whether intermediate processing facilities and cardholder authorization processors are capable of complying with system availability standards prescribed herein prior to permitting the interface with the central computer system.

(ii) The system central computer shall permit no more than 2 inaccurate EBT transactions for every 10,000 EBT transactions processed. The transactions to be included in measuring system accuracy shall include all types of food stamp transactions permitted at POS terminals and processed through the host computer, manual transactions entered into the system, credits to household accounts, and funds transfers to retailer accounts.

(iii) Reconciliation reports and other information regarding problematic transactions shall be made available to the State agency by the system operator, individual retailers, households or financial institutions as appropriate. Reports on problematic transactions, including inaccurate transactions shall be delineated by the source of the problem such as card failure, POS terminal failure, interruption of telecommunications, or other component failure. Errors shall be resolved in a timely manner.

(3) *System Security.* As an addition to or component of the Security Program required of Automated Data Processing systems prescribed under § 277.18(p) of this chapter, the State agency shall ensure that the following EBT security requirements are established:

(i) Storage and control measures to control blank unissued EBT cards and PINs, and unused or spare POS devices;

(ii) Measures to ensure communication access control. Communication controls shall include the transmission of transaction data and issuance information from point-of-sale terminals to work-stations and terminals at the data processing center. The following specific security measures shall be included, as appropriate, in the system design documentation, operating procedures or the State agency Security Program:

(A) Computer hardware controls that ensure acceptance of data from authorized terminals only. These controls shall include the use of mechanisms

such as retailer identification codes, terminal identifiers and user identification codes, and/or other mechanisms and procedures recognized by the industry;

(B) Software controls, placed at either the terminal or central computer or both, that establish separate control files containing lists of authorized retailers, terminal identifying codes, and user access and identification codes. EBT system software controls shall include separate checks against the control files in order to validate each transaction prior to authorization and limiting the number of unsuccessful PIN attempts that can be made utilizing standard industry practices before the card is deactivated;

(C) Communications network security that utilizes the Data Encryption Standard algorithm to encrypt the PIN, at a minimum, from the point of entry. Other security may include authentication codes and check-sum digits, in combination with data encoded on the magnetic stripe such as the PIN and/or PIN offset, to ensure data security during electronic transmission. Any of the network security measures may be utilized together or separately and may be applied at the terminal or central computer as indicated in the approved system design to ensure communications control;

(D) Manual procedures that provide for secure access to the system with minimal risk to household or retailer accounts. Manual procedures may include the utilization of manager identification codes in obtaining telephonic authorization from the central computer system; requirements for separate entry with audio response unit verification and authorization number; and/or the utilization of 24 hour hotline telephone numbers to authorize transactions.

(iii) Message validation shall include but shall not be limited to:

(A) Message format checks for completeness of the message, correct order of data, existence of control characters, number and size of data fields and appropriate format standards as specified in the approved system design;

(B) Range checks for acceptable date fields, number and valid account numbers, purchase and refund upper limitations in order to prevent and control damage to the system accounts;

(C) Reversals of messages that are not fully processed and recorded.

(iv) Administrative and operational procedures shall ensure that:

(A) Functions affecting an account balance are separated or dually controlled during processing and when requesting Federal reimbursement through a concentrator bank under the provisions of paragraph (i) of this section. These functions may include but are not limited to the set up of accounts, transmittal of funds to and from accounts, access to files to change account records, and transmittal of retailer deposits to the ACH network or other means approved by FCS for crediting retailer bank accounts;

(B) Passwords, identity codes or other security procedures must be utilized by State agency or local personnel and at data processing centers;

(C) Software programming changes shall be dual controlled to the extent possible;

(D) System operations functions shall be segregated from reconciliation duties;

(v) A separate EBT security component shall be incorporated into the State agency Security Program for Automated Data Processing (ADP) systems where appropriate and as prescribed under § 277.18(p) of this chapter. The periodic risk analyses required by the Security Program shall address the following items specific to an EBT system:

(A) EBT system vulnerability to theft and unauthorized use;

(B) Completeness and timeliness of the reconciliation system;

(C) Vulnerability to tampering with or creating household accounts;

(D) Erroneous posting of issuances to household accounts;

(E) Manipulation of retailers' accounts such as creation of false transactions or intrusion by unauthorized computer users;

(F) Capability to monitor systematic abuses at POS terminals such as debits for a complete allotment, excessive manual issuances, and multiple manual transactions at the same time. Such

monitoring may be accomplished through the use of exception reporting;

(G) Tampering with information on the ACH tape or similar information utilized in a crediting method approved by FCS; and,

(H) The availability of a complete audit trail. A complete audit trail shall, at a minimum, be able to provide a complete transaction history of each individual system activity that affects an account balance. The audit trail shall include the tracking of issuances from the Master File and Issuance File, network transactions from point-of-sale terminals to EBT central computer database and system file updates.

(vi) The State agency shall incorporate the contingency plan approved by FCS prior to pilot implementation and subsequently updated as part of the Expansion Implementation Plan into the Security Program.

(4) *System Ease-of-Use.* (i) For all system users, the State agency shall ensure that the system:

(A) Minimizes the number of separate steps required to complete a transaction;

(B) Minimizes the number of codes or commands needed to make use of the system;

(C) Makes available clear and comprehensive account balance information with a minimum number of actions necessary;

(D) Provides training and instructions for all system users especially those persons with disabilities;

(E) Makes available prompts on POS terminals or balance only terminals, where appropriate;

(F) Identifies procedures for problem resolution;

(G) Provides reasonable accommodation for the needs of households with disabilities in keeping with the Americans with Disabilities Act of 1990.

(ii) In addition to the requirements of paragraph (h)(4)(i) of this section, the State agency shall ensure that retailers utilizing the EBT system:

(A) Have available manual backup procedures;

(B) Can obtain timely information on daily credits to their banks;

(C) Have available deposit information in a format readily comparable to information maintained in the store; and

(D) Have available instructions on resolving problems with equipment and retailer accounts.

(5) *Third Party Processors.* Third party processors are financial institutions, cardholder authorization processors other than the party with which the State agency has contracted for EBT services, and food retailers driving their own terminals that are capable of relaying electronic transactions to a central database computer for authorization. The State agency shall afford retailers the opportunity to use third party processors and shall provide interface specifications and certification standards in order for the third party processor to participate in the EBT system.

(i) In order to participate in a Food Stamp Program EBT system, a third party processor must be able to meet all third party interface specifications and certification standards associated with this section. The State agency shall publish the third party interface specifications prior to implementation of the EBT system to enable third party processors to access the database. Third party processors shall undergo functional and acceptance tests as specified by the State agency;

(ii) Third party processors shall be liable for transactions until the transaction has been electronically accepted by the contracted vendor or an intermediate processing facility;

(iii) The State agency shall ensure that third party processors and food retailers driving their own terminals comply with this section and all applicable Food Stamp Program regulations.

(6) *Minimum Card Requirements.* (i) The State agency shall ensure that the following information is printed on the card:

(A) The address of the office where a card can be returned if found or no longer in use;

(B) The statement of nondiscrimination which reads as follows: ''This is an equal opportunity program. If you believe that you have been the victim of discrimination in your efforts to receive food stamp benefits because of your race, color, national origin, age,

sex, disability, religious belief, or political beliefs, write immediately to the Administrator, Food and Consumer Service, 3101 Park Center Drive, Alexandria, Virginia 22302.'' In lieu of printing the required information on the EBT card, the State agency shall provide each household a card jacket or sleeve containing the nondiscrimination statement.

(ii) FCS reserves the right to require State agencies to place a Department logo on the EBT card and/or sleeves or jackets.

(iii) EBT cards and/or sleeves or jackets shall not contain the name of any State or local official. EBT informational materials shall not indicate association with any political party or other political affiliation.

(7) *POS Terminals.* POS terminals shall meet the following requirements:

(i) Balance information shall not be displayed on the screen of the POS terminal except for balance-only inquiry terminals;

(ii) PINs shall not be displayed at the terminal; and

(iii) PIN encryption shall occur from the point of entry in a manner which prevents the unsecured transmission between any point in the system.

(8) *Performance Bonding.* The State agency may require a performance bond in accordance with § 277.8 of this chapter or utilize other contractual clauses it deems necessary to enforce the requirements of this section.

(9) *Minimum Transaction Set.* At a minimum, the State agency shall ensure that the EBT system, including third party processors and retailers driving their own terminals, is capable of providing for authorizing or rejecting purchases, refunds or customer credits, voids or cancellations, key entered transactions, balance inquiries and settlement or close-out transactions.

(i) *Concentrator Bank Responsibilities.* The concentrator bank shall be a Federally insured financial institution or other entity acceptable to the Federal Reserve which has the capability to take retailer credits and/or debits, obtained from the EBT system operator, and transmit them to the ACH network operated by the Federal Reserve or through another process for crediting retailers approved by FCS. Transmittal shall be by tape or on-line in a format suitable for the Automated Clearinghouse (ACH) or as approved by FCS.

(1) The minimum functions of the concentrator bank are:

(i) Preparing a daily ACH tape or other crediting process approved by FCS with information on benefits redeemed and creditable to each retailer;

(ii) Transferring the ACH tape or other crediting process approved by FCS to the Federal Reserve or other entity approved by FCS;

(iii) Initiating and accepting reimbursement from the appropriate U.S. Treasury account via the Payment Management System of the U.S. Department of Health and Human Services (HHS) or other payment process approved by FCS. At the option of FCS, the State agency may designate another entity as the initiator of reimbursement for food stamp redemptions provided the entity is acceptable to FCS and HHS;

(iv) Cooperating in the reconciliation of discrepancies and error resolution when necessary.

(2) With the approval of FCS, another procedure, other than the ACH system, may be utilized to credit retailer accounts and/or debit FCS' account, if it meets the needs of FCS and the EBT system.

(3) The State agency shall be liable for any errors in the creation of the ACH tape or its transmission. The State agency may transfer the liability associated with creation of the ACH tape, its transmission or another crediting process approved by FCS as appropriate to the EBT system operator or the concentrator bank. Appropriate system security administrative and operational procedures shall be instituted in accordance with paragraph (h)(3) of this section.

(j) *Reconciliation and Management Reporting.* The EBT system shall provide reports and documentation pertaining to the following:

(1) *Reconciliation.* Reconciliation shall be conducted and records kept as follows:

(i) Reconciliation of benefits posted to household accounts on the central computer against benefits on the Issuance Authorization File;

(ii) Reconciliation of individual household account balances against account activities on a daily basis;

(iii) Reconciliation of each individual retail store's food stamp transactions per POS terminal and in total to deposits on a daily basis;

(iv) Verification of retailer's credits against deposit information entered into the ACH network;

(v) Reconciliation of total funds entered into, exiting from, and remaining in the system each day;

(vi) Maintenance of audit trails that document the full cycle of issuance from benefit allotment posting to the State issuance authorization file through posting to point-of-sale transactions at retailers through settlement of retailer credits.

(2) *Management Reports.* The State agency shall require the EBT system to provide reports that enable the State agency to manage the system. The reports shall be available to the State agency or FCS as requested on a timely basis and consist of:

(i) Information on how the system operates relative to its performance standards, the incidence, type and cause of system problems, and utilization patterns.

(ii) Information regarding transactions and other information specified by FCS during system development which is necessary to conduct compliance investigations. At a minimum exception reports shall be able to isolate transaction data by individual retailers and households. Exception reports shall be provided to the appropriate FCS Compliance Branch Area office on a quarterly basis. The Compliance Officer in Charge (COIC) shall be permitted to require that the reports be made available on either a more or less frequent basis.

(3) *Pilot Project Reports.* The State agency shall provide quarterly reports as described in paragraph (c)(4) of this section during the pilot project.

(4) *Program Reporting.* When benefits are initially issued through an EBT system, the State agency shall report as required by FCS in § 274.4 and in accordance with the FCS instructions specific to EBT issuances.

(k) *Federal Financial Participation.* (1) The cost of administering statewide benefit issuance after implementation of the EBT system shall be funded at the regular Federal financial participation rate up to the level of the current coupon issuance costs, as prescribed in paragraph (c)(3) of this section.

(2) The State agency may request enhanced funding for the development of EBT systems which are components of complete automated data processing systems to be developed in accordance with the provisions of 7 CFR 277.18(g). To be eligible for enhanced funding, the EBT system must be fully integrated with the complete ADP system.

(3) Enhanced funding for coupon issuance activities that a State agency incurs on Indian Reservations and the enhanced funding provided in accordance with this paragraph for development of an EBT system shall be accommodated within the issuance cap.

(4) The State agency shall comply with the provisions set forth under 7 CFR 277.18 and appendix A of 7 CFR 277.18 in determining and claiming allowable costs for the EBT system.

(5) Access to system documentation, including cost records of contractors or subcontractors shall be made available and incorporated into contractual agreements in accordance with § 277.18(k) of this chapter.

(6) The State agency shall adjust the issuance cap, once the cap is approved by FCS, as follows:

(i) The food stamp case load utilized in estimating annual budgetary needs under the cap shall be adjusted quarterly by the number of cases actually issued benefits through the EBT system and the coupon issuance systems operating within the State. Quarterly costs adjusted by the number of food stamp cases actually issued benefits during the quarter shall accumulate by each Federal fiscal quarter until the close of the fiscal period to which it applies;

(ii) The annual issuance cap adjustment shall be based on the percentage change in the Gross National Product Implicit Price Deflator index (GNP price deflator). The index is reported monthly by the U.S. Department of Commerce, Bureau of Economic Analysis. The percentage change shall be calculated from the percentage change in the index between the first quarter of

the current calendar year and the first quarter of the previous year. This data will be made available to State agencies by FCS from the June report published by the Bureau of Economic Analysis. The case-month cap for subsequent Federal fiscal years shall be obtained by revising the previous year's cap based on the most recent inflation information for that period. The State agency shall then multiply the revised issuance cap from the prior year by the percentage change in inflation indicated by the most recent GNP price deflator;

(iii) The yearly amortized cost associated with pre-operational costs (i.e., design, development) shall be determined at the end of the assignment period established in accordance with paragraph (c)(3)(iv) of this section and assigned retroactively to the case-month costs of each prior year of operation. If such assignment puts the State agency over the issuance cap of all prior years of operation, claims shall be made as appropriate.

(l) *Re-presentation.* The State agency shall ensure that a manual purchase system is available for use during times when the EBT system is inaccessible.

(1) Under certain circumstances, when a manual transaction occurs due to the inaccessibility of the host computer and the transaction is rejected because insufficient funds are available in a household's account, the State agency may permit the re-presentation of the transaction during subsequent months. At the State agency's option, re-presentation may be permitted within the EBT system as follows:

(i) Re-presentation of manual vouchers when there are insufficient funds in the EBT account to cover the manual transaction may be permitted only under the following circumstances:

(A) The manual transaction occurred because the host computer was down and authorization was obtained by the retailer for the transaction; or

(B) The manual transaction occurred because telephone lines were down.

(ii) Re-presentation of manual vouchers shall not be permitted when the EBT card, magnetic stripe, PIN pad, card reader, or POS terminal fails and telephone lines are operational. Manual transactions shall not be utilized to extend credit to a household via re-presentation when the household's account balance is insufficient to cover the planned purchase.

(iii) The State agency may debit the benefit allotment of a household during the first month following the insufficient funds transaction in the amount of $50. If the monthly allotment is less than $50, the State shall debit the account for $10. For each subsequent month, the deduction from the monthly allotment shall be the greater of $10 or 10 percent until the re-presentation is completely repaid.

(2) The State agency shall establish procedures for determining the validity of each re-presentation and subsequent procedures authorizing a debit from a household's monthly benefit allotment. The State agency may ask households to voluntarily pay the amount of a re-presented transaction or arrange for a faster schedule of payment than identified in paragraph (l)(1)(iii) of this section.

(3) The State agency shall ensure that retailers provide notice to households at the time of the manual transaction that re-presentation may occur if there are insufficient benefits in the account to cover the transaction. The statement shall be printed on the paper voucher or on a separate sheet of paper. The State agency shall also provide notice to the household prior to the month when a benefit allotment is reduced when a re-presentation is necessary. Notice shall be provided to the household for each insufficient transaction that is to be re-presented in a future month. The notice shall be provided prior to the month it occurs and shall state the amount of the reduction in the benefit allotment.

(4) The Department shall not accept liability under any circumstances for the overissuance of benefits due to the utilization of manual vouchers, including those situations when the host computer is inaccessible or telecommunications lines are not functioning. However, the State agency, in consultation with authorized retailers and with the mutual agreement of the State agency's vendor, if any, may accept liability for manual purchases within a specified dollar limit. Costs

associated with liabilities accepted by the State agency shall not be reimbursable.

(5) The State agency shall be strictly liable for manual transactions that result in excess deductions from a household's account.

(m) *Ownership Rights and Procurement Requirements.* (1) The State agency shall comply with the software and automated data processing equipment ownership rights prescribed under §277.13 and §277.18(l) of this chapter.

(2) The State agency shall comply with the procurement standards prescribed under §277.18(j) of this chapter. Under service agreements, the procurement of equipment and services which will be utilized in a Food Stamp EBT system shall be conducted in accordance with the provisions set forth under §277.18(f) of this chapter.

[57 FR 11249, Apr. 1, 1992; 57 FR 44791, Sept. 29, 1992]

# PART 275—PERFORMANCE REPORTING SYSTEM

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EDITORIAL NOTE: OMB control numbers relating to this part 275 are contained in §271.8.

## Subpart A—Administration

### §275.1 General scope and purpose.

(a) Under the Food Stamp Act, each State agency is responsible for the administration of the Food Stamp Program in accordance with the Act, Regulations, and the State agency's plan of operation. To fulfill the requirements of the Act, each State agency shall have a system for monitoring and improving its administration of the program. The State agency is also responsible for reporting on its administration to FCS. These reports shall identify program deficiencies and the specific administrative action proposed to meet the program requirements established by the Secretary. If it is determined, however, that a State has failed without good cause to meet any of the program requirements established by the Secretary, or has failed to carry out the approved State plan of operation, the Department shall suspend and/or disallow from the State such funds as are determined to be appropriate in accordance with part 276 of this chapter.

(b)(1) The Food Stamp Act authorizes the Secretary to pay each State agency an amount equal to 50 percent of all administrative costs involved in each State agency's operation of the program. The Act further authorizes the Secretary to increase the percentage share if:

(i) The State agency's payment error rate is less than or equal to 5.90 percent, and

(ii) The State agency's negative case error rate is less than the national weighted mean negative case error rate for the prior fiscal year.

(2) If a State agency qualifies for an increased percentage share, the amount of increase will be an additional percentage point for each full tenth of a percentage point by which the payment error rate is less than six percent, up to a maximum of 60 percent of administrative costs. Those State agencies not receiving the increased share of funding shall develop and implement corrective action plans to reduce payment errors. Corrective action shall be completed as required in subpart E of this section.

[Amdt. 160, 45 FR 15898, Mar. 11, 1980, as amended by Amdt. 266, 52 FR 3407, Feb. 4, 1987; Amdt. 328, 56 FR 60051, Nov. 27, 1991]

### § 275.2 State agency responsibilities.

(a) *Establishment of the performance reporting system.* (1) The State agency shall establish a continuing performance reporting system to monitor program administration and program operations. The method for establishing each component of the system is identified and explained in subparts B through F of this part. The components of the State agency's performance reporting system shall be:

(i) Data collection through management evaluation (ME) reviews and quality control (QC) reviews;

(ii) Analysis and evaluation of data from all sources;

(iii) Corrective action planning;

(iv) Corrective action implementation and monitoring; and

(v) Reporting to FCS on program performance.

(2) The State agency must ensure corrective action is effected at the State and project area levels.

(b) *Staffing standards.* The State agency shall employ sufficient State level staff to perform all aspects of the Performance Reporting System as required in this part of the regulations. The staff used to conduct QC reviews shall not have prior knowledge of either the household or the decision under review. Where there is prior knowledge, the reviewer must disqualify her/himself. Prior knowledge is defined as having:

(1) Taken any part in the decision that has been made in the case; (2) any discussion of the case with staff who participated in the decision; or (3) any personal knowledge of or acquaintance with persons in the case itself. To ensure no prior knowledge on the part of QC or ME reviewers, local project area staff shall not be used to conduct QC or ME reviews; exceptions to this requirement concerning local level staff may be granted with prior approval from FCS. However, local personnel shall not, under any circumstances, participate in ME reviews of their own project areas.

[Amdt. 160, 45 FR 15898, Mar. 11, 1980, as amended by Amdt. 266, 52 FR 3407, Feb. 4, 1987]

### § 275.3 Federal monitoring.

The Food and Consumer Service shall conduct the review described in this section to determine whether a State agency is operating the Food Stamp Program and the Performance Reporting System in accordance with program requirements. The Federal reviewer may consolidate the scheduling and conduct of these reviews to reduce the frequency of entry into the State agency. FCS regional offices will conduct additional reviews to examine State agency and project area operations, as considered necessary to determine compliance with program requirements. FCS shall notify the State agency of any deficiencies detected in program or system operations. Any deficiencies detected in program or system operations which do not necessitate long range analytical and evaluative measures for corrective action development shall be immediately corrected by the State agency. Within 60 days of receipt of the findings of each review established below, State agencies shall develop corrective action addressing all other deficiencies detected in either program or system operations and shall ensure that the State agency's own corrective action plan is amended and that FCS is provided this information at the time of the next formal semiannual update to the State agency's Corrective Action Plan, as required in § 275.17.

(a) *Reviews of State Agency's Administration/Operation of the Food Stamp Program.* FCS shall conduct an annual review of certain functions performed at the State agency level in the administration/operation of the program. FCS

will designate specific areas required to be reviewed each fiscal year.

(b) *Reviews of State Agency's Management Evaluation System.* FCS will review each State agency's management evaluation system on a biennial basis; however, FCS may review a State agency's management evaluation system on a more frequent basis if a regular review reveals serious deficiencies in the ME system. The ME review will include but not be limited to a determination of whether or not the State agency is complying with FCS regulations, an assessment of the State agency's methods and procedures for conducting ME reviews, and an assessment of the data collected by the State agency in conducting the reviews.

(c) *Validation of State Agency error rates.* FCS shall validate each State agency's payment error rate and underissuance error rate, as described in § 275.23(c), during each annual quality control review period. Federal validation reviews shall be conducted by reviewing against the Food Stamp Act and the regulations, taking into account any FCS-authorized waivers to deviate from specific regulatory provisions. FCS shall validate the State agency's negative case error rate, as described in § 275.23(d), only when the State agency's payment and underissuance error rates for an annual review period appear to entitle it to an increased share of Federal administrative funding for that period as outlined in § 277.4(b)(2), and its reported negative case error rate for that period is less than the national weighted mean negative case error rate for the prior fiscal year. Any deficiencies detected in a State agency's QC system shall be included in the State agency's corrective action plan. The findings of validation reviews shall be used as outlined in § 275.23(e)(8).

(1) *Payment error rate.* The validation review of each State agency's payment error rate shall consist of the following actions:

(i) FCS will select a subsample of a State agency's completed active cases. The Federal review sample for completed active cases is determined as follows:

| State annual active case sample size | Federal annual sample size |
|---|---|
| 1,200 and over | n=400. |
| 300–1,199 | n=150+0.277 (N–300). |
| Under 300 | n=150 |

(A) In the above formula, n is the minimum number of Federal review sample cases which must be selected when conducting a validation review, except that FCS may select a lower number of sample cases if:

(*1*) The State agency does not report a change in sampling procedures associated with a revision in its required sample size within 10 days of effecting the change; and/or

(*2*) The State agency does not complete the number of case reviews specified in its approved sampling plan.

(B) The reduction in the number of Federal cases selected will be equal to the number of cases that would have been selected had the Federal sampling interval been applied to the State agency's shortfall in its required sample size. This number may not be exact due to random starts and rounding.

(C) In the above formula, N is the State agency's minimum active case sample size as determined in accordance with § 275.11(b)(1).

(ii) FCS Regional Offices will conduct case record reviews to the extent necessary to determine the accuracy of the State agency's findings using the household's certification records and the State agency's QC records as the basis of determination. The FCS Regional Office may choose to verify any aspects of a State agency's QC findings through telephone interviews with participants or collateral contacts. In addition, the FCS Regional Office may choose to conduct field investigations to the extent necessary.

(iii) Upon the request of a State agency, the appropriate FCS Regional Office will assist the State agency in completing active cases reported as not completed due to household refusal to cooperate.

(iv) FCS will also review the State agency's sampling procedures, estimation procedures, and the State agency's system for data management to ensure compliance with § 275.11 and § 275.12.

(v) FCS validation reviews of the State agency's active sample cases will

be conducted on an ongoing basis as the State agency reports the findings for individual cases and supplies the necessary case records. FCS will begin the remainder of each State agency's validation review as soon as possible after the State agency has supplied the necessary information regarding its sample and review activity.

(2) *Underissuance error rate.* The validation review of each State agency's underissuance error rate shall occur as a result of the Federal validation of the State agency's payment error rate as outlined in paragraph (c)(1) of this section.

(3) *Negative case error rate.* The validation review of each State agency's negative case error rate shall consist of the following actions:

(i) FCS will select a subsample of a State agency's completed negative cases. The Federal review sample for completed negative cases is determined as follows:

| State annual negative case sample size | Federal annual sample size |
|---|---|
| 800 and over | n=160. |
| 150–799 | n=75 + 0.130 (N–150). |
| Under 150 | n=75. |

(A) In the above formula, n is the minimum number of Federal review sample cases which must be selected when conducting a validation review, except that FCS may select a lower number of sample cases if:

(*1*) The State agency does not report a change in sampling procedures associated with a revision in its required sample size within 10 days of effecting the change; and/or

(*2*) The State agency does not complete the number of case reviews specified in its approved sampling plan.

(B) The reduction in the number of Federal cases selected will be equal to the number of cases that would have been selected had the Federal sampling interval been applied to the State agency's shortfall in its required sample size. This number may not be exact due to random starts and rounding.

(C) In the above formula, N is the State agency's minimum negative case sample size as determined in accordance with § 275.11(b)(2).

(ii) FCS Regional Offices will conduct case record reviews to the extent necessary to determine whether the household case record contained sufficient documentation to justify the State agency's QC findings of the correctness of the State agency's decision to deny or terminate a household's participation.

(iii) FCS will also review each State agency's negative case sampling and review procedures against the provisions of §§ 275.11 and 275.13.

(iv) FCS will begin each State agency's negative sample case validation review as soon as possible after the State agency has supplied the necessary information, including case records and information regarding its sample and review activity.

(4) *Arbitration.* (i) Whenever the State agency disagrees with the FCS regional office concerning individual QC case findings and the appropriateness of actions taken to dispose of an individual case, the State agency may request that the dispute be arbitrated on a case-by-case basis by an FCS Arbitrator, subject to the following limitations.

(A) The State agency may only request arbitration when the State agency's and FCS regional office's findings or disposition of an individual QC case disagree.

(B) The arbitration review shall be limited to the point(s) within the Federal findings or disposition that the State agency disputes. However, if the arbitrator in the course of the review discovers a mathematical error in the computational sheet, the arbitration shall correct the error while calculating the allotment.

(ii) The FCS Arbitrator(s) shall be an individual or individuals who are not directly involved in the validation effort.

(iii) With the exception of the restrictions contained in paragraph (c)(4)(iii), for an arbitration request to be considered, it must be received by the appropriate FCS regional office within 20 calendar days of the date of receipt by the State agency of the regional office case findings. In the event the last day of this time period falls on a Saturday, Sunday, or Federal or State holiday, the period shall run to the end of the next work day. The State agency shall be restricted in its

eligibility to request arbitration of an individual case if that case was not disposed of and the findings reported in accordance with the timeframes specified in §275.21(b)(2). For each day late that a case was disposed of and the findings reported, the State agency shall have one less day to request arbitration of the case.

(iv) When the State agency requests arbitration, it shall submit all required documentation to the appropriate FCS regional office addressed to the attention of the FCS Arbitrator. The FCS regional office QC staff may submit an explanation of the Federal position regarding a case to the FCS Arbitrator.

(A) A complete request is one that contains all information necessary for the arbitrator to render an accurate, timely decision.

(B) If the State agency's request is not complete the arbitrator shall make a decision based solely on the available documents.

(v) The FCS Arbitrator shall have 20 calendar days from the date of receipt of a State agency's request for arbitration to review the case and make a decision.

(5) *Household cooperation*. Households are required to cooperate with Federal QC reviewers. Refusal to cooperate shall result in termination of the household's eligibility. The Federal reviewer shall follow the procedures in §275.12(g)(1)(ii) in order to determine whether a household is refusing to cooperate with the Federal QC reviewer. If the Federal reviewer determines that the household has refused to cooperate, as opposed to failed to cooperate, the household shall be reported to the State agency for termination of eligibility.

(d) *Assessment of Corrective Action*. (1) FCS will conduct will conduct a comprehensive annual assessment of a State agency's corrective action process by compiling all information relative to that State agency's corrective action efforts, including the State agency's system for data analysis and evaluation. The purpose of this assessment and review is to determine if: identified deficiencies are analyzed in terms of causes and magnitude and are properly included in either the State or Project Area/Management Unit corrective action plan; the State agency is implementing corrective actions according to the appropriate plan; target completion dates for reduction or elimination of deficiencies are being met; and, corrective actions are effective. In addition, FCS will examine the State agency's corrective action monitoring and evaluative efforts. The assessment of corrective action will be conducted at the State agency, project area, and local level offices, as necessary.

(2) In addition, FCS will conduct on-site reviews of selected corrective actions as frequently as considered necessary to ensure that State agencies are implementing proposed corrective actions within the timeframes specified in the State agency and/or Project Area/Management Unit corrective action plans and to determine the effectiveness of the corrective action. The on-site reviews will provide State agencies and FCS with a mechanism for early detection of problems in the corrective action process to minimize losses to the program, participants, or potential participants.

[Amdt. 160, 45 FR 15898, Mar. 11, 1980, as amended by Amdt. 237, 47 FR 57669, Dec. 28, 1982; Amdt. 260, 49 FR 6303, Feb. 17, 1984; Amdt. 266, 52 FR 3407, Feb. 4, 1987; 53 FR 1604, Jan. 21, 1988; 54 FR 23951, June 5, 1989; Amdt. 309, 55 FR 1672, Jan. 18, 1990; Amdt. 328, 56 FR 60051, Nov. 27, 1991; Amdt. 366, 62 FR 29658, June 2, 1997]

EFFECTIVE DATE NOTE: At 62 FR 29658, June 2, 1997, §275.3(c)(4) was amended by revising paragraph (c)(4). This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

### §275.4 Record retention.

(a) The State agency shall maintain Performance Reporting System records to permit ready access to, and use of, these records. Performance Reporting System records include information used in data analysis and evalution, corrective action plans, corrective action monitoring records in addition to ME review records and QC review records as explained in paragraphs (b)

and (c) of this section. To be readily accessible, system records shall be retained and filed in an orderly fashion. Precautions should be taken to ensure that these records are retained without loss or destruction for the 3-year period required by these regulations. Information obtained on individual households for Performance Reporting System purposes shall be safeguarded in accordance with FCS policies on disclosure of information for the Food Stamp Program.

(b) ME review records consist of thorough documentation of review findings, sources from which information was obtained, procedures used to review Food Stamp Program requirements including sampling techniques and lists, and ME review plans. The State agency must submit documented evidence of review findings to the FCS Regional Office upon request for purposes of evaluating State corrective action plans.

(c) QC review records consist of Forms FCS–380, Worksheet for Integrated AFDC, Food Stamps and Medicaid Quality Control Reviews, FCS–380–1, Integrated Review Schedule, FCS–245, Negative Quality Control Review Schedule, and Form FCS–248, Status of Sample Selection and Completion; other materials supporting the review decision; sample lists; sampling frames; tabulation sheets; and reports of the results of all quality control reviews during each review period.

[Amdt. 160, 45 FR 15898, Mar. 11, 1980, as amended by Amdt. 260, 49 FR 6304, Feb. 17, 1984; Amdt. 262, 49 FR 50597, Dec. 31, 1984]

## Subpart B—Management Evaluation (ME) Reviews

### § 275.5 Scope and purpose.

(a) *Objectives.* Each State agency shall ensure that project areas operate the Food Stamp Program in accordance with the Act, regulations, and FCS-approved State Plan of Operation. To ensure compliance with program requirements, ME reviews shall be conducted to measure compliance with the provisions of FCS regulations. The objectives of an ME review are to:

(1) Provide a systematic method of monitoring and assessing program operations in the project areas;

(2) Provide a basis for project areas to improve and strengthen program operations by identifying and correcting deficiencies; and

(3) Provide a continuing flow of information between the project areas, the States, and FCS, necessary to develop the solutions to problems in program policy and procedures.

(b) *Frequency of review.* (1) State agencies shall conduct a review once every year for large project areas, once every two years for medium project areas, and once every three years for small project areas, unless an alternate schedule is approved by FCS. The most current and accurate information on active monthly caseload available at the time the review schedule is developed shall be used to determine project area size.

(2) A request for an alternate review schedule shall be submitted for approval in writing with a proposed schedule and justification. In any alternate schedule, each project area must be reviewed at least once every three years. Approval of an alternate schedule is dependent upon a State agency's justification that the project areas that will be reviewed less frequently than required in paragraph (b)(1) of this section are performing adequately and that previous reviews indicate few problems or that known problems have been corrected. FCS retains the authority for approving any alternate schedule and may approve a schedule in whole or in part. Until FCS approval of an alternate schedule is obtained, the State agency shall conduct reviews in accordance with paragraph (b)(1) of this section.

(3) FCS may require the State agency to conduct additional on-site reviews when a serious problem is detected in a project area which could result in a substantial dollar or service loss.

(4) State agencies shall also establish a system for monitoring those project areas' operations which experience a significant influx of migratory workers during such migrations. This requirement may be satisfied by either scheduling ME reviews to coincide with such migrations or by conducting special reviews. As part of the review the State agency shall contact local migrant

councils, advocate groups, or other organizations in the project area to ensure that migrants are receiving the required services.

[Amdt. 160, 45 FR 15900, Mar. 11, 1980, as amended by Amdt. 262, 49 FR 50597, Dec. 31, 1984; Amdt. 266, 52 FR 3408, Feb. 4, 1987]

### §275.6 Management units.

(a) *Establishment of management units.* For the purpose of ME reviews, State agencies may, subject to FCS approval, establish ''management units'' which are different from project areas designated by FCS for participation in the program. For example, State-established welfare districts, regions or other administrative structures within a State may be so designated. Management units can be designated as either large, medium, or small for purposes of frequency of review. However, establishment of management units solely for the purpose of reducing the frequency of review will not be approved by FCS.

(b) *FCS approval of management units.* State agencies shall submit requests for establishment of management units to FCS, which shall have final authority for approval of such units as well as any changes in those previously approved by FCS.

(1) The following minimum criteria must be met prior to requesting FCS approval:

(i) The proposed management unit must correspond with existing State-established welfare districts, regions, or other administrative structures; and

(ii) The unit must have supervisory control over Food Stamp Program operations within that geographic area and have authority for implementation of corrective action.

(2) In submitting the request for FCS approval, the State agency shall include the following information regarding the proposed management unit:

(i) That the proposed management unit meets the minimum criteria described in paragraphs (b)(1) (i) and (ii) of this section;

(ii) Geographic coverage, including the names of the counties/project areas within the unit and the identification (district or region number) and location (city) of the office which has supervisory control over the management unit;

(iii) Food Stamp Program participation, including the number of persons and number of households;

(iv) The number of certification offices;

(v) The number of issuance units;

(vi) The dollar value of allotments issued as reflected in the most recent available data; and

(vii) Any other relevant information.

[Amdt. 160, 45 FR 15900, Mar. 11, 1980; 45 FR 23637, Apr. 8, 1980, as amended by Amdt. 266, 52 FR 3408, Feb. 4, 1987]

### §275.7 Selection of sub-units for review.

(a) *Definition of sub-units.* Sub-units are the physical locations of organizational entities within project areas responsible for operating various aspects of the Food Stamp Program, exclusive of Post Offices which may issue coupons. Sub-units shall be classified based upon functional responsibility as one or more of the following.

(1) *Certification office.* Any sub-unit which has the responsibility for accepting applications, conducting interviews, determining eligibility, maintaining (or having easy access to) casefiles, and transmitting information to the data management unit shall be designated as a certification office.

(2) *Issuance office.* Any sub-unit which has the responsibility for issuing coupons to participating households and storing coupons shall be designated as an issuance office.

(3) *Data management unit (DMU).* Any sub-unit which has the responsibility for maintaining the household issuance record (HIR) masterfile shall be designated as a DMU.

(4) *Bulk storage point.* Any sub-unit which has the responsibility for accepting and storing supplies of coupons prior to shipment to issuance sites shall be designated as a bulk storage point.

(5) *Reporting point.* Any sub-unit which has the responsibility for preparation and submittal of Form FCS–250 for more than one issuance unit shall be designated as a reporting point, regardless of whether or not the unit actually issues coupons.

(b) *Reviewing Issuance Offices and Bulk Storage Points.* The issuance office and bulk storage point review required by § 274.1(c)(2) of this chapter may be satisfied through the ME review system.

(c) *Combined responsibilities.* (1) When a sub-unit has more than one of the areas of functional responsibility specified in paragraph (a) of this section, it shall be included in each applicable classification and if selected for review, all functions performed shall be examined. For example, if a sub-unit has an organizational entity which certifies households and also has an entity which regularly issues coupons, the sub-unit shall be designated as both a certification and an issuance office. Thus, in an HIR issuance system, sub-units designated as issuance offices would usually also be designated as DMU's since the HIR masterfile is usually maintained at the issuance site in this system.

(2) Certain sub-units shall not be designated as having combined responsibilities, even though they may perform certain functions related to more than one of the areas. For example, coupon issuers must maintain a level of coupon inventory to ensure that participants' needs are met on a daily basis but do not supply other issuance sites with bulk supplies of coupons. Such a sub-unit would not be classified as a bulk storage point. Certification offices may issue coupons in emergency situations or to meet the requirements of expedited service but do not routinely issue coupons to households under standard certifications. In these and similar situations, the sub-unit would be classified based upon its primary function exclusively. However, when any sub-unit is selected, all program requirements specified in § 275.8 which the sub-unit has responsibility for, shall be reviewed.

(d) *Itinerant issuance and certification points.* Units which certify households and/or issue coupons as satellites of a central sub-unit shall not be classified as independent sub-units. Units may be identified as itinerant when they do not operate on a regular basis, retain certification records, store coupons, transmit information directly to the DMU and/or develop FCS–250 reports independently. Examples of such units include mobile units, short term or seasonal operations, and units which may operate on a regular basis but do not meet the criteria for a sub-unit described in paragraph (a) of this section. However, when a sub-unit is selected for review which acts as a parent unit for itinerant service points, at least one itinerant point per sub-unit shall be reviewed if operational at the time of the review.

(e) *Selection of Sub-units for Review.* State agencies shall select a representative number of sub-units of each category for on-site review in order to determine a project area's compliance with program standards.

[Amdt. 160, 45 FR 15900, Mar. 11, 1980; 45 FR 23638, Apr. 8, 1980; 45 FR 46784, July 11, 1980, as amended by Amdt. 266, 52 FR 3408, Feb. 4, 1987]

### § 275.8 Review coverage.

(a) During each review period, State agencies shall review the national target areas of program operation specified by FCS. FCS will notify State agencies of the minimum program areas to be reviewed at least 90 days before the beginning of each annual review period, which is the Federal fiscal year. FCS may add additional areas during the review period if deemed necessary. The FCS headquarters office will add national target areas during the review period only for deficiencies of national scope. State agencies have 60 days in which to establish a plan schedule for such reviews.

(b) State agencies shall be responsible for reviewing each national target area or other program requirement based upon the provisions of the regulations governing the Food Stamp Program and the FCS-approved Plan of Operation. If FCS approves a State agency's request for a waiver from a program requirement, any different policy approved by FCS would also be reviewed. When, in the course of a review, a project area is found to be out of compliance with a given program requirement, the State agency shall identify the specifics of the problem including: the extent of the deficiency, the cause of the deficiency, and, as applicable, the specific procedural requirements the project area is misapplying.

[Amdt. 266, 52 FR 3408, Feb. 4, 1987, as amended by Amdt. 356, 59 FR 29713, June 9, 1994]

### §275.9 Review process.

(a) *Review procedures.* State agencies shall review the program requirements specified for review in §275.8 of this part using procedures that are adequate to identify problems and the causes of those problems. As each project area's operational structure will differ, State agencies shall review each program requirement applicable to the project area in a manner which will best measure the project area's compliance with each program requirement.

(b) *ME review plan.* (1) State agencies shall develop a review plan prior to each ME review. This review plan shall specify whether each project area is large, medium, or small and shall contain:

(i) Identification of the project area to be reviewed, program areas to be reviewed, the dates the review will be conducted, and the period of time that the review will cover;

(ii) Information secured from the project area regarding its caseload and organization;

(iii) Identification of the certification offices, issuance offices, bulk storage points, reporting points, and data management units selected for review and the techniques used to select them;

(iv) Identification of whether the State agency is using the ME review to monitor coupon issuers and bulk storage points as discussed §274.1(c)(2). At State agency option it may also indicate whether the State agency is using the ME review process to perform nondiscrimination reviews; and

(v) A description of the review method(s) the State agency plans to use for each program area being reviewed.

(2) ME review plans shall be maintained in an orderly fashion and be made available to FCS upon request.

(c) *Review methods.* (1) State agenices shall determine the method of reviewing the program requirements associated with each program area. For some areas of program operation it may be necessary to use more than one method of review to determine if the project area is in compliance with program requirements. The procedures used shall be adequate to identify any problems and the causes of those problems.

(2) State agencies shall ensure that the method used to review a program requirement does not bias the review findings. Bias can be introduced through leading questions, incomplete reviews, incorrect sampling techniques, etc.

(d) *Review worksheet.* (1) State agencies shall use a review worksheet to record all review findings. For each sub-unit reviewed the State agency shall, on the worksheet, identify:

(i) The sub-unit being reviewed;

(ii) Each program requirement reviewed in the sub-unit;

(iii) The method used to review each program requirement;

(iv) A description of any deficiency detected;

(v) The cause(s) of any deficiency detected, if known;

(vi) The number of casefiles and/or program records selected and examined within the sub-unit, identification of those selected (record case number, household name, etc.), the proportion which were not subject to review, as well as the method used to select the sample;

(vii) Where applicable, the numerical extent of any deficiency detected through examination of program records; and

(viii) Any pertinent comments concerning the sub-unit's operation.

(2) State agencies shall promptly forward review findings to the appropriate State office for analysis, evaluation, and corrective action planning. Review worksheets shall be retained in an orderly fashion and made available to FCS upon request.

[Amdt. 160, 45 FR 15900, Mar. 11, 1980; 45 FR 25375, Apr. 15, 1980, as amended by Amdt. 266, 52 FR 3409, Feb. 4, 1987; Amdt. 356, 59 FR 29713, June 9, 1994]

## Subpart C—Quality Control (QC) Reviews

### §275.10 Scope and purpose.

(a) As part of the Performance Reporting System, each State agency is responsible for conducting quality control reviews. For food stamp quality control reviews, a sample of households

shall be selected from two different categories: Households which are participating in the Food Stamp Program (called active cases) and households for which participation was denied or terminated (called negative cases). Reviews shall be conducted on active cases to determine if households are eligible and receiving the correct allotment of food stamps. The determination of whether the household received the correct allotment will be made by comparing the eligibility data gathered during the review against the amount authorized on the master issuance file. Reviews of negative cases shall be conducted to determine whether the State agency's decision to deny or terminate the household, as of the review date, was correct. Quality control reviews measure the validity of food stamp cases at a given time (the review date) by reviewing against the Food Stamp Program standards established in the Food Stamp Act and the Regulations, taking into account any FCS authorized waivers to deviate from specific regulatory provisions. FCS and the State agency shall analyze findings of the reviews to determine the incidence and dollar amounts of errors, which will determine the State agency's liability for payment errors and eligibility for enhanced funding in accordance with the Food Stamp Act of 1977, as amended, and to plan corrective action to reduce excessive levels of errors for any State agency that is not entitled to enhanced funding.

(b) The objectives of quality control reviews are to provide:

(1) A systematic method of measuring the validity of the food stamp caseload;

(2) A basis for determining error rates;

(3) A timely continuous flow of information on which to base corrective action at all levels of administration; and

(4) A basis for establishing State agency liability for errors that exceed the National standard and State agency eligibility for enhanced funding.

(c) The review process is the activity necessary to complete reviews and document findings of all cases selected in the sample for quality control reviews. The review process shall consist of: (1) Case assignment and completion monitoring; (2) case reviews; (3) supervisory review of completed worksheets and schedules; and (4) transmission of completed worksheets and schedules to the State agency for centralized data compilation and analysis.

[Amdt. 149, 44 FR 45893, Aug. 3, 1979, as amended by Amdt. 260, 49 FR 6304, Feb. 17, 1984; 54 FR 7016, Feb. 15, 1989; Amdt. 328, 56 FR 60051, Nov. 27, 1991]

### § 275.11 Sampling.

(a) *Sampling plan.* Each State agency shall develop a quality control sampling plan which demonstrates the integrity of its sampling procedures.

(1) *Content.* The sampling plan shall include a complete description of the frame, the method of sample selection, and methods for estimating characteristics of the population and their sampling errors. The description of the sample frames shall include: source, availability, accuracy, completeness, components, location, form, frequency of updates, deletion of cases not subject to review, and structure. The description of the methods of sample selection shall include procedures for: estimating caseload size, overpull, computation of sampling intervals and random starts (if any), stratification or clustering (if any), identifying sample cases, correcting over-or undersampling, and monitoring sample selection and assignment. A time schedule for each step in the sampling procedures shall be included. If appropriate, the sampling plan shall include a description of its relationship, to other Federally-mandated quality control samples (e.g., Aid to Families with Dependent Children or Medicaid).

(2) *Criteria.* Sampling plans proposing non-proportional integrated sampling, or other alternative designs shall document compliance with the approval criteria in paragraph (b)(4) of this section. All sampling plans shall:

(i) Conform to principles of probability sampling;

(ii) Specify and explain the basis for the sample sizes chosen by the State agency;

(iii) Specify and explain the basis for the approximate number of sample cases to be selected each month if other than one-twelfth of the active and negative sample sizes; and

(iv) If the State agency has chosen an active sample size as specified in paragraph (b)(1)(iii) of this section, include a statement that, whether or not the sample size is increased to reflect an increase in participation as discussed in paragraph (b)(3) of this section, the State agency will not use the size of the sample chosen as a basis for challenging the resulting error rates.

(3) *Design.* FCS generally recommends a systematic sample design for both active and negative samples because of its relative ease to administer, its validity, and because it yields a sample proportional to variations in the caseload over the course of the annual review period. (To obtain a systematic sample, a State agency would select every kth case after a random start between 1 and k. The value of k is dependent upon the estimated size of the universe and the sample size.) A State agency may, however, develop an alternative sampling design better suited for its particular situation.

(4) *FCS review and approval.* The State agency shall submit its sampling plan to FCS for approval as a part of its State Plan of Operation in accordance with § 272.2(e)(4). In addition, all sampling procedures used by the State agency, including frame composition, construction, and content shall be fully documented and available for review by FCS.

(b) *Sample size.* There are two samples for the food stamp quality control review process, an active case sample and a negative case sample. The size of both these samples is based on the State agency's average monthly caseload during the annual review period. Costs associated with a State agency's sample sizes are reimbursable as specified in § 277.4.

(1) *Active cases.* (i) All active cases shall be selected in accordance with standard procedures, and the review findings shall be included in the calculation of the State agency's payment error and underissuance error rates.

(ii) Unless a State agency chooses to select and review a number of active cases determined by the formulas provided in paragraph (b)(1)(iii) of this section and has included in its sampling plan the reliability certification required by paragraph (a)(2)(viii) of this section, the minimum number of active cases to be selected and reviewed by a State agency during each annual review period shall be determined as follows:

| Average monthly active households | Required annual sample size |
|---|---|
| 60,000 and over | n=2400. |
| 10,000 to 59,999 | n=300+0.042(N–10,000). |
| Under 10,000 | n=300. |

(iii) A State agency which includes in its sampling plan the statement required by paragraph (a)(2)(viii) of this section may determine the minimum number of active cases to be selected and reviewed during each annual review period as follows:

| Average monthly active households | Required annual sample size |
|---|---|
| 60,000 and over | n=1200. |
| 10,000 to 59,999 | n=300+0.018 (N–10,000). |
| Under 10,000 | n=300. |

(iv) In the formulas in paragraphs (b)(1)(ii) and (iii) of this section n is the required active case sample size. This is the minimum number of active cases subject to review which must be selected each review period. Also in the formulas, N is the anticipated average monthly participating caseload subject to quality control review (i.e., households which are included in the active universe defined in paragraph (e)(1) of this section) during the annual review period.

(2) *Negative cases.* The minimum number of negative cases to be selected and reviewed during each annual review period shall be determined as follows:

| Average monthly negative households | Required annual sample size |
|---|---|
| 5,000 and over | n=800. |
| 500 to 4,999 | n=150+0.144 (N–500). |
| Under 500 | n=150. |

(i) In the above formula, n is the required negative sample size. This is the minimum number of negative cases subject to review which must be selected each review period.

(ii) In the above formula, N is the anticipated average monthly number of negative cases which are subject to quality control review (i.e., households which are part of the negative universe defined in paragraph (e)(2) of this section) during the annual review period.

(3) *Unanticipated changes.* Since the average monthly caseloads (both active and negative) must be estimated at the beginning of each annual review period, unanticipated changes can result in the need for adjustments to the sample size. Recognizing the difficulty of forecasting caseloads, State agencies will not be penalized if the actual caseload during a review period is less than 20 percent larger than the estimated caseload used to determine sample size. If the actual caseload is more than 20 percent larger than the estimated caseload, the larger sample size appropriate for the actual caseload will be used in computing the sample completion rate.

(4) *Alternative designs.* The active and negative sample size determinations assume that State agencies will use a systematic or simple random sample design. State agencies able to obtain results of equivalent reliability with smaller samples and appropriate design may use an alternative design with FCS approval. To receive FCS approval, proposals for any type of alternative design must:

(i) Demonstrate that the alternative design provides payment error rate estimates with equal-or-better predicted precision than would be obtained had the State agency reviewed simple random samples of the sizes specified in paragraphs (b)(1) and (b)(2) of this section.

(ii) Describe all weighting, and estimation procedures if the sample design is non-self-weighted, or uses a sampling technique other than systematic sampling.

(iii) Demonstrate that self-weighting is actually achieved in sample designs claimed to be self-weighting.

(c) *Sample selection.* The selection of cases for quality control review shall be made separately for active and negative cases each month during the annual review period. Each month each State agency shall select for review approximately one-twelfth of its required sample, unless FCS has approved other numbers of cases specified in the sampling plan.

(1) *Substitutions.* Once a household has been identified for inclusion in the sample by a predesigned sampling procedure, substitutions are not acceptable. An active case must be reviewed each time it is selected for the sample. If a household is selected more than once for the negative sample as the result of separate and distinct instances of denial or termination, it shall be reviewed each time.

(2) *Corrections.* Excessive undersampling must be corrected during the annual review period. Excessive oversampling may be corrected at the State agency's option. Cases which are dropped to compensate for oversampling shall be reported as not subject to review. Because corrections must not bias the sample results, cases which are dropped to compensate for oversampling must comprise a random subsample of all cases selected (including those completed, not completed, and not subject to review). Cases which are added to the sample to compensate for undersampling must be randomly selected from the entire frame in accordance with the procedures specified in paragraphs (b), (c)(1), and (e) of this section. All sample adjustments must be fully documented and available for review by FCS.

(d) *Required sample size.* A State agency's required sample size is the larger of either the number of cases selected which are subject to review or the number of cases chosen for selection and review according to paragraph (b) of this section.

(e) *Sample frame.* The State agency shall select cases for quality control review from a sample frame. The choice of a sampling frame shall depend upon the criteria of timeliness, completeness, accuracy, and administrative burden. Complete coverage of the sample universes, as defined in paragraph (f) of this section, must be assured so that every household subject to quality control review has an equal or known chance of being selected in the sample. Since the food stamp quality control review process requires an active and negative sample, two corresponding sample frames are also required.

(1) *Active cases.* The frame for active cases shall list all households which were: (i) Certified prior to, or during, the sample month; and (ii) issued benefits for the sample month, except for those households excluded from the

universe in paragraph (f)(1) of this section. State agencies may elect to use either a list of certified eligible households or a list of households issued an allotment. If the State agency uses a list of certified eligible households, those households which are issued benefits for the sample month after the frame has been compiled shall be included in a supplemental list. If the State agency uses an issuance list, the State agency shall ensure that the list includes those households which do not actually receive an allotment because the entire amount is recovered for repayment of an overissuance in accordance with the allotment reduction procedures in § 273.18.

(2) *Negative cases.* The frame for negative cases shall list all households whose application for food stamps was denied or whose certification was terminated effective for the sample month except those excluded from the universe in paragraph (f)(2) of this section.

(3) *Unwanted cases.* A frame may include cases for which information is not desired (e.g., households which have been certified but did not actually participate during the sample month). When such cases cannot be eliminated from the frame beforehand and are selected for the sample, they must be accounted for and reported as being not subject to review in accordance with the provisions in §§ 275.12(g) and 275.13(e).

(f) *Sample universe.* The State agency shall ensure that its active and negative case frames accurately reflect their sample universes. There are two sample universes for the food stamp quality control review process, an active case universe and a negative case universe. The exceptions noted below for both universes are households not usually amenable to quality control review.

(1) *Active cases.* The universe for active cases shall include all households certified prior to, or during, the sample month and receiving food stamps for the sample month, except for the following:

(i) A household in which all the members had died or had moved out of the State before the review could be undertaken or completed;

(ii) A household receiving food stamps under a disaster certification authorized by FCS;

(iii) A household which is under investigation for intentional Program violation, including a household with a pending administrative disqualification hearing;

(iv) A household appealing an adverse action when the review date falls within the time period covered by continued participation pending the hearing; or

(v) A household receiving restored benefits in accordance with § 273.17 but not participating based upon an approved application. Other households excluded from the active case universe during the review process are identified in § 275.12(g).

(2) *Negative cases.* The universe for negative cases shall include all households whose application for food stamps was denied or whose certification was terminated effective for the sample month except the following:

(i) A household which had its case closed due to expiration of the certification period;

(ii) A household denied food stamps under a disaster certification authorized by FCS;

(iii) A household which withdrew an application prior to the agency's determination;

(iv) A household which is under investigation for intentional Program violation. Other households excluded from the negative case universe during the review process are identified in § 275.13(e). The negative case universe shall not include negative actions taken against the household which do not result in the household actually being denied or terminated.

(g) *Demonstration projects/SSA processing.* Households correctly classified for participation under the rules of an FCS-authorized demonstration project which FCS determines to significantly modify the rules for determining households' eligibility or allotment level, and households participating based upon an application processed by Social Security Administration personnel shall be included in the selection and review process. They shall be included in the universe for calculating sample sizes and included in the sample

frames for sample selection as specified in paragraphs (b) through (e) of this section. In addition, they shall be included in the quality control review reports as specified in § 275.21(e) and included in the calculation of a State agency's completion rate as specified in § 275.25(e)(8). However, all results of reviews of active and negative demonstration project/SSA processed cases shall be excluded from the determination of State agencies' active and negative case error rates, payment error rates, and underissuance error rates as described in § 275.23(c). The review of these cases shall be conducted in accordance with the provisions specified in §§ 275.12(h) and 275.13(f).

[Amdt. 260, 49 FR 6304, Feb. 17, 1984; 49 FR 14495, Apr. 12, 1984, as amended by Amdt. 262, 49 FR 50598, Dec. 31, 1984; Amdt. 266, 52 FR 3409, Feb. 4, 1987; Amdt. 328, 56 FR 60051, Nov. 27, 1991; Amdt. 366, 62 FR 29658, June 2, 1997]

### § 275.12 Review of active cases.

(a) *General.* A sample of households which were certified prior to, or during, the sample month and issued food stamp benefits for the sample month shall be selected for quality control review. These active cases shall be reviewed to determine if the household is eligible and, if eligible, whether the household is receiving the correct allotment. The determination of a household's eligibility shall be based on an examination and verification of all elements of eligibility (i.e., basic program requirements, resources, income, and deductions). The elements of eligibility are specified in §§ 273.1 and 273.3 through 273.9. The verified circumstances and the resulting benefit level determined by the quality control review shall be compared to the benefits authorized by the State agency as of the review date. When changes in household circumstances occur, the reviewer shall determine whether the changes were reported by the participant and handled by the agency in accordance with the rules set forth in §§ 273.12, 273.13 and 273.21, as appropriate. For active cases, the review date shall always fall within the sample month, either the first day of a calendar or fiscal month or the day of certification, whichever is later. The review of active cases shall include: a household case record review; a field investigation, except as provided in paragraph (b) of this section; the identification of any variances; an error analysis; and the reporting of review findings.

(b) *Household case record review.* The reviewer shall examine the household case record to identify the specific facts relating to the household's eligibility and basis of issuance. If the reviewer is unable to locate the household case record, the reviewer shall identify as many of the pertinent facts as possible from the household issuance record. The case record review shall include all information applicable to the case as of the review month, including the application and worksheet in effect as of the review date. Documentation contained in the case record can be used as verification if it is not subject to change and applies to the sample month. If during the case record review the reviewer can determine and verify the household's ineligibility the review can be terminated at that point, provided that if the determination is based on information not obtained from the household then the correctness of that information must be confirmed as provided in paragraph (c)(2) of this section. The reviewer shall utilize information obtained through the case record review to complete column (2) of the Integrated Worksheet, Form FCS–380, and to tentatively plan the content of the field investigation.

(c) *Field investigation.* A full field investigation shall be conducted for all active cases selected in the sample month except as provided in paragraph (b) of this section. A full field investigation shall include a review of any information pertinent to a particular case which is available through the State Income and Eligibility Verification System (IEVS) as specified in § 272.8. If during the field investigation the reviewer determines and verifies the household's ineligibility, the review can be terminated at that point, provided that if the determination is based on information not obtained from the household then the correctness of that information must be confirmed as provided in paragraph (c)(2) of this section. In Alaska an exception to this requirement can be made in

those isolated areas not reachable by regularly scheduled commercial air service, automobile, or other public transportation provided one fully documented attempt to contact the household has been made. Such cases may be completed through casefile review and collateral contact. The field investigation will include interviews with the head of household, spouse, or authorized representative; contact with collateral sources of information; and any other materials and activity pertinent to the review of the case. The scope of the review shall not extend beyond the examination of household circumstances which directly relate to the determination of household eligibility and basis of issuance status. The reviewer shall utilize information obtained through the field investigation to complete column (3) of the Integrated Worksheet, Form FCS–380.

(1) *Personal interviews.* Personal interviews shall be conducted in a manner that respects the rights, privacy, and dignity of the participants. Prior to making a home visit, the reviewer shall notify the household that it has been selected, as part of an ongoing review process, for review by quality control and that a home visit will be made in the future. The method of notifying the household and the specificity of the notification shall be determined by the State agency, in accordance with applicable State and Federal laws. Most interviews will be held in the home; however, interviews can be held elsewhere when circumstances warrant. Under no circumstances shall the interview with the household be conducted by phone, except in Alaska when an exception to the field investigation is made in accordance with this section. During the interview with the participant, the reviewer shall:

(i) Explore with the head of the household, spouse, authorized representative, or any other responsible household member, household circumstances as they affect each factor of eligibility and basis of issuance;

(ii) Establish the composition of the household;

(iii) Review the documentary evidence in the household's possession and secure information about collateral sources of verification; and

(iv) Elicit from the participant names of collateral contacts. The reviewer shall use, but not be limited to, these designated collateral contacts. If required by the State, the reviewer shall obtain consent from the head of the household to secure collateral information. If the participant refuses to sign the release of information form, the reviewer shall explain fully the consequences of this refusal to cooperate (as contained in paragraph (g)(1)(ii) of this section), and continue the review to the fullest extent possible.

(2) *Collateral contacts.* The reviewer shall obtain verification from collateral contacts in all instances when adequate documentation was not available from the participant. This second party verification shall cover each element of eligibility as it affects the household's eligibility and coupon allotment. The reviewer shall make every effort to use the most reliable second party verification available (for example, banks, payroll listings, etc.), in accordance with FCS guidelines, and shall thoroughly document all verification obtained. If any information obtained by the QC reviewer differs from that given by the participant, then the reviewer shall resolve the differences to determine which information is correct before an error determination is made. The manner in which the conflicting information is resolved shall include recontacting the participant unless the participant cannot be reached. When resolving conflicting information reviewers shall use their best judgement based on the most reliable data available and shall document how the differences were resolved.

(d) *Variance identification.* The reviewer shall identify any element of a basic program requirement or the basis of issuance which varies (i.e., information from review findings which indicates that policy was applied incorrectly and/or information verified as of the review date that differs from that used at the most recent certification action). For each element that varies, the reviewer shall determine whether the variance was State agency or participant caused. The results of these determinations shall be coded and recorded in column (5) of the Integrated Worksheet, Form FCS–380.

(1) *Variances included in error analysis.* Except for those variances in an element resulting from one of the situations described in paragraph (d)(2) of this section, any variance involving an element of eligibility or basis of issuance shall be included in the error analysis. Such variances shall include but not be limited to those resulting from a State agency's failure to take the disqualification action related to SSN's specified in § 273.6(c), and related to work requirements, specified in § 273.7(g).

(2) *Variances excluded from error analysis.* The following variances shall be excluded from the determination of a household's eligibility and basis of issuance for the sample month:

(i) Any variance resulting from the nonverified portion of a household's gross nonexempt income where there is conclusive documentation (a listing of what attempts were made to verify and why they were unsuccessful) that such income could not be verified at the time of certification because the source of income would not cooperate in providing verification and no other sources of verification were available. If there is no conclusive documentation as explained above, then the reviewer shall not exclude any resulting variance from the error determination. This follows certification policy outlined in § 273.2(f)(1)(i).

(ii) Any variance in cases certified under expedited certification procedures resulting from postponed verification of an element of eligibility as allowed under § 273.2(i)(4)(i). Verification of gross income, deductions, resources, household composition, alien status, or tax dependency may be postponed for cases eligible for expedited certification. However, if a case certified under expedited procedures contains a variance as a result of a residency deficiency, a mistake in the basis of issuance computation, a mistake in participant identification, or incorrect expedited income accounting, the variance shall be included in the error determination. This exclusion shall only apply to those cases which are selected for QC review in the first month of participation under expedited certification.

(iii) Any variance subsequent to certification in an element of eligibility or basis of issuance which was not reported and was not required to have been reported as of the review date. The elements participants are required to report and the time requirements for reporting are specified in §§ 273.12(a) and 273.21(h) and (i), as appropriate. If, however, a change in any element is reported, and the State agency fails to act in accordance with §§ 273.12(c) and 273.21(j), as appropriate, any resulting variance shall be included in the error determination.

(iv) Any variance in deductible expenses which was not provided for in determining a household's benefit level in accordance with § 273.2(f)(3)(i)(B). This provision allows households to have their benefit level determined without providing for a claimed expense when the expense is questionable and obtaining verification may delay certification. If such a household subsequently provides the needed verification for the claimed expense and the State agency does not redetermine the household's benefits in accordance with § 273.12(c), any resulting variance shall be included in the error determination.

(v) Any variance resulting from use by the State agency of information concerning households or individuals from an appropriate Federal source, provided that such information is correctly processed by the State agency. An appropriate Federal source is one which verifies: Income that it provides directly to the household; deductible expenses for which it directly bills the household; or other household circumstances which it is responsible for defining or establishing. To meet the provisions for correct processing, the eligibility worker must have appropriately acted on timely information. In order to be timely, information must be the most current that was available to the State agency at the time of the eligibility worker's action.

(vi) Two variances relating to the Immigration and Naturalization Service's (INS) Systematic Alien Verification for Entitlements (SAVE) Program.

(A) A variance based on a verification of alien documentation by INS. The reviewer shall exclude such variance only if the State agency properly used

SAVE and the State agency provides the reviewer with:

(*1*) The alien's name;

(*2*) The alien's status; and

(*3*) Either the Alien Status Verification Index (ASVI) Query Verification Number or the INS Form G–845, as annotated by INS.

(B) A variance based on the State agency's wait for the response of INS to the State agency's request for official verification of the alien's documentation. The reviewer shall exclude such variance only if the State agency properly used SAVE and the State agency provides the reviewer with either:

(*1*) The date of request, if the State agency was waiting for an automated response; or

(*2*) A copy of the completed Form G–845, if the State agency was waiting for secondary verification from INS.

(vii) Subject to the limitations provided in paragraphs (d)(2)(vii)(A) through (d)(2)(vii)(F) of this section any variance resulting from application of a new Program regulation or implementing memorandum (if one is sent to advise State agencies of a change in Federal law, in lieu of regulations during the first 120 days from the required implementation date.

(A) When a regulation allows a State agency an option to implement prior to the required implementation date, the date on which the State agency chooses to implement may, at the option of the State, be considered to be the required implementation date for purposes of this provision. The exclusion period would be adjusted to begin with this date and end on the 120th day that follows. States choosing to implement prior to the required implementation date must notify the appropriate FCS Regional Office, in writing, prior to implementation that they wish the 120 day variance exclusion to commence with actual implementation. Absent such notification, the exclusionary period will commence with the required implementation date.

(B) A State agency shall not exclude variances which occur prior to the States implementation.

(C) A State agency which did not implement until after the exclusion period shall not exclude variances under this provision.

(D) Regardless of when the State agency actually implemented the regulation, the variance exclusion period shall end on the 120th day following the required implementation date, including the required implementation date defined in paragraph (d)(2)(vii)(A) of this section.

(E) For purposes of this provision, implementation occurs on the effective date of State agency's written statewide notification to its eligibility workers.

(F) This variance exclusion applies to changes occasioned by final regulations or interim regulations. In the case of a final regulation issued following an interim regulation, the exclusion applies only to significant changes made to the earlier interim regulation. A significant change is one which the final regulation requires the State agency to implement on or after publication of a final rule.

(viii) Any variance resulting from incorrect written policy that a State agency acts on that is provided by a Departmental employee authorized to issue Food Stamp Program policy and that the State agency correctly applies. For purposes of this provision, written Federal policy is that which is issued in regulations, notices, handbooks, category three and four Policy Memoranda under the Policy Interpretation Response System, and regional policy memoranda issued pursuant to these. Written Federal policy is also a letter from the Food and Consumer Service to a State agency which contains comments on the State agency's food stamp manual or instructions.

(ix) Any variance in a child support deduction which was the result of an unreported change subsequent to the most recent certification action shall be excluded from the error determination.

(3) *Other findings.* Findings other than variances made during the review which are pertinent to the food stamp household or the case record may be acted on at the discretion of the State agency. Examples of such findings are: an incorrect age of a household member which is unrelated to an element of

eligibility; an overdue subsequent certification; no current application on file; insufficient documentation; incorrect application of the verification requirements specified in part 273; and deficiencies in work registration procedural requirements. Such deficiencies include: inadequate documentation of each household member's exempt status; work registration form for each nonexempt household member not completed at the time of application and every six months thereafter; and the household not advised of its responsibility to report any changes in the exempt status of any household member.

(e) *Error analysis.* The reviewer shall analyze all appropriate variances in completed cases, in accordance with paragraph (d) of this section, which are based upon verified information and determine whether such cases are either eligible, eligible with a basis of issuance error, or ineligible. The review of an active case determined ineligible shall be considered completed at the point of the ineligibility determination. For households determined eligible, the review shall be completed to the point where the correctness of the basis of issuance is determined, except in the situations outlined in paragraph (g) of this section. In the event that a review is conducted of a household which is receiving restored or retroactive benefits for the sample month, the portion of the allotment which is the restored or retroactive benefit shall be excluded from the determination of the household's eligibility and/or basis of issuance. A food stamp case in which a household member(s) receives public assistance shall be reviewed in the same manner as all other food stamp cases, using income as received. The determination of a household's eligibility and the correctness of the basis of issuance shall be determined based on data entered on the computation sheet as well as other information documented on other portions of the Integrated Worksheet, Form FCS–380, as appropriate.

(f) *Reporting of review findings.* All information verified to be incorrect during the review of an active case shall be reported to the State agency for appropriate action on an individual case basis. This includes information on all variances in elements of eligibility and basis of issuance in both error and nonerror cases. In addition, the reviewer shall report the review findings on the Integrated Review Schedule, Form FCS–380–1, in accordance with the following procedures:

(1) *Eligibility errors.* If the reviewer determines that a case is ineligible, the occurrence and the total allotment issued in the sample month shall be coded and reported. Whenever a case contains a variance in an element which results in an ineligibility determination and there are also variances in elements which would cause a basis of issuance error, the case shall be treated as an eligibility error. The reviewer shall also code and report any variances that directly contributed to the error determination. In addition, if the State agency has chosen to report information on all variances in elements of eligibility and basis of issuance, the reviewer shall code and report any other such variances which were discovered and verified during the course of the review.

(2) *Basis of issuance errors.* If the reviewer determines that food stamp allotments were either overissued or underissued to eligible households in the sample month, in an amount exceeding $5.00, the occurrence and the amount of the error shall be coded and reported. The reviewer shall also code and report any variances that directly contributed to the error determination. In addition, if the State agency has chosen to report information on all variances in elements of eligibility and basis of issuance, the reviewer shall code and report any other such variances which were discovered and verified during the course of the review.

(3) *Automated Federal Information Exchange System Errors.* Variances resulting from the use by the State agency of information received from automated Federal information exchange systems, which are excluded in accordance with § 275.12(d)(2)(v), shall be coded and reported as variances. They shall not, however, be used in determining a State's error rates.

(g) *Disposition of case reviews.* Each case selected in the sample of active

cases must be accounted for by classifying it as completed, not completed, or not subject to review. These case dispositions shall be coded and recorded on the Integrated Review Schedule, Form FCS–380–1.

(1) *Cases reported as not complete.* Active cases shall be reported as not completed if the household case record cannot be located and the household itself is not subsequently located; if the household case record is located but the household cannot be located unless the reviewer attempts to locate the household as specified in this paragraph; or if the household refuses to cooperate, as discussed in this paragraph. All cases reported as not complete shall be reported to the State agency for appropriate action on an individual case basis. Without FCS approval, no active case shall be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with the timeframes specified in § 275.21(b)(2).

(i) If the reviewer is unable to locate the participant either at the address indicated in the case record or in the issuance record and the State agency is not otherwise aware of the participant's current address, the reviewer shall attempt to locate the household by contacting at least two sources which the State agency determines are most likely to be able to inform the reviewer of the household's current address. Such sources include but are not limited to:

(A) The local office of the U.S. Postal Service;

(B) The State Motor Vehicle Department;

(C) The owner or property manager of the residence at the address in the case record; and

(D) Any other appropriate sources based on information contained in the case record, such as public utility companies, telephone company, employers, or relatives. Once the reviewer has attempted to locate the household and has documented the response of each source contacted, if the household still cannot be located and the State agency has documented evidence that the household did actually exist, the State agency shall report the active case as not subject to review. In these situations documented evidence shall be considered adequate if it either documents two different elements of eligibility or basis of issuance, such as a copy of a birth certificate for age and pay status for income; or documents the statement of a collateral contact indicating that the household did exist. FCS Regional Offices will monitor the results of the contacts which State agencies make in attempting to locate households.

(ii) If a household refuses to cooperate with the quality control reviewer and the State agency has taken other administrative steps to obtain that cooperation without obtaining it, the household shall be notified of the penalities for refusing to cooperate with respect to termination and reapplication, and of the possibility that its case will be referred for investigation for willful misrepresentation. If a household refuses to cooperate after such notice, the reviewer may attempt to complete the case and shall report the household's refusal to the State agency for termination of its participation without regard for the outcome of that attempt. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the quality control review process. In certain circumstances, the household may demonstrate that it is unwilling to cooperate by not taking actions after having been given every reasonable opportunity to do so, even though the household or its members do not state that the household refuses to cooperate. Instances where the household's unwillingness to cooperate in completing a quality control review has the effect of a refusal to cooperate shall include the following:

(A) The household does not respond to a letter from the reviewer sent Certified Mail-Return Receipt Requested within 30 days of the date of receipt;

(B) The household does not attend an agreed upon interview with the reviewer and then does not contact the reviewer within 10 days of the date of the scheduled interview to reschedule the interview; or

(C) The household does not return a signed release of information statement to the reviewer within 10 days of either agreeing to do so or receiving a request from the reviewer sent Certified Mail-Return Receipt Requested. However, in these and other situations, if there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be reported to the State agency for termination.

(2) *Cases not subject to review.* Cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated during the review process. These cases shall be as follows:

(i) Death of all members of a household if they died before the review could be undertaken or completed;

(ii) The household moved out of State before the review could be undertaken or completed;

(iii) The household, at the time of the review, is under active investigation for intentional Food Stamp Program violation, including a household with a pending administrative disqualification hearing;

(iv) A household receiving restored benefits in accordance with § 273.17 but not participating based upon an approved application for the sample month;

(v) A household dropped as a result of correction for oversampling;

(vi) A household participating under disaster certification authorized by FCS for a natural disaster;

(vii) A case incorrectly listed in the active frame;

(viii) A household appealing an adverse action when the review date falls within the time period covered by continued participation pending the hearing;

(ix) A household that did not receive benefits for the sample month; or

(x) A household that still cannot be located after the reviewer has attempted to locate it in accordance with paragraph (g)(1)(i) of this section.

(h) *Demonstration projects/SSA processing.* Households correctly classified for participation under the rules of a demonstration project which establishes new FCS-authorized eligibility criteria or modifies the rules for determining households' eligibility or allotment level shall be reviewed following standard procedures provided that FCS does not modify these procedures to reflect modifications in the treatment of elements of eligibility or basis of issuance in the case of a demonstration project. If FCS determines that information obtained from these cases would not be useful, then they may be excluded from review. A household whose most recent application for participation was processed by Social Security Administration personnel shall be reviewed following standard procedures. This includes applications for recertification, provided such an application is processed by the SSA as allowed in § 273.2(k)(2)(ii).

[Amdt. 260, 49 FR 6306, Feb. 17, 1984; 49 FR 14495, Apr. 12, 1984, as amended by Amdt. 264, 51 FR 7207, Feb. 28, 1986; Amdt. 295, 52 FR 29658, Aug. 11, 1987; 53 FR 39443, Oct. 7, 1988; 53 FR 44172, Nov. 2, 1988; Amdt. 324, 55 FR 48834, Nov. 23, 1990; Amdt. 362, 61 FR 54292, Oct. 17, 1996; Amdt. 366, 62 FR 29659, June 2, 1997]

### § 275.13 Review of negative cases.

(a) *General.* A sample of households denied certification to receive food stamps or which had their participation in the Food Stamp Program terminated during a certification period effective for the sample month shall be selected for quality control review. These negative cases shall be reviewed to determine whether the State agency's decision to deny or terminate the household, as of the review date, was correct. For negative cases, the review date shall be the date of the agency's decision to deny or terminate program benefits. The review of negative cases shall include a household case record review; an error analysis; and the reporting of review findings.

(b) *Household case record review.* The reviewer shall examine the household case record and verify through documentation in it whether the reason given for the denial or termination is correct or whether the denial or termination is correct for any other reason documented in the casefile. When the case record alone does not prove ineligibility, the reviewer may attempt to verify the element(s) of eligibility in

question by telephoning either the household and/or a collateral contact(s). Through the review of the household case record, the reviewer shall complete the household case record sections and document the reasons for denial or termination on the Negative Quality Control Review Schedule, Form FCS–245.

(c) *Error analysis.* (1) A negative case shall be considered correct if the reviewer is able to verify through documentation in the household case record or collateral contact that a household was correctly denied or terminated from the program. Whenever the reviewer is unable to verify the correctness of the State agency's decision to deny or terminate a household's participation through such documentation or collateral contact, the negative case shall be considered incorrect.

(2) The reviewer shall exclude a variance when the State agency erroneously denied or terminated a household's participation based on an erroneous verification of alien documentation by the Immigration and Nationalization Services (INS) Systematic Alien Verification for Entitlements (SAVE) Program. The reviewer shall exclude the variance only if the State agency properly used SAVE, and the State agency provides the reviewer with:

(i) The alien's name;

(ii) The alien's status; and

(iii) Either the Alien Status Verification Index (ASVI) Query Verification Number or the INS Form G–845, as annotated by INS.

(d) *Reporting of review findings.* When a negative case is incorrect, this information shall be reported to the State agency for appropriate action on an individual case basis, such as recomputation of the coupon allotment and restoration of lost benefits. In addition, the reviewer shall code and record the error determination on the Negative Quality Control Review Schedule, Form FCS–245.

(e) *Disposition of case review.* Each case selected in the sample of negative cases must be accounted for by classifying it as completed, not completed, or not subject to review. These case dispositions shall be coded and recorded on the Negative Quality Control Review Schedule, Form FCS–245.

(1) Negative cases shall be reported as not completed if the reviewer, after all reasonable efforts, is unable to locate the case record. In no event, however, shall any negative case be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with the timeframes specified in §275.21(b)(2), without prior FCS approval. This information shall be reported to the State agency for appropriate action on an individual case basis.

(2) Negative cases shall be reported as not subject to review when the household, at the time of the review:

(i) Withdrew an application prior to the State agency's determination;

(ii) Is under active investigation for intentional Food Stamp Program violation;

(iii) Had its case closed due to expiration of the certification period; or

(iv) Was dropped as a result of correction for oversampling.

(f) *Demonstration projects/SSA processing.* A household whose application has been denied or whose participation has been terminated under the rules of an FCS-authorized demonstration project shall be reviewed following standard procedures unless FCS provides modified procedures to reflect the rules of the demonstration project. If FCS determines that information obtained from these cases would not be useful, then these cases may be excluded from review. A household whose application has been processed by SSA personnel and is subsequently denied participation shall be reviewed following standard procedures.

[Amdt. 260, 49 FR 6309, Feb. 17, 1984, as amended at 53 FR 39443, Oct. 7, 1988]

### §275.14 Review processing.

(a) *General.* Each State agency shall use FCS handbooks, worksheets, and schedules in the quality control review process.

(b) *Handbooks.* The reviewer shall follow the procedures outlined in the Quality Control Review Handbook, FCS Handbook 310, to conduct quality control reviews. In addition, the sample of active and negative cases shall

be selected in accordance with the sampling techniques described in the Quality Control Sampling Handbook, FCS Handbook 311.

(c) *Worksheets.* The Integrated Review Worksheet, Form FCS–380, shall be used by the reviewer to record required information from the case record, plan and conduct the field investigation, and record findings which contribute to the determination of eligibility and basis of issuance in the review of active cases. In some instances, reviewers may need to supplement Form FCS–380 with other forms. The State forms for appointments, interoffice communications, release of information, etc., should be used when appropriate.

(d) *Schedules.* Decisions reached by the reviewer in active case reviews shall be coded and recorded on the Integrated Review Schedule, Form FCS–380–1. Such active case review findings must be substantiated by information recorded on the Integrated Review Worksheet, Form FCS–380. In negative case reviews, the review findings shall be coded and recorded on the Negative Quality Control Review Schedule, Form FCS–245, and supplemented as necessary with other documentation substantiating the findings.

[Amdt. 260, 49 FR 6310, Feb. 17, 1984, as amended by Amdt. 262, 49 FR 50598, Dec. 31, 1984]

## Subpart D—Data Analysis and Evaluation

### § 275.15 Data management.

(a) *Analysis.* Analysis is the process of classifying data, such as by areas of program requirements or use of error-prone profiles, to provide a basis for studying the data and determining trends including significant characteristics and their relationships.

(b) *Evaluation.* Evaluation is the process of determining the cause(s) of each deficiency, magnitude of the deficiency, and geographic extent of the deficiency, to provide the basis for planning and developing effective corrective action.

(c) Each State agency must analyze and evaluate at the State and project area levels all management information sources available to:

(1) Identify all deficiencies in program operations and systems;

(2) Identify causal factors and their relationships;

(3) Identify magnitude of each deficiency, where appropriate (This is the frequency of each deficiency occurring based on the number of program records reviewed and where applicable, the amount of loss either to the program or participants or potential participants in terms of dollars. The State agency shall include an estimate of the number of participants or potential participants affected by the existence of the deficiency, if applicable);

(4) Determine the geographic extent of each deficiency (e.g., Statewide/individual project area or management unit); and,

(5) Provide a basis for management decisions on planning, implementing, and evaluating corrective action.

(d) In the evaluation of data, situations may arise where the State agency identifies the existence of a deficiency, but after reviewing all available management information sources sufficient information is not available to make a determination of the actual causal factor(s), magnitude, or geographic extent necessary for the development of appropriate corrective action. In these situations, the State agency shall be responsible for gathering additional data necessary to make these determinations. This action may include, but is not limited to, conducting additional full or partial ME reviews in one or more project areas/management units or discussions with appropriate officials.

(e) Deficiencies identified from all management information sources must be analyzed and evaluated together to determine their causes, magnitude, and geographic extent. Causes indicated and deficiencies identified must be examined to determine if they are attributable to a single cause and can be effectively eliminated by a single action. Deficiencies and causes identified must also be compared to the results of past corrective action efforts to determine if the new problems arise from the causal factors which contributed to the occurrence of previously identified deficiencies.

(f) Data analysis and evaluation must be an ongoing process to facilitate the development of effective and prompt corrective action. The process shall also identify when deficiencies have been eliminated through corrective action efforts, and shall provide for the reevaluation of deficiencies and causes when it is determined that corrective action has not been effective.

(g) *Identification of High Error Project Areas/Counties/Local Offices.* FCS may use quality control information to determine which project areas/counties/local offices have reported payment error rates that are either significantly greater than the State agency average or greater than the national error standard of the Program. When FCS notifies a State agency that a ''high error'' area exists, the State agency shall ensure that corrective action is developed and reported in accordance with the provisions of §275.17. If FCS identifies a ''high error'' locality which a State agency has previously identified as error-prone and taken appropriate action, no further State agency shall be required. If a State agency's corrective action plan fails to address problems in FCS-identified ''high error'' areas, FCS may require a State agency to implement new or modified cost-effective procedures for the certification of households.

[Amdt. 160, 45 FR 15909, Mar. 11, 1980, as amended by Amdt. 266, 52 FR 3409, Feb. 4, 1987; Amdt. 320, 55 FR 6240, Feb. 22, 1990]

## Subpart E—Corrective Action

### §275.16 Corrective action planning.

(a) Corrective action planning is the process by which State agencies shall determine appropriate actions to reduce substantially or eliminate deficiencies in program operations and provide responsive service to eligible households.

(b) The State agency and project area(s)/management unit(s), as appropriate, shall implement corrective action on all identified deficiencies. Deficiencies requiring action by the State agency or the combined efforts of the State agency and the project area(s)/management unit(s) in the planning, development, and implementation of corrective action are those which:

(1) Result from evaluation of yearly targets (actions to correct errors in individual cases however, shall not be submitted as part of the State agency's corrective action plan);

(2) Are the cause for non-entitlement to enhanced funding for any reporting period (actions to correct errors in individual cases however, shall not be submitted as part of the State agency's corrective action plan);

(3) Are the causes of other errors/deficiencies detected through quality control, including error rates of 1 percent or more in negative cases (actions to correct errors in individual cases, however, shall not be submitted as part of the State agency's corrective action plan);

(4) Are identified by FCS reviews, GAO audits, contract audits, or USDA audits or investigations at the State agency or project area level (except deficiencies in isolated cases as indicated by FCS); and,

(5) Result from 5 percent or more of the State agency's QC sample being coded ''not complete'' as defined in §275.12(g)(1) of this part. This standard shall apply separately to both active and negative samples.

(6) Result in under issuances, improper denials, or improper terminations of benefits to eligible households where such errors are caused by State agency rules, practices or procedures.

(c) The State agency shall ensure that appropriate corrective action is taken on all deficiencies including each case found to be in error by quality control reviews and those deficiencies requiring corrective action only at the project area level. Moreover, when a substantial number of deficiencies are identified which require State agency level and/or project area/management unit corrective action, the State agency and/or project area/management unit shall establish an order of priority to ensure that the most serious deficiencies are addressed immediately and corrected as soon as possible. Primary factors to be considered when determining the most serious deficiencies are:

(1) Magnitude of the deficiency as defined in §275.15(c)(3) of this part;

(2) Geographic extent of the deficiency (e.g., Statewide/project area or management unit);

(3) Anticipated results of corrective actions; and

(4) High probability of errors occurring as identified through all management evaluation sources.

(d) In planning corrective action, the State agency shall coordinate actions in the areas of data analysis, policy development, quality control, program evaluation, operations, administrative cost management, civil rights, and training to develop appropriate and effective corrective action measures.

[Amdt. 160, 45 FR 15909, Mar. 11, 1980, as amended by Amdt. 169, 46 FR 7263, Jan. 23, 1981; Amdt. 262, 49 FR 50598, Dec. 31, 1984; Amdt. 266, 52 FR 3409, Feb. 4, 1987; Amdt. 328, 56 FR 60052, Nov. 27, 1991]

### § 275.17 State corrective action plan.

(a) State agencies shall prepare corrective action plans addressing those deficiencies specified in § 275.16(b) requiring action by the State agency or the combined efforts of the State agency and the project area(s)/management unit(s). This corrective action plan is an open-ended plan and shall remain in effect until all deficiencies in program operations have been reduced substantially or eliminated. State agencies shall provide updates to their corrective action plans through regular, semiannual updates. These semiannual updates shall be received by FCS by May 1st and November 1st respectively. Such updates must contain:

(1) Any additional deficiencies identified since the previous corrective action plan update;

(2) Documentation that a deficiency has been corrected and is therefore being removed from the plan; and

(3) Any changes to planned corrective actions for previously reported deficiencies.

(b) *Content.* State corrective action plans shall contain, but not necessarily be limited to, the following, based on the most recent information available:

(1) Specific description and identification of each deficiency;

(2) Source(s) through which the deficiency was detected;

(3) Magnitude of each deficiency, if appropriate, as defined in § 275.15(c)(3) of this part;

(4) Geographic extent of the deficiency (e.g., Statewide/project area or management unit—specific project areas in which the deficiency occurs);

(5) Identification of causal factor(s) contributing to the occurrence of each deficiency;

(6) Identification of any action already completed to eliminate the deficiency;

(7) For each deficiency, an outline of actions to be taken, the expected outcome of each action, the target date for each action, and the date by which each deficiency will have been eliminated; and

(8) For each deficiency, a description of the manner in which the State agency will monitor and evaluate the effectiveness of the corrective action in eliminating the deficiency.

(c) FCS will provide technical assistance in developing corrective action plans when requested by State agencies.

(d) State agencies will be held accountable for the efficient and effective operation of all areas of the program. FCS is not precluded from issuing a warning as specified in part 276 because a deficiency is included in the State agency's corrective action plan.

[Amdt. 160, 45 FR 15909, Mar. 11, 1980, as amended by Amdt. 266, 52 FR 3409, Feb. 4, 1987]

### § 275.18 Project area/management unit corrective action plan.

(a) The State agency shall ensure that corrective action plans are prepared at the project area/management unit level, addressing those deficiencies not required to be included in the State corrective action plan. State agencies may elect to prepare these plans for or in cooperation with the project area. These project area/management unit corrective action plans shall be open-ended and shall remain in effect until all deficiencies in program operations have been reduced substantially or eliminated. Any deficiencies detected through any source not previously reported to the State agency which require incorporation into the

Project Area/Management Unit Corrective Action Plan shall be submitted to the State agency within 60 days of identification. As deficiencies are reduced substantially or eliminated, the project area/management unit shall notify the State agency in writing. The project area/management unit shall be responsible for documenting why each deficiency is being removed from the Plan. The removal of any deficiency from the Plan will be subject to State agency and FCS review and validation.

(b) *Content.* Project area/management unit corrective action plans shall contain all the information necessary to enable the State agency to monitor and evaluate the corrective action properly. Also, State agencies shall establish requirements for project area/management units in planning, implementing and reporting corrective action to assist the State agency's efforts to fulfill its responsibilities for determining which deficiencies must be addressed in the State corrective action plan. States should consider requiring project area/management unit plans to include the following, based on the most recent information available:

(1) Specific description and identification of each deficiency;

(2) Source(s) through which the deficiency was detected;

(3) Magnitude of each deficiency, if appropriate, as defined in §275.15(c)(3) of this part;

(4) Geographic extent of the deficiency (throughout the project area/management unit or only in specific offices);

(5) Identification of causal factor(s) contributing to the occurrence of each deficiency;

(6) Identification of any action already completed to eliminate the deficiency;

(7) For each deficiency, an outline of actions to be taken, the expected outcome of each action, the target date for each action, the date by which each deficiency will have been eliminated; and

(8) For each deficiency, a description of the manner in which the project area/management unit will monitor and evaluate the effectiveness of the corrective action in eliminating the deficiency.

[Amdt. 160, 45 FR 15909, Mar. 11, 1980]

### §275.19 Monitoring and evaluation.

(a) The State agency shall establish a system for monitoring and evaluating corrective action at the State and project area levels. Monitoring and evaluation shall be an ongoing process to determine that deficiencies are being substantially reduced or eliminated in an efficient manner and that the program provides responsive service to eligible households.

(b) The State agency shall ensure that corrective action on all deficiencies identified in the State Corrective Action Plan and Project Area/Management Unit Corrective Action Plan is implemented and achieves the anticipated results within the specified time frames. The State agency shall monitor and evaluate corrective action at the State and project levels through a combination of reports, field reviews, and examination of current data available through program management tools and other sources.

(c) In instances where the State agency and/or the project area/management unit determines that the proposed corrective action is not effective in reducing substantially or eliminating deficiencies, the State agency and/or the project area/management unit shall promptly reevaluate the deficiency, causes, and the corrective action taken, and develop and implement new corrective actions.

[Amdt. 160, 45 FR 15909, Mar. 11, 1980]

## Subpart F—Responsibilities for Reporting on Program Performance

### §275.20 ME review schedules.

(a) Each State agency shall submit its review schedule to the appropriate FCS regional office at least 60 days prior to the beginning of the next year's review period (the Federal fiscal year). These schedules must ensure that all project areas/management units will be reviewed within the required time limits. Each schedule shall identify the project areas/management units in each classification and list each project area to be reviewed by month or by quarter. A State agency may submit a request to use an alternate review schedule at any time. The

alternate schedule shall not be effective until approved by FCS in accordance with § 275.5(b)(2).

(b) State agencies shall notify the appropriate FCS regional office of all changes in review schedules.

[Amdt. 266, 52 FR 3410, Feb. 4, 1987]

### § 275.21 Quality control review reports.

(a) *General.* Each State agency shall submit reports on the performance of quality control reviews in accordance with the requirements outlined in this section. These reports are designed to enable FCS to monitor the State agency's compliance with Program requirements relative to the Quality Control Review System. Every case selected for review during the sample month must be accounted for and reflected in the appropriate report(s).

(b) *Individual cases.* The State agency shall report the review findings on each case selected for review during the sample month. For active cases, the State agency shall submit the edited findings of the Integrated Review Schedule, Form FCS–380–1. For negative cases, the State agency shall submit a summary report which is produced from the edited findings on individual cases which are coded on the Negative Quality Control Review Schedule, Form FCS–245. The review findings shall be reported as follows:

(1) The State agency shall input and edit the results of each active and negative case into the FCS supplied computer terminal and transmit the data to the host computer. For State agencies that do not have FCS supplied terminals, the State agency shall submit the results of each QC review in a format specified by FCS. Upon State agency request, FCS will consider approval of a change in the review results after they have been reported to FCS.

(2) The State agency shall dispose of and report the findings of 90 percent of all cases selected in a given sample month so that they are received by FCS within 75 days of the end of the sample month. All cases selected in a sample month shall be disposed of and the findings reported so that they are received by FCS within 95 days of the end of the sample month.

(3) The State agency shall supply the FCS Regional Office with individual household case records and the pertinent information contained in the individual case records, or legible copies of that material, as well as legible hard copies of individual Forms FCS–380, FCS–380–1, and FCS–245 or other FCS-approved report forms, within 10 days of receipt of a request for such information.

(4) For each case that remains pending 95 days after the end of the sample month, the State agency shall immediately submit a report that includes an explanation of why the case has not been disposed of, documentation describing the progress of the review to date, and the date by which it will be completed. If FCS determines that the above report does not sufficiently justify the case's pending status, the case shall be considered overdue. Depending upon the number of overdue cases, FCS may find the State agency's QC system to be inefficient or ineffective and suspend and/or disallow the State agency's Federal share of administrative funds in accordance with the provisions of § 276.4.

(c) *Monthly status.* The State agency shall report the monthly progress of sample selection and completion on the Form FCS–248, Status of Sample Selection and Completion or other format specified by FCS. This report shall be submitted to FCS so that it is received no later than 105 days after the end of the sample month. Each report shall reflect sampling and review activity for a given sample month.

(d) *Annual results.* The State agency shall annually report the results of all quality control reviews during the review period. For this report, the State agency shall submit the edited results of all QC reviews on the Form FCS–247, Statistical Summary of Sample Distribution or other format specified by FCS. This report shall be submitted to FCS so that it is received no later than 105 days from the end of the annual review period. Every case selected in the active or negative sample must be accounted for and reported to FCS, including cases not subject to review, not completed, and completed.

(e) *Demonstration projects/SSA processing.* The State agency shall identify the

monthly status of active and negative demonstration project/SSA processed cases (i.e., those cases described in §275.11(g)) on the Form FCS–248, described in paragraph (c) of this section. In addition, the State agency shall identify the annual results of such cases on the Form FCS–247, described in paragraph (d) of this section.

[Amdt. 260, 49 FR 6310, Feb. 17, 1984, as amended by Amdt. 262, 49 FR 50598, Dec. 31, 1984; Amdt. 266, 52 FR 3410, Feb. 4, 1987]

### §275.22 Administrative procedure.

Reports on program performance are intended to provide the State an opportunity to determine compliance with program requirements, identify and resolve emerging problems, and assess the effectiveness of actions that have been taken to correct existing problems. States' reports enable FCS to assess the nationwide status of eligibility and basis of issuance determinations, to ensure State compliance with Federal requirements, to assist States in improving and strengthening their programs, and to develop Federal policies. Reports must be submitted in duplicate to the appropriate FCS Regional Office according to the time frames established in §§275.20, 275.21, and 275.22 of this part.

[Amdt. 160, 45 FR 15911, Mar. 11, 1980. Redesignated at 52 FR 3410, Feb. 4, 1987]

## Subpart G—Program Performance

### §275.23 Determination of State agency program performance.

(a) FCS shall determine the efficiency and effectiveness of a State's administration of the Food Stamp Program by measuring:

(1) State compliance with the standards contained in the Food Stamp Act, regulations, and the State Plan of Operation; and

(2) State efforts to improve program operations through corrective action.

(b) This determination shall be made based on:

(1) Reports submitted to FCS by the State;

(2) FCS reviews of State agency operations;

(3) State performance reporting systems and corrective action efforts; and

(4) Other available information such as Federal audits and investigations, civil rights reviews, administrative cost data, complaints, and any pending litigation.

(c) *State agency error rates.* FCS shall estimate each State agency's error rates based on the results of quality control review reports submitted in accordance with the requirements outlined in §275.21. The State agency's active case error, payment error, underissuance error, and negative case error rates shall be estimated as follows:

(1) *Active case error rate.* The active case error rate shall include the proportion of active sample cases which were reported as ineligible or as receiving an incorrect allotment (as described in §275.12(e)) based upon certification policy as set forth in part 273.

(2) *Payment error rate.* (i) For fiscal years prior to Fiscal Year 1986, the payment error rate shall include the value of the allotments overissued, including overissuances to ineligible cases, for those cases included in the active error rate.

(ii) For Fiscal Year 1986 and subsequent fiscal years, the payment error rate shall include the value of the allotments overissued, including those to ineligible cases, and the value of allotments underissued for those cases included in the active error rate.

(3) *Underissuance error rate.* Prior to Fiscal Year 1986, the underissuance error rate shall include the value of the allotments reported as underissued for those cases included in the active case error rate.

(4) *Negative case error rate.* The negative case error rate shall be the proportion of negative sample cases which were reported as having been eligible at the time of denial or termination (as described in §275.13(c)) based upon certification policy as set forth in part 273.

(5) *Demonstration projects/SSA processing.* The reported results of reviews of active and negative demonstration project/SSA processed cases, as described in §275.11(g), shall be excluded from the estimate of the active case error rate, payment error rate, underissuance error rate, and negative case error rate.

(d) *Federal enhanced funding.* (1) Before making enhanced funding available to a State agency, as described in § 277.4(b), FCS will:

(i) Validate the State agency's estimated payment error rate, underissuance error rate, and negative case error rate, as provided for in § 275.3(c);

(ii) Ensure that the sampling techniques used by the State agency are FCS-approved procedures, as established in § 275.11; and

(iii) Validate the State agency's quality control completion rate to ensure that all of the minimum required sample cases, of both active and negative quality control samples, have been completed. This completion standard is applied separately to the active and negative case samples, and the State agency's estimated payment and underissuance error rates will be adjusted separately, if necessary, to account for those required cases not completed, in accordance with the procedures described in paragraph (e)(8)(iii) of this section for adjustment of the payment error rate.

(2) After validation and any necessary adjustment of estimated error rates:

(i) A State agency with a combined payment error rate and underissuance error rate of less than five percent for an annual review period for Fiscal Year 1983 through Fiscal Year 1985, or a payment error rate of less than five percent for an annual review period for Fiscal Year 1986 through Fiscal Year 1988, shall be eligible for a 60 percent Federally funded share of administrative costs, provided that the State agency's negative case error rate for that period is less than the national weighted mean negative case error rate for the prior fiscal year;

(ii) Beginning with Fiscal Year 1989, a State agency with a payment error rate less than or equal to 5.90 percent and with a negative case error rate less than the national weighted mean negative case rate for the prior fiscal year will have its Federally funded share of administrative costs increased by one percentage point to a maximum of 60 percent for each full one-tenth of a percentage point by which the payment error rate is less than six percent.

(3) State agencies entitled to enhanced funding shall receive the additional funding on a retroactive basis only for the review period in which their error rates are less than the levels described in paragraph (d)(2) of this section.

(e) *State agencies' liabilities for payment error rates.* (1) At the end of each fiscal year, each State agency's payment error rate over the entire fiscal year will be computed, as described in paragraph (e)(8) of this section, and evaluated to determine whether the payment error rate goals established in the following paragraphs have been met.

(2) *Establishment of payment error rate goals—Fiscal Year 1983 through Fiscal Year 1985.* (i) Each State agency's payment error rate goal for Fiscal Year 1983 shall be nine percent. Each State agency's payment error rate goal for Fiscal Year 1984 shall be seven percent. Each State agency's payment error rate goal for Fiscal Year 1985 shall be five percent. State agencies' payment error rates for any fiscal year shall be derived from the review period corresponding to the fiscal year.

(ii) If a State agency fails to achieve a nine percent payment error rate in Fiscal Year 1983 but reduces its payment error rate for Fiscal Year 1983 by 33.3 percent (or more) of the difference between its payment error rate during the period of October 1980 through March 1981 and a five percent payment error rate, the State agency shall bear no fiscal liability for its payment error rate. If a State agency fails to achieve a seven percent payment error rate in Fiscal Year 1984, but reduces its payment error rate for Fiscal Year 1984 by 66.7 percent (or more) of the difference between its payment error rate during the period of October 1980 through March 1981 and a five percent payment error rate, the State agency shall bear no fiscal liability for its payment error rate.

(iii) State agencies' payment error rates shall be rounded to the nearest one hundredth of a percent with .005 and above being rounded up to the next highest one-hundredth and .004 and below being rounded to the next lowest one-hundredth.

(3) *State agencies failing to achieve payment error rate goals—Fiscal Year 1983 through Fiscal Year 1985.* Each State agency which fails to achieve its payment error rate goal during a fiscal year shall be liable as specified in the following paragraphs.

(i) For every percentage point, or fraction thereof, by which a State agency's payment error rate exceeds the goal for a fiscal year, FCS shall reduce the money it pays for the State agency's Food Stamp Program administrative costs by five percent for that fiscal year; provided that for every percentage point, or fraction thereof, by which a State agency's payment error rate exceeds its goal by more than three percentage points, FCS shall reduce the Federally funded share of Food Stamp Program administrative costs by ten percent for the applicable fiscal year. Thus, if a State agency's reported error rate in Fiscal Year 1983 is 10.5 percent, its Federal administrative funding could be reduced by ten percent. A 13.1 percent error rate, or 4.1 percentage points above the goal, would result in a reduction of 5 percent for each of the three first points, 10 percent for the fourth point and another 10 percent for the fraction above 4 percentage points. This would amount to a 35 percent reduction in Federal administrative funds unless the provisions of paragraph (e)(3)(ii) are applicable to the State agency's circumstances.

(ii) If a State agency fails to reach its payment error rate goal but reduces its error rate as explained in paragraph (e)(2)(ii) for a given fiscal year it will bear no liability for its error rates. If, however, a State agency fails to reach the established goal and fails to meet the reduction percentage for Fiscal Year 1983 and/or 1984, its Federally funded share of program administrative costs shall be reduced by five percent for every percentage point, or fraction thereof, (with a 10 percent reduction applied for every percentage point or fraction above 3 percentage points) by which its error rate exceeds the payment error rate it would have achieved had it met the 33.3 or 66.7 percent reduction percentage for the applicable fiscal year. Thus, if a State agency's payment error rate during the October through March 1981 period was 13 percent and its error rate for Fiscal Year 1983 is 11 percent, it will have failed to achieve a 33.3 percent reduction (13−(13−5)(33.3)=10.34 percent), i.e., the rate the State agency would have achieved had it met the reduction percentage) and incurred a liability equal to five percent of its Federal administrative funding. If the State agency's payment error rate increased to 13 percent in Fiscal Year 1984, it will have missed a 66.7 percent reduction by 5.34 percentage points (13−(13−5)(66.7)=7.66 percent) and incurred a liability equal to 45 percent of its Federal administrative funding. In the latter example, the 45 percent funding reduction results from a 15 percent reduction for the first three percentage points and 30 percent for the additional 2.34 percentage points by which the State agency exceeded a 7.66 percent error rate.

(iii) If a State agency is found liable for an excessive payment error rate, the amount of liability will be calculated by: (A) Multiplying the percent the Federal share is to be reduced by the base Federal reimbursement rate of 50 percent; (B) subtracting the product of (A) from 50 percent; and (C) multiplying the result of (B) by the State agency's costs covered under the base Federal reimbursement rate for the fiscal year in which the State agency incurred the liability. For example, if the total administrative costs (State and Federal) in a State agency are $4,000,000 for the fiscal year, and the State agency's Federal funding is to be reduced by 25 percent, the State agency would be reimbursed at a rate of 37.5 percent (i.e., 50 percent minus 25 percent times 50 percent) or $1,500,000. The State agency's liability would be $500,000 or 12.5 percent of its administative costs.

(iv) A State's federally funded share of administrative costs shall not be reduced by an amount that exceeds the difference between its payment error rate goal (or what its error rate would have been had it met the reduction criteria of paragraph (ii) above) and its actual error rates expressed as a percentage of its total issuance during the fiscal year. Therefore, if the State agency in the above example issued $10,000,000 in food stamps in the fiscal

year and exceeded its goal by four percentage points (as demonstrated by a 25 percent reduction in Federal funding), the State agency's liability would be capped at $400,000 ((.04)(10,000,000)), even though the calculation based upon administrative funds would result in a liability of $500,000.

(4) *State agencies' liabilities for payment error—Fiscal Year 1986 through Fiscal Year 1991.* Each State agency that fails to achieve its payment error rate goal during a fiscal year shall be liable as specified in the following paragraphs.

(i) For Fiscal Year 1986 through Fiscal Year 1991, FCS shall announce a national performance measure within nine months following the end of each fiscal year that is the sum of the products of each State agency's payment error rate times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is initially notified of its payment error rate. Once announced, the national performance measure for a given fiscal year will not be subject to change. This national performance measure is used to establish a payment-error tolerance level. The payment-error tolerance level for any fiscal year shall be one percentage point added to the lowest national performance measure ever announced up to and including such fiscal year.

(ii) For any fiscal year in which a State agency's payment error rate exceeds the payment-error tolerance level, the State agency shall pay or have its share of administrative costs reduced by an amount equal to the difference between its payment error rate less such tolerance level as a quantity, multiplied by the total value of the allotments issued in the fiscal year by that State agency.

(5) *State agencies' liabilities for payment error—Fiscal Year 1992 and beyond.* Each State agency that fails to achieve its payment error rate goal during a fiscal year shall be liable as specified in the following paragraphs.

(i) For Fiscal Year 1992 and subsequent years, FCS shall announce a national performance measure within 30 days following the completion of the case review and the arbitration processes for the fiscal year. The national performance measure is the sum of the products of each State agency's payment error rates times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. Once announced, the national performance measure for a given fiscal year will not be subject to change.

(ii) For any fiscal year in which a State agency's payment error rate exceeds the national performance measure for the fiscal year, the State agency shall pay or have its share of administrative funding reduced by an amount equal to the product of:

(A) The value of all allotments issued by the State agency in the fiscal year; multiplied by

(B) The lesser of—

(*1*) The ratio of the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year, to the national performance measure for the fiscal year, or

(*2*) One; multiplied by

(C) The amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year.

(6) *Relationship to warning process and negligence.* (i) States' liability for payment error rates as determined above are not subject to the warning process of §276.4(d). However, State agencies shall be notified by certified mail, return receipt requested, at least sixty days before any billing and shall have sixty days following such notice to request a good cause waiver of part or all of their potential liability. The billing will not occur until after the expiration of the sixty days and the Secretary's determination of good cause when it is timely requested. If a determination is made that good cause did not exist, FCS shall promptly issue the billing. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in §277.16(c), FCS shall also have the option of billing a State directly or

using other claims collection mechanisms authorized under the Federal Claims Collection Act, depending upon the amount of the State's liability.

(ii) FCS shall not determine negligence (as described in § 276.3) based on the overall payment error rate for issuances to ineligible households and overissuances to eligible households in a State or political subdivision thereof. FCS may only establish a claim under § 276.3 for dollar losses from failure to comply, due to negligence on the part of the State agency (as defined under § 276.3), with specific certification requirements. Thus, FCS will not use the results of States' QC reviews to determine negligence.

(iii) Whenever a State is assessed for an excessive payment error rate, the State shall have the right to request an appeal in accordance with procedures set forth in part 283 of this chapter.

(7) *Good cause—(i) Events.* When a State agency with otherwise effective administration exceeds the tolerance level for payment errors as described in this section, the State agency may seek relief from liability claims that would otherwise be levied under this section on the basis that the State agency had good cause for not achieving the payment error rate tolerance. State agencies desiring such relief must file an appeal with the Department's Administrative Law Judge (ALJ) in accordance with the procedures established under part 283 of this chapter. The five unusual events described below are considered to have a potential for disputing program operations and increasing error rates to an extent that relief from a resulting liability or increased liability is appropriate. The occurrence of an event(s) does not automatically result in a determination of good cause for an error rate in excess of the national performance measure. The State agency must demonstrate that the event had an adverse and uncontrollable impact on program operations during the relevant period, and the event caused an uncontrollable increase in the error rate. Good cause relief will only be considered for that portion of the error rate/liability attributable to the unusual event. The following are unusual events which State agencies may use as a basis for requesting good cause relief and specific information that must be submitted to justify such requests for relief:

(A) Natural disasters such as those under the authority of the Stafford Act of 1988 (Pub. L. 100–707), which amended the Disaster Relief Act of 1974 (Pub. L. 93–288) or civil disorders that adversely affect program operations.

(*1*) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(*i*) The nature of the disaster(s) (e.g. a tornado, hurricane, earthquake, flood, etc.) or civil disorder(s)) and evidence that the President has declared a disaster;

(*ii*) The date(s) of the occurrence;

(*iii*) The date(s) after the occurrence when program operations were affected;

(*iv*) The geographic extent of the occurrence (i.e. the county or counties where the disaster occurred);

(*v*) The proportion of the food stamp caseload whose management was affected;

(*vi*) The reason(s) why the State agency was unable to control the effects of the disaster on program administration and errors;

(*vii*) The identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.).

(*viii*) The percentage of the payment error rate that resulted from the occurrence and how this figure was derived; and

(*ix*) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(*2*) The following criteria and methodology will be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of a disaster or civil disorder: Geographical impact of the disaster; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or

the duration of the disaster and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure. For example, a reduction in the amount may be made when a State agency's recent error rate history indicates that even absent the events described, the State agency would have exceeded the national performance measure in the review period.

(*3*) If a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a natural disaster or civil disorder using factual analysis, the waiver amount shall be evaluated using the following formula and methodology which measures both the duration and intensity of the event: Duration will be measured by the number of months the event had an adverse impact on program operations. Intensity will be a proportional measurement of the issuances for the counties affected to the State's total issuance. This ratio will be determined using issuance figures for the first full month immediately preceding the disaster. This figure will not include issuances made to households participating under disaster certification authorized by FCS and already excluded from the error rate calculations under § 275.12(g)(2)(vi). ''Counties affected'' will include counties where the disaster/civil disorder occurred, and any other county that the State agency can demonstrate had program operations adversely impacted due to the event (such as a county that diverted significant numbers of food stamp certification or administrative staff). The amount of the waiver of liability will be determined using the following linear equation: Ia/Ib × [M/12 or Mp/18] × L, where Ia is the issuance for the first full month immediately preceding the unusual event for the county affected; Ib is the State's total issuance for the first full month immediately preceding the unusual event; M/12 is the number of months in the subject fiscal year that the unusual event had an adverse impact on program operations; Mp/18 is the number of months in the last half (April through September) of the prior fiscal year that the unusual event had an adverse impact on program operations; L is the total amount of the liability for the fiscal year. Mathematically this formula could result in a waiver of more than 100% of the liability, however, no more than 100% of a State's liability will be waived for any one fiscal year. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of disasters or civil disorders that ended prior to the second half of the prior fiscal year will not be considered.

(B) Strikes by State agency staff necessary to determine Food Stamp Program eligibility and process case changes.

(*1*) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(*i*) Which workers (i.e. eligibility workers, clerks, data input staff, etc.) and how many (number and percentage of total staff) were on strike or refused to cross picket lines;

(*ii*) The date(s) and nature of the strike (i.e., the issues surrounding the strike);

(*iii*) The date(s) after the occurrence when program operations were affected;

(*iv*) The geographic extent of the strike (i.e. the county or counties where the strike occurred);

(*v*) The proportion of the food stamp caseload whose management was affected;

(*vi*) The reason(s) why the State agency was unable to control the effects of the strike on program administration and errors;

(*vii*) Identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*viii*) The percentage of the payment error rate that resulted from the strike and how this figure was derived; and

(*ix*) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(*2*) The following criteria shall be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of liability in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of the strike: Geographical impact of the strike; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the strike and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. For example, the amount of the waiver might be reduced for a strike that was limited to a small area of the State. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program upon the degree to which the error rate exceeded the national performance measure.

(*3*) If a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a strike using factual analysis, a waiver amount shall be evaluated by using the formula described in paragraph (e)(*7*)(i)(A) of this section. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of strikes that ended prior to the second half of the prior fiscal year will not be considered.

(C) A significant growth in food stamp caseload in a State prior to or during a fiscal year, such as a 15 percent growth in caseload. Caseload growth which historically increases during certain periods of the year will not be considered unusual or beyond the State agency's control.

(*1*) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(*i*) The amount of growth (both actual and percentage);

(*ii*) The time the growth occurred (what month(s)/year);

(*iii*) The date(s) after the occurrence when program operations were affected;

(*iv*) The geographic extent of the caseload growth (i.e. Statewide or in which particular counties);

(*v*) The impact of caseload growth;

(*vi*) The reason(s) why the State agency was unable to control the effects of caseload growth on program administration and errors;

(*vii*) The percentage of the payment error rate that resulted from the caseload growth and how this figure was derived; and

(*viii*) The degree to which the error rate exceeded the national performance measure in the subject fiscal year.

(*2*) The following criteria and methodology shall be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of unusual caseload growth: Geographical impact of the caseload growth; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the caseload growth and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure. For example, a reduction in the amount may be made when a State agency's recent error rate history indicates that even absent the events described, the State agency would have exceeded the national performance measure in the review period. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of caseload growth that ended prior to the second half of the prior fiscal year will not be considered.

(*3*) If the State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of caseload growth using factual analysis, the waiver amount shall be

evaluated using the following five-step calculation:

(*i*) Step 1, determine the average number of households certified to participate statewide in the Food Stamp Program for the base period consisting of the twelve consecutive months ending with March of the prior fiscal year;

(*ii*) Step 2, determine the percentage of increase in caseload growth from the base period (Step 1) using the average number of households certified to participate statewide in the Food Stamp Program for any twelve consecutive months in the period beginning with April of the prior fiscal year and ending with June of the current fiscal year;

(*iii*) Step 3, determine the percentage the error rate for the subject fiscal year, as calculated under paragraph (e)(5)(i) of this section, exceeds the national performance measure determined in accordance with paragraph (e)(5)(i) of this section;

(*iv*) Step 4, divide the percentage of caseload growth increase arrived at in step 2 by the percentage the error rate for the subject fiscal year exceeds the national performance measure as determined in step 3; and

(*v*) Step 5, multiply the quotient arrived at in step 4 by the liability amount for the current fiscal year to determine the amount of waiver of liability.

(*4*) Under this methodology, caseload growth of less than 15% and/or occurring in the last three months of the subject fiscal year will not be considered. Mathematically this formula could result in a waiver of more than 100% of the liability however, no more than 100% of a State's liability will be waived for any one fiscal year.

(D) A change in the Food Stamp Program or other Federal or State program that has a substantial adverse impact on the management of the Food Stamp Program of a State. Requests for relief from errors caused by the uncontrollable effects of unusual program changes other than those variances already excluded by §275.12(d)(2)(vii) will be considered to the extent the program change is not common to all States.

(*1*) When submitting a request for good cause relief based on unusual changes in the Food Stamp or other Federal or State programs, the State agency shall provide the following information:

(*i*) The type of change(s) that occurred;

(*ii*) When the change(s) occurred;

(*iii*) The nature of the adverse effect of the changes on program operations and the State agency's efforts to mitigate these effects;

(*iv*) Reason(s) the State agency was unable to adequately handle the change(s);

(*v*) Identification and explanation of the uncontrollable errors caused by the changes (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*vi*) The percentage of the payment error rate that resulted from the adverse impact of the change(s) and how this figure was derived; and

(*vii*) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(*2*) The following criteria will be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of unusual changes in the Food Stamp Program or other Federal and State programs; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the unusual changes in the Food Stamp Program or other Federal and State programs and the impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administrative of the program based upon the degree to which the error rate exceeded the national performance measure.

(E) A significant circumstance beyond the control of the State agency. Requests for relief from errors caused by the uncontrollable effect of the significant circumstance other than those specifically set forth in paragraphs (e)(7)(i)(A) through (e)(7)(i)(D) of this section will be considered to the extent

that the circumstance is not common to all States, such as a fire in a certification office.

(*1*) When submitting a request for good cause relief based on significant circumstances, the State agency shall provide the following information:

(*i*) The significant circumstances that the State agency believes uncontrollably and adversely affected the payment error rate for the fiscal year in question;

(*ii*) Why the State agency had no control over the significant circumstances;

(*iii*) How the significant circumstances had an uncontrollable and adverse impact on the State agency's error rate;

(*iv*) Where the significant circumstances existed (i.e. Statewide or in particular counties);

(*v*) When the significant circumstances existed (provide specific dates whenever possible);

(*vi*) The proportion of the food stamp caseload whose management was affected;

(*vii*) Identification and explanation of the uncontrollable errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*viii*) The percentage of the payment error rate that was caused by the significant circumstances and how this figure was derived; and

(*ix*) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(*2*) The following criteria shall be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of a significant circumstance beyond the control of the State agency, other than those set forth in paragraph (e)(7)(i)(E) of this section: Geographical impact of the significant circumstances; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the significant circumstances and the impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(ii) *Adjustments.* When good cause is found under the criteria in paragraphs (e)(7)(i)(A) through (e)(7)(i)(E) of this section, the waiver amount may be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure.

(iii) *Evidence.* When submitting a request to the ALJ for good cause relief, the State agency shall include such data and documentation as is necessary to support and verify the information submitted in accordance with the requirements of paragraph (e)(7) of this section so as to fully explain how a particular significant circumstance(s) uncontrollable affected its payment error rate.

(iv) *Finality.* The initial decision of the ALJ concerning good cause shall constitute the final determination for purposes of judicial review without further proceedings as established under the provisions of § 283.17 and § 283.20 of this chapter.

(8) *Determination of payment error rates.* As specified in § 275.3(c), FCS will validate each State agency's estimated payment error rate through rereviewing the State agency's active case sample and ensuring that its sampling, estimation, and data management procedures are correct.

(i) Once the Federal case reviews have been completed and all differences with the State agency have been identified, FCS shall calculate regressed error rates using the following linear regression equations.

(A) $y_1' = y_1 + b_1(X_1 - x_1)$, where $y_1'$ is the average value of allotments overissued to eligible and ineligible households; $y_1$ is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to the Federal finding, $b_1$ is the estimate of the regression coefficient

regressing the Federal findings of allotments overissued to eligible and ineligible households on the corresponding State agency findings, $x_1$ is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to State agency findings, and $X_1$ is the average value of allotments overissued to eligible and ineligible households in the full quality control sample according to State agency's findings. In stratified sample designs $Y_1$, $X_1$, and $x_1$ are weighted averages and $b_1$ is a combined regression coefficient in which stratum weights sum to 1.0 and are proportional to the estimated stratum caseloads subject to review.

(B) $y_2'=y_2+b_2(X_2-x_2)$, where $y_2'$ is the average value of allotments underissued to households included in the active error rate, $y_2$ is the average value of allotments underissued to participating households in the rereview sample according to the Federal finding, $b_2$ is the estimate of the regression coefficient regressing the Federal findings of allotments underissued to participating households on the corresponding State agency findings, $x_2$ is the average value of allotments underissued to participating households in the rereview sample according to State agency findings, and $X_2$ is the average value of allotments underissued to participating households in the full quality control sample according to the State agency's findings. In stratified sample designs $y_2$, $X_2$, and $x_2$ are weighted averages and $b_1$ is a combined regression coefficient in which stratum weights sum to 1.0 and are proportional to the estimated stratum caseloads subject to review.

(C) The regressed error rates are given by $r_1'=y_1'/u$, yielding the regressed overpayment error rate, and $r_2'=y_2'/u$, yielding the regressed underpayment error rate, where u is the average value of allotments issued to participating households in the State agency sample.

(D) After application of the adjustment provisions of paragraph (e)(8)(iii) of this section, the adjusted regressed payment error rate shall be calculated to yield the State agency's payment error rate for use in the reduced and enhanced funding determinations described in paragraphs (d) and (e) of this section. Prior to Fiscal Year 1986, the adjusted regressed payment error rate is given by $r_1''$. For Fiscal Year 1986 and after, the adjusted regressed payment error rate is given by $r_1''+r_2''$.

(ii) If FCS determines that a State agency has sampled incorrectly, estimated improperly, or has deficiencies in its QC data management system, FCS will correct the State agency's payment error rate based upon a correction to that aspect of the State agency's QC system which is deficient. If FCS cannot accurately correct the State agency's deficiency, FCS will assign the State agency a payment error rate based upon the best information available. After consultation with the State agency, this assigned payment error rate will then be used in the above described liability determination and in determinations for enhanced funding under paragraph (d) of this section. State agencies shall have the right to appeal assignment of an error rate in this situation in accordance with the procedures of part 283.

(iii) Should a State agency fail to complete all of its required sample size, FCS shall adjust the State agency's regressed error rates using the following equations:

(A) $r_1''=r_1'+2(1-C)S_1$, where $r_1''$ is the adjusted regressed overpayment error rate, $r_1'$ is the regressed overpayment error rate computed from the formula in paragraph (e)(8)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and $S_1$ is the standard error of the State agency sample overpayment error rate. If a State agency completes all of its required sample size, then $r_1''=r_1'$.

(B) $r_2''=r_2'+2(1-C)S_2$, where $r_2''$ is the adjusted regressed underpayment error rate, $r_2'$ is the regressed underpayment error rate computed from the formula in paragraph (e)(8)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and $S_2$ is the standard error of the State agency sample underpayment error rate. If a State agency completes all of its required sample size, then $r_2''=r_2'$.

(9) *FCS Timeframes.* FCS shall determine, and announce the national average payment error rate for fiscal year within 30 days following the completion of the case review process and all arbitrations of State agency-Federal difference cases for that fiscal year, and at the same time FCS shall notify all State agencies of their individual payment error rates and payment error rate liabilities, if any. The case review process and the arbitration of all difference cases shall be completed not later than 180 days after the end of fiscal year. FCS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the end of the fiscal year reporting period in which the claim arose unless an administrative appeal relating to the claim is pending. FCS is not bound by the timeframes referenced in this subparagraph in cases where a State fails to submit QC data expeditiously to FCS and FCS determines that, as a result, it is unable to calculate the State's payment error rate and payment error rate liability within the prescribed timeframe.

(10) *Interest charges.* (i) To the extent that a State agency does not pay a claim established under § 275.23(e)(5) within 30 days from the date on which the bill for collection (after a determination on any request for a waiver for good cause) is received by the State agency, the State agency shall be liable for interest on any unpaid portion of such claim accruing from the date on which the bill for collection was received by the State agency. This situation applies unless the State agency appeals the claim under part 283 of the regulations. If the State agency agrees to pay the claim through reduction in Federal financial participation for administrative costs, this agreement shall be considered to be paying the claim. If the State agency appeals such claim (in whole or in part), the interest on any unpaid portion of the claim shall accrue from the date of the decision on the administrative appeal, or from a date that is one year after the date the bill is received, whichever is earlier, until the date the unpaid portion of the payment is received.

(ii) If the State agency pays such claim (in whole or in part) and the claim is subsequently overturned through administrative or judicial appeal, any amounts paid by the State agency above what is actually due shall be promptly returned with interest, accruing from the date the payment was received until the date the payment is returned.

(iii) Any interest assessed under this paragraph shall be computed at a rate determined by the Secretary based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates during the period such interest accrues. The bond equivalent is the discount rate (i.e., the price the bond is actually sold for as opposed to its face value) determined by the weekly auction (i.e., the difference between the discount rate and face value) converted to an annualized figure. The Secretary shall use the investment rate (i.e., the rate for 365 days) compounded in simple interest for the period for which the claim is not paid. Interest billings shall be made quarterly with the initial billing accruing from the date the interest is first due. Because the discount rate for Treasury bills is issued weekly, the interest rate for State agency claims shall be averaged for the appropriate weeks.

(11) *Suspension and waiver of liabilities for investments in program management activities.* In connection with the settlement of all or a portion of a QC liability for FY 1986 and subsequent QC review periods, the Department may suspend and subsequently waive all or part of a State agency's payment error rate liability claim based on the State agency's offsetting investment in program management activities intended to reduce errors measured by the QC system. A State agency may submit a request to the Department for review of planned investments in program management activities intended to reduce error rates as part of a proposed settlement of all or a portion of a QC liability at any time during the QC liability claim process.

(i) The State agency's investment plan activity or activities must meet the following conditions to be accepted by the Department:

(A) The activity or activities must be directly related to error reduction in

the ongoing program, with specific objectives regarding the amount of error reduction, and type of errors that will be reduced. The costs of demonstration, research, or evaluation projects under sections 17 (a) through (c) of the Act will not be accepted. The State agency may direct the investment plan to a specific project area or implement the plan on a statewide basis. In addition, the Department will allow an investment plan to be tested in a limited area, as a pilot project, if the Department determines it to be appropriate. A request by the State agency for a waiver of existing rules will not be acceptable as a component of the investment plan. The State agency must submit any waiver request through the normal channels for approval and receive approval of the request prior to including the waiver in the investment plan. Waivers that have been approved for the State agency's use in the ongoing operation of the program may continue to be used.

(B) The program management activity must represent a new or increased expenditure. The proposed activity must also represent an addition to the minimum program administration required by law for State agency administration including corrective action. Therefore, basic training of eligibility workers or a continuing corrective action from a Corrective Action Plan shall not be acceptable. The State agency may include a previous initiative in its plan; however, the State agency would have to demonstrate that the initiative is entirely funded by State money, represents an increase in spending and there are no remaining Federal funds earmarked for the activity.

(C) Investment activities must be funded in full by the State agency, without any matching Federal funds until the entire investment amount agreed to is spent. Amounts spent in excess of the settlement amount included in the plan may be subject to Federal matching funds.

(ii) The request shall include:

(A) a statement of the amount of money that is a quality control liability claim that is to be offset by investment in program improvements;

(B) a detailed description of the planned program management activity;

(C) planned expenditures, including time schedule and anticipated cost breakdown;

(D) anticipated impact of the activity, identifying the types of errors expected to be affected;

(E) documentation that the funds would not replace expenditures already earmarked for an ongoing effort; and

(F) a statement that the expenditures are not simply a reallocation of resources.

(iii) The State's and the Department's agreement to settle all, part, or none of the QC liability claim under this paragraph is final and not subject to further appeal within the Department. An agreement to settle all or part of a State agency's QC liability claim will result in suspension of the claim for the specified amount, pending the State's satisfactory completion of the initiative or action taken by the Department under the provisions of paragraph (e)(11)(vi) of this section.

(iv) The State agency shall submit modifications to the plan to the Department for approval, prior to implementation. Expenditures made prior to approval by the Department may not be used in offsetting the liability.

(v) Each State agency which has all or part of a claim suspended under this provision shall submit periodic documented reports according to a schedule in its approved investment plan. At a minimum, these reports shall contain:

(A) A detailed description of the expenditure of funds, including the source of funds and the actual goods and services purchased or rented with the funds;

(B) A detailed description of the actual activity; and

(C) An explanation of the activity's effect on errors, including an explanation of any discrepancy between the planned effect and the actual effect.

(vi) Any funds that the State agency's reports do not document as spent as specified in the investment plan may be withdrawn by the Department from the reduction in QC liability. Before the reduction is withdrawn, the

State agency will be provided an opportunity to provide the missing documentation.

(vii) If the reduction in QC liability is withdrawn, the Department shall charge interest on the funds not spent according to the plan, in accordance with section 602 of the Hunger Prevention Act of 1988, which amended section 13(a)(1) of the Food Stamp Act of 1977.

(viii) The Department's determination to withdraw a reduction in QC liability is not appealable within the Department.

[Amdt. 160, 45 FR 15912, Mar. 11, 1980, as amended by Amdt. 260, 49 FR 6311, Feb. 17, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984. Redesignated and amended at 52 FR 3410, Feb. 4, 1987; Amdt. 295, 52 FR 29659, Aug. 11, 1987; Amdt. 328, 56 FR 60052, Nov. 27, 1991; Amdt. 325, 57 FR 2828, Jan. 24, 1992; Amdt. 327, 57 FR 44486, Sept. 28, 1992; 57 FR 47163, Oct. 14, 1992; Amdt. 348, 59 FR 34561, July 6, 1994; ; Amdt. 366, 62 FR 29659, June 2, 1997]

## PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

Sec.

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EDITORIAL NOTE: OMB control numbers relating to this part 276 are contained in §271.8.

### §276.1 Responsibilities and rights.

(a) *Responsibilities.* (1) State agencies shall be responsible for establishing and maintaining secure control over coupons and cash for which the regulations designate them accountable. Except as otherwise provided in these regulations, any shortages or losses of coupons and cash shall strictly be a State agency liability and the State agency shall pay to FCS, upon demand, the amount of the lost or stolen coupons or cash, regardless of the circumstances.

(2) State agencies shall be responsible for preventing losses or shortages of Federal funds in the issuance of benefits to households participating in the Program. FCS shall strictly hold State agencies liable for all losses, thefts and unaccounted shortages that occur during issuance, unless otherwise specified. Issuance functions begin with the State agency's creation of a record-for-issuance to generate each month's issuances from the master issuance file. Shortages or losses which result from any functions that occur prior to the creation of the record-for-issuance are subject to either paragraph (a)(3) of this section or subpart C—Quality Control (QC) Reviews, of part 275—Performance Reporting System.

(3) State agencies shall be responsible for preventing losses of Federal funds in the certification of households for participation in the Program. If FCS makes a determination that there has been negligence or fraud on the part of a State agency in the certification of households for participation in the Program, FCS is authorized to bill the State agency for an amount equal to the amount of coupons issued as a result of the negligence or fraud.

(4) State agencies shall be responsible for efficiently and effectively administering the Program by complying with the provisions of the Act, the regulations issued pursuant to the Act, and the FCS-approved State Plan of Operation. A determination by FCS that a State agency has failed to comply with any of these provisions may result in FCS seeking injunctive relief to compel compliance and/or a suspension or disallowance of the Federal share of the State agency's administrative funds. FCS has the discretion to determine in each instance of noncompliance, whether to seek injunctive relief or to suspend or disallow administrative funds. FCS may seek injunctive relief *and* suspend or disallow funds simultaneously or in sequence.

(b) *Rights.* State agencies may appeal all claims brought against them by FCS and shall be afforded an administrative review by a designee of the Secretary as provided in §276.7. State agencies may seek judicial review of any final administrative determination made by the Secretary's designee, as provided in §276.7(j).

[54 FR 7016, Feb. 15, 1989]

**§ 276.2 State agency liabilities.**

(a) *General provisions.* Notwithstanding any other provision of this subchapter, State agencies shall be responsible to FCS for any financial losses involved in the acceptance, storage and issuance of coupons. All coupon issuance shall be documented, and the State agency shall make available to the Department all primary documentation (or secondary, if the primary has been inadvertently destroyed) when required to do so. State agencies shall pay to FCS, upon demand, the amount of any such losses. State agencies shall be responsible for the monthly increased Federal benefit costs involved in granting households an income exclusion for child support payments as described in § 273.9(c)(12). State agencies shall reimburse FCS the amount of such increased cost in accordance with paragraph (e) of this section.

(b) *Coupon shortages, losses, unauthorized issuances, overissuances and undocumented issuances.* (1) State agencies shall be strictly liable for:

(i) Coupon shortages and losses that occur any time after coupons have been accepted by receiving points within the State and that occur during storage or the movement of coupons between bulk storage point issuers and claims collection points within the State;

(ii) Losses resulting from authorization documents lost in transit from a manufacturer to the State agency and untransacted authorization documents lost in transit from an issuer to the State agency; and

(iii) The value of coupons overissued and coupons issued without authorization, except for those duplicate issuances in the correct amount that are the result of replacement issuances made in accordance with § 274.6. Overissuances and unauthorized issuances for which State agencies are liable include, but are not limited to: Single unmatched issuances, duplicates made that are not in accordance with § 274.6, and transacted authorization documents that are altered, counterfeit, from out-of-State or expired (including those unsigned by the designated household member and/or not date stamped by the issuer).

(2) Coupon shortages and/or losses for which State agencies shall be held strictly liable include, but are not limited to, the following:

(i) Thefts;

(ii) Embezzlements;

(iii) Cashier errors (e.g., errors by the personnel of issuance offices in the counting of coupon books);

(iv) Coupons lost in natural disasters if a State agency cannot provide reasonable evidence that the coupons were destroyed and not redeemed;

(v) Issuances which cannot be supported by the required documentation;

(vi) Issuances made to households not currently certified;

(vii) Issuance loss during an official investigation, unless the investigation was reported *directly* to FCS prior to the loss; and

(viii) Unexplained causes.

(3) State agencies shall submit written reports on significant losses unless those losses were investigated by the Office of the Inspector General, USDA.

(4) A State agency shall be held strictly liable for mail issuance losses that are in excess of the tolerance level that corresponds to the preselected reporting unit. Each State agency shall select one of the three following units annually and report the selection as provided in §§ 272.2(a)(2) and 272.2(d)(1)(iii). Where reporting units issue less than $300,000 in mail issuance in a quarter, the State agency shall be liable for all losses in excess of $1,500 for the quarter.

(i) If a State agency elects to report and have liabilities based on an existing county or project area level of mail issuance, then the State agency shall be strictly liable to FCS for the value of all mail issuance losses in excess of five-tenths (.5) percent of the dollar value of each reporting unit's quarterly mail issuance. This level shall be used if the State agency does not designate one of the three levels herein by May 15, 1989, and by August 15 in years thereafter.

(ii) If a State agency elects to report and have liabilities based on an existing administrative level higher than the county or project area provided in paragraph (b)(4)(i) of this section, but lower than the Statewide level of mail issuance provided in paragraph

(b)(4)(iii) of this section, then the State agency shall be strictly liable to FCS for the value of all mail issuance losses in excess of thirty-five hundreths (.35) percent per quarter of the dollar value of each reporting unit's quarterly mail issuance. State agencies shall not create new administrative units for the sole purpose of reporting mail issuance losses.

(iii) If a State agency elects to report and have liabilities based on a State level of mail issuance, then the State agency shall be strictly liable to FCS for the value of all mail issuance losses in excess of thirty hundreths (.30) percent per quarter of the dollar value of each State agency's total quarterly mail issuance.

(iv) FCS reserves the right to make all determinations on reporting requirements and on administrative divisions within the State for the purpose of determining and assessing liability for mail issuance losses. FCS also reserves the right to revise such determinations as necessary. Revisions will be communicated to State agencies by FCS. The liability assessment will be based on the revised reporting requirement for the next full fiscal quarter.

(v) For the purpose of this section, ''mail issuance'' means all original coupon issuances distributed through the mail. ''Mail loss'' means all replacements of mail issuances except for replacements of returned mail issuances.

(vi) The State agency's liability shall be computed using data from Form FCS–259, Food Stamp Mail Issuance Report, or alternative reporting document accepted in advance by FCS and the State agency, which is submitted for the quarter for the particular reporting unit agreed to by FCS and the State agency, as provided in §§ 272.2(a)(2) and 272.2(d)(1)(iii).

(5) State agencies shall be held strictly liable for the following overissuances:

(i) The value of overissued coupons issued as a result of a State agency's failure to comply with a directive issued by FCS in accordance with the provisions of § 271.7, to reduce, suspend or cancel allotments;

(ii) The value of coupons overissued by the State agency as a result of a court order or settlement agreement of a court suit which was not reported to FCS in accordance with the provisions of § 272.4(e); and

(iii) The value of coupons overissued as a result of a State agency entering into an out-of-court settlement of a court suit, the terms of which violate Federal laws or regulations.

(6) Coupon shortages and losses shall be determined from the Form FCS–250, Food Coupon Accountability Report and its supporting documents and from the Form FCS–46, Issuance System Reconciliation Report. Losses of Federal moneys resulting from overissuances shall be determined from sources such as audits, Performance Reporting System Reviews, Federal reviews, investigations and explanatory reports prepared by the State agency.

(7) State agencies shall be held strictly liable for overissuances resulting from Electronic Benefit Transfer system errors and unauthorized account activities. Such overissuances shall include but not be limited to: Overissuances to household accounts that are accessed and used by households, replacement benefits to a household's account due to unauthorized use of the benefits in a household's account, benefits drawn from an EBT account after the household has reported that the EBT card is lost or stolen to the State or its agent, overdraft situations due to the use of manual back-up procedures approved by the State agency, overcredits to a retailer account and transfer of funds to an illegitimate account.

(c) *Cash Losses.* State agencies are liable to FCS for cash losses when money collected by State agencies from recipient claims has been lost, stolen or otherwise not remitted to FCS in accordance with the provision of § 273.18(h). The amount of such losses shall be determined from the sources outlined in paragraph (6) of this section.

(d) *State agency payment to FCS.* State agencies shall be billed for the exact amount of losses specified in this section. If a State agency fails to pay the billing, FCS shall offset the amount of loss from the State agency's Letter of Credit in accordance with § 277.16(c).

(e) *Title IV reimbursements.* (1) State agencies shall be liable to FCS for the increased dollar value of coupon allotments resulting from providing households with an income exclusion for child support payments as described in § 273.9(c)(12) based on one of the following methods:

(i) For each month the State agency grants the income exclusion to a household, the State agency shall reimburse FCS for the monthly difference between the household's benefit level which includes the exclusion and the benefit level the household would have received without the exclusion.

(ii) On a monthly basis, State agencies shall total the actual amount of income exclusion granted to affected households and shall reimburse FCS 30 percent of such total.

(2) The State agency shall utilize only one reimbursement method and that method shall be applied for determining a reimbursement amount for all affected cases in the caseload. State agencies may switch from one method to the other on an annual basis, but not on a case-by-case basis.

(3) The State agency shall reimburse FCS through an adjustment to the Letter of Credit (LOC) unless it requests or has requested that it be allowed to pay by check. The reimbursement amount shall be reported quarterly on the Form FCS–209, Status of Claims Against Households, to be offset against LOC credit adjustments reported on that form. The State agency may request that FCS accept checks from the State for the amount due FCS. If a State agency fails to pay FCS the amount due as reported on the FCS–209, FCS shall offset the amount due from the State agency's Letter of Credit. The State agency shall maintain monthly records which detail the computation of reimbursement amounts reported on the Form FCS–209 for audit purposes.

[54 FR 7016, Feb. 15, 1989, as amended at 54 FR 51351, Dec. 15, 1989; 57 FR 11259, Apr. 1, 1992; 57 FR 44791, Sept. 29, 1992; Amdt. 342, 59 FR 2733, Jan. 19, 1994]

### § 276.3 Negligence or fraud.

(a) *General.* If FCS determines that there has been negligence or fraud on the part of the State agency in the certification of applicant households, the State agency shall, upon demand, pay to FCS a sum equal to the amount of coupons issued as a result of such negligence or fraud.

(b) *Negligence provisions.* (1) FCS may determine that a State agency has been negligent in the certification of applicant households if a State agency disregards Food Stamp Program requirements contained in the Food Stamp Act, the regulations issued pursuant to the Act, the FCS-approved State Plan of Operation and a loss of Federal funds results or a State agency implements procedures which deviate from food stamp requirements contained in the Food Stamp Act, the food stamp regulations, the FCS-approved State Plan of Operation without first obtaining FCS approval, and the implementation of the procedures results in a loss of Federal funds.

(2) In computing amounts of losses of Federal funds due to negligence, FCS may use actual, documented amounts or amounts which have been determined through the use of statistically valid projections. When a statistically valid projection is used, the methodology will include a 95 percent, one-sided confidence level.

(3) FCS will base its determinations of negligence on information drawn from any of a number of sources. These information sources include, but are not limited to, State and Federal Performance Reporting reviews, State and Federal audits and investigations, State corrective action plans and any required reports.

(4) Failure by the State agency to remit payment upon demand, within the specified time period, may result in FCS recovering the lost funds through offsets to the State agency's Letter of Credit, in accordance with § 277.16(c).

(c) *Fraud provisions.* For purposes of this subsection, the term fraud shall mean the wrongful acquisition or issuance of food coupons by the State agency or its officers, employees or agents, including issuance agents, through false representation or concealment of material facts. State agencies shall be liable to FCS for the amount of loss of Federal funds as a result of fraud. Failure by the State

agency to remit payment on demand by FCS, within the time period specified, may result in offsets to the Letter of Credit in accordance with §277.16(c).

[Amdt. 168, 45 FR 77263, Nov. 21, 1980, as amended by Amdt. 262, 49 FR 50598, Dec. 31, 1984; Amdt. 356, 59 FR 29713, June 9, 1994]

**§276.4 Suspension/disallowance of administrative funds.**

(a) *General provisions.* (1) FCS shall make determinations of the efficiency and effectiveness of State agencies' administration of the Food Stamp Program in accordance with the provisions of §275.25. When making such determinations, FCS shall use all information that is available relating to State agencies' administration of the Program. This information includes, but is not limited to, information received from Performance Reporting System reviews, Federal reviews, audits, investigations, corrective action plans, financial management reviews, and the public.

(2) FCS may determine a State agency's administration of the Program to be inefficient or ineffective if the State agency fails to comply with the food stamp requirements established by the Food Stamp Act, the regulations issued pursuant to the Act, or the FCS-approved State Plan of Operation.

(3) If FCS determines that a State agency's administration of the Program is inefficient or ineffective, FCS may warn the State agency that a suspension and/or disallowance of administrative funds is being considered. After a State agency receives a warning, FCS may either suspend or disallow administrative funds or take both actions in sequence, depending on the statement in the warning.

(b) *Suspension.* A suspension of funds is an action by FCS to temporarily withhold all or a portion of the Federal share of one or more of the cost categories of a State agency's budget for administration of the Food Stamp Program. Suspensions of funds shall remain in effect until FCS determines that a State agency has taken adequate corrective action to correct the problem causing the suspension, in which event the suspension will be rescinded, or until FCS decides to disallow the suspended funds. FCS shall suspend funds in accordance with §277.16.

(c) *Disallowance.* (1) A disallowance of funds is an action by FCS in which reimbursement is denied for otherwise reimbursable administrative costs claimed by a State agency in one or more of the cost categories of a State agency's budget for Program administration.

(2) In accordance with §277.16, FCS has the option of disallowing funds in another cost category, or all or a portion of the entire Letter of Credit if the disallowance is based on a finding that the State agency failed to take a required action. FCS may disallow funds after previously suspending such funds or may disallow funds immediately following the expiration of the formal warning under the conditions specified in paragraph (e) of this section.

(d) *Warning process.* Prior to taking action to suspend or disallow Federal funds, except those funds which are disallowed when a State agency fails to adhere to the cost principles of part 277 and appendix A, FCS shall provide State agencies with written advance notification that such action is being considered. If a State agency does not respond to such an advance notification to the satisfaction of FCS, FCS shall provide the State agency with a formal warning of the possibility of suspension or disallowance action. However, when a State agency fails to meet the objectives in a corrective action plan, FCS may omit the advance notification and immediately issue a formal warning.

(1) *Advance notification.* Immediately upon becoming aware that a deficiency or deficiencies in a State agency's administration of the Program may warrant the suspension and/or disallowance of Federal funds, FCS shall advise the State agency in writing of the deficiency and shall provide a specific period of time for correction of such deficiency or deficiencies. The time period allowed the State agency for corrective action will vary according to the nature of the deficiency.

(2) *Formal warning.* FCS shall issue a formal warning to a State agency if the State fails to correct to the satisfaction of FCS the deficiencies noted in an advance notification within the time

specified in the advance notification. FCS may also issue a formal warning to a State agency without first issuing an advance notification if a State agency fails to comply with a corrective action plan.

(i) Formal warnings shall include the following information:

(A) Specific descriptions of the deficiencies, explaining how the State agency is out of compliance with Program requirements;

(B) A Statement as to whether Federal funds will be suspended, disallowed or both, if appropriate;

(C) The amount of Federal funds that will be suspended and/or disallowed or an estimate of the amount if actual cost are unavailable; and

(D) A statement of FCS' willingness to assist State agencies is resolving the deficiencies.

(ii) A State agency shall have 30 days from receipt of a formal warning to submit evidence that it is in compliance or to submit a corrective action proposal, including the date the State agency will be in compliance.

(iii) When the deficiency cannot be corrected within 30 days of receipt of a formal warning but the State agency submits an acceptable plan for correcting the deficiency, FCS shall hold the formal warning in abeyance pending completion of the actions contained in the plan within the time specified in the plan.

(iv) FCS shall cancel a formal warning when the State agency submits evidence that shows, to the satisfaction of FCS, that the deficiency has been eliminated.

(e) *Suspension/disallowance of funds.* The Administrator of FCS shall notify State agencies in writing by certified mail or through personal service that administrative funds are being suspended or disallowed. Such action may occur when any of the following situations arise:

(1) A State agency fails to respond to the deficiencies cited in a formal warning within 30 days of receiving the warning;

(2) The response by a State agency to the deficiencies cited in a formal warning is unsatisfactory to FCS; or

(3) A State agency fails to meet the commitments it made in its corrective action proposal and a formal warning had been held in abeyance pending completion of that corrective action.

(f) *Appeals.* After FCS has taken action to disallow Federal funds the State agency may request an appeal in accordance with the procedures specified in § 276.7.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980, as amended by Amdt. 266, 52 FR 3410, Feb. 4, 1987]

### § 276.5 Injunctive relief.

(a) *General.* If FCS determines that a State agency has failed to comply with the Food Stamp Act, the regulations issued pursuant to the Act, or the FCS-approved State Plan of Operations, the Secretary may seek injunctive relief against the State agency to require compliance. The Secretary may request injunctive relief concurrently with negligence billings and sanctions against State agencies affecting administrative funds.

(b) *Requesting injunctive relief.* Prior to seeking injunctive relief to require compliance, FCS shall notify the State agency of the determination of noncompliance and provide the State agency with a specific period of time to correct the deficiency. The Secretary shall have the discretion to determine the time periods State agencies will have to correct deficiencies. If the State agency does not correct the failure within the specified time period and the Department decides to seek injunctive relief, the Secretary shall refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980]

### § 276.6 Good cause.

(a) When a State agency has failed to comply with provisions of the Act, the regulations issued pursuant to the Act, or the FCS-approved State Plan of Operation, and, thus, is subject to the suspension/disallowance and injunctive relief provisions in §§ 276.4 and 276.5, FCS may determine that the State had good cause for the noncompliance. FCS shall evaluate good cause in these situations on a case-by-case basis, based on any one of the following criteria:

(1) Natural disasters or civil disorders that adversely affect Program operations;

(2) Strikes by State agency staff;

(3) Change in the Food Stamp Program or other Federal or State programs that result in a substantial adverse impact upon a State agency's management of the Program; and

(4) Any other circumstances in which FCS determines good cause to exist.

(b) If FCS determines that food cause existed for a State agency's failure to comply with required provisions and standards, FCS shall not suspend or disallow administrative funds nor seek injunctive relief to compel compliance with the provisions and standards.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980]

### §276.7 Administrative review process.

(a) *General.* (1) Whenever FCS asserts a claim against a State agency, the State agency may appeal the claim by requesting an administrative review. FCS claims that may be appealed are billings resulting from financial losses involved in the acceptance, storage, and issuance of coupons (§276.2), billings based on charges of negligence or fraud (§276.3), and disallowances of Federal funds for State agency failures to comply with the Food Stamp Act, regulations, or the FCS-approved State Plan of Operations (§276.4).

(2) A State agency aggrieved by a claim shall have the option of requesting a hearing to present its position in addition to a review of the record and any written submission presented by the State agency. Unless circumstances warrant differently, hearings of appeals of negligence claims and disallowances of Federal funds shall be before an Appeals Board and hearings of appeals of other claims shall be before a single hearing official. In any case, the people reviewing the claim shall be people who were not involved in the decision to file the claim.

(b) *Notice of claim.* FCS shall provide a notice by certified mail or personal service when asserting claims against State agencies.

(c) *Filing an appeal.* A State agency aggrieved by claims asserted against it may file written appeals with the Secretary, U.S. Department of Agriculture, c/o the Executive Secretary, State Food Stamp Appeals Board, Food and Consumer Service, USDA, Washington, DC 20250, requesting an opportunity to present information in support of its position. The State agency shall attach a copy of the FCS claim to its appeal. Appeals must be filed with the Executive Secretary or postmarked within 10 days of the date of delivery of the notice of claim. If the State agency does not appeal within the prescribed 10-day period, the FCS decision on the claim shall be final. No extension shall be granted in the time allowed for filing an appeal.

(d) *Computation of time.* In computing any period of time prescribed or allowed under these procedures, the day of delivery of any notice of action, acknowledgment, or reply shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or Federal or State holiday. In that case, the period runs until the end of the next day which is not a Saturday, Sunday or Federal or State holiday.

(e) *Stay of administrative action.* With one exception, the filing of a timely appeal and request for administrative review shall automatically stay the action of FCS to collect the claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final determination has been issued. The exceptions to this provision are those claims that are asserted against State agencies due to State agency failure to comply with an order to reduce, suspend or cancel benefits in accordance with §271.7. In situations where a State agency does not reduce, suspend or cancel benefits as directed and FCS takes action to disallow administrative funds or bill the State agency, the disallowance and/or billing shall remain in effect during the review process. Should the Appeals Board uphold the State agency, all disallowed funds and/or funds collected as a result of the billing shall be restored to the State agency promptly.

(f) *Acknowledging an appeal.* Upon receipt of an appeal and request for administrative review, the Executive Secretary shall provide the State agency with a written acknowledgment of

the appeal, including a statement of whether or not the appeal is timely and can be accepted. A copy of each acknowledgment shall be provided to FCS. The acknowledgment of a timely and acceptable appeal and request for administrative review shall also include a copy of Secretary's Memorandum No. 2003, Revised, ''State Food Stamp Appeals Board,'' and the identity of the Appeals Board member(s) designated by the Secretary to review the claim.

(g) *Submitting additional information.* (1) State agencies shall have 30 days from their request for an appeal to submit five sets of the following information to the Executive Secretary of the Appeals Board:

(i) A clear, concise identification of the issue or issues in dispute;

(ii) The State agency's position with respect to the issue or issues in dispute;

(iii) The pertinent facts and reasons in support of the State agency's position with respect to the issue or issues in dispute;

(iv) All pertinent documents, correspondence and records which the State agency believes are relevant and helpful toward a more thorough understanding of the issue or issues in dispute;

(v) The relief sought by the State agency;

(vi) The identity of the person(s) presenting the State agency's position when a hearing is involved; and

(vii) A list of prospective State agency witnesses when a hearing is involved.

(2) At the request of the Executive Secretary, FCS shall promptly submit five complete sets of all documents, correspondence and records compiled by FCS in support of its claim.

(3) The Executive Secretary shall provide each person hearing an appeal and FCS with a complete set of the State agency information when it is received. The Executive Secretary shall also provide each person hearing an appeal and the State agency with a complete set of the information supplied by FCS when it is received.

(h) *Scheduling and conducting hearings.* When a hearing is afforded, the Appeals Board or hearing official has up to 60 days from receipt of the State agency's information, outlined in paragraph (g) of this section, to schedule and conduct the hearing. The Executive Secretary shall advise the State agency of the time, date and location of the hearing at least 10 days in advance of the hearing. The State agency is solely responsible for ensuring the attendance of all State agency witnesses at the hearing.

(1) A hearing is an informal proceeding designed to permit the State agency an opportunity to present its position before a neutral third party. Because the final determination is subject to judicial review and trial *de novo,* the Appeals Board and hearing official shall not be bound by the rules of civil procedure applicable in the court or by the adjudicatory requirements of the Administrative Procedures Act.

(2) The Appeals Board Chairman, his designee or the hearing official is the presiding officer at the hearing. The presiding officer shall have full authority to ensure a fair and impartial proceeding, avoid delays, maintain order and decorum, receive evidence, examine witnesses, and otherwise regulate the course of the hearing. The State agency may represent itself at the hearing or be represented by counsel.

(3) The Appeals Board or hearing official shall receive into evidence the oral testimony of State agency witnesses and any documents which are relevant and material. Neither the Department nor FCS is required to present witnesses at the hearing. However, the Department and FCS shall make staff available to provide any information or clarification requested by the Appeals Board or hearing official. Under no circumstances shall the Department or FCS introduce new evidence at the hearing. Departmental and FCS staff, as well as State agency witnesses, shall be subject to examination by the Appeals Board or hearing official. Departmental and FCS staff shall not be subject to cross-examination by State agency representative or counsel. Likewise, State agency witnesses shall not be subject to cross-examination by Departmental or FCS staff. Each side shall be permitted to make a closing statement to the Appeals Board or

hearing official upon completion of the taking of evidence and testimony.

(4) FCS and the State agency shall have the opportunity to submit additional written information to the Appeals Board or hearing official within 10 days after the close of the hearing. No new factual material may be introduced except as it directly relates to evidence or testimony presented at the hearing. Five complete sets of such information must be filed with the Executive Secretary or postmarked prior to the expiration of the 10-day deadline for it to be considered.

(5) An official verbatim transcript of each hearing shall be kept on file in the Office of the Executive Secretary for public inspection. A copy shall be furnished to FCS and the State agency. Anyone wishing to purchase a copy may make arrangements to do so with the commercial reporting service involved.

(i) *Final determination.* (1) When a hearing is afforded, a final determination shall be made within 30 days of the hearing, and the final determination shall take effect 30 days after delivery of the notice of this final decision to the State agency. When a hearing is not held, a final determination shall be made within 30 days after receipt of the State agency's information. The final determination shall take effect 30 days after delivery of the notice of the final decision to the State agency.

(2) The Appeals Board or hearing official shall either uphold the claim, deny the claim, or adjust the claim downward in such amounts and for such reasons as the Appeals Board or hearing official shall determine and declare. The final determination is not subject to reconsideration.

(j) *Judicial review.* State agencies aggrieved by the final determination may obtain judicial review and trial *de novo* by filing a complaint against the United States within 30 days after the date of delivery of the final determination, requesting the court to set aside the final determination. The final determination shall remain in effect during the period the judicial review or any appeal therefrom is pending unless the court temporarily stays such administrative action after a showing that irreparable injury will occur absent a stay and that the State agency is likely to prevail on the merits of the case.

(k) *Extension of time.* (1) No extension of time shall be permitted a State agency in which to file an initial request for an administrative review. All other requests from the State agency or from FCS for the extension of any deadline contained in §276.7 of these regulations or imposed by the Appeals Board or hearing official shall be granted only for good cause shown and only when received by the Executive Secretary before the expiration of the particular deadline involved. All requests for an extension shall be in writing. Filing a request for an extension stops the running of the prescribed period of time. When a request for an extension is granted, the requester shall be notified in writing of the amount of additional time granted. When a request is denied for being untimely or for cause, the requester shall be notified and the prescribed period of time shall resume from the date of denial.

(2) The Appeals Board or hearing official may grant itself such additional time as it may reasonably require to complete any of its assigned responsibilities. If the Appeals Board or hearing official does find it necessary to grant itself an extension of time, the Executive Secretary shall notify all parties in writing.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980, as amended by Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 356, 59 FR 29714, June 9, 1994]

# PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

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APPENDIX A TO PART 277—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO ADMINISTRATION OF THE FOOD STAMP PROGRAM BY STATE AGENCIES

AUTHORITY: 7 U.S.C. 2011–2032.

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EDITORIAL NOTE: OMB control numbers relating to this part 277 are contained in § 271.8.

### § 277.1 General purpose and scope.

(a) *Purpose.* This part establishes uniform requirements for the management of administrative funds provided to State agencies and sets forth principles for claiming costs of activities paid with administrative funds under the Food Stamp Program, and the Food Distribution Program and Food Stamp Program on Indian Reservations.

(b) *Scope and applicability.* Upon compliance with the provisions of this part, payments to State agencies will be made for cost(s) incurred for administration of the Food Stamp Program and for administration of the Food Distribution Program on Indian Reservations. To ensure maximum practical uniformity, deviation(s) by a State agency from this part may be authorized only when necessary to meet program objectives, to conserve program funds, or when essential to the public interest. However, any deviations from this part must be authorized by the Administrator of FCS.

### § 277.2 Definitions.

For the purpose of this part the term:

*Accrued expenditures* means the charges incurred by the State agency during a given period for liabilities incurred, benefits received or for goods and services used during this period.

*Accrued income* means the net value of earnings during a given period resulting from services and goods provided whether or not payment has been realized.

*Acquisition cost* refers to nonexpendable personal property acquired by purchase and means the net invoice price of the property including any attachments, accessories or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Ancillary charges such as taxes, duty, protection in-transit insurance, freight or installation shall be included in or excluded from acquisition cost in accordance with the State agency's regular accounting practices.

*Approval or authorization by FCS* means documentation evidencing consent prior to incurring specific costs.

*Applicable credits* refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to programs as direct or indirect costs. Examples of such transactions are: Purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

*Disbursements* refers to the transfer of funds by the state agency to pay for Program costs resulting from purchased or expired goods and services.

*Expendable personal property* means all tangible personal property other than nonexpendable property.

*Program funds* means money, or property provided in lieu of money, paid for or furnished by FCS to a State agency.

*Funds available to the State agency* may include contributions from third parties including other Federal agencies.

*In-kind contributions* refers to the value of noncash contributions. Only when authorized by Federal legislation may property purchased with Federal funds be considered as a State agency's in-kind contribution. In-kind contributions may be for the value of real and/or nonexpendable personal property or the value of goods and services provided specifically to the project or program.

*Nonexpendable personal property* means tangible personal property having a useful life of more than one year and an acquisition cost of more than $300 per unit. A State agency may use its own definition of nonexpendable

personal property provided that such definition would at least include all tangible personal property as defined herein.

*Obligations* are the amounts of orders placed, contracts awarded, services received, and similar transactions during a given period which require payment.

*Offset* means a method to recover funds due FCS through use of the Letter of Credit system. Recovery is accomplished by accounting adjustments to increase Federal funds on hand or disbursed.

*OMB* means the Office of Management and Budget.

*Personal property* means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence) such as patents, inventions and copyrights.

*Program* means both the Food Stamp Program and the Food Distribution Program on Indian Reservations.

*Program closeout* means the process by which FCS determines that all applicable administrative and financial processes have been completed by the State agency and FCS terminates the program in the affected project area or areas.

*Project costs* are allowable costs as set forth in this part.

*Real property* means land, land improvements, structure and appurtenances thereto, excluding movable machinery and equipment.

*State agency* means the organization as defined in 7 CFR 271.1.

*State agency costs* means the State agency outlays from its funds available for program administration. Unless authorized by Federal legislation, costs charged to other Federal grants or to other Federal contracts may not be considered as State agency costs reimbursable under this authority.

*Subagency* means the organization or person to which a State agency makes any payment for acquisition of goods, materials or services for use in administering the program and which is accountable to the State agency for the use of funds provided.

*Terms and conditions* means legal requirements imposed by the Federal Government under statute, regulations, contracts, agreements or otherwise.

*Unliquidated obligation* represents the amount of obligations not yet paid.

*Unobligated balance* means the portion of the Federal funds authorized less all allowable costs and unpaid obligations of the State agency.

### §277.3 Budgets and budget revision procedures.

The preparation, content, submittal, and revision requirements for the State Food Stamp Program Budget shall be as specified in §272.2. The application for funds and budget requirements for the Food Distribution Program on Indian Reservations shall be as specified in §283.9. State agencies must submit a budget to FCS as part of the State Plan each fiscal year. Upon approval of the budget by FCS, administrative funds will be provided.

### §277.4 Funding.

(a) *General.* This section sets allowable cost standards for activities of State agencies in administering the Food Stamp Program and Food Distribution Program on Indian Reservations.

(b) *Federal reimbursement rate.* The base percentage for Federal payment shall be 50 percent of State agencies' allowable Food Stamp Program administrative costs.

(1) A 75 percent Federal reimbursement is payable for Food Stamp Program allowable costs incurred for State fraud investigations, prosecutions, and fraud hearings upon presentation and approval of a State Plan addendum as outlined in §277.15.

(2) A State agency's federally funded share of Food Stamp Program administrative costs shall be increased when its error rate, as determined through the quality control process described in part 275, meets certain standards.

(i) For the period beginning October 1, 1982, through September 30, 1988, a State agency with a payment error rate of five percent or less in the corresponding fiscal year shall have its federally funded share of Program administrative costs increased to 60 percent, provided that the State agency's negative case error rate is less than the national weighted mean negative case

rate for the fiscal year prior to the period of enhanced funding.

(ii) For the period beginning October 1, 1988, and review periods thereafter, a State agency with a payment error rate less than or equal to 5.90 percent and with a negative case error rate less than the National weighted mean negative case error rate for the prior fiscal year shall have its Federally funded share of Food Stamp Program administrative costs increased by one percentage point to a maximum of 60 percent for each full one-tenth of a percentage point by which the payment error rate is less than six percent.

(3) Funding of demonstration projects approved by FCS will be at a rate agreed to by FCS in accordance with the requirements outlined in part 282.

(4) The reimbursement of administrative costs to State agencies administering the program on Indian reservations shall be in accordance with the requirements of parts 281 and 283.

(5) For the period beginning October 1, 1980, a State agency's federally funded share of Food Stamp Program administrative costs shall be increased to 65 percent when the State agency's cumulative allotment error rate is less than five percent; provided that the State agency's negative case error rate is less than the national weighted mean negative case error rate for the 6-month period of enhanced funding. This provision shall not apply to any period after the April through September 1982 period.

(6) For the period beginning October 1, 1980, a State agency's federally funded share of Food Stamp Program administrative costs shall be increased to 60 percent when the State agency's cumulative allotment error rate is less than eight percent; provided that the State agency's negative case error rate is less than the national weighted mean negative case error rate for the 6-month period of enhanced funding. This provision shall not apply to any period after the April through September 1982 period.

(7) For the 6-month period beginning October 1, 1980, a State agency with a 25 percent or greater reduction in its cumulative allotment error rate from one 6-month period to the comparable period of the next fiscal year shall be entitled to a 55 percent federally funded share of Food Stamp Program administrative costs; provided that, effective with the 6-month period beginning October 1, 1981, the State agency's negative case error rate is less than the national weighted mean negative case error rate for the period of enhanced funding. This provision shall not apply to any period after the April through September 1982 period.

(8) Beginning October 1982, the federally funded share of administrative costs, as identified in paragraph (b) of this section may be decreased based upon its payment error rate as described in § 275.23. The rates of Federal funding for the activities identified in paragraphs (b) (1), (3), and (4) of this section shall not be reduced based upon the agency's payment error rate.

(9) Employment and training program grants, as outlined in § 273.7(f) shall be 100 percent federally-funded.

(10) A 100 percent Federal Financial Participation rate shall be available for costs incurred in the verification of the documented alien status of FSP applicants through the Systematic Alien Verification for Entitlements (SAVE) Program. The charges must be contained in a budget or budget revisions approved by FCS and follow the allowability provisions found in § 277.19.

(11) A 63 percent Federal reimbursement is payable for Food Stamp Program allowable costs incurred for State agency planning, designing, developing, and installing of computerized systems as described in § 277.18 and approved for enhanced funding by FCS after September 30, 1991.

(12) A 75 percent Federal reimbursement is payable for Food Stamp Program allowable costs incurred for State agency planning, designing, developing, and installing of computerized systems as described in § 277.18 and submitted for approval for enhanced funding by FCS before November 28, 1990. Those proposals, including modifications and cost increases, which received approval at the 75 percent level during the period from November 28, 1990 through September 30, 1991, shall be reimbursed at the 75 percent rate for costs incurred through September 30, 1991, and at the 63 percent rate for

costs incurred thereafter. All modifications approved after September 30, 1991 and any cost increases which occur after this date shall be reimbursed at 63 percent regardless of when the original system was approved. For purposes of this paragraph, no system shall be funded at 75 percent unless all required paperwork for enhanced funding is (or was) either approved by FCS prior to the appropriate date contained in this paragraph or a planning advance planning document (PAPD) was approved and an implementation advance planning document (IAPD) was submitted with all the required paperwork for enhanced funding to FCS prior to November 28, 1990. The required paperwork is described in §277.18.

(c) *Matching costs.* State agency costs for Federal matching funds may consist of:

(1) Charges reported on a cash or accrual basis by the State agency as project costs.

(2) Project costs financed with cash contributed or donated to the State agency by other non-Federal public agencies and institutions.

(3) Project costs represented by services and real or personal property donated by other non-Federal public agencies and institutions.

(d) All cash or in-kind contributions except as provided in paragraph (e) of this section shall be allowable as part of the State agency's share of program costs when such contributions:

(1) Are verifiable;

(2) Are not contributed for another federally-assisted program, unless authorized by Federal legislation;

(3) Are necessary and reasonable for accomplishment of project objectives;

(4) Are charges that would be allowable under this part;

(5) Are not paid by the Federal Government under another assistance agreement unless authorized under the other agreement and its subject laws and regulations; and

(6) Are in the approved budget.

(e) The value of services rendered by volunteers or the value of goods contributed by third parties, exclusive of the State and Federal agencies, are unallowable for reimbursement purposes under the Food Stamp Program. The value of services rendered by volunteers shall be allowable only to meet any matching administrative costs requirements for the Food Distribution Program on Indian Reservations.

(f) The expenses (e.g. travel, lodging, meals) of persons working with volunteer or nonprofit organizations which receive training and assistance pursuant to §272.4(d)(2) are not allowable.

[Amdt. 188, 45 FR 85702, Dec. 30, 1980, as amended by Amdt. 201, 47 FR 25498, June 11, 1982; Amdt. 260, 49 FR 6313, Feb. 17, 1984; Amdt. 281, 51 FR 47397, Dec. 31, 1986; 53 FR 39443, Oct. 7, 1988; Amdt. 316, 54 FR 24531, June 7, 1989; Amdt. 328, 56 FR 60053, Nov. 27, 1991; Amdt. 342, 59 FR 2733, Jan. 19, 1994; Amdt. 316, 59 FR 16096, Apr. 6, 1994]

### §277.5 Methods of payment.

(a) This section sets forth FCS methods for authorizing funds for State agencies.

(b) The ''Letter of Credit'' (LOC) (SF–1193A) is the document by which an official of FCS authorizes a State agency to draw funds from the United States Treasury. This shall be the preferred method of payment for State agencies which receive at least $120,000 per year and meet the requirements prescribed in OMB Circular A–102, Attachment J.

(c) State agencies shall request payment(s) by submitting Request for Payment on Letter of Credit and Status of Funds Report (Treasury Form SF–183) to the appropriate United States Treasury Regional Disbursing Office with a copy to FCS.

(d) State agencies not meeting the requirements for the LOC method of payment or failing to meet LOC reporting requirements, including those requiring adjustments to cash balances to liquidate amounts owed to FCS, shall be provided funds by Treasury check in accordance with the provisions of Department of the Treasury Circular 1075.

(e) Payments for proper charges incurred by State agencies will not be withheld unless such payments are suspended or disallowed pursuant to §277.16. When a payment is withheld, payment adjustments will be made in accordance with §277.16. When FCS collects an indebtedness, whether due to a disallowance or an offset for amounts which the State agency has been billed but which it has failed to pay without

cause acceptable to FCS, FCS shall provide reasonable notice to the State agency, and shall require appropriate accounting adjustment to cash balances for which the State agency is accountable to the Federal government to liquidate the indebtedness.

### § 277.6 Standards for financial management systems.

(a) *General.* This section prescribes standards for financial management systems in administering program funds by the State agency and its subagencies or contractors.

(b) *Responsibilities.* Financial management systems for program funds in the State agency shall provide for:

(1) Accurate, current, and complete disclosure of the financial results of program activities in accordance with Federal reporting requirements.

(2) Records which identify the source and application of funds for FCS or State agency activities supporting the administration of the Program. These records shall show authorizations, obligations, unobligated balances, assets, liabilities, outlays and income of the State agency, its sub- agencies and agents.

(3) Records which identify unallowable costs and offsets resulting from FCS or other determinations as specified in § 277.16 and the disposition of these amounts. Accounting procedures must be in effect to prevent a State agency from claiming these costs under ongoing program administrative cost reports.

(4) Effective control and accountability by the State agency for all program funds, property, and other assets acquired with program funds. State agencies shall adequately safeguard all such assets and shall assure that they are used solely for program authorized purposes unless disposition has been made in accordance with § 277.13.

(5) Controls which minimize the time between the receipt of Federal funds from the United States Treasury and their disbursement for program costs. In the Letter of Credit system, the State agency shall make drawdowns from the U.S. Treasury through a U.S. Treasury Regional Disbursing Office as nearly as possible to the time of making the disbursements.

(6) Procedures to determine the reasonableness, allowability, and allocability of costs in accordance with the applicable provisions prescribed in appendix A to this part.

(7) Support and source documents for costs.

(8) An audit trail including identification of time periods, initial and summary accounts, cost determination and allocation procedures, cost centers or other accounting procedures to support any costs claimed for program administration.

(9) Periodic audits by qualified individuals who are independent of those who maintain Federal program funds as prescribed in § 277.17.

(10) Methods to resolve audit findings and recommendations and to follow up on corrective or preventive actions.

(c) The standards in § 277.6(b) apply to subagencies or contractors involved with program funding.

### § 277.7 Cash depositories.

(a) The term ''cash depositories'' refers to banks or other institutions which maintain accounts where Food Stamp Program funds are deposited and from which withdrawals are made to meet administrative costs of the State agency.

(b) State agencies are encouraged to use minority owned banks to expand opportunities for minority enterprises.

(c) FCS shall not:

(1) Require physical segregation in a cash depository of program funds from other State agency funds.

(2) Establish any eligibility requirements for cash depositories in which program funds are deposited by the State agency.

### § 277.8 Bonding and insurance.

(a) *General.* In administering FCS program funds, State agencies shall observe their regular requirements and practices with respect to bonding and insurance. FCS will not impose additional bonding and insurance requirements, including fidelity bonding, above those normally required by the State agency.

(b) *Loan guarantees.* FCS makes no guarantee of any loan or payment of money borrowed by a State agency for administering the program. State

agencies shall not make any assurances to any lender or contractor that FCS will furnish funds for loan payments.

**§277.9 Administrative costs principles.**

(a) This section prescribes specific policies and procedures governing State agencies for funding under this part.

(b) Any cost related to determining the Food Stamp eligibility of AFDC cases shall be included as part of the AFDC determination costs and claims. They are not allowable costs for FCS reimbursement.

(c) When costs for administering the program are claimed for reimbursement, the audit trail must identify the specific activities, locations, or time periods as defined in this section.

(1) *Direct cost.* Allowable direct costs may be charged to the Food Stamp Program at the 50 percent or higher funding level as specified in this part.

(2) *Indirect cost.* Allowable indirect costs may also be claimed at the 50 percent or higher reimbursement funding level as specified in this part and appendix A.

(3) Direct and indirect costs claimed for program cost reimbursement must be incurred for the time periods, the activities or for the locations for which the rates are approved by FCS.

(d) All State agency Cost Allocation Plans for determining the costs of administering the program must be approved by the cognizant Federal agency. All Cost Allocation Plans involving program funds shall be submitted to FCS for review.

**§277.10 Program income.**

(a) Program income is gross income resulting from activities financed with program funds. Such earnings exclude interest income but include income from service fees, usage or rental fees, sale of assets purchased with program funds, and royalties on patents and copyrights.

(b) Interest earned on advances of program administrative funds shall be remitted to FCS except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90–577) and advances to tribal organizations under the Indian Self-Determination Act (sections 102 through 104).

(c) Income resulting from the sale of real and personal property whose acquisition cost was borne in whole or in part with Program funds shall be remitted to FCS or applied to the Federal share of current program costs in accordance with §277.13. All other sales proceeds will be handled in accordance with §277.13.

(d) Unless there is a prior agreement between FCS and the State agency, the State agency shall have no obligation to FCS with respect to royalties received from copyrights or patents produced as a result of activities financed with program administrative funds.

(e) Any other income earned under activities supported by program administrative funds may be retained by the State agency if they are deducted from the gross program administrative costs for the purposes of determining net costs and FCS's share of net cost.

(f) State agencies shall record the receipt and expenditure of revenues such as taxes, special assessments, levies, fines, etc., as a part of program fund transactions when such revenues are specifically earmarked for program fund projects.

**§277.11 Financial reporting requirements.**

(a) *General.* This section prescribes requirements for the State agencies to report financial information to FCS.

(b) *Authorized forms and instructions.* (1) Only forms specified by this part, or other forms authorized by FCS, may be used for obtaining financial information from State agencies for the program.

(2) All instructions for use in connection with the form specified in §277.11(c) shall be followed. FCS may prescribe supplementary instructions.

(3) State agencies shall submit the original and two copies of forms required by this section unless FCS approves a waiver of this requirement.

(4) The forms and instructions in this part shall be available to the State agency and to the public upon request to FCS Regional Offices as set out in §271.6(b).

(c) *Financial status report*—(1) *Form.* State agencies shall use the standard Financial Status Report (Form SF–269) to report program costs.

(2) *Freqency.* The report (Form SF–269) shall be required quarterly.

(3) *Exceptions.* Those State agencies that receive payments under the U.S. Treasury check system shall submit to FCS a Quarterly Report of Federal Cash Transactions (Form SF–272).

(4) *Due dates.* Quarterly reports shall be due April 30 (for the period January through March), July 30 (April through June), October 30 (July through September), January 30 (October through December). Final reports are due December 30 for all completed Federal fiscal years (October 1 through September 30) or 90 days after termination of Federal financial support. Requests from State agencies for extension of reporting due dates may be approved, if necessary.

### § 277.12 Retention and custody of records.

(a) *Retention period.* All financial records, supporting documents, statistical records, negotiated contracts, and all other records pertinent to program funds shall be maintained for three years from the date of submission of the annual financial status report of the relevant fiscal year to which they apply except that:

(1) If any litigation, claim, or audit is started before the expiration of the three-year period, the applicable records shall be retained until these have been resolved.

(2) In the case of a payment by a State agency to a subagency or contractor using program funds, the State agency, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any book, documents, papers and records of the subagency or contractor which the State agency, USDA, or the Comptroller General of the United States or any of their duly authorized representatives, determine are pertinent to administration of the specific FCS program funds, for the purpose of making audit, examination, excerpts, and transcripts.

(b) *Restrictions on public access.* Unless required by laws, FCS will not place restrictions on State agencies which limit public access to their records or the records of their subagencies or contractors that are pertinent to the administrative funding provided by FCS except when the State agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to FCS.

### § 277.13 Property.

(a) *General.* This section prescribes policies and procedures governing title, use, disposition of real and personal property for which acquisition costs were borne, in whole or in part, as a direct charge to FCS funds, and ownership rights or intangible personal property developed, in whole or in part, with FCS funds. State agencies may follow their own property management policies and procedures provided they observe the requirements of this section. With respect to property covered by this section, FCS may not impose on State agencies any requirement (including property reporting requirements) not authorized by this section unless specifically required by Federal laws.

(b) *Nonexpendable personal property*—(1) *Title.* Title to nonexpendable personal property whose acquisition cost is borne, in whole or in part, by FCS shall vest in the State agency upon acquisition, and shall be subject to the restrictions on use and dispositions set forth in this section.

(2) *Use.* (i) The State agency shall use the property in the program as long as there is a need for such property to accomplish the purpose of the program.

(ii) When there is no longer a need for the property to accomplish the purpose of the program, the State agency shall use the property where needed in administration of other programs in the following order of priority:

(A) Other federally-funded programs of FCS.

(B) Other federally-funded programs of USDA.

(C) Other federally-funded programs.

(iii) When the State agency no longer has need for such property in any of its

federally financed activities, the property may be used for the State agency's own official activities in accordance with the following standards:

(A) If the property had a total acquisition cost of less than $1,000, the State agency may use the property without reimbursement to FCS.

(B) For all such property not covered under paragraph (b)(2)(iii)(A) of this section, the State agency may retain the property for its own use, provided a fair compensation is made to FCS for the FCS share of the property. The amount of compensation shall be computed by applying the percentage of FCS participation in the cost of the property to the current fair market value of the property.

(3) *Disposition*. If the State agency has no need for the property, disposition of the property shall be made as follows:

(i) If the property had a total acquisition cost of less than $1,000 per unit, the State agency may sell the property and retain the proceeds.

(ii) If the property had an acquisition cost of $1,000 or more per unit, the State agency shall:

(A) If instructed to ship the property elsewhere, the State agency shall be reimbursed with an amount which is computed by applying the percentage of the State agency's participation in the cost of the property to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(B) If instructed to otherwise dispose of the property, the State agency shall be reimbursed by FCS for the cost incurred in such disposition.

(C) If disposition or other instructions are not issued by FCS within 120 days of a request from the State agency, the State agency shall sell the property and reimburse FCS an amount which is computed by applying the percentage of FCS participation in the cost of the property to the sales proceeds. The State agency may, however, deduct and retain from FCS's share $100 or 10 percent of the proceeds, whichever is greater, for the State agency selling and handling expenses.

(c) *Transfer of title to certain property*. (1) Where FCS determines that an item of nonexpendable personal property with an acquisition cost of $1,000 or more which is to be wholly borne by FCS is unique, difficult, or costly to replace, FCS may reserve the right to require the State agency to transfer title of the property to the Federal Government or to a third party named by FCS.

(2) Such reservation shall be subject to the following:

(i) The right to require transfer of title may be reserved only by means of an expressed special condition under which funds were authorized for acquisition of the property, or, if approval for the acquisition of the property is given after the funds are awarded, by means of a written stipulation at the time such approval is given.

(ii) The property must be sufficiently described to enable the State agency to determine exactly what property is involved.

(3) FCS may not exercise the right to reserve until the State agency no longer needs the property in the activity for which it was acquired. Such need shall be assumed to end with termination of the activity in which the property was used unless the State agency continues to use the property in other program-related activities after the termination date and demonstrates to FCS a continued need for such use in the program.

(4) To exercise the right, FCS must issue disposition instructions to the State agency not later than 120 days after the State agency no longer needs the property in the activity for which it was acquired. If instructions are not issued within that time, FCS's right shall lapse, and the State agency shall act in accordance with the applicable standards in paragraphs (b)(2) and (b)(3) of this section.

(5) The State agency shall be entitled to reimbursement with an amount which is computed by applying the percentages of the State agency's participation in the acquisition cost of the property to the current fair market value of the property, and for any reasonable shipping and interim storage costs it incurs pursuant to FCS's disposition instructions.

(d) *Property management standards.* State agencies' property management standards for nonexpendable personal

property covered by this section shall include the following procedural requirements:

(1) Property records shall be maintained accurately and provide for:

(i) A description of the property.

(ii) Manufacturer's serial number or other identification number.

(iii) Acquisition date and cost.

(iv) Source of the property.

(v) Percentage of FCS funds used in the acquisition of the property, or sufficient information to be able to compute the percentage, if and when the property is disposed of.

(vi) Location, use and condition of the property.

(vii) Ultimate disposition data including sales price or the method used to determine current fair market value if the State agency reimburses FCS for its share.

(viii) Trade-in value of any property purchased with Federal funds where their trade-in value reduces the acquisition cost of new property.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(3) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable personal property shall be investigated and properly documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be implemented to keep the property in good condition.

(e) *Expendable personal property*—(1) *Title.* Title to expendable personal property, whose acquisition cost was borne in whole or in part by FCS, shall vest in the State agency.

(2) *Use.* The State agency shall use the property in the program as long as there is a need for such property to accomplish the purpose of the program.

(3) *Disposition.* When there is no longer a need for the property in the program and there is a residual inventory exceeding $1,000 the State agency shall:

(i) Use the property in other federally sponsored projects or programs;

(ii) Retain the property for use on non-federally sponsored activities; or,

(iii) Sell it.

(4) *Compensation.* FCS must be compensated for its share if the alternative in paragraph (e)(3)(i) of this section is not followed. The amount of compensation shall be computed in the same manner as for nonexpendable personal property.

(f) *Patents and inventions.* If any program activity produced patents, patent rights, processes or inventions in the course of work aided by FCS, such fact shall be promptly and fully reported to FCS. Unless there is prior agreement between the State agency and FCS on disposition of such items, FCS shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued thereon—shall be disposed of and administered in order to protect the public interest consistent with ''Government Patent Policy'' (President's Memorandum for Heads of Excecutive Departments and Agencies, August 23, 1971), and State of Government Patent Policy as printed in title 37 CFR, chapters I and II.

(g) *Copyrights.* When a program activity results in a book or other copyrightable materials, the author or State agency is free to copyright the work, but FCS reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use and to authorize others to use the work for government purposes. This includes copyrights on ADP software as specified in appendix A.

### § 277.14 Procurement standards.

(a) *General.* This section establishes standards and guidelines for the procurement of supplies, equipment, construction and other services whose cost is borne in whole or in part by FCS program funds. These standards ensure that such materials are obtained in an effective and economical manner and in compliance with the provisions of applicable Federal law and Executive orders. No additional procurement standards will be imposed by FCS upon

State agencies unless specifically required by Federal law, or Executive orders, or authorized by the Administrator for Federal Procurement Policy, Office of Management and Budget.

(1) These standards do not relieve the State agency of any contractual responsibilities under its contracts. The State agency is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into in support of the program. These include but are not limited to sources evaluations, protests, disputes and claims. FCS shall not substitute its judgment for that of the State agency unless the matter is primarily a Federal concern. Violations of laws shall be referred to the local, State or Federal authority having jurisdiction.

(2) State agencies shall use their own procurement procedures provided that procurements paid in whole or in part with FCS program funds meet the standards set forth in this part.

(b) *Review of proposed contracts.* State agencies shall submit proposed contracts and related procurement documents to FCS for preaward review and approval when:

(1) The procurement is expected to exceed $10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation;

(2) The procurement expected to exceed $10,000 specifies a ''brand name'' product; or

(3) FCS has determined that the State agency's procurement procedures or operation fails to comply with one or more significant aspects of this section.

(c) *Code of conduct.* The State agency shall maintain a written code or standards of conduct which shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts borne in whole or in part with FCS program funds. No employee, officer, or agent of the State agency shall participate in the selection, or in the award or administration of a contract supported in whole or in part by FCS program funds if a conflict of interest, real or apparent, would be involved. Such conflict would arise when:

(1) The employee, officer, or agent;

(2) Any member of his/her immediate family;

(3) His or her partner; or

(4) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The State agency's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. State agencies may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the State agency's officers, employees, or agents, or by contractors or their agents.

(d) *Procurement procedures.* The State agency shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by State agency officials to avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidation or dividing the purchase into smaller units, to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analyses, to determine which approach would be the most economical. To foster greater economy and efficiency, State agencies are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(e) *Contracting with small and minority firms, women's business enterprises and labor surplus area firms.* (1) It is FCS policy to award a fair share of contracts to small and minority business firms. State agencies must take affirmative steps to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. State agency affirmative steps shall include the following:

(i) Including qualified small and minority businesses on solicitation lists.

(ii) Assuring that small and minority businesses are solicited whenever they are potential sources.

(iii) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(iv) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(v) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration, as appropriate.

(vi) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in paragraphs (e)(1) (i) through (v) of this section.

(2) State agencies shall take similar appropriate affirmative action in support of women's business enterprises.

(3) State agencies are encouraged to procure goods and services from labor surplus areas, as defined by the Department of Labor.

(4) FCS shall impose no additional regulations or requirements in the foregoing areas unless specifically mandated by law or Executive order.

(f) *Selection procedures.* All State agency procurement transactions shall be conducted in a manner that provides maximum open and free competition with this section. Procurement procedures shall not contain features which restrict or eliminate competition. The State agency shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitation of offers, whether by competitive sealed bid or competitive negotiation, shall contain a clear and accurate description of the technical requirements for the material, product, or service desired. Descriptions shall not, in competitive procurements, contain features which unduly restrict competition. Descriptions may include a statement of the qualitative nature of the material, product or service desired and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to describe clearly and accurately the technical requirements, a ''brand name or equal'' description may be used to define the performance or requirements of the material, product or service desired. The specific features of the named brand which must be met by offerors shall be clearly stated. State agencies shall clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) State agencies shall make awards only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(g) *Procurement methods.* State agency procurements made in whole or in part with program funds shall be by one of the following methods:

(1) *Small purchase procedures* are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies, or other property, costing in the aggregate not more than $10,000. State agencies shall comply with State or local small purchase dollar limits under $10,000. If small purchase procedures are used for a procurement under the program, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) In *competitive sealed bids* (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(i) In order for the State agency to use this method of procurement the following conditions, as a minimum, must prevail:

(A) A complete, adequate, and realistic specification or purchase description is available.

(B) Two or more responsible suppliers are willing and able to compete effectively for the State agency's business.

(C) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(ii) If formal advertising is used for a procurement under a grant, the following requirements shall apply:

(A) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(B) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(C) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(D) A firm-fixed-price contract award shall be made by written notice by the State agency to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the State agency indicates that such discounts are generally taken.

(E) Any or all bids may be rejected by the State agency when there are sound documented business reasons in the best interest of the program.

(3) In *competitive negotiation,* proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are appropriate for the use of formal advertising. If competitive negotiation is used for procurement under a grant, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(iii) The State agency shall provide procedures for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the State agency, price and other factors considered. Unsuccessful offerors should be notified promptly.

(v) State agencies may utilize competitive negotiation procedures for procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation.

(4) *Noncompetitive negotiation* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Awards of contracts by noncompetitive negotiation are limited to the following:

(i) The item is available only from a single source;

(ii) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive procurement;

(iii) FCS authorizes noncompetitive procurement; or

(iv) After solicitation of a number of sources, competition is determined inadequate.

(h) *Contract pricing.* The cost plus a percentage of cost and percentage of construction cost method(s) of contracting may not be used by a State agency. State agencies shall perform

some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts, paid in whole or in part by FCS program funds, shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

(i) *State agency procurement records.* State agencies shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to, information pertinent to the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the cost or price.

(j) *Contract provisions.* In addition to provisions defining a sound and complete procurement contract, State agencies shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by this provision, Federal law, or FCS:

(1) Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the State agency including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded in excess of $10,000 by State agencies and their contractors or subagencies shall contain a provision requiring compliance with Executive Order 11246, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (29 CFR part 60).

(4) All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). This Act provides that each contractor or subagency shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The State agency shall report all suspected or reported violations to FCS.

(5) Where applicable, all contracts awarded by State agencies and subagencies in excess of $2,000 for construction contracts in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 330) as supplemented by Department of Labor regulations (29 CFR part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible provided that the work is compensated at a rate of not less than 1½ times the basic rate for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(6) The contract shall include notice of FCS requirements and regulations pertaining to reporting and print rights under any contract involving research, developmental, experimental, or demonstration work with respect to any discovery or invention which

arises or is developed in the course of or under such contract, and of FCS requirements and regulations pertaining to copyrights and rights to data so derived.

(7) All negotiated contracts (except those awarded by small purchases procedures) awarded by State agencies shall include a provision to the effect that the State agency, FCS, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. State agencies shall require contracts to maintain all required records for three years after the State agency makes final payments or all other pending matters are closed, whichever is last.

(8) Contracts, subcontracts, and subgrants of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act, section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency (EPA) regulations, which prohibit the use under nonexempt Federal contract, grants, or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the FCS and to the USEPA Assistant Administrator for Enforcement.

(9) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–165).

(k) *Contract administration.* State agencies shall maintain a contract administration system insuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

### §277.15 Food stamp investigations and prosecutions.

(a) *General.* This section establishes the standards and procedures for Federal funding of State and local costs of intentional Program violation investigations, prosecutions and administrative disqualification hearings under the Food Stamp Program.

(b) *Funding.* Upon submission to and approval by FCS of a budget revision and the information required by paragraph (c) of this section, State agencies will be funded at 75 percent of all allowable direct and indirect costs in accordance with the requirement contained in this section. This higher rate may apply retroactively only to costs incurred in the Federal fiscal year during which a State agency applies for 75 percent funding, regardless of when the determination of eligibility for 75 percent funding is made. In cases where 75 percent funding of the operation of an agency other than the State welfare agency is or will be involved, an information statement shall be submitted by each State agency to include a description of such operations.

(c) *State agency descriptions.* Concurrent with the budget revision required in paragraph (d) of this section, the State agency shall submit the following information:

(1) Identification of the oganizational units, with a brief description of the intentional Program violation disqualification hearing, investigation or prosecution function assigned, that is claimed at the 75 percent rate;

(2) A copy of the statutes or court decisions under which intentional Food Stamp Program violation cases are prosecuted;

(3) A detailed description of the coordination between the investigative units and the prosecuting units, and the process by which prosecuting officials present indictments regarding intentional Food Stamp Program violation cases;

(4) Agreement that investigative reports, prepared by the investigation or prosecution units, and other related records will be made available to USDA upon request; and

(5) Assurance that the administrative disqualification hearing activity claimed under this part is conducted in accordance with §273.16.

(d) *Budget revision.* The State agency shall prepare and submit a budget revision in compliance with §§ 272.2 and 277.3 to FCS for approval.

(e) *Eligible activity.* The following activities performed at the State or local level shall be eligible for funding at 75 percent of the costs if they are an integral element of intentional Food Stamp Program investigations, prosecutions, and administrative disqualification hearings.

(1) *Direct charges.* Direct charges are costs which may be directly attributable to employees assigned specifically to the investigation and prosecution functions for intentional Food Stamp Program violations. Such employees need not be assigned full time, but in the event they are employed less than full time, time sheets or time records must be used to document the amount of time spent on these functions.

(i) For investigative function, only employees whose State or local job title is ''Investigator'' or a similar descriptive title shall be eligible for the increased funding. Exceptions shall be granted based on adequate justification that the majority of the job duties are specifically related to the investigative function.

(ii) Costs related to the investigative or prosecutive function which are performed by agencies other than the State agency shall be based on a formal agreement between the State or local agency and provider agency. These interagency agreements shall meet the requirements of this part in regard to allowable charges. Funding under these interagency agreements shall be provided by the State agency from their funds and funds made available by FCS.

(iii) Costs relating to the establishment and collection of claims, when performed by investigators or prosecutors or by any separate unit having claims establishment or collection as its primary function, shall be eligible for the increased funding.

(iv) Costs related to reporting individuals disqualified for intentional Program violation and to retrieving data from the Disqualification Reporting Network file, when performed by employees assigned specifically to the food stamp intentional Program violation investigation and prosecution functions.

(2) *Indirect charges.* Indirect charges are, in general, those costs which are attributable through allocation to the investigation and prosecution functions for intentional Food Stamp Program violations.

(3) *Documentation.* The requirements of appendix A, part 277, sections (2)(E) and (2)(F), will be followed for the classification and documentation of costs by the State or local agency.

(f) *Ineligible activity.* The following activities, whether performed at the State or local level, shall be allowable only at the 50 percent funding level, and shall be ineligible for funding at the 75 percent level.

(1) Administrative reviews, such as fair hearings as required per 7 CFR part 273 or Performance Reporting System reviews required per 7 CFR part 275.

(2) Investigations of authorized retail or wholesale food concerns except when performed in coordination with USDA Office of Inspector General and FCS.

(3) Investigations or establishing claims against households by workers whose regular duties include the determination of a household's eligibility for participation in the Food Stamp Program, except as may be granted under the provisions of paragraph (e)(1)(i) of this section.

(4) Verification of eligibility information provided by the household for the purpose of making an eligibility determination, and

(5) Audits.

[Amdt. 188, 45 FR 85802, Dec. 30, 1980, as amended by Amdt. 210, 47 FR 41096, Sept. 17, 1982; Amdt. 242, 48 FR 6865, Feb. 15, 1983]

### § 277.16 Suspension, disallowance and program closeout.

(a) *Suspension.* When a State agency has materially failed to comply with any of the provisions contained in the Act, regulations, or FCS-approved State Plan of Operation, FCS may, after written notification to the State agency, temporarily withhold some or all Federal reimbursements for costs of administration of the Food Stamp Program in accordance with § 276.4. Adjustments will be made either by adjusting

the Letter of Credit authorization or by not allowing the State agency to withdraw funds.

(b) *Disallowance.* (1) FCS may disallow costs in accordance with part 276 and effect nonpayment for some or all costs incurred by a State agency which are normally allowable but are determined by FCS to be nonreimbursable because the State agency has failed to comply with any of the provisions contained in the Act, regulations, or FCS-approved State Plan of Operation.

(2) FCS may also disallow costs and institute recovery of Federal funds when a State agency fails to adhere to the cost principles of this part and appendix A.

(c) *Offsets to the Letter of Credit.* (1) FCS may recover funds when owed by the State agency to FCS through offsets to the Letter of Credit. Offsets shall include:

(i) Costs determined by FCS to be disallowed under the provisions of this part;

(ii) Unallowable costs resulting from audit or investigation findings;

(iii) Amounts owed which have been billed to the State agency and which the State agency has failed to pay without cause acceptable to FCS; or

(iv) Amounts owed to FCS for title IV reimbursements and recipient claims collections which were reported on the FCS–209 and which the State agency has failed to pay.

(2) The amounts recovered through the offset procedure should be in one lump sum. If recovery of funds through the offset procedure is not possible in one lump sum, FCS shall make appropriate adjustments to recover the funds in not more than three fiscal years.

(d) *Program transfer or termination.* (1) When termination or transfer of a State program has been agreed upon by FCS, the following closeout procedure shall be observed:

(i) Upon request, FCS shall make or arrange for prompt payment to the State agency for allowable costs not covered by previous payments.

(ii) The State agency shall immediately refund to FCS any unobligated balance of cash withdrawn by the State agency for the administration of the program in the affected State or Indian reservation.

(iii) The State agency shall submit to FCS within 90 days after the date of termination of the program, all required financial, performance, and other reports. FCS may grant extensions when requested by the State agency.

(iv) FCS shall adjust the amount authorized by the Letter of Credit in order to effect payment of any amounts due the State agency, and if appropriate, shall bill the State agency for any amounts due to FCS. The amounts of such billings shall be promptly remitted to FCS.

(v) In the event a final audit has not been performed prior to the closeout of the program, FCS shall retain the right to disallow costs or recover funds resulting from the final audit findings.

(2) Provisions of §277.13 apply for any property acquired with program funds or received from the Federal Government in connection with the program and which was in use in the affected project area or areas.

[Amdt. 188, 45 FR 85702, Dec. 30, 1980, as amended by Amdt. 342, 59 FR 2733, Jan. 19, 1994]

### §277.17 Audit requirements.

(a) *General.* This section sets forth the audit requirements for State agencies that receive FCS program funds. Audits shall be conducted on an organization-wide basis. Such audits are to determine whether:

(1) Financial operations are conducted properly;

(2) The financial statements are presented fairly;

(3) The organization has complied with laws and regulations affecting the expenditure of Federal funds;

(4) Internal procedures have been established to meet the objectives of federally assisted programs; and

(5) Financial reports to the Federal Government contain accurate and reliable information.

Except where required by law, no additional requirements for audit will be imposed by FCS unless approved by the Office of Management and Budget (OMB). The provisions of this section do not limit the authority of FCS to make audits of State agencies, their subdivisions, and subcontracts. However, if independent audits arranged for

by State agencies meet the requirements prescribed herein, FCS shall rely on them, and any additional audit work already done.

(b) *Audit standards.* (1) State agencies shall use their own procedures to arrange for independent audits, and to prescribe the scope of audits, provided that the audits comply with the requirements set forth in this section. Where contracts are awarded for audit services, the contracts shall include a reference to OMB Circular A–102, Attachment P.

(2) Audits shall be made in accordance with the General Accounting Office ''Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Program,'' and any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(c) *Purpose of audit.* Audits will include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of State agencies. These examinations are to determine whether:

(1) There is effective control over and proper accounting for revenues expenditures, assets, and liabilities.

(2) The financial statements are presented fairly in accordance with generally accepted accounting principles.

(3) The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data; and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of OMB Circular A–102.

(4) Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

(d) *Audit coverage.* A representative number of charges to Federal funds shall be tested. The test shall be representative of:

(1) The universe of Federal funds received, and

(2) All cost categories that materially affect the award. The test is to determine whether the charges:

(i) Are necessary and reasonable for the proper administration of the program;

(ii) Conform to any limitations or exclusions in the award;

(iii) Were given consistent accounting treatments and applied uniformly to both federally assisted and other activities of the State agency;

(iv) Were net of applicable credits;

(v) Did not include costs property chargeable to other federally assisted programs;

(vi) Were properly recorded (i.e., correct amount, date) and supported by source documentation;

(vii) Were approved in advance, if subject to prior approval in accordance with Financial Management Circular 74–4;

(viii) Were incurred in accordance with competitive purchasing procedures, if covered by OMB Circular A–102, Attachment O; and

(ix) Were allocated equitably to benefiting activities, including non-Federal activities.

(3) Audits usually will be made annually, but not less frequently than every two years.

(4) If the auditors become aware of irregularities in the State agency, subagency or subcontractor, the auditor shall promptly notify the cognizant agency and State agency management officials above the level of involvement. Irregularities include such matters as conflict of interest, falsification of records or reports, and misappropriation of funds and other assets.

(e) *Audit report.* The audit report shall include:

(1) Financial statements, including footnotes, of the State agency, subagency, or subcontractor organization.

(2) The auditor's comments on the financial statements which should:

(i) Identify the statements examined and the period covered.

(ii) Identify the various programs under which the organization received Federal funds, and the amounts received for each program.

(iii) State that the audit was done in accordance with paragraph (d) of this section.

(iv) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

(3) The auditor's comments on compliance and internal control which should:

(i) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses.

(ii) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulation that could have a material effect on the financial statements and reports.

(iii) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.

(4) Comments on the accuracy and completeness of financial reports and claims for advances or reimbursements to Federal agencies.

(5) Comments on corrective action taken or planned by the State agency.

(f) *Record retention.* Work paper and reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the cognizant agency of the need to extend the retention period. The audit workpapers shall be made available upon request to the cognizant agency or its designees and the General Accounting Office or its designees.

(g) *Cognizant agency responsibilities.* The cognizant agency shall have the following responsibilities:

(1) Obtain or make quality assessment reviews of the work of non-Federal audit organizations, and provide the results to other interested audit agencies. If a non-Federal audit organization is responsible for audits of State agencies that have different cognizant audit agencies, a single quality assessment review will be arranged.

(2) Assure that all audit reports of State agencies that affect federally assisted programs are received, reviewed, and distributed to appropriate Federal audit officials. These officials will be responsible for distributing audit reports to their program officials.

(3) Whenever significant inadequacies in an audit are disclosed, the State agency will be advised and the auditor will be called upon to take corrective action. If corrective action is not taken, the cognizant agency shall notify the State agency and Federal awarding agencies of the facts and its recommendation. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies.

(4) Assure that satisfactory audit coverage is provided in a timely manner and in accordance with the provisions of this section.

(5) Provide technical advice and act as a liaison between Federal agencies, independent auditors and State agencies.

(6) Maintain a followup system on audit findings and investigative matters to assure that audit findings are resolved.

(7) Inform other affected audit agencies of irregularities uncovered. The audit agencies, in turn, shall inform all appropriate officials in their agencies. State or local government law enforcement and prosecuting authorities shall also be informed of irregularities within their jurisdiction.

(8) Recipients shall require subrecipients that are local governments of Indian tribal governments to adopt the requirements in paragraphs (d) through (f) of this section. The recipient shall ensure that the subrecipient audit reports are received as required, and shall submit the reports to the cognizant agency. The cognizant agency will have the responsibility for those reports described in paragraph (g) of this section.

**§ 277.18 Establishment of an Automated Data Processing (ADP) and Information Retrieval System.**

(a) *Scope and application.* This section establishes conditions for initial and continuing authority to claim Federal financial participation (FFP) for the costs of the planning, development, acquisition, installation and implementation of ADP equipment and services used in the administration of the Food Stamp Program. Due to the nature of the procurement of ADP equipment and services, current State agency approved cost allocation plans for ongoing operational costs shall not apply to ADP system development costs under this section unless documentation required under paragraph (c) of this section is submitted to and approvals are obtained from FCS.

(b) *Definitions:*

*Acceptance Documents* means written evidence of satisfactory completion of an approved phase of work or contract, and acceptance thereof by the State agency.

*Advance Planning Document for Project Implementation* or *Implementation APD* means a written plan of action requesting Federal financial participation (FFP) to acquire and implement ADP services and/or equipment.

*Advance Planning Document for Project Planning* or *Planning APD* means a brief written plan of action that requests FFP to accomplish the planning necessary for a State agency to determine the need for and plan the acquisition of ADP equipment and/or services, and to acquire information necessary to prepare an Implementation APD.

*Advance Planning Document Update (APDU)* means an annual self-certification by the State agency on the status of project development activities and expenditures in relation to the approved Planning APD or Implementation APD. An APDU may also be submitted as needed to request funding approval for project continuation whenever significant project changes occur or are anticipated.

*Automated Data Processing* or *ADP* means data processing performed by a system of electronic or electrical machines so interconnected and interacting as to minimize the need for human assistance or intervention.

*Automated Data Processing Equipment* or *hardware* means:

(1) Electronic digital computers, regardless of size, capacity, or price, that accept data input, store data, perform calculations, and other processing steps, and prepare information;

(2) All peripheral or auxiliary equipment used in support of electronic digital computers whether selected and acquired with the computer or separately;

(3) Data transmission or communications equipment that is selected and acquired solely or primarily for use with a configuration of ADP equipment which includes an electronic digital computer; and

(4) Data input equipment used to enter directly or indirectly into an electronic digital computer, peripheral or auxiliary equipment, or data transmission, or communication equipment.

*Automated Data Processing Services* means:

(1) Services to operate ADP equipment, either by private sources, or by employees of the State agency, or by State or local organizations other than the State agency; and/or

(2) Services provided by private sources or by employees of the State agency or by State and local organizations other than the State agency to perform such tasks as feasibility studies, system studies, system design efforts, development of system specifications, system analysis, programming and system implementation. This includes system training, systems development, site preparation, data entry, and personal services related to automated systems development and operations that are specifically identified as part of a Planning APD or Implementation APD.

*Data Processing* means the preparation of source media containing data or basic elements of information and the use of such source media according to precise rules of procedures to accomplish such operations as classifying, sorting, calculating, summarizing, recording, and transmitting.

*Emergency situation* means a situation where:

(1) The State agency can demonstrate to FCS an immediate need to acquire ADP equipment or services in

order to continue operation of the Food Stamp Program; and

(2) The State agency can clearly document that the need could not have been anticipated or planned for and the need prevents the State from following the prior approval requirements of § 277.18(c).

*Enhanced funding* or *enhanced FFP rate* means Federal reimbursement at the 63 percent level for allowable costs for State agency planning, design, development and installation of computerized systems, as authorized by § 277.4(b)(11) and (b)(12), and in accordance with the requirements at § 277.18(g).

*Feasibility Study* means a preliminary study to determine whether it is sufficiently probable that effective and efficient use of ADP equipment or systems would warrant a substantial investment of staff, time, and money being requested, and whether the plan can be accomplished successfully.

*Functional Requirements Specification* means an initial definition of the proposed system, which documents the goals, objectives, user or programmatic requirements, the operating environment, and the proposed design methodology, e.g., centralized or distributed. This document details what the new system and/or hardware should do, not how it is to do it. The Specification document shall be based upon a clear and accurate description of the functional requirements for the project, and shall not, in competitive procurements, lead to requirements which unduly restrict competition.

*General Systems Design* means a combination of narrative and diagrams describing the generic architecture of a system as opposed to the detailed architecture of the system. A general systems design may include a systems diagram; narrative identifying overall logic flow and systems functions; a description of equipment needed (including processing, data transmission and storage requirements); a description of other resource requirements which will be necessary to operate the system; a description of system performance requirements; and a description of the environment in which the system will operate, including how the system will function within that environment.

*Regular funding* or *regular FFP rate* means any Federal reimbursement rate authorized by § 277.4(b), except the 63 percent funding rate for State agency planning, design, development and installation of computerized systems, as specified at § 277.4(b)(11) and (b)(12).

*Request for Proposal* or *RFP* means the document used for public solicitations of competitive proposals from qualified sources as outlined in § 277.14(g)(3).

*Service Agreement* means the document, described in § 277.18(f), signed by the State or local agency and the State or local central data processing facility whenever a central data processing facility provides ADP services to the State or local agency.

*Software* means a set of computer programs, procedures, and associated documentation used to operate the hardware.

*System specifications* means information about the new ADP systems, such as: Workload descriptions, input data, information to be maintained and processed, data processing techniques, and output data, which is required to determine the ADP equipment and software necessary to implement the system design.

*System study* means the examination of existing information flow and operational procedures within an organization. The study consists of three basic phases: Data gathering or investigation of the present system and new information requirements; analysis of the data gathered in the investigation; and synthesis, or refitting, of the parts and relationships uncovered through the analysis into an efficient system.

(c) *General acquisition requirements—(1) Requirement for prior FCS approval.* A State agency shall obtain prior written approval from FCS as specified in paragraph (c)(2) of this section when it plans to acquire ADP equipment or services with proposed FFP that it anticipates will have total acquisition costs of $5 million or more in Federal and State funds. This applies to both competitively bid and sole source acquisitions. A State agency shall also obtain prior written approval from FCS of its justification for a sole source acquisition when it plans to acquire ADP equipment or services non-competitively from a nongovernmental source

which has a total State and Federal acquisition cost of more than $1 million but no more than $5 million. The State agency shall request prior FCS approval by submitting the Planning APD, the Implementation APD or the justification for the sole source acquisition signed by the appropriate State official to the FCS Regional Office. However, a State agency shall obtain prior written approval from FCS for the acquisition of ADP equipment or services to be utilized in an EBT system regardless of the cost of the acquisition.

(2) *Specific prior approval requirements.* (i) For ADP equipment and services acquisitions which require prior approval as specified in paragraph (c)(1) of this section, the State agency shall obtain the prior written approval of FCS for:

(A) The Planning APD prior to entering into contractual agreements or making any other commitment for acquiring the necessary planning services;

(B) The Implementation APD prior to entering into contractual agreements or making any other commitment for the acquisition of ADP equipment or services.

(ii) For ADP equipment and services acquisitions requiring prior approval as specified in paragraph (c)(1) of this section, prior approval of the following documents associated with such acquisitions is also required:

(A) RFP's; unless specifically exempted by FCS, the State agency shall obtain prior written approval of the RFP before the RFP may be released. However, RFPs costing up to $5 million for competitive procurements and up to $1 million for noncompetitive acquisitions from non-governmental sources and which are an integral part of the approved APD need not be submitted to FCS. States will be required to submit RFPs under this threshold amount on an exception basis or if the procurement strategy is not adequately described and justified in an APD. The State agency shall obtain prior written approval from FCS for Request for Proposals which are associated with an EBT system regardless of the cost.

(B) Contracts; unless specifically exempted by FCS, the State agency shall obtain prior written approval before the contract may be signed by the State agency. However, contracts costing up to $5 million for competitive procurements and up to $1 million for noncompetitive acquisitions from non-governmental sources, and which are an integral part of the approved APD need not be submitted to FCS. States will be required to submit contracts under this threshold amount on an exception basis or if the procurement strategy is not adequately described and justified in an APD. The State agency shall obtain prior written approval from FCS for contracts which are associated with an EBT system regardless of the cost.

(C) Contract amendments; unless specifically exempted by FCS, the State agency shall obtain prior written approval before the contract amendment may be signed by the State agency. However, contract amendments involving cost increases of up to $1 million or time extensions of up to 120 days, and which are an integral part of the approved APD need not be submitted to FCS. States will be required to submit contract amendments under these threshold amounts on an exception basis or if the contract amendment is not adequately described and justified in an APD. Amendments to contracts for EBT systems shall be permitted within the approved funding cap. State agencies shall submit copies of any contract amendments or contract extensions to FCS with an accompanying analysis of the impact the changes would have upon the approved issuance cap.

(iii) The State agency must obtain prior written approval from FCS as specified in paragraphs (c)(2) (i) and (ii) of this section in order to claim and receive reimbursement for the associated costs of the ADP acquisition.

(3) *Approval requirements.* (i) For ADP equipment and service acquisitions requiring prior approval as specified in paragraph (c)(1) of this section, the State agency shall submit the following documents to FCS for approval:

(A) Feasibility studies, when specifically required by FCS as a condition of approving the Planning APD. When required by FCS for approval, the State agency shall submit the feasibility

study no later than 90 days after its completion.

(B) APD Updates, as required by paragraph (e) of this section, on an annual or as needed basis.

(ii) The State agency must obtain FCS approval of the documents specified in paragraph (c)(3)(i) of this section in order to claim and receive reimbursement for the associated costs of the ADP acquisition.

(4) *Approval by the State agency*. Approval by the State agency is required for all documents specified in this regulation prior to submission for FCS approval. In addition, State agency approval is also required for those acquisitions of ADP equipment and services not requiring prior approval by FCS.

(5) *Prompt action on requests for prior approval.* FCS will reply promptly to State requests for prior approval. If FCS has not provided written approval, disapproval or a request for additional information within 60 days of FCS' letter acknowledging receipt of the State's request, the request will be deemed to have provisionally met the prior approval requirement in paragraph (c) of this section. However, provisional approval will not exempt a State from having to meet all other Federal requirements which pertain to the acquisition of ADP equipment and services. Such requirements remain subject to Federal audit and review.

(d) *APD content requirements*—(1) *Planning APD.* The State agency may request FFP at the regular or enhanced funding rate for the costs of determining the need for and planning the acquisition of ADP equipment or services through the submission of the Planning APD. The State agency may request FFP for the costs of planning activities beginning with initial project inception through the performance of necessary systems and alternatives analyses, selection and design, including the completion of a general systems design. The Planning APD shall contain the following information:

(i) The State agency's description of the programmatic and organizational needs and/or problems to be addressed by the proposed ADP acquisition and the specific objectives to be accomplished under the Planning APD;

(ii) The State agency's commitment to complete the following, where appropriate, as part of project planning activities: a functional requirements specification document, feasibility study, alternatives analysis, cost-benefit analysis, and a general system design. If an existing ADP system is to be transferred, the State agency may plan to use the general system design of the transferred system. State agencies requesting FFP at 63 percent funding rate shall include a statement of commitment that the proposed ADP acquisition would meet the functional requirements of § 272.10;

(iii) The State agency's description of the organization, required State and contractual resources and availability of those resources, and the assignments of roles and responsibilities for project planning activities. The State agency shall include a description of resources to be procured and procurement methods;

(iv) The State agency's schedule of activities and deliverables during project planning, including a description and schedule of procurement activities to be undertaken in support of the planning project; and

(v) A proposed budget which shall identify costs for project planning activities by Federal fiscal year. The budget shall include an estimate of prospective cost distribution to participating Federal agencies and the method for cost allocation. The State agency shall also include an estimate of the total project costs, including both the cost of the planning project and the cost of any eventual ADP equipment and/or services acquisition, which will be used only for determining whether the thresholds of § 277.18(c)(1) are met. An estimate of total project cost for an EBT system shall not be required to be incorporated into the Planning APD budget.

(2) *Implementation APD.* The State agency may request FFP at the regular or enhanced funding rate to acquire ADP equipment and services through the submission of the Implementation APD. The State agency may request FFP for the necessary activities to develop, acquire, install and implement the proposed ADP system or acquisition. The Implementation APD shall

contain the following information, where appropriate:

(i) The State agency shall complete and submit a functional requirements specification document;

(ii) The State agency shall submit a feasibility study and associated alternatives analyses, which include the transfer or modification of an existing system from a similar State or jurisdiction in the examination of alternatives. State agencies which reject the transfer or modification of an existing system must provide an analysis describing the barriers to system transfer as part of the feasibility study. The analysis of barriers to system transfer shall include a comparison of the costs of overcoming the problem in transferring an operational system to the costs of developing a new system;

(iii) The State agency shall submit the new or transferred general systems design and shall also document the intended approaches, plans and techniques to develop or modify specific aspects of the proposed ADP system or acquisition including hardware, software, telecommunications, system testing, and data security;

(iv) The State agency shall describe the anticipated resource requirements for implementation of the ADP project, the resources planned to be available for the project, and plans for augmenting resources to meet resource requirements;

(v) The State agency shall indicate the principal events and schedule of activities, milestones, and deliverables during implementation of the project;

(vi) The State agency shall submit a proposed budget which identifies costs for intended project development and implementation activities by Federal fiscal year and shall include a consideration of all possible Implementation APD activity costs (e.g., system conversion, computer capacity planning, supplies, training, and miscellaneous ADP expenses). The budget shall contain an estimate of prospective cost distribution and methods for allocating costs to participating Federal agencies;

(vii) The State agency shall document the scope, methodology, evaluation criteria and results of cost-benefit analyses for evaluating the selected design and alternatives. The cost-benefit analysis shall include a statement indicating the period of time the State agency intends to use the proposed equipment or system; and

(viii) The State agency shall describe the security and interface requirements to be employed and the backup and contingency procedures available.

(3) *APD Budget.* The proposed budget for both the Planning APD and the Implementation APD shall include cost distribution plans containing the bases for proposed rates, both direct and indirect, for costs associated with system planning, development, acquisition or implementation, as appropriate. The budget proposals accompanying the Implementation APD shall also include proposed cost distribution plans and the bases of proposed rates for the operation of the ADP system. The budget activities shall be presented on a Federal fiscal year basis in a clear fashion to associate costs with each planned activity. The budgets must identify all development costs separately from any ongoing operational costs. Costs must be distinguished by developmental projects and developmental time periods. Actual costs claimed must be reconciliable to projected costs as proposed and approved by FCS in the APD.

(e) *APD Update*—(1) *General submission requirements.* The State agency shall submit an APD Update for FCS approval for all approved Planning and Implementation APD's that are funded at the enhanced FFP rate, or that are funded at the regular FFP rate and total acquisition costs exceed $5 million. The APD Update shall be submitted to the FCS Regional Office within 90 days after the annual anniversary date of the original APD approval, unless the submission date is specifically altered by FCS.

(2) *Content requirements.* The APD Update represents a self-certification by the State agency of project status in relation to the provisions of the approved Planning APD and Implementation APD. The Annually Updated APD shall include:

(i) Project activity status.

(A) The status of all major tasks and milestones in the approved Planning APD, Implementation APD or previous APD Update's for the past year. The

APD Update shall include all major tasks and milestones completed in the past year and degree of completion for unfinished tasks.

(B) The status of all project deliverables completed in the past year and degree of completion for unfinished products.

(C) Reports of past and/or anticipated problems or delays in meeting target dates in the approved Planning APD, Implementation APD or previous APD Update's for the remainder of the project. The Annually Updated APD shall include an explanation of the need to extend any major project target dates.

(ii) Project expenditures.

(A) A detailed accounting for all expenditures for project development over the past year.

(B) An explanation of differences between projected expenses in the approved Planning or Implementation APD, or previous APD Update's, and actual expenditures for the past year. If changes in costs are reported, FCS may require the submission of a revised cost-benefit analysis as a condition for approval of the APD Update.

(C) Changes to the allocation basis in the approved APD's cost allocation methodology.

(iii) Changes to the approved APD.

(A) Revised language for all changes to the approved APD or previous APD Updates shall be submitted as part of the APD Update, unless submitted separately by the State agency as the changes occurred throughout the year.

(B) Changes in project management and/or contractor services.

(3) *Submission as needed.* In addition to the requirement for approval of an APD Update on an annual basis, as specified in paragraph (e)(1) of this section, the State agency may submit an APD Update on a more frequent or as needed basis, in order to obtain a commitment of FFP whenever significant project changes occur. Without such approval, the State agency is at risk for funding of project activities which are not in compliance with the terms and conditions of the approved APD and subsequently approved APD Updates, until such time as approval is specifically granted by FCS. At a minimum, the State agency should consider submission of an APD Update whenever any of the following changes occur or are anticipated:

(i) A significant increase ($1 million or more) in total project costs;

(ii) A significant schedule extension (60 days or more) for major milestones;

(iii) A significant change in procurement approach, and/or scope of procurement activities beyond that approved in the APD;

(iv) A change in system concept, or a change to the scope of the project; or

(v) A change to the approved cost allocation methodology.

(f) *Service agreements.* The State agency shall execute service agreements when data processing services are to be provided by a State central data processing facility or another State or local agency. Service agreements shall be kept on file by the State agency and be available for Federal review, and shall:

(1) Identify the ADP services that will be provided;

(2) Include, preferably as an amendable attachment, a schedule of charges for each identified ADP service, and a certification that these charges apply equally to all users;

(3) Include a description of the method(s) of accounting for the services rendered under the agreement and computing services charges;

(4) Include assurances that services provided will be timely and satisfactory;

(5) Include assurances that information in the computer system as well as access, use and disposal of ADP data will be safeguarded in accordance with provisions of § 272.1(c) and § 277.13;

(6) Require the provider to obtain prior approval pursuant to § 277.18(c)(1) from FCS for ADP equipment and ADP services that are acquired from commercial sources primarily to support the Food Stamp Program and requires the provider to comply with § 277.14 for procurements related to the service agreement. ADP equipment and services are considered to be primarily acquired to support the Food Stamp Program when the Program may reasonably be expected to either be billed for more than 50 percent of the total charges made to all users of the ADP equipment and services during the time

period covered by the service agreement, or directly charged for the total cost of the purchase or lease of ADP equipment or services;

(7) Include the beginning and ending dates of the period of time covered by the service agreement; and

(8) Include a schedule of expected total charges to the Program for the period of the service agreement.

(g) *Entitlement to 63 Percent FFP Rate.* (1) A State agency may, at its option, request reimbursement one time at a 63 percent FFP rate for the costs of planning, design, development and installation of ADP and information retrieval systems.

(2) The 63 percent funding level may be approved by FCS if the proposed system will:

(i) Assist the State agency in meeting the requirements of the Food Stamp Act;

(ii) Meet the program standards specified in § 272.10(b)(1), (b)(2) and (b)(3) of this part, except for the requirements in paragraphs (b)(2)(vi), (b)(2)(vii), and (b)(3)(xi) of this section to eventually transmit data directly to FCS;

(iii) Be likely to provide more efficient and effective administration of the program; and

(iv) Be compatible with other such systems utilized in the administration of State plans under the program of Aid to Families with Dependent Children (AFDC).

(3) State agencies seeking an enhanced level of funding for the planning, design, development and installation of automated data processing and information retrieval systems shall develop Statewide systems which are integrated with AFDC. In cases where a State agency can demonstrate that a local, dedicated, or single function (issuance or certification only) system will provide for more efficient and effective administration of the program, FCS may grant an exception to the Statewide integrated requirement. These exceptions will be based on an assessment of the proposed system's ability to meet the State agency's need for automation. Systems funded as exceptions to this rule, however, should be capable, to the extent necessary, of an automated data exchange with the State system used to administer AFDC. In no circumstances will funding be available for systems which duplicate other State agency systems, whether presently operational or planned for future development.

(4) The system developed in response to these regulations shall contain the following elements, where appropriate:

(i) A data base which receives information, sorts, performs calculations, and stores information;

(ii) An information retrieval system which will have the ability to access the data base, display or print data, and update the data in numerical or alphabetical form;

(iii) Hardware, in addition to that required for the data base, which will include visual display terminal(s) with an attached keyboard, connected to the data base hardware components by telecommunication networks;

(iv) Software which will include system programs for data recall and input, budget calculation capability when not included in the data base system, printout and display for data entry and inquiry terminals, and for network control; and

(v) Technological safeguards and managerial procedures which will be established and applied to computer hardware, software, and data, in accordance with paragraph (p) of this section, in order to ensure the protection of the integrity of the system and individual privacy. System security shall be inherent in the system and provided for in the Implementation APD submitted for approval. The system will process machine readable data files used for the authorized exchange of information between levels of government (*i.e.,* State to State, State to Federal).

(5) Approval of the Planning APD and Implementation APD for payment by FCS of costs at the 63 percent level will be limited to:

(i) Planning and design, *i.e.,* requirements and systems analyses, feasibility studies, preliminary cost benefits analyses, alternatives analyses, and general systems design;

(ii) Development, *i.e.,* detailing of system and program specifications, programming and testing;

(iii) Procurement of ADP equipment and/or services; and

(iv) Installation, *i.e.*, conversion, training of staff, and turnover to operational status.

(6) Costs may not be funded at 63 percent when the approved system produces automated processing of food stamp recipient applications, issuance authorizations or other reports (operations) on a continuing basis for use by State agency personnel for administration of the Food Stamp Program. Operations include the use of purchased or rented computer equipment and software directly required for and used in the operation of the automated data processing and information retrieval system. For ADP development projects with phased installation and implementation, counties, districts or other subdivisions of the State shall be considered operational at the time that the approved system produces automated application processing and/or issuance authorizations for the food stamp caseload for that subdivision of the State. Pilot testing and an initial period of parallel processing for test purposes may be considered developmental costs and eligible for 63 percent funding for the period of time specified in the approved APD, unless an extension is subsequently approved by FCS.

(7) If FCS suspends approval of an APD in the course of a State agency's planning, design, development, or installation, the 63 percent level of funding shall not be allowable for any costs incurred until such time as the conditions for approval are met.

(8) Incident to the activities listed in paragraph (g)(5) of this section, a State agency may seek payment for the following expenses at a 63 percent level.

(i) Personnel. Salaries, wages, travel, and benefits of personnel actually engaged in design, development, or installation of approved ADP systems.

(ii) Materials, equipment, facilities, and supplies. Costs of materials, equipment, facilities and supplies used in design, development, or installation of approved ADP systems. Only the proportionate share of the costs of capital assets assignable to the period of time or prorated for usage may be claimed during the design, development, or installation of these systems. This share must be determined based on acquisition costs and/or depreciation or approved usage rates. Data with respect to such costs shall be submitted with the request for funding.

(iii) Contracted services. Services obtained under the provisions of contracts which meet the procurement standards of this part for the design, development, or installation of FCS approved systems.

(iv) Management studies and preparation of other planning documents. The cost of planning activities, which were approved for enhanced funding under a planning APD, may be funded at the 63 percent level regardless of final approval or denial of the Implementation APD.

(h) *Emergency acquisition requirements.* The State agency may request FFP for the costs of ADP equipment and services acquired to meet emergency situations which preclude the State agency from following the prior approval requirements of § 277.18(c). FCS may provide FFP in emergency situations if the following conditions are met:

(1) The State agency must submit a written request to FCS prior to the acquisition of any ADP equipment or services. The written request must be sent by registered mail and shall include:

(i) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs;

(ii) A brief description of the circumstances which result in the State agency's need to proceed with the acquisition prior to obtaining formal FCS approval; and

(iii) A description of the adverse impact which would result if the State agency does not immediately acquire the ADP equipment and/or services.

(2) Upon receipt of a written request for emergency acquisition FCS shall provide a written response to the State agency within 14 days. The FCS response shall:

(i) Inform the State agency that the request has been disapproved and the reason for disapproval; or,

(ii) Inform the State agency that FCS recognizes that an emergency situation exists and the State agency must submit a formal request for approval by FCS which includes the information specified at § 277.18(d)(2)

within 90 days from the date of the State agency's initial written request.

(iii) If FCS approves the request submitted under paragraph (h)(1) of this section, FFP will be available from the date the State agency acquires the ADP equipment and services.

(i) *Cost determination and claiming costs*—(1) *Cost determination.* Actual costs must be determined in compliance with an FCS approved budget and appendix A to this part, and must be reconcilable with the FCS funding level. There shall be no payments pursuant to this section to the extent that a State agency is reimbursed for such costs pursuant to any other Federal program or uses ADP systems for purposes not connected with the Food Stamp Program. The State agency approved cost allocation plan must be amended to disclose the methods which will be used to identify and classify costs to be claimed. This methodology must be submitted to FCS as part of the request for FCS approval of funding as required in paragraph (d)(3) of this section. Any costs funded pursuant to these regulations shall be excluded in determining the State agency's administrative costs under any other section of this part.

(2) *Cost identification for purposes of FFP claims.* State agencies shall assign and claim the costs incurred under an approved APD in accordance with the following criteria:

(i) *Development costs.* Using its normal departmental accounting system, the State agency shall specifically identify what items of costs constitute development costs, assign these costs to specific project cost centers, and distribute these costs to funding sources based on the specific identification, assignment and distribution outlined in the approved APD. The methods for distributing costs set forth in the APD should provide for assigning identifiable costs, to the extent practicable, directly to program/functions. The State agency shall amend the cost allocation plan required by § 277.9 to include the approved APD methodology for the identification, assignment and distribution of the development costs.

(ii) *Operational costs.* Costs incurred for the operation of an ADP system shall be identified and assigned by the State agency to funding sources in accordance with the approved cost allocation plan required by § 277.9.

(iii) *Service agreement costs.* States that operate a central data processing facility shall use their approved central service cost allocation plan required by OMB Circular A–87 to identify and assign costs incurred under service agreements with the State agency. The State agency shall then distribute these costs to funding sources in accordance with paragraphs (i)(2)(i) and (i)(2)(ii) of this section.

(3) *Capital expenditures.* The State agency shall charge the costs of ADP equipment having unit acquisition costs or total aggregate costs, at the time of acquisition, of more than $25,000 by means of depreciation or use allowance, unless a waiver is specifically granted by FCS. If the equipment acquisition is part of an APD that is subject to the prior approval requirements of paragraph (c)(2) of this section, the State agency may submit the waiver request as part of the APD.

(4) *Claiming costs.* Prior to claiming funding under this section the State agency shall have complied with the requirements for obtaining approval and prior approval of § 277.18(c).

(5) *Budget authority.* FCS approval of requests for funding shall provide notification to the State agency of the budget authority and dollar limitations under which such funding may be claimed. FCS shall provide this amount as a total authorization for such funding which may not be exceeded unless amended by FCS. FCS's determination of the amount of this authorization shall be based on the budget submitted by the State agency. Activities not included in the approved budget, as well as continuation of approved activities beyond scheduled deadlines in the approved plan, shall require FCS approval of an amended State budget for payment. Requests to amend the budget authorization approved by FCS shall be submitted to FCS prior to claiming such expenses.

(j) *Procurement requirements.* (1) Procurements of ADP equipment and services are subject to the procurement standards prescribed by § 277.14 regardless of any conditions for prior approval, except the requirements of

§ 277.14(b)(1) and (2) regarding review of proposed contracts. Those standards include a requirement for maximum practical open and free competition regardless of whether the procurement is formally advertised or negotiated.

(2) The standards prescribed by § 277.14, as well as the requirement for prior approval, apply to ADP services and equipment acquired by a State or local agency, and the ADP services and equipment acquired by a State or local central data processing facility primarily to support the Food Stamp Program.

(3) The competitive procurement policy prescribed by § 277.14 shall be applicable except for ADP services provided by the agency itself, or by other State or local agencies.

(k) *Access to the system and records.* Access to the system in all aspects, including but not limited to design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, shall be made available by the State agency to FCS or its authorized representatives at intervals as are deemed necessary by FCS, in order to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system. Failure to provide full access by appropriate State and Federal representatives to all parts of the system shall result in suspension and/or termination of Food Stamp Program funds for the costs of the system and its operation.

(l) *Ownership rights*—(1) *Software*—(i) The State or local government shall include a clause in all procurement instruments which provides that the State or local government shall have all ownership rights in any software or modifications thereof and associated documentation designed, developed or installed with FFP under this section.

(ii) FCS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation.

(iii) Proprietary operating/vendor software packages (e.g., ADABAS or TOTAL) which are provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in paragraphs (l)(1)(i) and (l)(1)(ii) of this section. FFP is not available for proprietary applications software developed specifically for the Food Stamp Program.

(2) *Automated data processing equipment.* The policies and procedures governing title, use and disposition of property purchased with Food Stamp Program funds, which appear at 7 CFR 277.13 are applicable to automated data processing equipment.

(m) *Use of ADP systems.* ADP systems designed, developed or installed with FFP shall be used for the period of time specified in the APD, unless FCS determines that a shorter period is justified.

(n) *Basis for continued Federal financial participation.* FCS will continue FFP at the levels approved in the Planning APD and the Implementation APD provided that project development proceeds in accordance with the conditions and terms of the approved APD and that ADP resources are used for the purposes authorized. FCS will use the APD Update to monitor ADP project development. The submission of the report prescribed in § 277.18(e) for the duration of project development is a condition for continued FFP. In addition, periodic onsite reviews of ADP project development and State and local agency ADP operations may be conducted by or for FCS to assure compliance with approved APD's, proper use of ADP resources, and the adequacy of State or local agency ADP operations.

(o) *Disallowance of Federal financial participation.* If FCS finds that any ADP acquisition approved under the provisions of § 277.18(c) fails to comply with the criteria, requirements, and other undertakings described in the approved or modified APD, payment of FFP may be disallowed.

(p) *ADP system security requirements and review process*—(1) *ADP system security requirements.* State and local agencies are responsible for the security of all ADP projects under development, and operational systems involved in the administration of the Food Stamp Program. State and local agencies

shall determine appropriate ADP security requirements based on recognized industry standards or standards governing security of Federal ADP systems and information processing.

(2) *ADP security program.* State agencies shall implement and maintain a comprehensive ADP Security Program for ADP systems and installations involved in the administration of the Food Stamp Program. ADP Security Programs shall include the following components.

(i) Determination and implementation of appropriate security requirements as prescribed in paragraph (p)(1) of this section.

(ii) Establishment of a security plan and, as appropriate, policies and procedures to address the following areas of ADP security:

(A) Physical security of ADP resources;

(B) Equipment security to protect equipment from theft and unauthorized use;

(C) Software and data security;

(D) Telecommunications security;

(E) Personnel security;

(F) Contingency plans to meet critical processing needs in the event of short- or long-term interruption of service;

(G) Emergency preparedness; and

(H) Designation of an Agency ADP Security Manager.

(iii) Periodic risk analyses. State agencies shall establish and maintain a program for conducting periodic risk analyses to ensure that appropriate, cost-effective safeguards are incorporated into new and existing systems. In addition, risk analyses shall be performed whenever significant system changes occur.

(3) *ADP system security reviews.* State agencies shall review the ADP system security of installations involved in the administration of the Food Stamp Program on a biennial basis. At a minimum, the reviews shall include an evaluation of physical and data security, operating procedures, and personnel practices. State agencies shall maintain reports of their biennial ADP system security reviews, together with pertinent supporting documentation, for Federal on-site review.

(4) *Applicability.* The security requirements of this section apply to all ADP systems used by State and local governments to administer the Food Stamp Program.

(5) *Costs.* Costs incurred for complying with the provisions of paragraphs (p)(1) through (p)(3) of this section are considered regular administrative costs which are funded at the regular FFP level unless they are incurred during the development of an ADP system funded at the 63 percent FFP rate, in accordance with paragraph (g) of this section.

[Amdt. 319, 55 FR 4355, Feb. 7, 1990, as amended by Amdt. 345, 57 FR 11259, Apr. 1, 1992; Amdt. 342, 59 FR 2733, Jan. 19, 1994; Amdt. 368, 61 FR 33643, June 28, 1996]

### § 277.19 Alien verification activities.

(a) *General.* This section establishes the standards and procedures for Federal Financial Participation (FFP) for State and local costs incurred in the verification of the documented alien status of FSP applicants through the SAVE Program, as outlined in § 272.11. These costs are eligible for 100 percent FFP under the terms and conditions of this section. In addition, any such costs funded at the 100 percent rate must be necessary and reasonable in the judgment of FCS, based on cost benefit analysis and/or other methods determined by FCS.

(b) *Funding.* Upon submission to and approval by FCS of a budget, or budget revisions, and the attachment to the State Plan of Operations required by § 272.11(e), State agencies will be funded at the 100 percent FFP rate for all allowable direct and indirect costs in accordance with the requirements contained in this section.

(c) *Eligible costs.* The following costs are eligible for 100 percent FFP:

(1) *Personnel.* Charges for time spent by State and local employees in the verification of the documented alien status of Food Stamp Program applicants through the SAVE Program. The allocated share of indirect costs attributable to this staff is also an allowable charge. All such costs, both direct and indirect, shall be documented through the use of time sheets or time studies, or through another method specified in

the State Plan of Operations and approved by FCS.

(2) *Equipment and supplies.* Charges for equipment and supplies in proportion to their use in implementing and operating the SAVE Program by the State and/or local agencies. ADP equipment may only be acquired following prior approval by FCS. FCS approval shall be obtained as prescribed by §277.18. Non-ADP equipment having a net unit cost of $25,000 or more must also receive prior FCS approval for such charges.

(3) *Fees and other charges.* Charges for fees and other costs attributable to the implementation and operation of the SAVE Program by State and local agencies are allowable. Specifically, any fees charged for the use of the Immigration and Naturalization Service's alien verification system are allowable. Any other charges, such as use allowances for space used by alien verification units are allowable.

(d) *Ineligible costs.* Costs reimbursable at the 100 percent FFP rate are limited to those costs incurred in the implementation and operation of the SAVE Program as outlined in §272.11. Costs associated with routine certification and verification activities, including mandatory alien verification procedures as described in §273.2(f)(1)(ii), are eligible for funding as prescribed by §277.4(b).

(e) *Budget submittals.* The State agency shall include a projection of anticipated costs for the implementation and operation of the SAVE Program as part of the normal submittal of the State Food Stamp Program budget, as required by §277.3, or as a revision to a budget previously submitted. These costs shall be included in the column for ''other'' expenses on the Budget Projection Statement (FCS–366A) and identified separately on an attachment to the FCS–366A.

(f) *Reporting.* Expenditures for the implementation and operation of the SAVE Program shall be reported on the Financial Status Report (SF–269) in the column containing ''other'' expenses. SAVE Program expenditures shall also be separately identified in an attachment to be submitted with each quarterly SF–269 report. Any costs requiring prior approval by FCS shall not be claimed until approved.

[53 FR 39443, Oct. 7, 1988]

## APPENDIX A TO PART 277—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO ADMINISTRATION OF THE FOOD STAMP PROGRAM BY STATE AGENCIES

This appendix sets forth the procedures implementing uniform requirements for the negotiations and approval of cost allocation plans with State agencies, in accordance with the provisions of Federal Management Circular (FMC) 74–4 and OASC–10, ''Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government,'' U.S. Department of Health, Education, and Welfare. This material is adapted substantially from the circular; changes have been made only when necessary in order to conform with legislative constraints.

(A) Purpose and scope.

(1) *Objectives.* This appendix sets forth principles for determining the allowable costs of administering the Food Stamp Program by State agency under FCS-approved State Plans of Operation. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of the Program. They are designed to provide that all federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

(2) *Policy guides.* The application of these principles is based on the fundamental premises that:

(a) State agencies are responsible for the efficient and effective administration of the Food Stamp Program through the application of sound management practice.

(b) The State agency assumes the responsibility for seeing that Food Stamp Program funds have been expended and accounted for consistent with underlying agreements and program objectives.

(c) Each State agency, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques as may be necessary to assure proper and efficient administration.

(3) *Application.* These principles will be applied by FCS in determining costs incurred by State agencies receiving FCS payments for administering the Food Stamp Program.

(B) Definitions.

Approval or authorization by FCS means documentation evidencing consent prior to incurring specific costs.

Cognizant Federal Agency means the Federal agency recognized by OMB as having the predominate interest in terms of program dollars.

Cost allocation plan means the documentation identifying, accumulating, and distributing allowable costs of program administration together with the allocation methods used.

Cost, as used herein, means cost as determined on a cash, accrual, or other basis acceptable to FCS as a discharge of the State agency's accountability for FCS funds.

Cost center means a pool, summary account, objective or area established for the accumulation of costs. Such areas include objective organizational units, functions, objects or items of expense, as well as ultimate cost objective(s) including specific costs, products, projects, contracts, programs and other operations.

Federal agency means FCS and also any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to or contracts with State or local governments.

Payments for administrative costs means reimbursement or advances for costs to State agencies pursuant to any agreement whereby FCS provides funds to carry out programs, services, or activities in connection with administration of the Food Stamp Program. The principles and policies stated in this appendix as applicable to program payments in general also apply to any State agency obligations under a cost reimbursement type of agreement performed by a subagency, including contracts and subcontracts.

Food Stamp Program administration means those activities and operations of the State agency which are necessary to carry out the purposes of the Food Stamp Act, including any portion of the Program financed by the State agency.

Local unit means any political subdivision of government below the State level.

Other agencies of the State means departments or agencies of the State or local unit which provide goods, facilities, and services to a State agency.

Subagencies means the organization or person to which a State agency makes any payment for acquisition of goods, materials or services for use in administering the Food Stamp Program and which is accountable to the State agency for the use of the funds provided.

Service, as used herein, means goods and facilities, as well as services.

Supporting services means auxiliary functions necessary to sustain the direct effort of administering the Program. These services may be centralized in the State agency or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

(C) Basic guidelines.

(1) Factors affecting allowability of costs. To be allowable under the Program, costs must meet the following general criteria:

(a) Be necessary and reasonable for proper and efficient administration of the Program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

(b) Be authorized or not prohibited under State or local laws or regulations.

(c) Conform to any limitations or exclusions set forth in these principles, Federal Laws, or other governing limitations as to types or amounts of cost items.

(d) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the State agency is a part.

(e) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(f) Not be allocable to or included as a cost to any other federally financed program in either the current or a prior period.

(g) Be the net of all applicable credits.

(2) Allocable costs.

(a) A cost allocable to a particular cost objective to the extent of benefits received by such objective.

(b) Any cost allocable to a particular program or cost objective under these principles may not be shifted to other Federal programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreement, or for other reasons.

(c) Where an allocation of joint cost will ultimately result in charges to the Program, an allocation plan will be required as prescribed in section I of these principles.

(3) Applicable credits.

(a) Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to programs as direct or indirect costs. Examples of such transactions are: Purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

(b) Applicable credits may also arise when Federal funds are received or are available from sources other than FCS to finance operations or capital items donated or financed

by the Federal Government to fulfill matching requirements under another program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given program.

(D) Composition of cost.

(1) *Total cost.* The total cost of a program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credit.

(2) *Classification costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to a program or other ultimate cost objective. However, it is essential that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under the Program are provided in the section which follows.

(E) Direct costs.

(1) *General.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to the Program, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in the course to programs and other ultimate costs objectives.

(2) *Application.* Typical direct costs chargeable to the Program are:

(a) Compensation of employees for the time and effort devoted specifically to the administration of the Program.

(b) Cost of materials acquired, consumed, or expended specifically for the purpose of the Program.

(c) Equipment and other approved capital expenditures.

(d) Other items of expense incurred specifically for efficiently and effectively administering the Program.

(e) Service furnished specifically for the Program by other agencies, provided such charges are consistent with criteria outlined in section G of these principles.

(F) Indirect costs.

(1) *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the result achieved. The term indirect cost as used herein applies to costs of this type originating in the State agency, as well as those incurred by other departments in supplying goods, services, and facilities, to the State agency. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a State agency or in other agencies providing services to a State agency. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

(2) *State agency indirect costs.* All State agency indirect costs, including the various levels of supervision, are eligible for allocation to the program provided they meet the conditions set forth in their principles. In lieu of determining the actual amount of State agency indirect cost allocable to the program the following methods may be used:

(a) *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to program administration may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties to reach an informed judgment (1) as to the probable level of indirect costs in the State agency during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect costs.

(b) *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a State agency's indirect services cannot be readily determined as in the case of a small self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the State agency before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

(3) *Limitation on indirect costs.*

(a) Some Federal programs may be subject to laws that limit the amount of indirect cost that may be allowed. Agencies that sponsor programs of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such program does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under these principles, whichever is the smaller.

(b) When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under a program may not be shifted to another federally sponsored program or contract.

(G) Cost incurred by other agencies of the State.

(1) *General.* The cost of service provided by other agencies may only include allowable

direct costs of the service plus a pro rata share of allowable supporting costs and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

(2) *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by other agencies of the State, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

(a) *Standard indirect rate.* An amount equal to ten percent of direct labor cost in providing the service performed by other agencies of the State (excluding overtime, shift, or holiday premiums, and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

(b) *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in section F(2)(a) of these principles.

(H) Cost incurred by State agency for others. The principles provided in section G will also be used in determining the cost of services provided by the State agency to another agency.

(I) Cost allocation plan.

(1) A cost allocation will be required to support the distribution of any indirect costs. All costs allocable to the Food Stamp Program under cost allocation plans will be supported by formal accounting records which will substantiate the propriety of eventual charges.

(2) There are two types of cost allocation plans:

(a) Statewide or central service cost allocation plan identifies and distributes the cost of services provided by support organizations to those departments or units participating in Federal programs.

(b) Indirect cost proposals distribute the administrative or joint costs incurred by the State agency and the cost of service allocable to it under the Statewide or central service cost allocation plan in a ratio to all work performed by the State agency. The process involves applying a percentage relationship of indirect cost to direct cost.

(3) *Requirements.* The cost allocation plan of the State agency shall cover all allocated costs of the department as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the State agency, to the extent feasible, should be presented in a single document.

(4) *Instructions for preparation of cost allocation plans.* The Department of Health and Human Services, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State agencies in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government level and indirect cost proposals of individual State agencies.

(5) *Submitting plans for approval.*

(a) Responsibility for approving cost allocation plans for individual State agencies has been assigned by the Office of Management and Budget to the cognizant Federal agency.

(b) State cost allocation plans must be submitted to the cognizant Federal agency within six months after the last day of the State's fiscal year. Upon request by the State agency, an extension of time for submittal of the cost allocation plan may be granted by the cognizant Federal agency. It is essential that cost allocation plans be submitted in a timely manner. Failure to submit the plans when required will cause the State agency to become delinquent. In the event a State becomes delinquent, FCS will not provide for the recovery of central service and indirect costs, and such costs already made and claimed against Food Stamp Program funds will be subject to disallowance.

(6) *Negotiation and approval of cost allocation plans for States.* The cognizant Federal agency, in collaboration with Federal agencies concerned, will be responsible for negotiation, approval, and audit of cost allocation plans.

(7) *Negotiation and approval of cost allocation plans for local governments.* Cost allocation plans will be retained at the local government level for audit by the cognizant Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

(8) A current list of cognizant Federal agencies is maintained by the Office of Management and Budget.

(9) *Resolution of problems.* The Office of Management and Budget will lend assistance in resolving problems encountered by Federal agencies on cost allocation plans.

(10) Approval by FCS. FCS reserves the right to disapprove costs not meeting the general criteria outlined in section C of these principles. FCS shall promptly notify the State agency in writing of the disapproval, the reason for the disapproval and the effective date. Costs incurred by State agencies after disapproval may not be

charged to FCS unless if FCS subsequently approves the cost.

*Standards for Selected Items of Cost*

A. *Allowable cost.* Standards for allowability of costs are established by Federal Management Circular 74–4. These standards will apply regardless of whether a particular item of cost is treated as direct or indirect. Failure to mention a particular item of cost in these standards is not intended to imply that it is either allowable or unallowable. Rather, determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles as stated in Attachment A to Federal Management Circular 74–4.

(1) *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of the Food Stamp Program is allowable. This includes costs incurred by central service agencies of the State government for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

(2) *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

(a) Recruitment of personnel required for the Program;

(b) Solicitation of bids for the procurement of goods and services required;

(c) Disposal of scrap or surplus materials acquired in the performance of the agreement; and

(d) Other purposes specifically provided for by FCS regulations or approved by FCS in the administration of the Food Stamp Program.

(3) *Advisory councils.* Costs incurred by State advisory councils or committees established to carry out Food Stamp Program goals are allowable. The cost of like organizations is allowable when used to improve the efficiency and effectiveness of the Program.

(4) *Audit service.* The cost of audits necessary for the administration and management of functions related to the Program is allowable.

(5) *Bonding.* Costs of premiums on bonds covering employees who handle Food Stamp Program funds or food coupons are allowable. The amount of allowable coverage shall be limited to the anticipated maximum amount of food stamp funds or food coupons handled at one time by that employee.

(6) *Budgeting.* Costs incurred for the development, preparation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the State agency's budget process, the cost of services identifiable to the Food Stamp Program are allowable.

(7) *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

(8) *Central stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for the Food Stamp Program is allowable.

(9) *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

(10) *Compensation for personal services.*

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance in the administration of the program including but not necessarily limited to wages, salaries, and supplementary compensation and benefits as defined in section A.(13) of these principles. The costs of such compensation are allowable to the extent that total compensation for individual employees: is reasonable for the services rendered; follows an appointment made in accordance with State or local government laws and rules and which meets Federal Merit System or other requirements, where applicable; and is determined and supported as provided in section A of these principles. Compensation for employees engaged in federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the Food Stamp Program activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

(b) *Payroll and distribution of time.* Amounts charged to the program for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with the generally accepted practice of the State or

local agency. Payrolls must be supported by time and attendence or equivalent records for individual employees. Distribution of salaries and wages of employees chargeable to more than one program or other cost objective will be supported by appropriate time reports or approved time study methodologies. The method used should be included in the cost allocation plan and should be approved by FCS.

(11) *Depreciation and use allowance.*

(a) State agencies may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

(b) The computation of depreciation or use allowances will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost of any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of acquisition of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by FCS.

(c) Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

(d) In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment.

(e) No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

(12) *Disbursing service.* The cost of disbursing program funds by the State Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

(13) *Employee fringe benefits.* Costs identified are allowable to the extent that total compensation for employees is reasonable as defined in paragraph (10)(a) of these principles.

(a) Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are provided pursuant to an approved leave system, and the cost thereof is equitably allocated to all related activities, including federally assisted programs.

(b) Employee benefits in the form of employers' contributions or expense for social security, employees' life and health insurance plans, unemployment insurance coverage, workers' compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to programs and to other activities.

(14) *Employee morale, health And welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State or local policy, are allowable. Income generated from any of these activities will be offset against expenses.

(15) *Exhibits.* Costs of exhibits relating specifically to the Food Stamp Program are allowable.

(16) *Legal expenses.* The cost of legal expenses required in the administration of the program is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government is unallowable.

(17) *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

(18) *Materials and supplies.* The cost of materials and supplies necessary to carry out the program is allowable. Purchases made specifically for the program should be charged thereto at their actual prices after

deducting all cash discounts, trade discounts, rebates, and allowances received by the State agency. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

(19) *Memberships, subscriptions and professional activities.*

(a) The *cost of membership* in civic, business, technical, and professional organizations is allowable, provided:

(i) The benefit from the membership is related to the program,

(ii) The expenditure is for agency membership,

(iii) The cost of the membership is reasonably related to the value of the services or benefits received, and

(iv) The expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

(b) *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the program.

(c) *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the program and they are consistent with regular practices followed for other activities of the State agency.

(20) *Motor pools.* The costs of a service organization which provides automobiles to user State agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

(21) *Payroll preparation.* The cost of preparing payrolls and maintaining necessary wage records is allowable.

(22) *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for the program are allowable.

(23) *Printing and reproduction.* Cost for printing and reproduction services necessary for program administration including but not limited to forms, reports, manuals, and information literature, is allowable. Publication costs of reports or other media relating to program accomplishments or results are allowable.

(24) *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for the program is allowable.

(25) *Taxes.* In general, taxes or payments in lieu of taxes which the State agency is legally required to pay are allowable.

(26) *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits the program is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by FCS.

(27) *Transportation.* Costs incurred for freight, cartage, express, postage, and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

(28) *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to the program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two. The charges must be consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available. Notwithstanding the provisions of paragraphs C (7) and (10), travel costs of officials covered by those paragraphs, when specifically related to grant programs, are allowable with the prior approval of a grantor agency.

B. *Costs allowable with approval of FCS.*

(1) *Automated Data Processing.* The costs of acquiring data processing equipment and services used in the administration of the Food Stamp Program are allowable. The costs of ADP equipment and services acquisitions to be funded at the 63 percent rate or which exceed the prior approval cost thresholds specified in §277.18(c) are allowable upon the prior written approval of FCS. Requests for prior approval of such costs shall be in accordance with the provisions of §277.18.

(2) *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the Program is allowable subject to the following conditions.

(a) The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality.

(b) The cost of space may not be charged to FCS for periods of nonoccupancy, without authorization of FCS.

(i) *Rental cost.* The rental cost of space in a privately-owned building is allowable.

(ii) *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

(iii) *Rearrangements and alterations.* Costs incurred for rearrangement and alteration of

facilities required specifically for the program or those that materially increase the value or useful life of the facilities (section B(3) of these principles) are allowable when specifically approved by FCS.

(iv) *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in paragraph A(11) of these principles.

(v) *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by FCS.

(3) *Capital expenditures.* The cost, net of any credits, of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets, and/or of nonexpendable personal property, having a useful life of more than one year and a net acquisition cost of more than $5,000 per unit after allocation to FCS as projected for one year after purchase, is allowable when such procurement is specifically approved by FCS. No such approval shall be granted unless the State agency shall demonstrate to FCS that such a cost is:

(a) Necessary and reasonable for proper and efficient administration of the program, and allocable thereto under the principles provided herein; and

(b) That procurement of such item or items has been or will be made in accordance with the standards set out in §277.14. In no case shall such a cost become a program charge against FCS prior to approval in writing by FCS of the procurement and the cost. When assets acquired with Food Stamp funds are (i) sold, (ii) no longer available for use in a federally sponsored program, or (iii) used for purposes not authorized by FCS, FCS's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

(4) *Insurance.*

(a) Cost of insurance to secure the State agency against financial losses involved in the acceptance, storage, and issuance of food coupons and ATP cards is allowable with FCS approval.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(i) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(ii) Costs of insurance or contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that FCS approves such cost.

(5) *Management studies.* The cost of management studies to improve the effectiveness and efficiency of program management for the Food Stamp Program is allowable. However, FCS must approve cost in excess of $2,500 for studies performed by outside consultants or agencies other than the State agency.

(6) *Preagreement costs.* Costs incurred prior to the effective date of approval of the amended indirect cost proposal or the revised Statewide cost allocation plan, whether or not they would have been allowable thereunder if incurred after such date, are allowable only when subsequently provided for in the plan or approved indirect cost proposal.

(7) *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the State agency is allowable. Prior authorization must be obtained from FCS for cost exceeding a total of $2,500.

(8) *Proposal costs.* Costs of preparing indirect cost proposals or amendments for allocating, distributing, and implementing provisions for payment of portions of the costs of administering the Food Stamp Program by the State agency are allowable.

(9) *Cost incurred by agencies other than the State.* The cost of services provided by other agencies (including municipal governments) may only include allowable direct costs plus a pro rata share of allowable supporting costs and supervision directly required in performing the service. Allowable supporting costs are those services which may be centralized and includes such functions as procurement, payroll, personnel services, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service and the like. Supervision costs will not include supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in the operation of the program. In lieu of determining actual indirect cost related to a particular service performed by another agency, either of the following alternative methods may be used during the fiscal year involved and is specifically provided for in the indirect cost proposal:

(a) Standard indirect rate equal to ten percent of direct labor cost in providing the service (excluding overtime, shift or holiday premiums, and fringe benefits) may be allowed in lieu of actual allowable cost.

(b) A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated.

C. *Unallowable costs.* The following costs shall not be allowable:

(1) *Costs of determining food stamp eligibility incidental to the determination of AFDC eligibility are not chargeable to FCS.*

(2) *Bad debts.* Any losses arising from uncollectable accounts or other claims, and related costs, are unallowable.

(3) *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

(4) *Contributions and donations.* Unallowable.

(5) *Entertainment.* Costs whose purpose is for amusement, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities are unallowable.

(6) *Fines and penalties.* Costs resulting from violations of or failure to comply with Federal, State and local laws and regulations are unallowable.

(7) *Governor's expenses.* The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable. However, for a federally-recognized Indian tribal government, only that portion of the salaries and expenses of the office of the chief executive that is a cost of general government is unallowable. The portion of salaries and expenses directly attributable to managing and operating programs is allowable.

(8) *Indemnification.* The cost of indemnifying the State against liabilities to third parties and other losses not compensated by insurance is unallowable.

(9) *Interest and other financial costs.* Interest on borrowings, bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable.

(10) *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies are unallowable.

(11) *Losses.* Losses which could have been covered by permissible insurance are unallowable.

(12) *Underrecovery of cost under agreements.* Any excess of cost over Federal contribution under one agreement is unallowable under another agreement.

(13) The acquisition of land or buildings is an unallowable cost.

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# PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

Sec.

278.1 Approval of retail food stores and wholesale food concerns.
278.2 Participation of retail food stores.
278.3 Participation of wholesale food concerns.
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278.10 [Reserved]

AUTHORITY: 7 U.S.C. 2011–2032.

EDITORIAL NOTE: OMB control numbers relating to this part 278 are contained in §271.8.

## §278.1 Approval of retail food stores and wholesale food concerns.

(a) *Application.* Any firm desiring to participate in the program shall file an application as prescribed by FCS. The FCS officer in charge shall deny or approve authorization, or request more information, within 30 days of receipt of the application.

(b) *Determination of authorization.* An applicant shall provide sufficient data on the nature and scope of the firm's business for the FCS officer in charge to determine whether the applicant's participation will further the purposes of the program. In making this determination the FCS officer in charge shall consider all of the following:

(1) *The nature and extent of the food business conducted by the applicant.* (i) Retail food stores which sell primarily food for home preparation and consumption and in which one or more staple food items, as defined in §271.2, make up more than 50 percent of eligible food sales shall normally be considered to have food business of a nature and extent which will further the purposes of the program. These stores shall include: Full-line grocery stores; convenience stores; stores which sell meat, poultry, or, fish; stands which sell agricultural commodities; farmers markets; milk routes; bread routes; day-old bread stores; bakeries which sell bread; and nonprofit cooperative food-purchasing ventures which are properly licensed to sell food in the

state and locality in which they are operating.

(ii) Firms whose primary business is not the sale of food for home preparation and consumption, but who have recognized grocery departments in which staple foods make up more than 50 percent of eligible food sales, shall normally be considered to have food business of a nature and extent which will qualify the store for participation in the program. In determining whether a store's staple food business is sufficient for the store to qualify for participation in the program, the FCS officer in charge shall also consider:

(A) The volume of staple food business the store does;

(B) The amount of sales of staple foods compared to other business conducted by the firm; and

(C) The availability of other authorized food stores in the area.

(iii) Wholesale food concerns whose primary business is the sale of eligible food at wholesale, and in which one or more staple food items, as defined in § 271.2, make up more than 50 percent of eligible food sales, shall normally be considered to have adequate food business for the purposes of the program.

(iv) No co-located wholesale/retail food concern with 50 percent or less of its total sales in retail food sales may be authorized to redeem food stamps unless it meets the criteria applicable to all retail firms and:

(A) It is a legitimate retail food outlet. Indicators which may establish to FCS that a firm is a legitimate retail food outlet include, but are not limited to, the following:

(*1*) The firm's marketing structure; as may be determined by factors such as, but not limited to:

(*i*) A retail business license;

(*ii*) The existence of sales tax records documenting retail food sales; and/or separate bookkeeping records; and

(*2*) The way the firm holds itself out to the public as evidenced by factors such as, but not limited to:

(*i*) The layout of the retail sales space;

(*ii*) The use of retail advertisements;

(*iii*) The posting of retail prices;

(*iv*) Offering specials to attract retail customers;

(*v*) Hours of operation for retail business;

(*vi*) Parking area for retail customers; and

(B) It has total annual retail food sales of at least $250,000; or

(C) It is a legitimate retail outlet but fails to meet the requirements in paragraph (b)(1)(iv)(B) of this section, and not authorizing such a firm would cause hardship to food stamp households. Hardship would occur in any one of the following circumstances:

(*1*) Program recipients would have difficulty in finding authorized firms to accept their coupons for eligible food;

(*2*) Special ethnic foods would not otherwise be available to recipients; or

(*3*) Recipients would be deprived of an opportunity to take advantage of unusually low prices offered by the firm if no other authorized firm in the area offers the same types of food items at comparable prices.

(2) *The volume of coupon business which FCS may reasonably expect the firm to do.* The FCS officer in charge may consider such factors as the location of a store and previous food sales volumes in evaluating the ability of an applicant firm to attract food stamp business.

(3) *The business integrity and reputation of the applicant.* The FCS officer in charge may consider:

(i) Criminal conviction records reflecting on the honesty or integrity of officers or managers of the applicant firm;

(ii) Official records of removal from other Federal, State, or local programs;

(iii) Judicial determinations in civil litigation adversely reflecting on the integrity of officers or managers of the applicant firm;

(iv) Evidence of an attempt to circumvent a period of disqualification from the food stamp program or a civil money penalty imposed for violations of the Food Stamp Act and this part;

(v) Evidence of prior fraudulent behavior of officers, managers or employees of the applicant firm; and

(vi) Any other evidence reflecting on the business integrity and reputation of the applicant.

(4) *Bonding for firms with previous sanctions.* (i) If the applicant firm has been sanctioned for violations of this part, by withdrawal or disqualification from program participation, or by a civil money penalty, the FCS officer-in-charge shall, as a condition of future authorization, require the applicant to present a collateral bond which:

(A) Is issued by a bonding agent recognized under the law of the State in which the applicant is conducting business, and which is represented by a negotiable certificate only.

(B) Is payable to the Food and Consumer Service, U.S. Department of Agriculture;

(C) Cannot be canceled by the bonding agent for non-payment of the premium by the applicant;

(D) Has a face value of $1,000 or an amount equal to ten percent of the average monthly coupon redemption volume of the applicant for the immediate twelve months prior to the effective date of the most recent sanction which necessitated the bond, whichever amount is greater;

(E) Is valid at all times during which the firm is authorized to participate in the program; and

(F) Remains in the custody of the officer-in-charge unless released to the applicant as a result of the withdrawal of the applicant's authorization, without a fiscal claim established against the applicant by FCS.

(ii) Furnishing a collateral bond shall not eliminate or reduce a firm's obligation to pay in full any civil money penalty or previously determined fiscal claim which may have been assessed against the firm by FCS prior to the time the bond was required by FCS, and furnished by the firm. A firm which has been assessed a civil money penalty shall pay FCS as required, any subsequent fiscal claim asserted by FCS. In such cases a collateral bond shall be furnished to FCS with the payment, or a schedule of intended payments, of the civil money penalty. A buyer or transferee shall not, as a result of the transfer or purchase of a disqualified firm, be required to furnish a bond prior to authorization.

(5) *Taxpayer identification numbers.* At the time of an initial request for authorization as well as reauthorization, an applicant firm must provide its employer identification number and social security numbers as described below:

(i) *Employer Identification Number.* The firm must provide its employer identification number (EIN) if one has been assigned to the firm by the Internal Revenue Service. The authority to request EINs and the guidelines for requesting EINs are set forth in section 6109(f) of the Internal Revenue Code of 1986 and Treas. Reg. § 301.6109–2 (26 CFR 301.6109–2).

(ii) *Social Security Number.* In addition to the EIN, the firm must provide the social security numbers (SSNs) of the following individuals:

(A) The SSN of an owner of a sole proprietorship.

(B) The SSNs of general partners of firms which are partnerships.

(C) The SSNs of up to five of the largest shareholders (owners) of privately owned corporations. (For purposes of this section, a privately owned corporation is one which has shares or stock that are not traded on a stock exchange or available for purchase by the general public.)

(6) *Other factors.* Any other factors which the FCS officer in charge considers pertinent to the application under consideration.

(c) *Wholesalers.* A wholesale food concern may be authorized to accept coupons only from a specified customer or customers if it meets the requirements of paragraphs (a) and (b) of this section, and FCS determines it is required as a redemption outlet:

(1) For one or more specified authorized drug addict or alcoholic treatment programs,

(2) For one or more specified authorized group living arrangements,

(3) For one or more specified authorized shelters for battered women and children,

(4) For one or more specified authorized nonprofit cooperative food-purchasing ventures,

(5) For one or more specified authorized public or private nonprofit homeless meal providers, or

(6) For one or more specified authorized retail food stores which are without access to an insured financial institution which will redeem their coupons.

No firm may be authorized to accept and redeem coupons concurrently as both a retail food store and a wholesale food concern. Authorizations of wholesale food concerns granted prior to January 28, 1982 shall expire on May 31, 1982. Wholesale food concerns desiring to participate in the program after that date must reapply for authorization in accordance with the provisions of this paragraph.

(d) *Meal services.* A meal delivery service or communal dining facility desiring to prepare and serve meals to households eligible to use coupons for those meals in addition to meeting the requirements of paragraphs (a) and (b) of this section, must establish that:

(1) It is recognized as a tax exempt organization by the Internal Revenue Service; or

(2) It is a senior citizens' center or apartment building occupied primarily by elderly persons and SSI recipients, and their spouses; or

(3) It is a restaurant operating under a contract with a State or local agency to prepare and serve (or deliver) low-cost meals to homeless persons, elderly persons and SSI recipients (and in the case of meal delivery services, to elderly persons or handicapped persons) and their spouses. Such a facility must have more than 50 percent of its total sales in food. The contracts of restaurants must specify the approximate prices which will be charged.

(e) *Treatment programs.* Drug addict or alcoholic treatment and rehabilitation programs wishing to redeem through wholesalers food stamps received from or on behalf of their participants shall in addition to meeting the requirements of paragraphs (a), (b) and (d)(1) of this section, be under Part B of Title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.). Approval to participate is automatically withdrawn once the treatment and rehabilitation program no longer meets the criteria which would make it eligible for funding under part B of Title XIX (in accordance with the definition in *Drug addiction or alcoholic treatment and rehabilitation program* in § 271.2).

(f) *Group living arrangements.* FCS shall authorize as retail food stores those group living arrangements wishing to redeem coupons directly through wholesalers. The group living arrangement must, in addition to meeting requirements of paragraphs (a), (b), and (d)(1) of this section, be certified by the appropriate agency or agencies of the State under regulations issued under section 1616(e) of the Social Security Act or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under section 1616(e) of the Social Security Act. Approval to participate is automatically cancelled at any time that a program loses its certification from the State agency or agencies.

(g) *Shelters for battered women and children.* FCS shall authorize as retail food stores those shelters for battered women and children wishing to redeem coupons directly through wholesalers. The shelter must be public or private nonprofit, as defined in paragraph (d)(1) of this section, and meet the requirements of paragraphs (a) and (b) of this section. Shelters which also serve other groups of individuals must have a portion of the facility set aside on a long-term basis to shelter battered women and children. Also required is that the shelter be a residence which serves meals or provides food to its residents.

(h) *House-to-house trade routes.* FCS shall, in consultation with the Department's Office of Inspector General, determine those locations where the operation of trade routes damages the program's integrity. FCS may limit the authorization of house-to-house trade routes to those trade routes whose services are required by participating households in such areas in order to obtain food. The FCS Officer in Charge, in deciding whether households in such areas require a trade route's services, shall consider the volume of food business the trade route does and the availability of alternate sources of comparable food. An FCS official shall inspect any applicant trade route's vehicle to ensure that the trade route is a retail food store before authorizing it to accept coupons. An FCS official may require, as a condition of continuing authorization, that the trade route vehicle be reinspected semiannually to ensure that it continues to be a retail food store.

(i) *Private homeless meal providers.* FCS may authorize as retail food stores those restaurants which contract with the appropriate State agency to serve meals to homeless persons at ''concessional'' (low or reduced) prices. Restaurants shall be responsible for obtaining contracts with the appropriate State agency as defined in § 272.9 and for providing a copy of the contract to FCS at the time it applies for authorization to accept food stamp benefits. Contracts must specify the approximate prices which will be charged. Examples of reduced prices include, but are not limited to, a percentage reduction, a set dollar amount reduction, a daily special meal, or an offer of a free food item or beverage (excluding alcoholic beverages).

(j) *Authorization card.* Upon approval, FCS shall issue a nontransferable authorization card to the firm. The authorization card shall be retained by the firm until superseded, surrendered, or revoked as provided in this part.

(k) *Denying authorization.* FCS shall deny the application of any firm if it determines that:

(1) The firm does not qualify for participation in the program as specified in paragraph (b), (c), (d), (e), (f), (g) or (h) of this section; or

(2) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7 or any fines assessed under § 278.6(l) or § 278.6(m). The FCS officer in charge shall issue a notice to the firm by certified mail or personal service of any authorization denial and shall advise the firm that it may request review of that determination.

(l) *Withdrawing authorization.* (1) FCS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons.

(i) The firm's continued participation in the program will not further the purposes of the program;

(ii) The firm fails to meet the specifications of paragraph (b), (c), (d), (e), (f), (g), or (h) of this section;

(iii) The firm has been found to be circumventing a period of disqualification or a civil money penalty through a purported transfer of ownership;

(iv) The firm has failed to pay fines assessed under § 278.6(l) or § 278.6(m); or

(v) The firm is required under State and/or local law to charge tax on eligible food purchased with coupons or to sequence or allocate purchases of eligible foods made with coupons and cash in a manner inconsistent with 272.1 of these regulations.

(2) The FCS officer in charge shall issue a notice to the firm by certified mail or personal service to inform the firm of the determination and of the review procedure. FCS shall remove the firm from the program if the firm does not request review within the period specified in § 279.5.

(m) *Refusal to accept correspondence or to respond to inquiries.* FCS may withdraw the authorization of any firm which:

(1) Refuses to accept correspondence from FCS;

(2) Fails to respond to inquiries from FCS within a reasonable time; or

(3) Cannot be located by FCS with reasonable effort.

(n) *Periodic reauthorization.* At the request of FCS a retail food store or wholesale food concern will be required to undergo a periodic reauthorization determination by updating any or all of the information on the firm's application form. Failure to cooperate in the reauthorization process will result in withdrawal of the firm's approval to participate in the program.

(o) *Removal from the Special Supplemental Nutrition Program, for Women, Infants, and Children (WIC).* (1) FCS shall withdraw the Food Stamp Program authorization of any firm which is disqualified from the WIC Program based in whole or in part on any act which constitutes a violation of that program's regulation and which is shown to constitute a misdemeanor or felony violation of law, or for any of the following specific program violations:

(i) Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of that food item for a specified period of time.

(ii) Exchanging cash or credit for WIC food instruments;

(iii) Receiving, transacting and/or redeeming WIC food instruments outside of authorized channels;

(iv) Accepting WIC food instruments from unauthorized persons;

(v) Exchanging non-food items for a WIC food instrument;

(vi) Charging WIC customers more for food than non-WIC customers or charging WIC customers more than current shelf price; or

(vii) Charging for food items not received by the WIC customer or for foods provided in excess of those listed on the food instrument.

(2) FCS shall not withdraw the Food Stamp Program authorization of a firm which is disqualified from the WIC Program unless prior to the time prescribed for securing review of WIC disqualification action, the firm was provided notice that it could be withdrawn from the Food Stamp Program based on the WIC violation. Once a firm has served the period of removal from WIC specified by the State agency, the firm may reapply for Food Stamp Program authorization and be approved if otherwise eligible.

(p) *Applications containing false information*. The filing of any application containing false or misleading information may result in the denial or withdrawal of approval to participate in the program and may subject the firm and persons responsible to civil or criminal action.

(q) *Administrative review*. Any withdrawal or denial of authorization to participate in the program shall be subject to administrative review under § 278.8.

(r) *Use and disclosure of information provided by firms*. With the exception of EINs and SSNs, the contents of an initial application, or other information required to be submitted by retail food stores and wholesale food concerns to determine continued eligibility, such as ownership information and sales and redemption data, may be disclosed to and used by Federal and State law enforcement and investigative agencies for the purpose of administering or enforcing the Food Stamp Act or any other Federal or State law, and the regulations issued under the Food Stamp Act or such other law. Such disclosure and use shall also include companies or individuals under contract for the operation by, or on behalf of FCS to accomplish an FCS function. Such purposes include the audit and examination of such information by the Comptroller General of the United States authorized by any other provision of law. Any person who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by Federal law or regulations any information obtained under this paragraph shall be fined not more than $1,000 or imprisoned not more than 1 year, or both. Safeguards with respect to employee identification numbers (EINs) are contained in paragraph (r)(2) of this section. Safeguards with respect to Social Security numbers (SSNs) are contained in paragraph (r)(3) of this section.

(1) *Criteria for requesting information*. FCS shall determine what information can be disclosed and which government agencies have access to that information based on the following criteria:

(i) Federal and State law enforcement or investigative agencies or instrumentalities administering or enforcing specified Federal and State laws, or regulations issued under those laws, have access to certain information maintained by FCS. Such agencies or instrumentalities must have among their responsibilities the enforcement of law or the investigation of suspected violations of law. However, only certain Federal entities have access to information involving SSNs and EINs in accordance with paragraph (r)(1)(ii) of this section;

(ii) Except for SSNs and EINs, information provided to FCS by applicants and authorized firms participating in the FSP may be disclosed and used by qualifying Federal and State entities in accordance with paragraph (r)(1)(i) of this section. The disclosure of SSNs and EINs is limited only to qualifying Federal agencies or instrumentalities which otherwise have access to SSNs and EINs based on law and routine use. Release of information under this paragraph shall be limited to information relevant to the administration or enforcement of the specified laws and regulations, as determined by FCS;

(iii) Requests for information must be submitted in writing, including electronic communication, and must clearly indicate the specific provision of law or regulations which would be administered or enforced by access to requested information, and the relevance

of the information to those purposes. If a formal agreement exists between FCS and another agency or instrumentality, individual written requests may be unnecessary. FCS may request additional information if needed to clarify a request;

(iv) Disclosure by FCS is limited to: Information about applicant stores and concerns with applications on file; information about authorized stores participating in the FSP; and information about unauthorized entities or individuals illegally accepting or redeeming food stamps;

(v) Requests for information disclosure by FCS may involve a specific store or concern, or some or all stores and concerns covered by paragraph (r)(1)(iv) of this section. In addition, FCS may sign agreements allowing certain government entities direct access to appropriate FCS data, with access to EINs and SSNs limited only to other Federal agencies and instrumentalities that otherwise have access to such numbers.

(2) *Employer identification numbers.* (i) The Department may have access to the EINs obtained pursuant to paragraph (b)(5) of this section for the purpose of establishing and maintaining a list of the names and EINs of the stores and concerns for use in determining those applicants who previously have been sanctioned or convicted under sections 12 and 15 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2021 or 2024). The Department also may share EINs with other Federal agencies and instrumentalities that otherwise have access to EINs if the Department determines that such sharing would assist in verifying and matching such information against information maintained by such other agency or instrumentality. Any such information shared pursuant to this paragraph may be used by the Department or such other agency or instrumentality for the purpose of effective administration and enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws. See Treas. Reg. §301.6109–2 (b) and (c) (26 CFR 301.6109–2 (b) and (c)).

(ii) The only persons permitted access to EINs obtained pursuant to paragraph (b) of this section are officers and employees of the United States, who otherwise have access and whose duties or responsibilities require access to the EINs for the administration or enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws. See Treas. Reg. §301.6109–2(d)(1) (26 CFR 301.6109–2(d)(1)).

(iii) The Department or any agency or instrumentality of the United States shall provide for any additional safeguards that the Secretary of the Treasury determines to be necessary or appropriate to protect the confidentiality of the EINs. The Department may also provide for any additional safeguards to protect the confidentiality of EINs so long as these safeguards are consistent with any safeguards determined by the Secretary of the Treasury to be necessary or appropriate. See Treas. Reg. §301.6109–2(d)(2) (26 CFR 301.6109–2(d)(2)).

(iv) EINs maintained by the Department or maintained by any agency or instrumentality of the United States pursuant to §278.1(b)(5) are confidential. Except as provided in paragraph (r)(2)(ii) of this section above, no officer or employee of the United States who has or had access to any such EIN may disclose that number in any manner. For purposes of paragraph (r)(2)(iv) of this section the term *officer or employee* includes a former officer or employee. See Treas. Reg. §301.6109–2(e) (26 CFR 301.6109(e)).

(v) Sections 7213(a) (1), (2) and (3) of the Internal Revenue Code of 1986 apply with respect to the unauthorized, willful disclosure to any person of EINs obtained by the Department pursuant to §278.1(b)(5) in the same manner and to the same extent as sections 7213(a) (1), (2) and (3) apply with respect to unauthorized disclosure of returns and return information described in those sections. Section 7213(a)(4) of the Internal Revenue Code of 1986 applies with respect to the willful offer of any item of material value in exchange for any EIN obtained by the Department pursuant to §278.1(b)(5) in the same manner and to the same extent as section 7213(a)(4) applies with respect to offers (in exchange for any return or return

information) described in that section. See Treas. Reg. § 301.6109–2(f) (26 CFR 301.6109–2(f)).

(3) *Social Security numbers.* (i) The Department may have access to SSNs obtained pursuant to paragraph (b)(5) of this section for the purpose of establishing and maintaining a list of names and SSNs of stores and concerns for use in determining those applicants who previously have been sanctioned or convicted under section 12 or 15 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2021 or 2024). The Department may use this determination of sanctions and convictions in administering sections 12 and 15 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2018, 2021). The Department also may share SSNs with other Federal agencies and instrumentalities if the Department determines that such sharing would assist in verifying and matching such information against information maintained by the Department or such other agency or instrumentality. Any such information shared pursuant to this paragraph shall be used for the purpose of effective administration and enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws.

(ii) The only persons permitted access to SSNs obtained pursuant to paragraph (b) of this section are officers and employees of the United States, who otherwise have access, and whose duties or responsibilities require access to the SSNs for the administration or enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws. Such access shall also include companies or individuals under contract for the operation by, or on behalf of FCS to accomplish an FCS function.

(iii) The Department shall provide for all additional safeguards that the Secretary of Health and Human Services determines to be necessary or appropriate to protect the confidentiality of the SSNs. The Department may also provide for any additional safeguards to protect the confidentiality of SSNs so long as these safeguards are consistent with any safeguards determined by the Secretary of Health and Human Services to be necessary or appropriate.

(iv) The SSNs and related records that are obtained or maintained by authorized persons are confidential, and no officer or employee shall disclose any such SSN or related record except as authorized. The term ''related record'' means any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom a request for a SSN is maintained. For purposes of paragraph (r)(3)(iv) of this section the term ''officer or employee'' includes a former officer or employee.

(v) The sanctions under sections 7213(a) (1), (2) and (3) of the Internal Revenue Code of 1986 will apply with respect to the unauthorized, willful disclosure to any person of SSNs and related records obtained or maintained in the same manner and to the same extent as sections 7213(a) (1), (2) and (3) apply with respect to unauthorized disclosures of returns and return information described in those sections. The sanction under section 7213(a)(4) of the Internal Revenue Code of 1986 will apply with respect to the willful offer of any item of material value in exchange for any SSN or related record in the same manner and to the same extent as section 7213(a)(4) applies with respect to offers (in exchange for any return or return information) described in that section.

(4) *FCS initiated matches.* Under the restrictions noted in paragraph (r) of this section, FCS will periodically initiate cross matches of retailer data with other Federal and State agencies' files for the purpose of verifying information provided by applicant and participating firms, and for the purposes of administering and enforcing other Federal or State laws. Such matches could involve all firms participating after implementation for the purpose of verifying information such as, but not limited to, SSNs and retail sales data.

(s) *Public and Private Nonprofit Homeless Meal Providers.* FCS shall authorize as retail food stores, those public and private nonprofit homeless meal providers which apply and qualify for authorization to accept food stamps from homless food stamp recipients. Such

meal providers must be public or private nonprofit organizations as defined by the Internal Revenue Service (I.R.C. 501(c)(3)), must serve meals that include food purchased by the provider, must meet the requirements of paragraphs (a) and (b) of this section, and must be approved by an appropriate State or local agency, pursuant to §272.9. Public and private nonprofit homeless meal providers shall be responsible for obtaining approval from an appropriate State or local agency and shall provide written documentation of such approval to FCS prior to approval of the meal provider's application for authorization. (If such approval is subsequently withdrawn, FCS authorization shall be withdrawn). Public and private nonprofit homeless meal providers serving meals which consist wholly of donated foods shall not be eligible for authorization. In an area in which FCS, in consultation with the Department's Office of Inspector General, finds evidence that the authorization of a public and private nonprofit homeless meal provider would damage the Food Stamp Program's integrity, FCS shall limit the participation of that public and private nonprofit homeless meal provider, unless FCS determines that the establishment or shelter is the only one of its kind serving the area.

(t) Each authorized retail food store shall post in a suitable and conspicuous location in the store a sign designed and provided by FCS which provides information on how persons may report abuses they have observed in the operation of the program. Refusal or repeated failure to display such a sign by an authorized retail food store may result in the withdrawal of the firm's approval to participate in the program.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §278.1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTES: 1. At 61 FR 53600, Oct. 15, 1996, in §278.1, paragraph (i) was redesignated as paragraph (j) and a new paragraph (i) was added. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget. The Food and Consumer Service will publish a document in the FEDERAL REGISTER announcing the effective date.

### §278.2 Participation of retail food stores.

(a) *Use of coupons.* Coupons may be accepted by an authorized retail food store only from eligible households or the households' authorized representative, and only in exchange for eligible food. Coupons may not be accepted in exchange for cash, except when cash is returned as change in a transaction in which coupons were accepted in payment for eligible food under pargraph (d) of this section. Coupons may not be accepted in payment of interest on loans or for any other nonfood use. An authorized retail food store may not accept coupons from another retail food store, except that public or private nonprofit homeless meal providers may redeem coupons for eligible food through authorized retail food stores.

(b) *Equal treatment for coupon customers.* Coupons shall be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store except that tax shall not be charged on eligible foods purchased with coupons. However, nothing in this part may be construed as authorizing FCS to specify the prices at which retail food stores may sell food. However, public or private nonprofit homeless meal providers may only request *voluntary* use of food stamps from homeless food stamp recipients and may not request such household using food stamps to pay more than the average cost of the food *purchased* by the public or private nonprofit homeless meal provider contained in a meal served to the patrons of the meal service. For purposes of this section, ''average cost'' is determined by averaging food costs over a period of up to one calendar month. Voluntary payments by food stamp recipients in excess of such costs may be accepted by the meal providers. The value of donated foods from any source shall not be considered in determining the amount to be requested from food stamp recipients. All indirect costs, such as those incurred in the acquisition, storage, or preparation of the foods used in meals shall also be excluded. In addition, if

others have the option of eating free or making a monetary donation, food stamp recipients must be provided the same option of eating free or making a donation in money or food stamps. No retail food store may single out coupon users for special treatment in any way.

(c) *Accepting coupons.* No authorized retail food store may accept coupons marked ''paid,'' ''canceled,'' or ''specimen.'' Nor may a retail food store accept coupons bearing any cancellation or endorsement, or coupons of other than the 1-dollar denomination which have been detached from the coupon books prior to the time of purchase or delivery of eligible food unless the detached coupons are accompanied by the coupon books which bear the same serial numbers that appear on the detached coupons. However, in the case of public or private nonprofit homeless meal providers, retail food stores may accept detached coupons which have been accepted by the homeless meal provider. It is the right of the household member or the authorized representative to detach the coupons from the book.

(d) *Making change.* An authorized retail food store shall use, for the purpose of making change, uncanceled and unmarked 1-dollar coupons which were previously accepted for eligible foods. If change in an amount of less than 1-dollar is required, the eligible household shall receive the change in cash. However, in the case of public or private nonprofit homeless meal providers, neither cash change nor credit slips shall be provided under any circumstances when food stamps are used to purchase meals. At no time may cash change in excess of 99 cents be returned in a coupon transaction. An authorized retail food store may not engage in a series of coupon transactions the purpose of which is to provide the same food stamp customer an amount of cash change greater than the maximum 99 cents cash change allowed in one transaction.

(e) *Accepting coupons before delivery.* Food retailers may not accept coupons before delivering the food, retain custody of any unspent coupons, or in any way prevent an eligible household from using coupons in making purchases from other authorized firms. However, a nonprofit cooperative food purchasing venture may accept coupons from a member of the cooperative at the time the member places a food order. The food ordered must be made available to the member within 14 days from the day the cooperative receives the member's coupons.

(f) *Paying credit accounts.* Coupons may not be accepted by an authorized retail food store in payment for any eligible food sold to a household on credit.

(g) *Redeeming coupons.* Authorized retail food stores may exchange coupons accepted in accordance with this part for face value upon presentation through the banking system or through a wholesale food concern authorized to accept coupons from that retailer. Authorized drug addict or alcoholic treatment and rehabilitation programs, group living arrangements, and shelters for battered women and children may present coupons for redemption through authorized wholesale food concerns. A drug addict or alcoholic treatment center, group living arrangement, or shelter for battered women and children may purchase food in authorized retail food stores as the authorized representative of its participating households. Public or private nonprofit homeless meal providers may purchase food in authorized retail food stores and through authorized wholesale food concerns. Authorized drug addict and alcoholic treatment and rehabilitation programs, group living arrangements, shelters for battered women and children, and public or private nonprofit homeless meal providers for homeless food stamp households shall not present coupons directly to an insured financial institution for redemption.

(h) *Identifying coupon users.* Coupons may not knowingly be accepted from persons who have no right to possession of coupons. If a food retailer has any cause to believe that a person presenting coupons has no right to use the coupons, the food retailer should request the person to show the ID card of the household to establish the right of that person to use the coupons. Where photo ID cards are in use, the person presenting the ID card need not be pictured on the card. Public or private

nonprofit homeless meal providers redeeming detached coupons through retail food stores shall present their retailer authorization card as proof of their eligibility to redeem coupons through retail food stores.

(i) *Checking meal delivery service recipients.* A nonprofit meal delivery service shall require the recipient of a delivered meal to show the marked ID card establishing the recipient's right to use coupons for that service the first time that the recipient offers coupons in payment for the service, and shall request the marked ID card at any time the nonprofit meal delivery service has cause to question the continued eligibility of the recipient to use coupons for delivered meals.

(j) *Checking hunting and fishing equipment users.* Authorized Alaskan retailers shall require coupon customers wanting to purchase hunting and fishing equipment with coupons to show their ID cards to determine that they live in an area designated by FCS as one in which persons are dependent upon hunting and fishing for subsistence.

(k) *Checking participants in restaurants.* A restaurant operating under a State contract shall require a household purchasing meals to show the marked ID card establishing the household's right to purchase meals with coupons unless the personnel of the restaurant know that the program participant tendering coupons is eligible to use coupons to purchase meals.

(l) *Checking public or private nonprofit homeless meal provider recipients.* Public or private nonprofit homeless meal providers shall establish a food stamp patron's right to purchase meals with coupons.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended at Amdt. 191, 46 FR 50277, Oct. 9, 1981; Amdt. 205, 46 FR 60167, Dec. 8, 1981; Amdt. 257, 49 FR 32538, Aug. 15, 1984; Amdt. 286, 52 FR 7557, Mar. 11, 1987; 53 FR 31649, Aug. 19, 1988; Amdt. 344, 56 FR 54778, Oct. 23, 1991; Amdt. 356, 59 FR 29714, June 9, 1994; Amdt. 343, 61 FR 53601, Oct. 15, 1996]

### §278.3 Participation of wholesale food concerns.

(a) *Accepting coupons.* An authorized wholesale food concern may accept endorsed coupons from one or more specified authorized retail food stores, from one or more specified authorized nonprofit cooperative food-purchasing ventures, from one or more specified authorized group living arrangements, from one or more specified authorized drug addict or alcoholic treatment programs, from one or more specified authorized shelters for battered women and children, or, from one or more specified public or private nonprofit homeless meal providers if the coupons are accompanied by a properly filled-out and signed redemption certificate, and are not marked ''paid,'' ''canceled,'' or ''specimen.'' A wholesaler authorized to accept coupons from an authorized drug addict or alcoholic treatment program, or from an authorized group living arrangement, or from an authorized shelter for battered women and children, or from one or more public or private nonprofit homeless meal providers may accept coupons from that treatment program, or group living arrangement, or shelter for battered women and children, or from one or more public or private nonprofit homeless meal providers, only in exchange for food.

(b) *Accepting legally obtained coupons.* No authorized wholesale food concern may accept coupons if the wholesaler knows or has reasonable cause to believe that the coupons were not legally obtained for eligible food.

(c) *Redeeming coupons.* An authorized wholesale food concern may redeem coupons, properly accepted from retailers, through the banking system, upon presentation of the coupons with:

(1) The authorized retail food store's properly filled-out and signed redemption certificate for the coupons; and

(2) The authorized wholesale food concern's properly filled-out and signed redemption certificate.

(d) *Handling retailer redemption certificates.* No authorized wholesale food concern may alter, prepare, or complete an authorized retail food store's redemption certificate.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended by Amdt. 173, 46 FR 62810, Dec. 29, 1981; Amdt. 286, 52 FR 7558, Mar. 11, 1987; Amdt. 344, 56 FR 54778, Oct. 23, 1991; Amdt. 343, 61 FR 53601, Oct. 15, 1996]

**§ 278.4 Procedure for redeeming coupons.**

(a) *Coupons accepted without authorization.* Coupons accepted by a retail food store or a wholesale food concern before the receipt by the firm of an authorization card from FCS may not be presented for redemption unless the FCS officer in charge has approved the redemption under § 278.7(b). Burned or mutilated coupons shall be presented for redemption to the FCS officer in charge as provided in § 278.7(c).

(b) *Endorsing coupons.* Each authorized retail food store or authorized wholesale food concern shall mark its authorization number or name on each coupon before it presents the coupons for redemption.

(c) *Using redemption certificates.* FCS will provide all authorized firms with redemption certificates. Wholesale food concerns and retail food stores, except for drug addict and alcoholic treatment and rehabilitation programs and public or private nonprofit homeless meal providers, shall use the redemption certificates to present coupons to insured financial institutions for credit or for cash. All retail food stores which wish to redeem coupons at wholesale food concerns shall use the redemption certificates for that purpose. An authorized retail firm using redemption certificates to redeem coupons shall fill out the redemption certificate to show the value of the coupons redeemed, the name of the insured financial institution or wholesaler, the date, and the signature and title of the official of the firm redeeming coupons.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended by Amdt. 286, 52 FR 7558, Mar. 11, 1987; Amdt. 344, 56 FR 54778, Oct. 23, 1991; Amdt. 343, 61 FR 53601, Oct. 15, 1996]

**§ 278.5 Participation of insured financial institutions.**

(a) *Accepting coupons.* (1) Financial institutions that are insured by the Federal Deposit Insurance Corporation (FDIC) or financial institutions which are insured under the Federal Credit Union Act and which have retail food stores or wholesale food concerns in their field of membership may redeem coupons only from authorized retail food stores, meal services, and wholesale food concerns in accordance with the rules contained in this part and instructions of the Federal Reserve Banks. No financial institution may impose on or collect from a retail food store a fee or other charge for redemption of coupons that are submitted to the financial institution in a manner consistent with the requirements, except for coupon cancellation, for the presentation of coupons by the financial institution to the Federal Reserve banks. Coupons submitted to insured financial institutions for credit or cash must be properly endorsed in accordance with § 278.4 of this part and shall be accompanied by a properly completed and signed redemption certificate. All verified and encoded redemption certificates accepted by insured financial institutions shall be forwarded with the corresponding coupon deposits to the Federal Reserve Bank along with the accompanying Food Coupon Deposit Document (Form FCS–521). In accordance with Federal Reserve requirements, the coupon deposit value entered on the Food Coupon Deposit Document must be equal to the actual value of coupons being deposited and to the total value of verified amounts encoded on the corresponding redemption certificates.

(2) An insured financial institution shall verify the amount of the coupons being redeemed and record the amount in the designated space on the redemption certificate. In order to conform with Federal Reserve requirements, the verified amount shall be recorded in the appropriate field on the redemption certificate using Magnetic Ink Character Recognition (MICR) encoding. Redemption certificates accepted by insured financial institutions shall be forwarded with the corresponding coupon deposits to the Federal Reserve Bank along with the Food Coupon Deposit Document (Form FCS–521).

(3) Redeemed coupons must be indelibly cancelled on the face of the coupon by the first insured financial institution receiving them. If the cancellation on the coupon face does not show the depositing institution's name or its routing symbol transit number, this identifying information must appear on the straps affixed to each bundle of coupons of like denomination. Deposits

not meeting these cancellation requirements may be returned to the depositing institution for reprocessing. Retail food stores may not be required to cancel the coupons by the insured financial institution nor may the insured financial institution charge the retail food stores a fee or other charge for cancellation of coupons. A portion of a coupon consisting of less than three-fifths of a whole coupon may not be redeemed.

(4) Insured financial institutions which are members of the Federal Reserve System, insured nonmember clearing institutions, and insured nonmember institutions which have arranged with a Federal Reserve Bank to deposit coupons for credit to the account of a member institution on the books of a Federal Reserve Bank may forward coupons directly to the Federal Reserve Bank. Other insured financial institutions may forward cancelled coupons through ordinary collection channels.

(b) *Role of Federal Reserve Banks.* Federal Reserve Banks, acting as fiscal agents of the United States, will receive canceled coupons for collection as cash items from armed forces installations, member insured financial institutions of the Federal Reserve System, nonmember clearing insured financial institutions, and nonmember insured financial institutions which have arranged with a Federal Reserve Bank to deposit coupons for credit to the account of a member insured financial institution on the books of the Federal Reserve Bank, and will charge those items to the general account of the Treasurer of the United States.

(c) *FCS liability for losses.* FCS shall not be liable for the value of any coupons lost, stolen, or destroyed while in the custody of an insured financial institution or for the value of coupons lost, stolen, or destroyed while in transit from an insured financial institution to a Federal Reserve Bank.

(d) *FCS use of coupons to detect violations.* Regardless of any other provision in these regulations, coupons may be issued to, purchased by, or redeemed by persons authorized by FCS to use those coupons in examining and inspecting program operations, and for other purposes determined by FCS to be required for proper administration of the program. Coupons which have been so issued and used, as well as any coupons which have been issued under paragraph (g) of this section, or which FCS believes may have been issued, transferred, negotiated, used, or received in violation of this subchapter or of any applicable statute, shall at the request of FCS and on issuance of a receipt for them be turned over to FCS by the insured financial institution receiving the coupons, or by any other person to whom the request is addressed, together with any certificate(s) of redemption accompanying the coupons. Any coupons so requested shall not be eligible for redemption through Federal Reserve Banks or other collection channels. However, FCS may redeem coupons from any insured financial institution or person by payment of the face amount of the coupons upon determination by FCS that this direct redemption of coupons is warranted. FCS shall determine the proper disposition of any coupons held by FCS on completion of the examination or inspection in which the coupons were used. Claims or demands for unredeemed coupons surrendered to FCS may be mailed to the local FCS field office for the project area involved.

(e) *Selling coupons to stores for internal checks.* FCS may sell coupons at face value to any authorized retail food store which wishes to use coupons to conduct internal checks of coupon transactions. The retail food store must submit a written request to FCS which shall include a certification that the store recognizes that its use of coupons will not affect FCS action to enforce program regulations and that the requested coupons will be used only for internal checks of the store's employees and only to uncover sales of items other than eligible foods. The request shall also include the name of the city or county in which the stores to be checked through the use of the requested coupons are located and the name and address of any outside agency with which the retail food store has or will have a contract to conduct checks of the store's employees using coupons. The request shall be directed to the Benefit Redemption Division,

FSP, FCS, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302, and shall be accompanied by a check or money order made payable to the Food and Consumer Service to cover the face value cost of the coupons requested. Coupons bought by retail food stores for use in internal checks may be later redeemed for full value in accordance with § 278.4, and in redeeming those coupons, retail food stores are authorized to make the certification required for redemption.

(f) *Continued participation of households under investigation.* Upon the written request of Federal, State, or local government agencies which have authority to investigate, and are investigating, suspected violations of Federal or State statutes concerning the enforcement of the Food Stamp Act or the regulations, the State agency may allow ineligible households to continue program participation. The State agency may allow the households to continue participation in the program until the earlier of (1) expiration of the period of 90 days after the request is received or any longer period which FCS, upon request of the State agency, may approve in a particular case, or (2) receipt of notification from the investigative agency that participation may be terminated or that the investigation has been completed. Regardless of any other provision of these regulations, FCS may not hold the State agency liable for the value of any coupons issued to households under this paragraph.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended by Amdt. 257, 49 FR 32538, Aug. 15, 1984; Amdt. 267, 51 FR 6514, Feb. 25, 1986; Amdt. 272, 51 FR 12498, Apr. 11, 1986; Amdt. 288, 52 FR 11815, Apr. 13, 1987; Amdt. 272, 52 FR 18198, May 14, 1987; Amdt. 356, 59 FR 29714, June 9, 1994; Amdt. 331, 59 FR 60062, Nov. 22, 1994]

### § 278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.

(a) *Authority to disqualify or subject to a civil money penalty.* FCS may disqualify any authorized retail food store or authorized wholesale food concern from further participation in the program if the firm fails to comply with the Food Stamp Act or this part. Disqualification shall be for from 6 months to 5 years for the firm's first sanction; for from 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a firm's third sanction or a disqualification based on trafficking as defined in § 271.2. Any firm which has been disqualified and which wishes to be reinstated at the end of the period of disqualification or at any later time shall file a new application under § 278.1 of this part so that FCS may determine whether reauthorization is appropriate. The application may be filed no earlier than 10 days before the end of the period of disqualification. FCS may, in lieu of a disqualification, subject the firm to a civil money penalty of up to an amount specified in § 3.91(b)(3)(A) of this title for each violation if FCS determines that a disqualification would cause hardship to participating households. FCS may impose a civil money penalty of up to an amount specified in § 3.91(b)(3)(B) of this title for each violation in lieu of a permanent disqualification for trafficking, as defined in § 271.2, in accordance with the provisions of § 278.6(i) and § 278.6(j).

(b) *Charge letter*—(1) *General provisions.* Any firm considered for disqualification or imposition of a civil money penalty under paragraph (a) of this section or a fine as specified under paragraph (l) or (m) of this section shall have full opportunity to submit to FCS information, explanation, or evidence concerning any instances of noncompliance before FCS makes a final administrative determination. The FCS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FCS believes constitute a basis for disqualification or imposition of a civil money penalty or fine. The letter shall specify the violations or actions which FCS believes constitute a basis for disqualification or imposition of a civil money penalty. The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter. The firm's response shall set forth a statement of evidence, information, or explanation concerning the specified violations or acts. The firm

shall make its response, if any, to the officer in charge of the FCS field office which has responsibility for the project area in which the firm is located.

(2) *Charge letter for trafficking.* (i) The charge letter shall advise a firm being considered for permanent disqualification based on evidence of trafficking as defined in § 271.2 that the firm must notify FCS if the firm desires FCS to consider the sanction of a civil money penalty in lieu of permanent disqualification.

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FCS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).

(iii) If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.

(c) *Review of evidence.* The letter of charges, the response, and any other information available to FCS shall be reviewed and considered by the appropriate FCS regional office, which shall then issue the determination.

(d) *Basis for determination.* The FCS regional office making a disqualification or penalty determination shall consider: (1) The nature and scope of the violations committed by personnel of the firm, (2) any prior action taken by FCS to warn the firm about the possibility that violations are occurring, and (3) any other evidence that shows the firm's intent to violate the regulations.

(e) *Penalties.* FCS shall take action as follows against any firm determined to have violated the Act or regulations. For the purposes of assigning a period of disqualification, a warning letter shall not be considered to be a sanction. A civil money penalty and a disqualification shall be considered sanctions for such purposes. The FCS regional office shall:

(1) Disqualify a firm permanently if:

(i) Personnel of the firm have trafficked as defined in § 271.2; or

(ii) Violations such as, but not limited to, the sale of ineligible items occurred and the firm had twice before been sanctioned.

(2) Disqualify the firm for 5 years if it is to be the firm's first sanction, the firm had been previously advised of the possibility that violations were occurring and of possible consequences of violating the regulations, and the evidence shows that:

(i) It is the firm's practice to sell expensive or conspicuous nonfood items, cartons of cigarettes, or alcoholic beverages in exchange for food coupons; or

(ii) The firm's coupon redemptions for a specified period of time exceed its food sales for the same period of time; or

(iii) A wholesale food concern's redemptions of coupons for a specified period of time exceed the redemptions of all the specified authorized retail food stores, nonprofit cooperative food-purchasing ventures, group living arrangements, drug addict and alcoholic treatment programs, homeless meal providers, and shelters for battered women and children which the wholesale food concern was authorized to serve during that time; or

(iv) A wholesale food concern's stated redemptions of coupons for a particular retail food store, nonprofit cooperative food-purchasing venture, group living arrangement, drug addict and alcoholic treatment program, homeless meal providers, or shelters for battered women and children exceeded the actual amount of coupons which that firm or organization redeemed through the wholesaler; or

(v) Personnel of the firm knowingly accepted coupons from an unauthorized firm or an individual known not to be legally entitled to possess coupons.

(3) Disqualify the firm for 3 years if it is to be the first sanction for the firm and the evidence shows that:

(i) It is the firm's practice to commit violations such as the sale of common nonfood items in amounts normally found in a shopping basket and the

firm was previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(ii) Any of the situations described in paragraph (e)(2) of this section occurred and FCS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(iii) The firm is an authorized communal dining facility, drug addiction or alcoholic treatment and rehabilitation program, group living arrangement, homeless meal provider, meal delivery service, or shelter for battered women and children and it is the firm's practice to sell meals in exchange for food coupons to persons not eligible to purchase meals with food coupons and the firm has been previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(iv) A wholesale food concern accepted coupons from an authorized firm which it was not authorized to serve and the wholesale food concern had been previously advised of the possibility that violations were occurring and of possible consequences of violating the regulations; or

(v) The firm is an authorized retail food store and personnel of the firm have engaged in food coupon transactions with other authorized retail stores, not including treatment programs, group living arrangements, homeless meal providers, or shelters for battered women and children, and the firm had been previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations.

(4) Disqualify the firm for 1 year if it is to be the first sanction for the firm and the ownership or management personnel of the firm have committed violations such as the sale of common nonfood items in amounts normally found in a shopping basket, and FCS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations.

(5) Disqualify the firm for 6 months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as but not limited to the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

(6) Double the appropriate period of disqualification prescribed in paragraphs (e) (2) through (5) of this section as warranted by the evidence of violations if the same firm has once before been assigned a sanction.

(7) Send the firm a warning letter if violations are too limited to warrant a disqualification.

(f) *Criteria for civil money penalties for hardship and transfer of ownership.* (1) FCS may impose a civil money penalty as a sanction in lieu of disqualification when the firm subject to a disqualification is selling a substantial variety of staple food items, and the firm's disqualification would cause hardship to food stamp households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices. FCS may disqualify a store which meets the criteria for a civil money penalty if the store had previously been assigned a sanction. A civil money penalty for hardship to food stamp households may not be imposed in lieu of a permanent disqualification.

(2) In the event any retail food store or wholesale food concern which has been disqualified is sold or the ownership thereof is otherwise transferred to a purchaser or transferee, the person or other legal entity who sells or otherwise transfers ownership of the retail food store or wholesale food concern shall be subjected to and liable for a civil money penalty in an amount to reflect that portion of the disqualification period that has not expired, to be calculated using the method found at § 278.6(g). If the retail food store or wholesale food concern has been permanently disqualified, the civil money penalty shall be double the penalty for a ten year disqualification period. The disqualification shall continue in effect at the disqualified location for the person or other legal entity who transfers ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil money penalty under this paragraph.

(3) At any time after a civil money penalty imposed under paragraph (f) (2) of this section has become final under the provisions of part 279, the Food and Consumer Service may request the Attorney General institute a civil action to collect the penalty from the person or persons subject to the penalty in a district court of the United States for any district in which such person or persons are found, reside, or transact business.

(4) A bona fide transferee of a retail food store shall not be required to pay a civil money penalty imposed on the firm prior to its transfer. A buyer or transferee (other than a bona fide buyer or transferee) may not be authorized to accept or redeem coupons and may not accept or redeem coupons until the Secretary receives full payment of any penalty imposed on such store or concern.

(g) *Amount of civil money penalties for hardship and transfer of ownership.* FCS shall determine the amount of the civil money penalty as follows:

(1) Determine the firm's average monthly redemptions of coupons for the 12-month period ending with the month immediately preceding that month during which the firm was charged with violations.

(2) Multiply the average monthly redemption figure by 10 percent.

(3) Multiply the product arrived at in paragraph (g)(2) by the number of months for which the firm would have been disqualified under paragraph (e) of this section. The civil money penalty may not exceed $10,000 for each violation.

(h) *Notifying the firm of civil money penalties for hardship and transfer of ownership.* A firm has 15 days from the date the FCS regional office notifies the firm in writing in which to pay the civil money penalty, or to notify the regional office in writing of its intent to pay in installments as specified by the regional office. The firm must present to FCS a collateral bond as specified in § 278.1(b)(4), within the same 15-day period. The civil money penalty must be paid in full by the end of the period for which the firm would have been disqualified. FCS shall:

(1) Disqualify the firm for the period determined to be appropriate under paragraph (e) of this section if the firm refuses to pay any of the civil money penalty;

(2) Disqualify the firm for a period corresponding to the unpaid part of the civil money penalty if the firm does not pay the civil money penalty in full or in installments as specified by the FCS regional office; or

(3) Disqualify the firm for the prescribed period if the firm does not present a collateral bond within the required 15 days. Any payment on a civil money penalty which have been received by FCS shall be returned to the firm. If the firm presents the required bond during the disqualification period, the civil money penalty may be reinstated for the duration of the disqualification period.

(i) *Criteria for eligibility for a civil money penalty in lieu of permanent disqualification for trafficking.* FCS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FCS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program. Firms assessed a CMP under this paragraph shall be subject to the applicable penalties included in §§ 278.6(e) (2) through (6) for the sale of ineligible items. Only those firms for which a permanent disqualification for trafficking took effect on or after October 1, 1988, are eligible for a civil money penalty in lieu of permanent disqualification for trafficking, except that firms that have been disqualified but are awaiting a judicial review decision are eligible for a civil money penalty in lieu of a permanent disqualification. In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

*Criterion 1.* The firm shall have developed an effective compliance policy as specified in § 278.6(i)(1); and

*Criterion 2.* The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred *prior* to the occurrence of

violations cited in the charge letter sent to the firm; and

*Criterion 3.* The firm had developed and instituted an effective personnel training program as specified in § 278.6(i)(2); and

*Criterion 4.* Neither firm ownership nor management were aware of, approved, benefitted from, or were in any way involved in the conduct or approval of trafficking violations. For purposes of this section, a person is considered to be part of firm management if that individual has substantial supervisory responsibilities with regard to directing the activities and work assignments of store employees. Such supervisory responsibilities shall include the authority to hire employees for the store or to terminate the employment of individuals working for the store.

(1) *Compliance policy standards.* As specified in Criterion 1 above, in determining whether a firm has established an effective policy to prevent violations, FCS shall consider written and dated statements of firm policy which reflect a commitment to ensure that the firm is operated in a manner consistent with this part 278 of current FSP regulations and current FSP policy on the proper acceptance and handling of food coupons. As required by Criterion 2, such policy statements shall be considered only if documentation is supplied which establishes that the policy statements were provided to the violating employee(s) prior to the commission of the violation. In addition, in evaluating the effectiveness of the firm's policy and program to ensure FSP compliance and to prevent FSP violations, FCS may consider the following:

(i) Documentation reflecting the development and/or operation of a policy to terminate the employment of any firm employee found violating FSP regulations;

(ii) Documentation of the development and/or continued operation of firm policy and procedures resulting in appropriate corrective action following complaints of FSP violations or irregularities committed by firm personnel;

(iii) Documentation of the development and/or continued operation of procedures for internal review of firm employees' compliance with FSP regulations;

(iv) The nature and scope of the violations charged against the firm;

(v) Any record of previous firm violations under the same ownership or management; and

(vi) Any other information the firm may present to FCS for consideration.

(2) *Compliance training program standards.* As prescribed in Criterion 3 above, the firm shall have developed and implemented an effective training program for all managers and employees on the acceptance and handling of food coupons in accordance with this part 278. A firm which seeks a civil money penalty in lieu of a permanent disqualification shall document its training activity by submitting to FCS its dated training curricula and records of dates training sessions were conducted; a record of dates of employment of firm personnel; and contemporaneous documentation of the participation of the violating employee(s) in initial and any follow-up training held prior to the violation(s). FCS shall consider a training program effective if it meets or is otherwise equivalent to the following standards:

(i) Training for all managers and employees whose work brings them into contact with food stamps or who are assigned to a location where food stamps are accepted, handled or processed shall be conducted within one month of the institution of the compliance policy under Criterion 1 above. Employees hired subsequent to the institution of the compliance policy shall be trained within one month of employment. All employees shall be trained periodically thereafter;

(ii) Training shall be designed to establish a level of competence that assures compliance with Program requirements as included in this part 278;

(iii) Written materials, which may include FCS publications and program regulations that are available to all authorized firms, are used in the training program. Training materials shall clearly state that the following acts are prohibited and are in violation of the Food Stamp Act and regulations: the exchange of food coupons, ATP cards or other program access devices for cash; and, in exchange for coupons, the sale of firearms, ammunition, explosives or controlled substances, as the term is defined in section 802 of title 21, United States Code.

(j) *Amount of civil money penalty in lieu of permanent disqualification for trafficking.* A civil money penalty assessed in accordance with § 278.6(i) shall not exceed $20,000 for each violation and shall not exceed $40,000 for all violations occurring during a single investigation. FCS shall determine the amount of the civil money penalty as follows:

(1) Determine the firm's average monthly redemptions for the 12-month period ending with the month immediately preceding the month during which the firm was charged with violations;

(2) Multiply the average monthly redemption figure by 10 percent;

(3) For the first trafficking offense by a firm, multiply the product obtained in § 278.6(j)(2) by 60 if the largest amount of food coupons, ATP cards, or other benefit instruments involved in a single trafficking transaction had a face value of $99 or less. If the face value of coupons, ATP cards or other benefit instruments involved in the largest single trafficking transaction was $100 or more, the amount of the product obtained in this paragraph shall be doubled;

(4) For a second trafficking offense by a firm, multiply the product obtained in § 278.6(j)(2) by 120 if the largest amount of food coupons, ATP cards, or other benefit instruments involved in a single trafficking transaction had a face value of $99 or less and the same firm has once before been sanctioned for trafficking in food coupons, ATP cards, or other benefit instruments. If the face value of food coupons, ATP cards, or other benefit instruments involved in the largest single trafficking transaction was $100 or more, the amount of the product obtained in this paragraph shall be doubled; and

(5) If a third trafficking offense is committed by the firm, the firm shall not be eligible for a civil money penalty in lieu of disqualification.

(k) *Payment of civil money penalty in lieu of a permanent disqualification for trafficking.* Payment of the full amount of the civil money penalty in lieu of permanent disqualification for trafficking shall be made within 30 days of the date the final determination was received by the firm. If payment is not made within the prescribed period, the right to the civil money penalty in lieu of a permanent disqualification is forfeited and disqualification shall become effective immediately.

(l) *Fines for the acceptance of loose coupons.* FCS may impose a fine against any retail food store or wholesale food concern that accepts coupons that are not accompanied by the corresponding book cover, other than the denomination of coupons used for making change as specified in § 278.2(d) or coupons accepted from homeless meal providers as specified in § 278.2(c). The fine to be assessed against a firm found to be accepting loose coupons shall be $500 per investigation *plus* an amount equal to double the face value of each loose coupon accepted, and may be assessed and collected in addition to any fiscal claim established by FCS. The fine shall be paid in full within 30 days of the firm's receipt of FCS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the store or concern to collect the fine. FCS may withdraw the authorization of the store, as well as other authorized locations of a multi-unit firm which are under the same ownership, for failure to pay such a fine as specified under § 278.1(k). FCS may deny the authorization of any firm that has failed to pay such fines as specified under § 278.1(j).

(m) *Fines for unauthorized third parties that accept food stamps.* FCS may impose a fine against any individual, sole proprietorship, partnership, corporation or other legal entity not approved by FCS to accept and redeem food coupons for any violation of the provisions of the Food Stamp Act or the program regulations, including violations involving the acceptance of coupons. The fine shall be $1,000 for each violation *plus* an amount equal to three times the face value of the illegally accepted food coupons. The fine shall be paid in full within 30 days of the individual's or legal entity's receipt of FCS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine. FCS may withdraw the authorization of any firm

that is under the same ownership as an unauthorized firm that has failed to pay such a fine, as specified under § 278.1(k). FCS may deny authorization to any firm that has failed to pay such a fine, as specified under § 278.1(j).

(n) *Review of determination.* The determination of the FCS regional office shall be final and not subject to further administrative or judicial review unless a written request for review is filed within the period stated in § 279.5.

(o) *Delivery of notice.* The delivery by certified mail or personal service of any notice required of FCS by this part will constitute notice to the addressee of its contents.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended by Amdt. 236, 47 FR 56471, Dec. 17, 1982; Amdt. 236, 49 FR 22057, May 25, 1984; Amdt. 258, 49 FR 28393, July 12, 1984; Amdt. 286, 52 FR 7558, Mar. 11, 1987; Amdt. 280, 52 FR 13222, Apr. 22, 1987; Amdt. 311, 54 FR 18645, May 2, 1989; Amdt. 323, 55 FR 31812, Aug. 6, 1990; Amdt. 344, 56 FR 54778, Oct. 23, 1991; Amdt. 334, 57 FR 3912, Feb. 3, 1992; Amdt. 354, 59 FR 27434, May 27, 1994; 62 FR 40928, July 31, 1997]

### § 278.7 Determination and disposition of claims—retail food stores and wholesale food concerns.

(a) *Claims against violators.* FCS may establish and pursue claims against firms or other entities which have accepted or redeemed coupons in violation of the Food Stamp Act or this part regardless of whether the firms or entities are authorized to accept food stamps. If a firm fails to pay a claim, FCS may collect the claim by offsetting against amounts due the firm on redemption of other coupons or by deducting the amounts due from bonds posted by firms in compliance with the provisions of § 278.1(b)(4). FCS shall deny an application for authorization or reauthorization by a firm which has failed to pay a claim.

(b) *Forfeiture of a collateral bond.* If FCS establishes a claim against an authorized firm which has previously been sanctioned, collection of the claim may be through total or partial forfeiture of the collateral bond. If FCS determines that forfeiture is required for collection of the claim, FCS shall take one or more of the following actions, as appropriate.

(1) Determine the amount of the bond to be forfeited on the basis of the loss to the Government through violations of the act, and this part, as detailed in a letter of charges to the firm;

(2) Send written notification by certified mail-return receipt requested to the firm and the bonding agent, of FCS' determination regarding forfeiture of all or a specified part of the collateral bond, and the reasons for the forfeiture;

(3) Advise the firm and the bonding agent of the firm's right to administrative review of the claim determination;

(4) Advise the firm and the bonding agent that if payment of the current claim is not received directly from the firm, FCS shall obtain full payment through forfeiture of the bond;

(5) Proceed with collection on the bond for the amount forfeited if a request for review is not filed by the firm within the period established in § 279.5, or if such review is unsuccessful; and

(6) Upon the expiration of time permitted for the filing of a request for administratve and/or judicial review, deposit the bond in a Federal Reserve Bank account or in the Treasury Account, General. If FCS requires only a portion of the face value of the bond to satisfy a claim, the entire bond will be negotiated, and the remaining amount returned to the firm.

(c) *Coupons accepted without authorization.* (1) The FCS officer in charge may approve the redemption under § 278.4 of coupons accepted by firms before the receipt of an authorization card from FCS if the following conditions exist:

(i) The coupons were received in accordance with the requirements of this part governing acceptance of coupons except the requirement that the firm be authorized before acceptance;

(ii) The coupons were accepted by the firm in good faith, and without intent to circumvent this part; and

(iii) The firm receives authorization to participate in the program.

(2) Firms seeking approval to redeem coupons accepted without authorization shall present a written application for approval to the local FCS field office. This application shall be accompanied by a written statement signed by the firm of all the facts about the

acceptance of the coupons. The statement shall also include a certification that the coupons were accepted in good faith, and without any intent to circumvent this part.

(d) *Burned or mutilated coupons.* FCS may redeem burned or mutilated coupons only to the extent that the Bureau of Engraving and Printing of the United States Treasury Department can determine the value of the coupons. The firm presenting burned or mutilated coupons for redemption shall submit the coupons to the local FCS field office with a properly filled-out redemption certificate. In the section of the redemption certificate for entering the amount of coupons to be redeemed, an estimate of the value of the burned or mutilated coupons submitted for redemption shall be entered if the exact value of the coupons is unknown. The phrase ''Deputy Administrator for Fiscal Management, FCS, USDA,'' should be entered in the section of the redemption certificate for entering the name and address of the insured financial institution or wholesaler.

(e) *Old series coupons.* FCS may redeem the old series food coupons issued in 50-cent, 2-dollar, and 5-dollar denominations when they are presented for redemption. Firms presenting the coupons for redemption shall submit the coupons to the local FCS field office with a properly completed redemption certificate and a written statement, signed by a representative of the firm, detailing the circumstances of the acceptance of the coupons.

(f) *Denials of claims brought by authorized firms against FCS.* If a claim brought by a firm against FCS under this section is denied in whole or in part, notification of this action shall be sent to the firm by certified mail or personal service. If the firm is aggrieved by this action, it may seek administrative review as provided in §278.8.

(g) *Lost or stolen coupons.* FCS may not be held liable for claims from retail food stores, meal services, or wholesale food concerns for lost or stolen coupons.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended by Amdt. 258, 49 FR 28393, July 12, 1984; Amdt. 257, 49 FR 32538, Aug. 15, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984]

### §278.8 Administrative review—retail food stores and wholesale food concerns.

(a) *Requesting review.* A food retailer or wholesaler aggrieved by administrative action under §278.1, §278.6 or §278.7 may, within the period stated in §279.5, file a written request for review of the administrative action with the review officer. On receipt of the request for review, the questioned administrative action shall be stayed pending disposition of the request for review by the review officer. A disqualification for failure to pay a civil money penalty shall not be subject to an administrative review.

(b) *Addressing the request.* The request for review shall be filed with the Director, Administrative Review Division, U.S. Department of Agriculture, Food and Consumer Service, Room 304, 3101 Park Center Drive, Alexandria, Virginia 22302.

(c) *Review procedure.* The procedure for food stamp reviews in published in part 279 and is available upon request from the Director, Administrative Review Division.

[Amdt. 236, 49 FR 22058, May 25, 1984]

### §278.9 Implementation of amendments relating to the participation of retail food stores, wholesale food concerns and insured financial institutions.

(a) *Amendment 224.* Retail food stores shall have signs posted as required by this amendment no later than 30 days after distribution of the signs by FCS.

(b) *Amendment 257.* With the exception of the provisions in §278.5 requiring redeeming financial institutions to verify that coupons are supported by redemption certificates, the revisions to part 278 shall be effective September 14, 1984. Redeeming financial institutions shall begin verifying coupon deposits as required by §278.5 in accordance with the schedule determined by the Federal Reserve Board. Insured financial institutions shall adhere to preexisting requirements for handling redemption certificates (at 7 CFR 278.5(a)) until their Federal Reserve District implements the procedures contained in this final rule. FCS shall not be liable for any losses of coupons in transit to Federal Reserve Banks or as a result of a burglary or robbery of

an insured financial institution which occur after September 14, 1984.

(c) *Amendment 267.* The federally insured credit unions authorized to redeem food stamps under this amendment may begin accepting food stamps for redemption not later than March 27, 1986.

(d) The program changes of *Amendment 272* at § 278.5(a) (1) and (3) are effective upon publication of the amendment. Financial institutions must implement the provisions no later than April 21, 1986.

(e) *Amendment No. 286.* The provisions for part 278 of *Amendment No. 286* were effective March 11, 1987 for purposes of submitting applications for authorization to accept food stamps. For all other purposes, the effective date was April 1, 1987.

(f) *Amendment No. 280.* The provisions for part 271 and §§ 278.1(r) and 278.6(f) of No. 280 are effective retroactively to April 1, 1987. The provision for § 278.1(o) is effective May 22, 1987.

(g) *Amendment No. 304.* The technical amendment for part 278 of *Amendment No. 304* was effective August 1, 1988.

(h) *Amendment No. 323.* The program changes made to § 278.6 by this amendment are retroactively effective October 1, 1988.

(i) *Amendment No. 334.* The program changes made to § 278.1 and § 278.6 by this amendment are effective February 1, 1992. The program changes made to § 271.2 and § 271.5 by this amendment are retroactively effective to November 28, 1990, as specified in Pub. L. No. 101–624.

(j) *Amendment No. 354.* The program changes made to § 271.2 and § 278.6 by this amendment are effective October 1, 1993.

(k) *Amendment No. 331.* The program changes made to §§ 271.2 and 278.5 by this amendment are effective December 22, 1994.

(l) *Amendment No. 335.* Expanded authority to use and disclose information about firms participating in the FSP under CFR 278.1(r) for currently authorized firms is effective and will be implemented beginning February 25, 1997 but not before 60-days after the date of notices to such firms, notifying them of the changes. The only exception to the above is that such disclosure of information shall not apply to firms that are withdrawn or are disqualified from FSP participation prior to implementation, unless such firms participate in the FSP at a future date subsequent to the implementation date.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 278.9, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

### § 278.10 [Reserved]

# PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

## Subpart A—Administrative Review—General

Sec.
279.1 Scope and purpose.
279.2 Administrative review officer.
279.3 Authority and jurisdiction.
279.4 Rules of procedure.

## Subpart B—Rules of Procedure

279.5 Manner of filing requests for review.
279.6 Content of request for review.
279.7 Action upon receipt of a request for review.
279.8 Determination of the administrative review officer.
279.9 Legal advice and extensions of time.

## Subpart C—Judicial Review

279.10 Judicial review.
279.11 Implementation of amendments relating to administrative and judicial review.

AUTHORITY: 7 U.S.C. 2011–2032.

SOURCE: Amdt. 136, 43 FR 43279, Sept. 22, 1978, unless otherwise noted.

## Subpart A—Administrative Review—General

### § 279.1 Scope and purpose.

Subpart A sets forth the procedure for the designation of the administrative review officers and the authority and jurisdiction of those officers. Subpart B states the rules of procedure to be followed in the filing and disposition of the requests for review provided for in § 278.8. Subpart C concerns the rights of food retailers and food wholesalers

to judicial review of the final determinations of the administrative review officer.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 356, 59 FR 29714, June 9, 1994]

### §279.2 Administrative review officer.

(a) *Designation of review officers.* The Administrator, FCS, shall designate one or more persons to act as administrative review officers.

(b) *Assigning cases to review officers.* The officers shall serve for periods which the Administrator, FCS, shall determine. Changes in designations and additional designations may be made from time to time at the discretion of the Administrator, FCS. When more than one administrative review officer has been designated, requests for review will be assigned for handling to individual administrative review officers by a person designated by the Administrator, FCS. The names of the administrative review officers shall be on file in the Office of the Administrator, FCS.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 356, 59 FR 29714, June 9, 1994]

### §279.3 Authority and jurisdiction.

(a) *Jurisdiction.* An administrative review officer shall act for the Department on requests for review filed by firms aggrieved by any of the following actions:

(1) Denial of an application or withdrawal of authorization to participate in the program under §278.1;

(2) Disqualification from participation in the program or imposition of a civil money penalty under §278.6 or imposition of a fine under §278.6(l) or §278.6(m);

(3) Denial of all or part of any claim asserted by a firm against FCS under §278.7 (c), (d), or (e);

(4) Assertion of a claim under §278.7(a); or

(5) Forfeiture of part or all of a collateral bond under §278.1, if the request for review is made by the authorized firm. The administrative review officer shall not accept requests for review made by a bonding company or agent.

(b) *Authority.* The determination of the administrative review officer shall be the final administrative determination of the Department, subject, however, to judicial review under section 14 of the Food Stamp Act and subpart C of this part.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 258, 49 FR 28393, July 12, 1984; Amdt. 257, 49 FR 32538, Aug. 15, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984; Amdt. 334, 57 FR 3913, Feb. 3, 1992; Amdt. 356, 59 FR 29714, June 9, 1994; Amdt. 364, 61 FR 54320, Oct. 17, 1996]

### §279.4 Rules of procedure.

Rules of procedure for the orderly filing and disposition of requests for review of firms submitted in accordance with §279.5 are issued in subpart B of this part. The Administrator, FCS, may later issue amendments to any rules of procedure which are appropriate.

## Subpart B—Rules of Procedure

### §279.5 Manner of filing requests for review.

(a) *Addressing requests for review.* Requests for review submitted by firms shall be mailed to or filed with Director, Administrative Review Division, U.S. Department of Agriculture, Food and Consumer Service, Room 304, 3101 Park Center Drive, Alexandria, Virginia 22302.

(b) *Content of requests.* Requests for review shall be in writing and shall state the name and business address of the firm involved, and the name, address and position with the firm of the person who signed the request. The request shall be signed by the owner of the firm, an officer or partner of the firm, or by counsel, and need not be under oath.

(c) *Time limit for requesting review.* A request for review shall be filed with the Director, Administrative Review Division, within 10 days of the date of delivery of the notice of the action for which review is requested. For purposes of determining whether a filing date is timely:

(1) The filing date shall be the postmark date of the request, or equivalent if the written request is filed by a means other than mail;

(2) In computing the 10 day period, the day of delivery of the notice of the

action for which review is requested may not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. In that case, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. As used in this paragraph, ''legal holiday'' includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President or the Congress of the United States.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 236, 49 FR 22058, May 25, 1984]

### § 279.6 Content of request for review.

(a) *Identifying the request.* Requests for review shall clearly identify the administrative action from which the review is requested. This identification shall include the date of the letter or other written communication notifying the firm of the administrative action, the name and title of the person who signed the letter or other communication, and whether the action under appeal concerns a denial of an application or a withdrawal of authorization to participate, a disqualification from further participation, a civil money penalty, or a denial of all or any part of a claim or a fine.

(b) *Supporting the request.* The request shall include information in support of the request showing the grounds on which review is being sought, or shall state that supporting information will be filed in writing at a later date. In the latter case, the review officer shall notify the firm of the date by which the information must be filed. The firm requesting review may ask for an opportunity to appear before the review officer in person. However, any information submitted in person shall, if directed by the review officer, be put in writing by the firm and filed with the review officer within a period which the review officer shall specify.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 236, 49 FR 22058, May 25, 1984; Amdt. 334, 57 FR 3913, Feb. 3, 1992]

### § 279.7 Action upon receipt of a request for review.

(a) *Holding action.* Upon receipt of a request for review of administrative action, the review officer shall notify the appropriate FCS regional office, in writing, of the action under review, and shall direct that the administrative action be held in abeyance until the review officer has made a determination. If the administrative action in question involves a denial of approval of an application to participate in the program, a denial of a claim brought by a firm against FCS, or the forfeiture of a collateral bond, the review officer shall direct that the firm not be approved for participation, not be paid any part of the disputed claim, or not be reimbursed for any bond forfeiture, until the review officer has made a determination. In any case, notice to the appropriate FCS office shall be accompanied by a copy of the request filed by the firm.

(b) *Filing supporting information.* If the request filed by the firm includes a request for an opportunity to file written information in support of its position at a later date, the administrative review officer shall promptly notify the firm of the date by which the information shall be filed. If the firm fails to file any information in support of its position by the designated date, the information submitted with the original request shall be considered to be the only information submitted by the firm. In that case, if no information in support of the firm's position was submitted with the original request, the action of the appropriate FCS office shall be final.

(c) *Failure to meet with review officer.* If the firm filing the request for review asks to appear before the administrative review officer in person, the review officer shall promptly notify the firm of the date, time and place set for the appearance. If the firm fails to appear before the administrative review officer as specified, any written information timely submitted in accordance with this section shall be considered to be the only information submitted by the firm.

(d) *Basis for regional office determination.* The administrative review officer

shall require the appropriate FCS regional office to promptly submit, in writing, all information which was the basis for the administrative action for which the review has been requested.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 236, 49 FR 22059, May 25, 1984; Amdt. 258, 49 FR 28393, July 12, 1984; 49 FR 29769, July 24, 1984; Amdt. 356, 59 FR 29714, June 9, 1994]

### §279.8 Determination of the administrative review officer.

(a) *Basis for review officer determination.* The administrative review officer shall make a determination based upon:

(1) The information submitted by the appropriate FCS office;

(2) Information submitted by the firm in support of its position; and

(3) Any additional information, in writing, obtained by the review officer from any other person having relevant information.

(b) *Review of denial of application or withdrawal of approval.* In the case of a request for review of a denial of an application or withdrawal of approval to participate in the program, the determination of the administrative review officer shall sustain the action under review or shall direct that the firm be approved for participation.

(c) *Review of disqualification or civil money penalty or fine.* In the case of a request for review of action disqualifying a firm from participation in the program or assessing a civil money penalty or fine against the firm, the determination of the administrative review officer shall sustain the action under review or specify a shorter period of disqualification or a reduced civil money penalty or fine, direct that an official warning letter be issued to the firm in lieu of any period of disqualification or civil money penalty or fine, or direct that no administrative action be taken. The administrative review officer may change a disqualification of a firm selling a substantial variety of staple foods to a civil money penalty if the review officer receives information that the disqualification would cause a hardship to participating households because there are no other firms in the area selling as large a variety of staple food items at comparable prices, and this information was not available to the appropriate FCS office when the appropriate FCS office made its determination to disqualify the firm. In such a case, the administrative review officer, before he/she makes a determination, shall provide the information to the appropriate FCS office, which shall report to the administrative review officer whether the new information warrants a civil money penalty in lieu of disqualification. If the administrative review officer determines that a civil money penalty in lieu of a disqualification is warranted, the review officer shall determine the amount of the penalty in accordance with §278.6.

(d) *Review of denial of claim.* In the case of a request for review of a denial of all or part of a claim of a firm, the determination of the administrative review officer shall sustain the action under review or shall specify the amount of the claim to be paid by FCS.

(e) *Notice of review officer determination.* The administrative review officer shall notify the firm of the determination by certified mail. The notification shall be sent to the representative of the firm who filed the request for review.

(f) *Notifying the appropriate FCS office.* The administrative review officer shall send a copy of the notification to the firm to the appropriate FCS office, which shall take any action which may be necessary to comply with the determination of the review officer.

(g) *Effective date.* The determination of the administrative review officer shall take effect 30 days after the date of delivery of the determination to the firm.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 334, 57 FR 3913, Feb. 3, 1992; Amdt. 356, 59 FR 29714, June 9, 1994]

### §279.9 Legal advice and extensions of time.

(a) *Advice from Office of the General Counsel.* If any request for review involves any doubtful questions of law, the administrative review officer shall obtain the advice of the Department's Office of the General Counsel.

(b) *Extensions of time.* Upon timely written request to the administrative review officer by the firm requesting

the review, the administrative review officer may grant extensions of time if, in the review officer's discretion, additional time is required for the firm to fully present information in support of its position. However, no extensions may be made in the time allowed for the filing of a request for review.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 356, 59 FR 29714, June 9, 1994]

## Subpart C—Judicial Review

### § 279.10 Judicial review.

(a) *Filing for judicial review.* A firm aggrieved by the determination of the administrative review officer may obtain judicial review of the determination by filing a complaint against the United States in the U.S. district court for the district in which the owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. The complaint must be filed within 30 days after the date of delivery or service upon the firm of the notice of determination of the administrative review officer in accordance with § 279.8(e); otherwise the determination shall be final.

(b) *Summons and complaint.* Service of the summons and complaint in any such action shall be made in accordance with the rules of civil procedure for the U.S. district courts. The copy of the summons and complaint required by the rules to be served on the officer or agency whose order is being attacked shall be sent by registered or certified mail to the person in charge of the applicable regional office of FCS.

(c) *Trial de novo.* The suit in the U.S. district court or in the State court, as the case may be, shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action. If the court determines that the administrative action is invalid, it shall enter a judgment or order which it determines is in accordance with the law and the evidence.

(d) *Stay of action.* During the pendency of any judicial review, or any appeal therefrom, the administrative action under review shall remain in force unless the firm makes a timely application to the court and after hearing thereon, the court stays the administrative action after a showing that irreparable injury will occur absent a stay and that the firm is likely to prevail on the merits of the case.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 356, 59 FR 29714, June 9, 1994]

### § 279.11 Implementation of amendments relating to administrative and judicial review.

(a) *Amendment No. 257.* The program change to § 279.3(a)(4) shall be effective September 14, 1984.

(b) *Amendment No. 274.* The program change of *Amendment No. 274* at § 279.10(d) is effective retroactively to December 23, 1985.

(c) *Amendment No. 334.* The program changes made to part 279 by this amendment are effective February 1, 1992.

[Amdt. 257, 49 FR 32539, Aug. 15, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984, as amended by Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 334, 57 FR 3913, Feb. 3, 1992]

# PART 280—EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS

AUTHORITY: 7 U.S.C. 2011–2032.

SOURCE: Amdt. 192, 46 FR 8922, Jan. 27, 1981, as amended at 56 FR 63617, Dec. 4, 1991.

EDITORIAL NOTE: OMB control numbers relating to this part 280 are contained in § 271.8.

### § 280.1 Interim disaster procedures.

The Secretary shall, after consultation with the official empowered to exercise the authority provided for by section 302(a) of the Disaster Relief Act of 1974, establish temporary emergency standards of eligibility for the duration of the emergency for households who are victims of a disaster which disrupts commercial channels of food distribution, if such households are in need of temporary food assistance and if commercial channels of food distribution have again become available to meet the temporary food needs of such households. Such standards as are prescribed for individual emergencies may be promulgated without regard to section 4(c) of this Act or the procedures set forth in section 553 of Title 5 of the

United States Code. In addition to establishing temporary emergency standards of eligibility, the Secretary shall provide for emergency allotments to eligible households to replace food destroyed in a disaster. Such emergency allotments would be equal to the value of the food actually lost in such disaster but not greater than the applicable maximum monthly allotment for the household size.

# PART 281—ADMINISTRATION OF THE FOOD STAMP PROGRAM ON INDIAN RESERVATIONS

Sec.

281.1 General purpose and scope.
281.2 Administration.
281.3 Determination of failure.
281.4 Determining Indian tribal organization capability.
281.5 Responsibilities of an Indian tribal organization designated as State agency.
281.6 Liabilities and sanctions.
281.7 Indian tribal organization failure.
281.8 Transfer of program administration.
281.9 Funding.
281.10 Appeals.

AUTHORITY: 7 U.S.C. 2011–2032.

SOURCE: 44 FR 35925, June 19, 1979, unless otherwise noted.

## §281.1 General purpose and scope.

(a) These regulations govern the operation of the Food Stamp Program on Indian reservations either separately or concurrently with the Food distribution program. In order to assure that the Food Stamp Program is responsive to the needs of Indians on reservations, State agencies are required to consult with Indian tribal organizations about the implementation and operation of the Food Stamp Program on reservations. Also, under certain specified conditions Indian tribal organizations on reservations can administer the Food Stamp Program. The Act authorizes the Secretary to pay such amounts for administrative costs as are determined to be necessary for the effective operation of the Food Stamp Program on Indian reservations.

(b) The operation of the Food Stamp Program on Indian reservations is governed by all of the terms and conditions set forth in the Food Stamp Act of 1977 as amended and the regulations of this chapter.

(c) Additionally, under no circumstances shall any household participate simultaneously in the Food Stamp Program and the Food Distribution Program. Policy governing this prohibition is found in §283.7(e).

## §281.2 Administration.

(a) *Qualification.* (1) The appropriate ITO of an established Indian reservation will qualify for participation under the provisions of this part, when that ITO files an application which demonstrates the status of an area as an established reservation, unless FCS determines that such area(s) does not qualify as a reservation, as that term is defined in these regulations. For purposes of this part, established reservation means the geographically defined area(s) currently recognized and established by Federal or State treaty or by Federal statute whereby such geographically defined area(s) is set aside for the use of Indians. Where such established areas exist, the appropriate ITO is presumed to exercise governmental jurisdiction, unless otherwise determined by FCS:

(2) The appropriate ITO for other areas, in order to qualify as reservations for the provisions of this part, must show to FCS:

(i) That the ITO exercises governmental jurisdiction over a geographic area(s) which enjoys legal recognition from the Federal or a State government and is set aside for the use of Indians.

(ii) A clear and precise description of the boundaries of such geographic area(s).

(3) Otherwise qualified areas for which the responsible ITO has requested operation of the Food Distribution Program alone in accordance with §283.4, rather than concurrent operation with the Food Stamp Program, shall be exempt from the requirements of this part, and shall not be considered food stamp areas for any other purposes of this subchapter. Indian tribal households (households in which at least one adult member is recognized by the appropriate ITO as a tribal member) resident in these areas shall be ineligible for food stamp benefits. However, non-Indian tribal households resident in these areas may apply and

be certified for food stamps at the State agency's certification office which would otherwise service the area. Otherwise qualified areas for which the responsible ITO has requested operation of the food distribution Program concurrently with the Food Stamp Program or areas within the reservation where FCS has determined that concurrent operation is necessary in accordance with §283.3(b)(2) shall be subject to all requirements of this part and subchapter.

(b) *State plan.* In addition to the public comment requirements in §272.2, the State agency shall submit for comment its service plans, and all other portions of the State plan that directly pertains to the operation of the Program for residents on the reservation to the responsible ITO for reservations that qualify under paragraph (a) of this section. The ITO shall have 30 days to provide comments in writing to the State agency. The State agency shall, if appropriate and to the extent practicable, incorporate into its plans any suggestions made by the ITO. Additionally, the State agency shall administer the Food Stamp Program in a manner that is responsive to the needs of the Indians on the reservation, as determined by ongoing consultation with the ITO and by other means, regarding such areas of program operation as project area designation, operating procedures, locations and hours of certification and issuance, staffing and corrective action plans. The State agency shall maintain records of consultations on State plans and ongoing consultations held with ITO's for review by FCS. FCS shall study these records as part of reviews in accord with §281.3 and Management Evaluation Reviews of the State agency.

(c) *Project area designation.* (1) An Indian reservation shall be designated as a separate project area or areas for the purpose of improving the accessibility of program services to Indians on the reservation unless:

(i) The State agency demonstrates to FCS that the size or population of the reservation does not warrant such designation;

(ii) The State agency demonstrates to FCS that the tribe can be adequately served by the existing or a planned project area because of the location of certification and issuance offices;

(iii) The State agency demonstrates to FCS that such designation would reduce the availability of certification and issuance offices; or

(iv) The State agency otherwise demonstrates to FCS that such designation would impair its Statewide administration of the Program.

(2) In the case where the Indian reservation boundaries cross State lines, the ITO and the appropriate State agencies may jointly request FCS approval that a single State agency administer the Food Stamp Program on all or part of the Indian reservation. A single agency of the State government would have to administer the Program under the same terms and conditions applied to all other political subdivisions within its jurisdiction. An ITO designated as a State agency pursuant to §281.4(d) would have to administer the Program under the same terms and conditions on all areas of the reservation.

(d) *Contracts with an Indian tribal organization.* The State agency may contract program functions to an ITO. These functions include, but are not limited to, outreach, preparation of bilingual materials on issuance. The State agency may also use the ITO in prescreening, translations, interpretive services and other noncertification functions. The State agency shall not contract responsibility for certification activities such as interviews or eligibility determinations. In all cases, the State agency shall retain full responsibility for program administration.

[44 FR 35925, June 19, 1979, as amended by Amdt. 207, 47 FR 52338, Nov. 19, 1982]

### § 281.3 Determination of failure.

(a) *Request for determination of State government agency failure.* FCS shall examine State agency adminstration of the Food Stamp Program on all or part of a reservation when requested by the ITO, the State agency or at FCS' discretion. When FCS determines that a deficiency in a State agency operation of the Food Stamp Program on all or part of an Indian reservation may be serious enough to warrant a review,

FCS shall advise the State agency and the ITO in writing of the alleged deficiencies and of its plans to conduct the review and document deficiencies, if any are found. Subsequent to October 1, 1979 FCS shall complete these reviews within 90 days from receipt of an ITO's or State agency's request except under unusual circumstances such as the receipt of a large number of simultaneous requests.

(b) *Review*—(1) *Content of the review for State agency performance.* The review shall be designed to determine whether or not the State agency is properly administering the Food Stamp Program on a specific reservation. When an agency of State government is administering the Program on a reservation, FCS shall as a part of the review consult with the ITO about the operation of the Program on the reservation. The review should, depending on the nature of the complaint, include but not be limited to, an analysis of some or all of the following data:

(i) The records of State agency consultation with the ITO required under §281.2(a);

(ii) The estimated percentage of all eligible Indians on the reservation who are participating the Program;

(iii) The nature and extent of violations, if any, of the 30-day and other processing standards for Indians;

(iv) The percentage of errors made in determining eligibility and/or the amount of benefits overissued or underissued;

(v) Compliance with standards for location and hours of certification and issuance offices as required in §272.5;

(vi) Compliance with bilingual requirements of this regulation, where appropriate;

(vii) Compliance with nondiscrimination requirements of this regulation;

(viii) Compliance with other significant program requirements;

(ix) Comparison with services provided in all other areas of the State; and

(x) Any other relevant information that becomes available during the course of reviews including information received through contacts with the Indian tribe.

(2) *Finding of no or of minor deficiencies.* If after the review FCS determines either that deficiencies do not exist or that only minor deficiencies exist, FCS shall issue a report documenting its findings to both the State agency and the ITO and shall work closely with the State agency to achieve corrective action.

(c) *Formal warning.* After the review is completed, if FCS determines that major deficiencies exist, a formal warning shall be issued to the State, with a copy to the ITO. At a minimum, such warning shall indicate the State agency deficiencies and shall detail the basis upon which deficiencies were determined. The State shall have 30 days to respond with evidence that it is in compliance or to submit a corrective action proposal under part 276. If satisfactory compliance is achieved by the State agency on deficiencies cited in a formal warning, FCS shall notify the State, with a copy to the ITO, that the warning for those deficiences is satisfied.

(d) *Determination of failure and sanctions.* If at any time after the formal warning period, or during or after the corrective action period, FCS determines that major deficiencies still exist which the State agency has not satisfactorily addressed or is not satisfactorily addressing, FCS shall determine State failure and may impose appropriate Federal sanctions on the State agency as specified in part 276.

(e) *ITO operations.* If FCS has determined State failure and FCS has also determined that the ITO is capable of administering a Food Stamp Program in accordance with the terms and requirements for participating State agencies as established in the Act and regulations, then the ITO shall assume adminstration of the Food Stamp Program on the reservation. The State agency shall continue to administer the Food Stamp Program on the reservation until an effective termination and transition arrangement has been completed in accordance with §281.8.

### §281.4 Determining Indian tribal organization capability.

(a) *Determining capability of ITO.* If the ITO wishes to administer its own Food Stamp Program on the reservation FCS shall determine the ITO's potential capability for administering

the Food Stamp Program in accordance with the criteria listed in § 281.4(b). FCS shall begin to evaluate the ITO's capability for all aspects of Food Stamp Program administration, allowing for fulfillment of that potential through necessary training and technical assistance, not later than the date of the issuance of the formal warning to the State agency.

(b) *ITO responsibility.* (1) The ITO must satisfy FCS that it is capable (if provided with any needed training and technical assistance) of administering the Food Stamp Program effectively and efficiently, and of complying with all provisions of the Food Stamp Act of 1977, as amended, and the regulations of this chapter, including provisions governing quality control procedures, fraud determinations, and establishment and collection of claims for both Indian and any non-Indian participants. The ITO shall provide FCS with the following information:

(i) *Operation of government programs.* The ITO shall provide FCS a list of all government programs that the ITO administers and has recently administered. FCS may ask the ITO to provide the names of appropriate officials of the government organizations having jurisdiction over these programs so FCS can obtain all relevant audits, GAO reports, program evaluations and any other documents pertaining to the effectiveness and efficiency of tribal administration of these programs. The ITO shall also provide FCS a list of its recent contractual responsibilities, if any, for the Food Stamp Program under § 281.2(b).

(ii) *Fiscal capabilities.* The ITO shall provide FCS documentation of its bookeeping and accounting procedures, including procedures in use for fiscal accountability under part 277 and for other government programs that the ITO administers.

(iii) *Projected certification and issuance facilities.* The ITO shall provide FCS with a description of the location of projected certification and issuance facilities.

(iv) *Fraud hearings and claims.* The ITO shall provide FCS with a description of how it will pursue fraud hearings and claims against Indian and non-Indian participants.

(v) *Staffing.* The ITO shall provide FCS with sufficient information to determine that personnel who will be used in the certification process will be employed under standards equivalent to current standards for a Merit System of Personnel Administration or any standards later prescribed by the Office of Personnel Management under section 208 of the Intergovernmental Personnel Act of 1970.

(vi) *Civil rights assurance.* The ITO shall provide FCS an assurance that the ITO shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 99–112), section 504), and section 11(c) of the Food Stamp Act of 1977 and all pertinent regulations or directives to the effect that no person in the United States shall, on the grounds of sex, race, color, age, political belief, religion, handicap, or national origin, be denied benefits or otherwise be subject to discrimination under the Food Stamp Program. Where appropriate, FCS shall consider the adequacy of measures taken by the ITO to ensure that there shall be no discrimination.

(2) Prior to the determination of ITO capability, FCS shall consult with other sources such as the Bureau of Indian Affairs (BIA) to obtain any information relevant to the capability determination.

(3) If it is determined by FCS, after consultation with other sources such as the BIA, that the ITO is not capable of operating an efficient and effective Food Stamp Program, the agency of the State government shall continue to operate the Program on the reservation in accordance with § 281.3.

(c) *Training and technical assistance.* Upon determining that the State agency has failed to properly administer the Food Stamp Program and that the ITO is potentially capable of operating an effective and efficient Food Stamp Program, FCS shall determine, based on information provided by the ITO and other sources such as BIA, the training and technical assistance which is necessary to assure efficient and effective program administration. FCS will assure that appropriate training and technical assistance is provided as expeditiously as possible prior to the

ITO's assumption of the administration of the Food Stamp Program.

(d) *Assumption of duties.* When FCS is satisfied that the ITO has successfully completed (c) of this section, FCS shall designate the ITO as a State agency, contingent on the following:

(1) *State plans.* The ITO shall prepare and submit to FCS a Plan of Operation as provided in §272.2. In completing the Plan of Operation the ITO shall affirm that it will comply with the Civil Rights assurances detailed in (b)(1)(vi) of this section.

(2) *Proposed budget.* As part of the Plan of Operation, the ITO shall annually submit to FCS a proposed statement which shall provide a summary of program information and amounts budgeted to carry out the various program functions. This information shall be submitted to FCS for approval prior to the commitment of any Federal funds for administrative costs for that year. FCS shall provide the ITO any technical assistance which is necessary to prepare this information.

(3) *Termination and transition arrangement.* An effective termination and transition arrangement shall be established as required in §281.8.

### §281.5 Responsibilities of an Indian tribal organization designated as State agency.

An ITO administering the Food Stamp Program on a reservation shall adhere to the Food Stamp Act of 1977, all subsequent amendments, and all regulations issued pursuant to that law in the same manner as any other State agency. The ITO may contract certain administrative functions to private organizations as provided in parts 274 and 277. The ITO may not, however, contract responsibility for certification activities such as interviews or eligibility determinations. The ITO shall retain full responsibility for program administration.

### §281.6 Liabilities and sanctions.

An ITO administering the Food Stamp Program on a reservation is subject to the same liabilities and Federal sanctions as is any other State agency. FCS shall monitor administration of the Program and conduct reviews through the Performance Reporting System described in part 275. When necessary, warning procedures and other Federal sanctions prescribed in part 276 will be implemented.

### §281.7 Indian tribal organization failure.

When Performance Reporting System reviews indicate that continuing deficiencies exist and corrective action proposals (including training and technical assistance to overcome these deficiencies), and/or appropriate sanctions have not, in the opinion of FCS, resulted in a sufficient degree of improvement, FCS will conduct a review to determine if the ITO has failed to properly administer the Food Stamp Program. FCS shall examine the relevant factors specified in §281.3(b)(1) and shall follow the notification and determination procedures set forth in §281.3 (c) and (d). If ITO failure is determined, FCS shall require the appropriate agency of the State government to resume administration of the Program on the reservation in accordance with an approved termination and transition arrangement.

### §281.8 Transfer of program administration.

The transfer of program administration from an agency of the State government to an ITO pursuant to a determination of failure as provided for in §281.3, or from an ITO to an agency of the State government pursuant to §281.7, shall be contingent on the establishment of an effective termination and transition arrangement and an approved Plan of Operation from the State agency assuming program administration. Grant closeout procedures shall be followed in accordance with part 277. FCS shall approve the transition plan, monitor its implementation and resolve any issues which may arise during the transition and after the transfer of program administration.

### §281.9 Funding.

(a) *Agency of State government.* From the funds available to carry out this provision beginning July 1, 1979, FCS may pay to each agency of State government administering a Food Stamp Program on a reservation, 75 percent of

all approved administrative costs, such as: Certification, issuance, outreach, fair hearings and quality control, incurred on the reservation for residents of the reservation and approved by FCS to meet standards set by the 1977 Food Stamp Act. FCS may pay each agency of State government administering a Food Stamp Program on a reservation 75 percent of all approved administrative costs incurred off the reservation for activities begun after the effective date of these regulations that are primarily directed at providing better services for Indians on the reservation, such as hiring an interpreter or an Indian outreach worker, or moving a certification or issuance center closer to a reservation. The provisions of part 277 apply to any funds received under this section.

(b) *Indian tribal organization acting as State agency*. From the funds available to carry out the provisions of this part beginning October 1, 1979, FCS is authorized to pay to each ITO acting as a State agency and administering a Food Stamp Program on a reservation 75 percent of all administrative costs approved by FCS as needed for operation of a Food Stamp Program on a reservation. Any approval for payment of funds in excess of 75 percent must be based on compelling justification that such additional amounts are necessary for the effective operation of the Food Stamp Program on the reservation. The provisions of part 277 apply to any funds received under this section.

**§ 281.10 Appeals.**

(a) *Failure/capability*. (1) Any State agency or ITO may appeal the determination made by FCS on:

(i) Whether or not the reservation definition is met;

(ii) The failure or absence of failure of an agency of State government to properly administer the Food Stamp Program;

(iii) The capability or incapability of an ITO to administer the Food Stamp Program;

(iv) The failure of an ITO to properly administer the Food Stamp Program;

(v) The Federal matching percentage level of administrative funding made available by FCS. To prevail the State agency must show a compelling justification that additional funding is needed for the effective administration of the Program on the reservation.

(2) At the time FCS advises the State agency or ITO of its determination, FCS shall also advise the State agency or ITO of its right to appeal and, except for appeals of funding determinations, shall advise the State agency or ITO of its right to request either a meeting to present its position in person or a review of the record. On appeals of funding determinations, FCS shall advise the State agency or ITO that it may indicate if it wishes a meeting, however, FCS need schedule a meeting only if FCS determines a meeting is warranted to reach a proper adjudication of the matter. Otherwise, FCS shall review supportive information submitted by the State agency or ITO in paragraph (b)(2) of this section.

(b) *Procedures*—(1) *Time limit*. Any State agency or ITO which wants to appeal an initial FCS determination under paragraph (a) of this section must notify the Administrator of FCS, in writing within 15 days from the date of the determination and must advise FCS if it wishes a meeting or a review of the record.

(2) *Acknowledgment*. Within five days of receipt by the Administrator of FCS of a request for review, FCS shall provide the State agency or ITO by certified mail, return receipt requested, with a written acknowledgement of the request. The acknowledgment shall include the name and address of the official designated by the Administrator to review the appeal. The acknowledgment shall also notify the State agency or ITO that within ten day of receipt of the acknowledgment, the State agency or ITO shall submit written information in support of its position.

(3) *Scheduling a meeting*. If the Administrator, FCS, grants a meeting FCS shall advise the State agency or ITO by certified mail, return receipt requested, of the time, date and location of the meeting at least ten days in advance of the meeting. FCS shall schedule and conduct the meeting and make a decision within 60 days of the receipt of the information submitted in response to paragraph (b)(2) of this section.

(4) *Review.* If no meeting is conducted, the official designated by the Administrator, FCS, shall review information presented by a State agency or ITO which requests a review, and shall make a final determination in writing within 45 days of the receipt of the State agency's or ITO's information submitted in response to paragraph (b)(2) of this section setting forth in full the reasons for the determination.

(5) *Final decision.* The official's decision after a meeting or a review shall be final.

(c) *Funding and other sanctions.* Any State agency or ITO that wishes to appeal a funding determination made by FCS other than under (a)(5) of this section, or the application of a Federal sanction, shall follow the Administrative Review Procedures set forth in part 276.

## PART 282—DEMONSTRATION, RESEARCH, AND EVALUATION PROJECTS

Sec.
282.1 Legislative authority and notice requirements.
282.2 Funding.

AUTHORITY: 7 U.S.C. 2011–2032.

SOURCE: Amdt. 134, 43 FR 54215, Nov. 21, 1978, unless otherwise noted.

### § 282.1 Legislative authority and notice requirements.

(a) *Legislative authority.* Section 17 of the Act authorizes the Secretary to conduct demonstration, research, and evaluation projects. In conducting such projects, the Secretary may waive all or part of the requirements of the Act and implementing regulations necessary to conduct such projects, except that no project, other than a project involving the payment of the average value of allotments by household size in the form of cash to eligible households or a project conducted to test improved consistency or coordination between the food stamp employment and training program and the Job Opportunities and Basic Skills program under Title IV of the Social Security Act, may be undertaken which would lower or further restrict the established income and resource standards or benefit levels.

(b) *Notices.* At least 30 days prior to the initiation of a demonstration project, FCS shall publish a General Notice in the FEDERAL REGISTER if the demonstration project will likely have a significant impact on the public. The notice shall set forth the specific operational procedures and shall explain the basis and purpose of the demonstration project. If significant comments are received in response to this General Notice, the Department will take such action as may be appropriate prior to implementing the project. If the operational procedures contained in the General Notice described above are significantly changed because of comments, an amended General Notice will be published in the FEDERAL REGISTER at least 30 days prior to the initiation of the demonstration project, except where good cause exists supporting a shorter effective date. The explanation for the determination of good cause will be published with the amended General Notice. The amended General Notice will also explain the basis and purpose of the change.

[Amdt. 371, 61 FR 60012, Nov. 26, 1996]

### § 282.2 Funding.

Federal financial participation may be made available to demonstration, research, and evaluation projects awarded by FCS through grants and contracts. Funds may not be transferred from one project to another. FCS will pay all costs incurred during the project, up to the level established in the grant, or in the terms and conditions of the contract. FCS may grant time extensions of the project upon approval. Funding for additional costs is subject to existing Federal grant and contract procedures.

[Amdt. 371, 61 FR 60012, Nov. 26, 1996]

## PART 283—APPEALS OF QUALITY CONTROL ("QC") CLAIMS

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AUTHORITY: 7 U.S.C. 2011–2032.

SOURCE: Amdt. 348, 59 FR 34561, July 6, 1994, unless otherwise noted.

## Subpart A—General

### § 283.1 Meaning of words.

As used in this part, words in the singular form shall be deemed to import the plural, and vice versa, as the case may require.

### § 283.2 Scope and applicability.

The rules of practice in this part, shall be applicable to appeals by State agencies of Food and Consumer Service quality control (QC) claims for Fiscal Year (''FY'') 1986 and subsequent fiscal years pursuant to sections 14(a) and 16(c) of the Food Stamp Act of 1977, as amended, 7 U.S.C. 2023(a) and 2025(c).

### § 283.3 Definitions.

As used in this part, the terms as defined in the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2032 (''Act''), and in the regulations, standards, instructions or orders issued thereunder, shall apply with equal force and effect. In addition, and except as may be provided otherwise in this section:

*Administrator* means the Administrator, Food and Consumer Service, U.S. Department of Agriculture (''USDA'').

*ALJ* means any Administrative Law Judge in USDA appointed pursuant to 5 U.S.C. 3105 or detailed to the USDA pursuant to 5 U.S.C. 3344 and assigned to the appeal.

*Appeal* means the appeal to the ALJ.

*Ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include procedural matters.

*Filing.* A pleading or other document allowed or required to be filed in accordance with this part shall be considered filed when postmarked, if mailed, or when received, if hand delivered.

*FCS* means the Food and Consumer Service, USDA.

*Hearing* means that part of the appeal which involves the submission of evidence before the ALJ for the record in the appeal.

*Hearing Clerk* means the Hearing Clerk, USDA, Washington, DC 20250.

*Judicial Officer* means an official of the USDA delegated authority by the Secretary of Agriculture, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–459g) and Reorganization Plan No. 2 of 1953 (5 U.S.C. 1970 ed., Appendix, P. 550), as amended by Public Law 97–35, title I, sec. 125, 95 Stat. 357, 369 (1981) (7 U.S.C. 2201 note), to perform the adjudicating function involved (7 CFR 2.35(a)), or the Secretary of Agriculture if the authority so delegated is exercised by the Secretary.

*OC claim* means a claim made pursuant to 7 U.S.C. 2025(c).

*Secretary* means the Secretary of the USDA.

*State agency* means:

(1) The agency of State government, including the local offices thereof, which is responsible for the administration of the federally aided public assistance programs within the State, and in those States where such assistance programs are operated on a decentralized basis, it includes the counterpart local agencies which administer such assistance programs for the State agency; and

(2) The Indian tribal organization of any Indian tribe determined by the Secretary to be capable of effectively administering a Food Stamp Program in accordance with the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2032.

## Subpart B—Appeals of QC Claims of $50,000 or More

### §283.4 Filing appeals for QC claims of $50,000 or more.

(a) *Time.* A State agency may appeal the bill for collection from FCS for a QC claim of $50,000 or more for a food stamp QC error rate in excess of the tolerance level. A State agency shall file a written notice of appeal, in accordance with this subpart, within 10 days of receipt of the bill for collection from FCS for a QC claim of $50,000 or more. The State agency may request an extension to the 10-day filing requirement in accordance with §283.22(f). FCS shall issue the bill for collection by certified mail or personal service.

(b) *Exhaustion of administrative remedies.* The State agency must appeal the bill for collection to the ALJ, pursuant to this subpart, and exhaust the available administrative remedies before filing suit in the Federal District Courts.

(c) *Filing.* The notice of appeal shall be filed with the Hearing Clerk in accordance with §283.22(b).

(d) *Content of the notice.* (1) A notice of appeal, in order to be considered acceptable, must contain the following information:

(i) A brief and clear statement that it is an appeal from a QC claim of $50,000 or more identifying the period the claim covers, the date and amount of the bill for collection, and the date of receipt of the bill for collection;

(ii) Identification of the State agency as the appellant and FCS as the appellee;

(iii) A statement that the notice of appeal is filed pursuant to section 14(a) of the Food Stamp Act;

(iv) A copy of the bill for collection which constitutes the basis for the filing of the notice of appeal shall be attached to the notice.

(2) Failure to file an acceptable notice of appeal may result in a challenge by FCS to the notice, dismissal of the notice by the ALJ and a waiver of the opportunity for further appeal or review by the Judicial Officer unless the State agency pursues the options as discussed in §§283.17(d) and 283.20.

(e) *Receipt of notice of appeal and assignment of docket number.* Upon receipt of a notice of appeal, the Hearing Clerk shall assign the appeal a docket number. The Hearing Clerk shall:

(1) Send the State agency a letter which shall include the following information:

(i) Advice that the notice of appeal has been received and the date of receipt;

(ii) The docket number assigned to the appeal and instructions that all future communications related to the appeal shall reference the docket number, and;

(iii) Advice that the State agency must file and serve its appeal petition, as set forth in §283.22, not later than 60 days after receiving a notice of the claim. Failure to file a timely appeal petition may result in a waiver of further appeal rights.

(2) Send FCS a copy of the notice of appeal and a copy of the letter to the State agency.

(f) *Stay of collection.* The filing of a timely notice of appeal shall automatically stay the action of FCS to collect the QC claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final administrative determination has been issued. However, interest will accrue on the outstanding claim amount during the stay as provided in section 13(a)(1) of the Food

Stamp Act of 1977, as amended (7 U.S.C. 2022(a)(1)).

(g) *Content of the appeal petition.* The appeal petition shall include:

(1) A brief statement of the allegations of fact and provisions of law that constitute the basis for the appeal including a statement as to whether a factual basis for good cause relief exists;

(2) The nature of the relief sought, and;

(3) A request for an oral hearing, if desired by the State agency. Failure to request an oral hearing will result in a forfeiture of the opportunity for such a hearing, except as provided in § 283.15(a).

(h) *FCS answer.* Upon service of the State agency appeal petition, FCS shall:

(1) File an answer, in accordance with § 283.6, not later than 60 days after the State agency submits its appeal petition and;

(2) Advise the Hearing Clerk if FCS wishes to have an oral hearing.

(i) *Oral hearing not requested.* If no oral hearing has been requested, the appeal shall proceed in accordance with the procedures set forth under subpart C of this part.

**§ 283.5 Motion to dismiss.**

(a) *Filing of motion to dismiss.* Prior to or at the same time as filing the answer, FCS may file a motion to dismiss. The appeal may be challenged on the basis that the notice of appeal was not filed within 10 days or as that time may have been extended by the ALJ, the appeal petition was not filed in accordance with § 283.4, or that the appeal petition is substantially incomplete and could not be quickly and easily cured by amendment. The motion must be accompanied by clear and convincing proof of any of these factors alleged as grounds for dismissal.

(b) *Service of motion to dismiss.* FCS shall serve the State agency with a copy of the motion to dismiss. The State agency will have 10 days from date of service to submit objections to the motion.

(c) *Ruling on a motion to dismiss.* The ALJ will rule on the motion to dismiss before any further action proceeds on the basis of the merits of the appeal. The basis of the ruling will be clearly documented and will become part of the official record. If the ALJ denies the motion, FCS shall file its answer in accordance with § 283.6 within 60 days of service of the ALJ's ruling, unless there is a motion for reconsideration filed pursuant to § 283.17(d) or review by the Judicial Officer is sought pursuant to § 283.20.

(d) *Dismissal of appeal.* If the ALJ finds the basis for the motion to have merit, the appeal may be dismissed. The initial decision of the ALJ shall become final and effective 30 days after service in accordance with § 283.17(c)(2) unless either party pursues the options as discussed in §§ 283.17(d) and 283.20.

(e) *Waiver.* Failure to file for dismissal of the appeal by the time the answer is required to be filed will result in waiver of the right to request dismissal.

**§ 283.6 Answer.**

(a) *Filing and service.* Not later than 60 days after the State agency submits its appeal petition, or within 60 days following service of a ruling in accordance with § 283.5, FCS shall file an answer signed by the FCS Administrator or authorized representative or the attorney of record in the appeal. The attorney may file an appearance of record prior to or simultaneously with the filing of the answer.

(b) *Contents.* The answer shall clearly admit, deny, or explain each of the allegations of the appeal petition and shall:

(1) Clearly set forth any defense asserted by FCS; or

(2) State that FCS admits all the facts alleged in the appeal petition; or

(3) State that FCS admits the jurisdictional allegations of the appeal petition and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

(c) *Default.* Failure to file a timely answer shall be deemed, for purposes of the appeal, an admission of the allegations in the appeal petition and failure to deny or otherwise respond to an allegation of the appeal petition shall be deemed for purposes of the appeal, an admission of said allegation, unless FCS and the State agency have agreed

to a consent decision pursuant to §283.10.

### §283.7 Procedures upon failure to file an answer.

The failure by FCS to file an answer shall constitute a waiver of hearing. Upon such failure to file, the State agency shall file a proposed decision, along with a motion for adoption thereof, both of which shall be served upon FCS by the State agency. Within 10 days after service of such motion and proposed decision, FCS may file objections thereto. If the ALJ finds that meritorious objections have been filed, the State agency's motion shall be denied with supporting reasons. If meritorious objections are not filed, the ALJ shall issue an initial decision without further procedures or hearing. Copies of the initial decision or denial of the State agency's motion shall be served on each of the parties and shall be included as part of the official record. Where the decision as proposed by the State agency is adopted as the ALJ's initial decision, such decision of the ALJ shall become final and effective 30 days after service in accordance with §283.17(c)(2) unless reconsideration or review by the Judicial Officer is sought as discussed in §§283.17(d) and 283.20.

### §283.8 Rebuttal or amendment of appeal or answer.

(a) Not later than 30 days after FCS submits an answer in accordance with §283.6, the State agency may submit rebuttal evidence.

(b) At any time prior to the filing of a motion for a hearing pursuant to §283.15(b), the appeal petition or the answer may be amended without prior authorization by the ALJ. Thereafter, such an amendment may only be made as authorized by the ALJ upon a showing of cause.

### §283.9 Withdrawal of appeal.

At any time before the ALJ files an initial decision, the State agency may withdraw its appeal and agree to pay the full amount of the claim. By withdrawing an appeal, the State agency waives all opportunity to appeal or seek further administrative or judicial review on the claim or related matters.

### §283.10 Consent decision.

At any time before the ALJ files an initial decision, FCS and the State agency may agree to entry of a consent decision. Such decision shall be filed in the form of a decision signed by the parties with appropriate space for signature by the ALJ and shall contain an admission of at least the jurisdictional facts, consent to the issuance of the agreed decision without further procedure and such other admissions or statements as may be agreed between the parties. The ALJ shall enter such decision without further procedures, unless an error is apparent on the face of the document. Such decision shall be final and shall take effect 30 days after the date of the delivery or service of such decision and is not subject to further administrative or judicial.

### §283.11 Prehearing conference and procedure.

(a) *Time and place.* The ALJ shall direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to the hearing. The prehearing conference shall be held at the U.S. Department of Agriculture, Washington, DC. Reasonable notice of the time, place of the prehearing conference and if personal attendance will be necessary shall be given. Prehearing conferences may be conducted telephonically. The ALJ shall order each of the parties to furnish at the prehearing conference or at another time prior to the hearing the following:

(1) An outline of the appeal or defense;

(2) The legal theories upon which the party will rely;

(3) Copies of or a list of documents that the party anticipates relying upon at the hearing; and

(4) A list of witnesses who will testify on behalf of the party. At the discretion of the party furnishing such list of witnesses, the names of the witnesses need not be furnished if they are otherwise identified in some meaningful way, such as a short statement of the type of evidence they will offer.

(b) *Procedures.* The ALJ shall not order any of the foregoing procedures

that a party can show are inappropriate or unwarranted under the circumstances of the particular appeal.

(c) *Matters to be considered.* At the prehearing conference, the following matters shall be considered:

(1) The simplification of issues;

(2) The necessity of amendments to pleadings;

(3) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(4) The limitation of the number of expert or other witnesses;

(5) Negotiation, compromise, or settlement of issues;

(6) The exchange of copies of proposed exhibits;

(7) The nature of and the date by which discovery, as provided in § 283.12, must be completed;

(8) The identification of documents or matters of which official notice may be requested;

(9) A schedule to be followed by the parties for the completion of the actions decided at the conference; and

(10) Such other matters as may expedite and aid in the disposition of the appeal.

(d) *Reporting.* (1) A prehearing conference will not be stenographically reported unless so directed by the ALJ.

(2) Any party to the appeal may, upon motion, request the ALJ to allow for a stenographic transcript of a prehearing conference. The party requesting the transcript shall bear the transcription cost of producing the transcript and the duplication cost for one transcript provided to the ALJ and to the other parties to the appeal.

(e) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the ALJ concludes that a stenographic report, if available, shall suffice, or, in the event the conference takes place within 7 days of the beginning of the hearing, the ALJ elects to make a statement on the record at the hearing summarizing the actions taken.

**§ 283.12 Discovery.**

(a) *Dispositions.*—(1) *Motion for taking deposition.* Only upon a finding by the ALJ that a deposition is necessary to preserve testimony as provided in this subparagraph, upon the motion of a party to the appeal, the ALJ may, at any time after the filing of the answer, order the taking of testimony by deposition. The motion shall set forth:

(i) The name and address of the proposed deponent;

(ii) The name and address of the person (referred to hereafter in this section as the ''officer'') qualified under the regulations in this part to take depositions, before whom the proposed examination is to be made;

(iii) The proposed time and place of the examination, which shall be at least 15 days after the date of service of the motion; and

(iv) The reasons why such deposition should be taken, which shall be solely for the purpose of eliciting testimony which otherwise might not be available at the time of the hearing, for use as provided in accordance with paragraph (a)(7) of this section.

(2) *ALJ's order for taking depositions.* If the ALJ finds that the testimony may not otherwise be available at the hearing, the taking of the deposition may be ordered. The order shall be served upon the parties, and shall state:

(i) The time and place of the examination;

(ii) The name of the officer before whom the examination is to be made; and

(iii) The name of the deponent. The officer and the time and place need not be the same as those suggested in the motion.

(3) *Qualifications of officer.* The deposition shall be made before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths.

(4) *Procedure on examination.* (i) The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. Objections to questions or documents shall be in the short form, stating the grounds of objections relied upon. The questions propounded, together with all objections made (but not including argument or debate), shall be recorded verbatim. In lieu of oral examination, parties may

transmit written questions to the officer prior to the examination and the officer shall propound such questions to the deponent.

(ii) The party taking the deposition shall arrange for the examination of the witness either by oral examination, or by written questions upon agreement of the parties or as directed by the ALJ. If the examination is conducted by means of written questions, copies of the questions shall be served upon the other party to the appeal and filed with the officer at least 10 days prior to the date set for the examination unless otherwise agreed, and the other party may serve cross questions and file them with the officer at any time prior to the time of the examination.

(iii) The parties may stipulate in writing or the ALJ may upon motion order that a deposition be taken by telephone. A deposition taken by telephone is to be taken at the place where the deponent is to answer questions propounded to the deponent.

(iv) The parties may stipulate in writing or the ALJ may upon motion order that a deposition be recorded by other than stenographic means. The stipulation or the order shall designate the manner of recording, preserving and filing of the deposition, and may include other provisions to assure that the recorded testimony is accurate and trustworthy.

(5) *Certification by the officer.* The officer shall certify on the deposition that the deponent was duly sworn and that the deposition is a true record of the deponent's testimony. The officer shall then securely seal the deposition, together with one copy thereof (unless there are more than two parties in the appeal, in which case there should be another copy for each additional party), in an envelope and mail the same by registered or certified mail to the Hearing Clerk.

(6) *Corrections to the transcript.* (i) At any time prior to the hearing, any party may file a motion proposing corrections to the transcript of the deposition.

(ii) Unless a party files such a motion in the manner prescribed, the transcript shall be presumed to be a true, correct, and complete transcript of the testimony given in the deposition proceeding and to contain an accurate description or reference to all exhibits in connection therewith, and shall be deemed to be certified correct without further procedure.

(iii) At any time prior to the use of the deposition in accordance with paragraph (a)(7) of this section and after consideration of any objections filed thereto, the ALJ may issue an order making any corrections in the transcript which the ALJ finds are warranted, and these corrections shall be entered onto the original transcript by the Hearing Clerk (without obscuring the original text).

(7) *Use of depositions.* A deposition ordered and taken in accordance with the provisions of this section may be used in an appeal under these rules if the ALJ finds that the evidence is otherwise admissible and

(i) That the witness is deceased;

(ii) That the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;

(iii) That the party offering the deposition has endeavored to procure the attendance of the witness by subpoena, but has been unable to do so; or

(iv) That such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If the party upon whose motion the deposition was taken refuses to offer it in evidence, any other party may offer the deposition or any part thereof in evidence. If only part of a deposition is offered in evidence by a party, any other party may require the introduction of any other part which is relevant be considered with the part introduced, and any party may introduce any other parts.

(b) *Interrogatories, requests for admissions and requests for production of documents*—(1) *Interrogatories.* A party may submit written interrogatories to any other party to an appeal. The time for submitting and responding to written interrogatories shall be set by the ALJ at the pre-hearing conference, but in no event shall the time for response be less than 20 days from the date of service or within such time as determined upon motion to the ALJ. The number of interrogatories submitted by each

party shall not exceed twenty-five questions including subparts, unless additional interrogatories are authorized by the ALJ. Each interrogatory should be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection should be stated in lieu of an answer. The answers are to be signed under penalty of perjury by the person making them. Objections shall be signed by the attorney of record in the appeal or by the responding party's authorized representative.

(2) *Request for admissions.* A party may submit a written request for admission of the truth of any matters relevant to the appeal to any other party to the appeal. The time for submitting a written request for admission shall be set by the ALJ at the pre-hearing conference. The number of admissions contained in a request submitted by a party shall not exceed twenty-five unless additional admissions are authorized by the ALJ. The matter is admitted unless, within 20 days after service thereof, or within such time as determined upon motion to the ALJ, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter signed by the party, counsel or designated representative. If objection is made, the reasons therefor should be stated. The answer should specifically deny the matter or set forth in detail why the answering party cannot truthfully admit or deny the matter. An answering party may not give lack of information or knowledge as a reason for the failure to admit or deny unless it is stated that reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter for which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the matter cannot be admitted or denied.

(3) *Request for production of documents.* (i) Any party may serve upon any other party to the appeal a request for production of documents which are in the possession or control of the party upon whom the request is served. The time for service and response to such a request shall be set by the ALJ at the pre-hearing conference. Upon payment of fees for search and duplication of documents, any party to the appeal may obtain copies of such documents.

(ii) Parties may request production of any documents regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. Grounds for objection will not exist if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(iii) If such documents include privileged information or information the disclosure of which is proscribed by the Food Stamp Act of 1977, as amended, such documents need not be produced.

(c) *Supplementation of response.* A party who knows or later learns that a response is incorrect is under a duty to correct such response as soon as possible. A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement the response to include information thereafter acquired. A party is under a duty to supplement responses with respect to any question directly addressed to:

(1) The identity and location of persons having knowledge of discoverable matters, and

(2) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which such expert(s) is expected to testify, and the substance of the testimony.

(d) *Frequency and use of discovery.* The ALJ shall limit, upon motion of a party, the frequency or extent of discovery if the ALJ determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(3) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in

controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

(e) *Protective orders*—(1) *Request for protective order.* A party served with such a request may file a motion for a protective order before the date on which a response to the discovery request is due, stating why discovery should be limited or should not be required.

(2) *Issuance of protective order.* In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:

(i) That discovery not be had;

(ii) That the discovery may be had only through a method of discovery other than that requested;

(iii) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(iv) That discovery be conducted with no one present except persons designated by the ALJ; and

(v) That the contents of discovery or evidence be sealed.

(f) *Failure to respond to discovery*—(1) *Motions to compel.* If a deponent fails to respond or gives an evasive or incomplete answer to a question propounded at a deposition pursuant to paragraph (a) of this section or a party fails to respond or gives evasive or incomplete answers to written interrogatories or admissions, or fails to respond, in full or in part, to a request for production of documents served pursuant to paragraph (b) of this section, the party seeking discovery may apply for an order compelling an answer by filing and serving a motion on all parties and deponents.

(2) *Filing motion to compel.* (i) Such motion must be filed within 20 days following the service of the unresponsive answer upon deposition or within 20 days after expiration of the period allowed for answers to interrogatories or production of documents.

(ii) On matters related to an oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(3) *Responding to motion to compel.* A response to the motion may be filed in accordance with §283.18(d).

(g) *Decision of the ALJ.* (1) The ALJ may grant a motion to compel production or deny a motion for a protective order only if the ALJ finds that the discovery sought is necessary for the expeditious, fair, and reasonable consideration of the issues; it is not unduly costly or burdensome; it will not unduly delay the proceeding; and the information sought is not privileged.

(2) The initial decision of the ALJ regarding the motion to compel the production of privileged documents or the motion for a protective order shall become final and effective 10 days after service unless either party pursues the options as discussed in §§283.17(d) and 283.20.

(h) *Failure to comply with an order.* (1) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by order of the ALJ, such refusal may subject the refusing party to proceedings to compel compliance with the ALJ's order in the appropriate United States district court.

(2) If any party or other person refuses to obey an order made under this section requiring an answer to designated questions or production of documents, the ALJ may order that the matters regarding which questions were asked or the contents of the document or documents or any other designated facts should be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order.

(i) *Postponements or delays.* No hearing, proceeding or other matter under this part shall be postponed or otherwise delayed pending the response or resolution of issues pertaining to a request for information pursuant to the Freedom of Information Act, 5 U.S.C. 552.

### §283.13 Subpoenas.

(a) *Issuance of subpoenas.* The attendance and testimony of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the appeal may be required by subpoena at the designated place of hearing. Except

for cause shown, requests for subpoenas shall be filed at least 15 days prior to the date of the hearing. Subpoenas shall be issued by the ALJ, over the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity and reasonable scope thereof.

(b) *Service of subpoenas.* (1) When the ALJ issues a subpoena under this section, the party who requested such subpoena shall serve all other parties with a copy of the subpoena, notice of the names and addresses of the individuals subpoenaed and specify any documents required to be produced.

(2) Subpoenas may be served:

(i) By a U.S. Marshal or deputy marshal,

(ii) By any other person who is not less than 18 years of age, or

(iii) By registering and mailing a copy of the subpoena addressed to the person to be served at the last known principal place of business or residence.

(3) Proof of service may be made:

(i) By the return of service on the subpoena by the U.S. Marshal or deputy marshal,

(ii) If served by an employee of the Department, by a certificate stating that he personally served the subpoena upon the person named therein,

(iii) If served by another person, by an affidavit of such person stating that he personally served the subpoena upon the person named therein, or

(iv) If service was by registered mail, by an affidavit made by the person mailing the subpoena that it was mailed as provided herein and by the signed return post-office receipt. Where the subpoena is issued on behalf of the Secretary and service is by mail, the return receipt without an affidavit or certificate of mailing shall be sufficient proof of service.

(4) In making personal service, the person making service shall leave a copy of the subpoena with the person subpoenaed, or, if such person is not immediately available, with any other responsible person authorized to accept service residing or employed at the place of residence or business of the person subpoenaed.

(5) The original of the subpoena, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same. The party at whose request the subpoena is issued shall be responsible for the service thereof.

### § 283.14 Fees of witnesses.

Witnesses summoned under these rules shall be paid the same fees and expenses that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose request the witness appears. Current Federal, State, or local government employees shall not be eligible to receive witness fees.

### § 283.15 Procedure for hearing.

(a) *Request for hearing.* A party may request a hearing on the facts by including such request in its Appeal Petition or Answer, whichever is appropriate. Failure to request a hearing within the time specified shall constitute a waiver of the opportunity for such a hearing, except as provided for under § 283.4(i). In the event FCS denies any material facts and fails to request a hearing, the matter may be set down for hearing on motion of the State agency or upon the ALJ's own motion.

(b) *Time and place.* If any material issue of fact is joined by the pleadings, the ALJ, upon motion of any party, stating that the matter is ready for hearing, shall set a time for the hearing, as soon as feasible thereafter, with due regard for the public interest and the convenience and necessity of the State agency and FCS. The hearing shall be held at the U.S. Department of Agriculture, Washington, DC. Upon a showing of unusual or extraordinary circumstances, the ALJ may order that the hearing be held at another location. The ALJ shall file a notice stating the time and place of the hearing. If any change in the time of the hearing is made, the ALJ shall file a notice of such change, which notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript or actual notice given to the parties.

(c) *Appearances.* The parties may appear in person or by attorney of record in the appeal or by any other designated representative. Any person who appears as attorney or as a party's

designated representative must conform to the standards of ethical conduct required by practitioners before the courts of the United States.

(d) *Exchange of witness and rebuttal witness lists, statements and exhibits.* (1) Witness and rebuttal witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements or depositions that a party intends to offer in lieu of live testimony in accordance with § 283.12(a)(7), shall be exchanged at least 15 days in advance of the hearing or at such other time as may be set by the ALJ.

(2) A witness whose name does not appear on the witness list shall not be permitted to testify and exhibits which were not provided to the opposing party as provided above shall not be admitted into evidence at the hearing absent a showing of cause and as authorized by the ALJ.

(e) *Deparment of attorney or representative.* (1) Whenever an ALJ finds that a person acting as attorney or designated representative for any party to the appeal is guilty of unethical or contumacious conduct in, or in connection with an appeal, the ALJ may order that such person be precluded from further acting as attorney or representative in the appeal. Review by the Judicial Officer may be taken on any such order, but no appeal of the QC claim shall be delayed or suspended pending disposition of the debarment review by the Judicial Officer. Provided, however, that the ALJ shall suspend the appeal of the QC claim for a reasonable time for the purpose of enabling the party to obtain another attorney or representative.

(2) Whenever it is found, after notice and opportunity for hearing, that a person who is acting or who has acted as attorney or representative for another person in any proceeding before the U.S. Department of Agriculture, is unfit to act as such counsel because of such unethical or contumacious conduct, such person will be precluded from acting as the attorney or representative in any or all proceedings before the Department as found to be appropriate.

(f) *Failure to appear.* (1) If FCS or the State agency, after being duly notified, fails to appear at the hearing without cause, that party shall be deemed to have waived the opportunity for an oral hearing and to have admitted any facts which may be presented at the hearing. Such failure by either party shall also constitute an admission of all the material allegations of fact contained in any pleadings submitted by the other party. The party who appears shall have the option of whether to follow the procedure under § 283.7 or to present evidence, in whole or in part, in the form of declarations or by oral testimony before the ALJ.

(2) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the ALJ's initial decision, to file a motion for reconsideration pursuant to § 283.17(d) or to seek review by the Judicial Officer in accordance with § 283.20.

(g) *Order of proceeding.* Except as may be decided otherwise by the ALJ, FCS shall proceed first at the hearing. FCS has the burden of proving, by a preponderance of the evidence, the QC claim against the State agency for a QC error rate in excess of the tolerance level. The State agency will proceed second and must prove, by a preponderance of the evidence, the facts upon which it bases its appeal.

(h) *Evidence.* (1) The testimony of witnesses at a hearing shall be on oath or affirmation and subject to cross-examination.

(2) Upon a finding of cause, the ALJ may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the appeal or whose presence is shown by a party to be essential to the presentation of the party's cause.

(3) After a witness called by either party has testified on direct examination, any other party may request and obtain the production of any statement, or part thereof, of such witness in the possession of the opposing party which relates to the subject matter as to which the witness has testified. Such production shall be made according to the procedures and subject to

the definitions and limitations prescribed in the Jencks Act (18 U.S.C. 3500).

(4) Evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded by order of the ALJ insofar as practicable.

(i) *Inclusion in the record.* At the oral hearing or as ordered by the ALJ, depositions to the extent deemed admissible, written interrogatories, written requests for admission and respective responses may be offered in evidence by the party at whose instance they were taken. If not offered by such party, they may be offered in whole or in part by any other party. If only part of a deposition, written interrogatory, written request for admission or response thereto is offered in evidence by a party, any other party may require that all of it, which is relevant to the part introduced, be offered, and any party may introduce any other parts. Such depositions, written interrogatories, written requests for admission and respective responses thereto shall be admissible in evidence subject to such objections as to relevancy, materiality or competency of the testimony as were noted at the time of their taking or are made at the time they are offered in evidence.

(j) *Objections.* (1) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross examination or to any other ruling by the ALJ, the party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the ALJ.

(2) Only objections made before the ALJ may be subsequently relied upon on review by the Judicial Officer.

(k) *Exhibits.* Four copies of each exhibit shall be filed with the ALJ. However, where there are more than two parties in the appeal, an additional copy shall be filed for each additional party. A true copy of an exhibit may be substituted for the original.

(l) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be prima facie evidence of the relevant facts stated therein. Such record or document shall be evidenced by an official publication thereof or by a copy certified by a person having legal authority to make such certification.

(m) *Official notice.* Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character. Provided, that the parties shall be given adequate opportunity to show that such facts are erroneously noticed.

(n) *Offer of proof.* Whenever evidence is excluded by the ALJ, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it shall be included in the transcript in toto. If the evidence consists of a document or other exhibit, it shall be marked for identification and inserted in the hearing record. In either event, if the Judicial Officer, upon review, determines that the ALJ's ruling excluding the evidence was erroneous and prejudicial, the evidence shall be considered a part of the transcript and hearing record. If the Judicial Officer determines that the ALJ's ruling excluding the evidence was erroneous and prejudicial, and that it would inappropriate to have such evidence considered a part of the hearing record without reopening the hearing, the Judicial Officer may direct that the hearing be reopened to permit the taking of such evidence or for any other purpose in connection with the excluded evidence.

(o) *Transcript.* Hearings shall be recorded and transcribed verbatim. The party requesting the hearing shall bear the transcription cost of producing the transcript and the duplication cost for one transcript provided to the ALJ and to the other parties to the appeal.

### § 283.16 Consolidation of issues.

Similar issues involved in appeals by two or more State agencies may be consolidated upon motion by the State agencies, FCS, or at the discretion of

the ALJ if it is decided that consolidation would help to promote administrative efficiency.

(a) *Disposition of consolidated issues.* If the ALJ orders consolidation, the issues consolidated will be considered first. If a hearing has been requested by any of the parties that have had issues consolidated, arguments on the consolidated issues will be heard before arguments on dissimilar issues. The ALJ will take the information into consideration along with arguments on other issues in preparing initial decisions for QC appeals in which some issues have been consolidated.

(b) *Initial decision.* (1) If the ALJ decides the evidence and arguments by the State agencies on the consolidated issues cannot be overcome by the evidence presented by FCS and are sufficient to grant the relief requested by a State agency or all State agencies in which the issue is involved, the ALJ shall prepare an initial decision as provided in §283.17(c).

(2) FCS may file a motion for reconsideration pursuant to §283.17(d) or seek review by the Judicial Officer in accordance with §283.20.

**§283.17 Post-hearing procedure.**

(a) *Corrections to transcript.* (1) At any time, but not later than the time fixed for filing proposed findings of fact, conclusions of law, order and briefs, any party may file a motion proposing corrections to the transcript.

(2) Unless a party files such a motion in the matter prescribed, the transcript shall be presumed to be a true, correct, and complete transcript of the testimony given at the hearing and to contain an accurate description or reference to all exhibits received in evidence and made part of the hearing record. The transcript shall be deemed to be certified without further action by the ALJ.

(3) At any time prior to the filing of the ALJ's initial decision and after consideration of any objections filed as to the transcript, the ALJ may issue an order making any corrections in the transcript that the ALJ finds are warranted. Such corrections shall be entered into the original transcript by the Hearing Clerk (without obscuring the original text).

(b) *Proposed findings of fact, conclusions of law, order, and briefs.* The parties may file proposed findings of fact, conclusions of law and orders based solely upon the record and on officially noticed matters, and briefs in support thereof. briefs may be filed at the discretion of the ALJ. The ALJ shall announce at the hearing the time within which these documents may be filed.

(c) *ALJ's initial decision.* (1) The ALJ shall decide the appeal not later than 60 days after receipt of rebuttal evidence submitted by the State agency or, if the State agency does not submit rebuttal evidence, not later than 90 days after the State agency submits the notice of appeal and evidence in support of the appeal. In accordance with §283.22(f), the ALJ may, upon motion or *sua sponte,* extend this deadline for cause shown.

(2) The ALJ shall prepare, upon the basis of the record and officially noticed matters, and shall file, an initial decision which shall include a decision on a request for good cause relief, a copy of which shall be served upon each of the parties.

(3) Such initial decision shall be considered final for purposes of judicial review without further proceedings, unless there is a motion for reconsideration filed pursuant to §283.17(d) or review by the Judicial Officer is sought pursuant to §283.20.

(4) If no motion for reconsideration or review by the Judicial Officer is filed, the initial decision shall constitute the final notice of determination for purposes of judicial review and shall become effective 30 day after service.

(d) *Motion for reconsideration.* (1) Except as provided in paragraph (d)(4) of this section, any party may file a motion for reconsideration of the initial decision within 30 days of service of the initial decision. If served by mail, the time for filing a motion for reconsideration will be 5 days longer in accordance with §283.22.

(2) Every such motion must set forth the mattes claimed to have been erroneously decided and the basis of the alleged errors. Such motion shall be accompanied by a supporting brief.

(3) Responses to such motions shall be filed in accordance with §283.18(d).

(4) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(5) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(6) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final notice of determination for purposes of judicial review and shall become effective 30 days after service unless review by the Judicial Officer is sought in accordance with § 283.20.

(7) If the ALJ issues a revised initial decision, that decision shall constitute the final notice of determination for purposes of judicial review and shall become effective 30 days after service unless review by the Judicial Officer is sought in accordance with § 283.20.

**§ 283.18 Motions and requests.**

(a) *Filing.* All motions and requests shall be filed with the Hearing Clerk, and served upon all the parties by the moving or requesting party, except motions and requests made on the record during the oral hearing. The ALJ assigned to the appeal or the Chief Judge shall rule upon all motions and requests filed or made prior to seeking review of the ALJ's initial decision pursuant to § 283.20, except motions directly relating to such review. Thereafter, the Judicial Officer shall rule on any motions and requests as well as the motions directly relating to the review of the ALJ's initial decision.

(b) *Time for filing.* Any motion or request may be filed at any time, except that:

(1) Motions to dismiss pursuant to § 283.5 must be filed within the time allowed for filing an answer; and

(2) Motions for reconsideration must be filed within 30 days of service of the ALJ's initial decision pursuant to § 283.17(d).

(c) *Contents.* All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefor.

(d) *Response to motions and requests.* Within 10 days after service of any written motion or request or within such shorter or longer period as may be fixed by the ALJ or Judicial Officer, an opposing party may file a response to the motion or request. The moving party shall have no right to reply to the response; however, the ALJ or Judicial Officer may order that a reply be filed.

(e) *Certification to the Judicial Officer.* The submission or certification of any motion, request, objection, or other question to the Judicial Officer prior to the seeking of review pursuant to § 283.20 shall be made by and in the discretion of the ALJ. The ALJ may either rule upon or certify the motion, request, objection, or other question to the Judicial Officer, but not both.

**§ 283.19 ALJs.**

(a) *Assignment.* No ALJ shall be assigned to serve in any appeal who:

(1) Has any pecuniary interest in any matter or business involved in the appeal,

(2) Is related by blood or marriage to any party in the appeal, or

(3) Has any conflict of interest which might impair the ALJ's objectivity in the appeal.

(b) *Disqualification of ALJ.* (1) Any party to the appeal may, by motion, request that the ALJ withdraw from the appeal on one or more of the grounds set out in paragraph (a) of this section. Such motion shall set forth with particularity the alleged grounds for disqualification. The ALJ may then either rule upon or certify the motion to the Judicial Officer, but not both.

(2) The ALJ may withdraw from any appeal for any reason deemed by the ALJ to be disqualifying.

(c) *Powers.* (1) Subject to review as provided elsewhere in this part, the ALJ, in any assigned appeal, shall have the power to:

(i) Rule upon motions and requests;

(ii) Set the time and place of a prehearing conference and the time of the hearing, adjourn the hearing from time to time, and change the time of the hearing;

(iii) Administer oaths and affirmations;

(iv) Regulate the scope and timing of discovery;

(v) Issue and enforce subpoenas as authorized under 7 U.S.C. 2023(a) and these rules;

(vi) Summon and examine witnesses and receive evidence at the hearing;

(vii) Appoint expert witnesses in accordance with the provisions of Rule 706 of the Federal Rules of Evidence;

(viii) Admit or exclude evidence;

(ix) Hear oral argument on facts or law;

(x) Upon motion of a party, decide cases, in whole or in part, by non-oral hearing procedures under subpart C of this part where there is no disputed material issue of fact;

(xi) Perform all acts and take all measures necessary for the maintenance of order, including the exclusion of contumacious counsel or other persons;

(xii) Take all other actions authorized under the Act and these rules, including the extension of time upon motion of a party or *sua sponte* for cause shown.

(2) The ALJ may not rule upon the validity of Federal statutes or regulations.

(d) *Who may act in the absence of the ALJ.* In case of the absence of the ALJ or the ALJ's inability to act, the powers and duties to be performed by the ALJ under these rules of practice in connection with any assigned appeal may, without abatement of the appeal, unless otherwise directed by the Chief Judge, be assigned to any other ALJ.

**§283.20 Review by the Judicial Officer.**

(a) *Filing of review petition.* (1) Within 30 days after service of the ALJ's initial decision, or any part thereof, any party may seek Judicial Officer review of such decision by filing a review petition with the Hearing Clerk. However, if another party files a motion for reconsideration under §283.17(d), consideration of the review petition shall be stayed automatically pending resolution of the motion for reconsideration. If a motion for reconsideration is timely filed, a review petition may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(2) As provided in §283.15(h), objections made before the ALJ regarding evidence or regarding a limitation on examination or cross-examination or other ruling may be relied upon in a Judicial Officer review.

(3) Each issue set forth in the review petition, and the arguments thereon, shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations or authorities being relied upon in support thereof. A brief in support may be filed simultaneously with the review petition.

(b) *Response to review petition.* Within 30 days after service of a copy of a review petition and any brief in support thereof, any other party to the proceedings may file a response in support of or in opposition to the review petition and in such response any relevant issue, not presented in the review petition, may be raised.

(c) *Transmittal of the record.* (1) Whenever a review petition of an ALJ's initial decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the appeal.

(2) Such record shall include: The pleadings; motions and requests filed and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a prehearing conference; such proposed findings of fact, conclusions of law, orders, and briefs in support thereof, as may have been filed in connection with the appeal; the ALJ's initial decision; the motion for reconsideration of the ALJ's initial decision; the ALJ's initial decision on the motion for reconsideration and the review petition, and such briefs in support thereof and responses thereto as may have been filed.

(d) *Oral argument.* A party filing a review petition may request, within the prescribed time for filing such review petition, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, the responding party may file a request for such oral argument. Failure to make such request to appear before the Judicial Officer, within the prescribed time period, shall be deemed a waiver of the opportunity for oral argument. There is no right to appear personally before the Judicial Officer.

The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard by the Judicial Officer on review, whether oral or on brief, shall be limited to the issues raised in the review petition to the Judicial Officer or in the response to such petition, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit adequate preparation on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed within a reasonable time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to commence and conclude the argument.

(h) *Submission of briefs.* By agreement of the parties, a review may be submitted for decision on the briefs, but the Judicial Officer may direct that the review be argued orally.

(i) *Additional evidence.* If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented to the ALJ is material, not cumulative, and that there were reasonable grounds for the failure to present such evidence to the ALJ, the Judicial Officer shall remand the matter to the ALJ for consideration of such additional evidence.

(j) *Decision of the Judicial Officer on review.* (1) As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of the record and any matter of which official notice is taken, shall rule on the review.

(2) The Judicial Officer may adopt, reduce, reverse, compromise, remand or approve settlement of any claim initially decided by the ALJ under this part.

(3) The Judicial Officer shall promptly serve each party to the appeal with a copy of the ruling of the Judicial Officer which shall be considered the final determination and contain a statement describing the right to seek judicial review.

(4) Judicial review must be sought within 30 days of service of the final notice of determination by the Judicial Officer pursuant to 7 U.S.C. 2023(a).

**§ 283.21 Ex parte communications.**

(a) *ALJ; Judicial Officer.* At no time prior to the issuance of the final decision shall the ALJ or Judicial Officer discuss ex parte the merits of the appeal or review with any person who is connected with the appeal or review in an advocative or in an investigative capacity, or with any representative of such person. However, procedural matters shall not be included within this limitation; and furthermore, the ALJ or Judicial Officer may discuss the merits of the case with such a person if all parties to the appeal or review, or their attorneys have been given notice and an opportunity to participate. A memorandum of such discussion shall be included in the record.

(b) *Parties; interested persons.* No party or other interested person shall make or knowingly cause to be made to the ALJ or Judicial Officer an ex parte communication relevant to the merits of the appeal or review.

(c) *Procedure.* If the ALJ or Judicial Officer receives an ex parte communication in violation of this section, the one who receives the communication shall place in the public record of the appeal or review:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) Copies of all written responses, and memoranda stating the substance of all oral responses thereto.

(4) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the ALJ or Judicial Officer may, to the extent consistent with the interests of justice and the policy of the underlying statute, require the party to show cause why its claim or interest in the appeal or review should not be dismissed, denied, disregarded or

otherwise adversely affected on account of such violation.

(d) *Decision.* To the extent consistent with the interests of justice and the policy of the underlying statute, a violation of this section shall be sufficient grounds for a decision adverse to the party who knowingly commits a violation of this section or who knowingly causes such a violation to occur.

### §283.22 Form; filing; service; proof of service; computation of time; and extensions of time.

(a) *Form.* (1) The original and two copies of all papers in a proceeding conducted under this subpart shall be filed with the Hearing Clerk.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the docket number assigned by the Hearing Clerk, and a descriptive title (e.g., Motion for Extension of Time).

(3) Every pleading and paper shall be signed by and contain the address and telephone number of the representative for the party on whose behalf the paper was filed.

(b) *Filing.* Papers are considered filed when they are postmarked, or, received, if hand delivered. Date of mailing may be established by a certificate from the party or representative or by proof that the document was sent by certified or registered mail.

(c) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by an attorney or designated representative, service shall be made upon such attorney or representative in lieu of the actual party.

(d) *Proof of service.* A certificate of the person serving the document by personal delivery or by mail, setting forth the date, time and manner of service, shall be proof of service.

(e) *Computation of time.*

(1) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday or legal holiday observed by the Federal Government, in which event it includes the next business day.

(2) When a document has been served by mail, an additional five days will be added to the time permitted for any response.

(f) *Extensions of time.* Requests for extensions of time shall be submitted to the ALJ, Chief Judge or the Judicial Officer prior to the expiration of the original due date. The time for the filing of any document or paper required or authorized under the rules in this part may be extended by the ALJ, Chief Judge or the Judicial Officer, if, in the judgment of the ALJ, Chief Judge or the Judicial Officer, there is cause for the extension. In instances where the time permits notice of the request for extension, time shall be given to the other party to submit views concerning the request.

### §283.23 Procedural matters.

(a) *Communications from Hearing Clerk.* In order to expedite the appeal process, the Hearing Clerk may develop form letters and transmittal forms to be used for notices, service of papers, requests for information, and all other communications between the Hearing Clerk's Office and the parties.

(b) *Representation.* All parties may be represented by attorneys or by designated representatives. Attorneys or designated representatives appearing for the parties shall file formal notices of appearances and withdrawals with the Hearing Clerk.

## Subpart C—Summary Procedure for Appeals of QC Claims of Less Than $50,000

### §283.24 Incorporation of procedures by reference.

Except as otherwise provided, the following procedures detailed in subpart B of this part shall apply to appeals of QC claims of less than $50,000: §§283.5 *Motion to Dismiss*; 283.6 *Answer*; 283.8 *Rebuttal or Amendment of Appeal or Answer*; 283.9 *Withdrawal of Appeal*; 283.10 *Consent Decision*; 283.18 *Motions and Requests*; 283.19 *ALJ's*; 283.20 *Review by the*

*Judicial Officer*; 283.21 *Ex Parte Communications*; 283.22 *Filings; Service; Extensions of Time; and Computations of Time*; and 283.23 *Procedural Matters.*

### § 283.25 Filing appeals for QC claims of less than $50,000.

(a) *Time.* A State agency may appeal the bill for collection from FCS for a QC claim of less than $50,000 for a food stamp QC error rate in excess of the tolerance level. A State agency must file a written notice of appeal, in accordance with this section, within 10 days of receipt of the bill for collection from FCS for a QC claim of less than $50,000. The State agency may request an extension to the 10-day filing requirement in accordance with § 283.22(f). FCS shall issue the bill for collection by certified mail or personal service.

(b) *Exhaustion of administrative remedies.* The State agency must appeal the bill for collection to the ALJ, pursuant to this subpart, and exhaust the available administrative remedies before filing suit in the Federal District Courts.

(c) *Filing.* The notice of appeal shall be filed with the Hearing Clerk.

(d) *Content of the notice of appeal.* (1) A notice of appeal, in order to be considered acceptable must contain the following information:

(i) A brief and clear statement that it is an appeal from a QC claim of less than $50,000 identifying the period the claim covers, the date and amount of the bill for collection, and the date of receipt of the bill for collection;

(ii) Identification of the State agency as the appellant and FCS as the appellee;

(iii) A statement that the notice of appeal is filed pursuant to section 14(a) of the Food Stamp Act;

(iv) A true copy of the bill for collection which constitutes the basis for the filing of the notice of appeal shall be attached to the notice.

(2) Failure to file an acceptable notice of appeal may result in a challenge by FCS to the notice and dismissal of the notice by the ALJ and a waiver of the opportunity for further appeal or review by the Judicial Officer unless the State agency pursues the options as discussed in §§ 283.17(d) and 283.20.

(e) *Receipt of notice of appeal and assignment of docket number.* Upon receipt of a notice of appeal, the Hearing Clerk shall assign the appeal a docket number. The Hearing Clerk shall:

(1) Send the State agency a letter which shall include the following information:

(i) Advise that the notice of appeal has been received and the date of receipt;

(ii) The docket number assigned to the appeal and instructions that all future communications related to the appeal shall reference the docket number, and;

(iii) That the State agency must file and serve its appeal petition, as set forth in § 283.22 not later than 60 days after receiving a notice of the claim. Failure to file a timely appeal petition may result in a waiver of further appeal rights.

(2) Send FCS a copy of the notice of appeal and a copy of the letter to the State agency.

(f) *Stay of collection.* The filing of a timely notice of appeal shall automatically stay the action of FCS to collect the QC claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final administrative determination has been issued. However, interest will accrue on the outstanding claim amount during the stay as provided in section 13(a)(1) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2022(a)(1)).

(g) *Content of appeal petition.* The appeal petition shall include:

(1) A brief statement of the allegations of fact and provisions of law that constitute the basis for the appeal including a statement as to whether a factual basis for good cause relief exists, and

(2) The nature of the relief sought.

(h) *FCS answer.* Upon service of the State agency appeal petition, FCS shall file an answer, pursuant to § 283.6, not later than 60 days after the State agency submits its appeal petition.

**§283.26 Request that appeals be handled under procedures in subpart B for appeals of QC claims of $50,000 or more.**

(a) If, after the filing of its appeal petition, the State agency does not believe that the summary procedure provided in this subpart is adequate for handling the appeal and that an oral hearing is necessary, the State agency may file, no later than the date established for the conclusion of any discovery pursuant to §283.29, a motion that its appeal be handled under the procedures in subpart B of this part.

(b) The motion shall specify why the State agency believes that the summary procedure is inadequate and what harm will result if an oral hearing is not held.

(c) FCS will have 10 days from service of the State agency's motion that the appeal be handled under subpart B of this part to submit arguments either in support of or against the State agency's position.

(d) The ALJ will review the State agency's motion and the information submitted by FCS and decide which procedures shall be used in the appeal.

**§283.27 Procedures upon failure to file an answer.**

The failure by FCS to file an answer shall constitute a waiver of the opportunity to file a cross motion for summary judgment pursuant to §283.30. Upon such failure to file, the State agency shall file a proposed decision, along with a motion for adoption thereof, both of which shall be served upon FCS by the State agency. Within 10 days after service of such motion and proposed decision, FCS may file with the Hearing Clerk objections thereto. If the ALJ finds that meritorious objections have been filed, the State agency's motion shall be denied with supporting reasons. If meritorious objections are not filed, the ALJ shall issue an initial decision without further procedures. Copies of the decision or denial of State agency's motion shall be served on each of the parties and shall be included as part of the official record. Where the decision as proposed by the State agency is adopted as the ALJ's initial decision, such decision of the ALJ shall become final and effective 30 days after service unless reconsideration or review by the Judicial Officer is sought as discussed in §§283.17(d) and 283.20.

**§283.28 Discovery.**

Upon motion and as ordered by the ALJ, written interrogatories, written requests for admissions and written requests for the production of documents, may be served by any party to the appeal upon any other party and used in accordance with §283.12(b).

**§283.29 Scheduling conference.**

(a) *Time and place.* The ALJ shall direct the parties or their counsel to attend a scheduling conference following the filing of a notice of appeal pursuant to §283.25. The scheduling conference shall be held at the U.S. Department of Agriculture, Washington, DC. Reasonable notice of the time and place of the scheduling conference shall be given. The ALJ may order each of the parties to furnish at the scheduling conference the following:

(1) An outline of the appeal or defense;

(2) The legal theories upon which the party will rely;

(3) Copies of or a list of documents that the party anticipates relying upon;

(b) *Procedures.* The ALJ shall not order any of the foregoing procedures that a party can show are inappropriate or unwarranted under the circumstances of the particular appeal.

(c) *Scheduling conference.* At the scheduling conference, the following matters shall be considered:

(1) The simplification of issues;

(2) The necessity of amendments to pleadings;

(3) Stipulations of facts and of the authenticity, accuracy, and admissibility of documents;

(4) Negotiation, compromise, or settlement of issues;

(5) The exchange of copies of proposed exhibits;

(6) The nature of and the date by which discovery, as provided in §283.28, must be completed;

(7) The identification of documents or matters of which official notice may be requested;

(8) A schedule to be followed by the parties for the filing of cross-motions for summary judgment and completion of other actions decided at the conference; and

(9) Such other matters as may expedite and aid in the disposition of the appeal.

(d) *Reporting.* A scheduling conference will not be stenographically reported unless so directed by the ALJ.

(e) *Attendance at scheduling conference.* In the event the ALJ concludes that personal attendance by the ALJ and the parties or counsel at a scheduling conference is unwarranted or impractical, but decides that a conference would expedite the appeal, the ALJ may conduct such conference by telephone.

(f) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the ALJ concludes that a stenographic report shall suffice.

### § 283.30 Cross motions for summary judgment.

Appeals filed pursuant to this subpart shall be determined upon cross motions for summary judgment unless the matter is heard under subpart B of this part in accordance with § 283.26. Cross motions for summary judgment shall be filed by the parties along with the appeal petition and answer or in accordance with the schedule established by the ALJ pursuant to § 283.29. Motions for summary judgment shall address the issues raised by the pleadings and may be supported by declarations. Motions and accompanying briefs in support of summary judgment shall not exceed 35 pages excluding exhibits unless otherwise authorized by the ALJ. Reply briefs may be filed by the parties in accordance with the schedule established by the ALJ. Reply briefs may not exceed 15 pages in length, excluding exhibits.

### § 283.31 Review of the record.

(a) The ALJ shall review the cross motions for summary judgment, briefs, reply briefs and supporting materials submitted by both FCS and the State agency.

(b) If the ALJ decides that additional information or briefing is required from a party, a request for such information or briefing shall be submitted to such party with a copy to the other party. The request shall identify the additional information or specific issues to be addressed and shall specify the date(s) by which such information or briefing must be provided. Upon receipt of such additional information or briefing, the ALJ shall provide the other party an opportunity to submit responsive information or briefing.

(c) If the party to whom a request for additional information or briefing is made fails to submit the information or brief the issue(s) as requested, the ALJ may decide the appeal based on the existing record.

(d) If the ALJ decides that oral argument is necessary on legal issues, the ALJ shall set a time for the oral arguments as soon as feasible thereafter, with due regard for the public interest and the convenience and necessity of the State agency and FCS. The oral arguments shall be held at the U.S. Department of Agriculture, Washington, DC. Upon a showing of unusual or extraordinary circumstances, the ALJ may order that the argument be held at another location. The ALJ shall file a notice stating the time and place of the oral arguments. If any change in the time of the oral arguments is made, the ALJ shall file a notice of such change, which notice shall be served upon the parties, unless it is made during the course of the oral arguments and made a part of the transcript or actual notice given to the parties.

(e) Oral argument shall not be transcribed unless so ordered in advance by the ALJ for cause shown upon request of a party or upon the ALJ's own motion.

### § 283.32 ALJ's initial decision.

(a) The ALJ shall decide the appeal not later than 60 days after receipt of rebuttal evidence submitted by the State agency pursuant to § 283.8 or, if the State agency does not submit rebuttal evidence, not later than 90 days after the State agency submits the notice of appeal and evidence in support of the appeal. The ALJ may extend this deadline for cause shown.

(b) The ALJ shall prepare, upon the basis of the record, and shall file an initial decision which shall include a decision on a request for good cause relief, a copy of which shall be served upon each of the parties.

(c) Such initial decision shall constitute the final notice of determination for purposes of judicial review without further proceedings, unless there is a motion for reconsideration filed pursuant to §283.17(d) or review by the Judicial Officer is sought pursuant to §283.20.

## PART 284—PROVISION OF A NUTRITION ASSISTANCE PROGRAM FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (CNMI) [RESERVED]

## PART 285—PROVISION OF A NUTRITION ASSISTANCE GRANT FOR THE COMMONWEALTH OF PUERTO RICO

Sec.

285.1 General purpose and scope.
285.2 Funding.
285.3 Plan of operation.
285.4 Audits.
285.5 Failure to comply.

AUTHORITY: 7 U.S.C. 2011–2032.

SOURCE: Amdt. 209, 47 FR 32409, July 27, 1982, unless otherwise noted.

### §285.1 General purpose and scope.

This part describes the general terms and conditions under which grant funds shall be provided by the Food and Consumer Service (FCS) to the government of the Commonwealth of Puerto Rico for the purpose of designing and conducting a nutrition assistance program for needy persons. The Commonwealth of Puerto Rico is authorized to establish eligibility and benefit levels for the nutrition assistance program. In addition, with FCS approval, the Commonwealth of Puerto Rico may employ a small proportion of the grant funds to finance projects that the Commonwealth of Puerto Rico believes likely to improve or stimulate agriculture, food production, and food distribution.

### §285.2 Funding.

(a) FCS shall, consistent with the plan of operation required by §285.3 of this part, and subject to availability of funds, provide nutrition assistance grant funds to the Commonwealth of Puerto Rico to cover 100 percent of the expenditures related to food assistance provided to needy persons and 50 percent of the administrative expenses related to the food assistance. The amount of the grant funds provided to the Commonwealth of Puerto Rico shall not exceed amounts appropriated for this purpose for each fiscal year.

(b) FCS shall, subject to the provisions in §§285.3 and 285.5 in this part, and limited by the provisions of paragraph (a) of this section, pay to the Commonwealth of Puerto Rico for the applicable fiscal year, the amount estimated by the Commonwealth of Puerto Rico pursuant to §285.3(b)(4). Payments shall be made no less frequently than on a monthly basis prior to the beginning of each month consistent with the Treasury Fiscal Requirement Manual, Volume I, part 6, section 2030; these letters of credit shall be drawn on an as-needed basis. The amount shall be reduced or increased to the extent of any prior overpayment or underpayment which FCS determines has been made and which has not been previoulsy adjusted. The payment(s) received by the Commonwealth of Puerto Rico for a fiscal year shall not exceed the total authorized for the grant, or the total cost for the nutrition assistance program eligible for funding, whichever is less, for that fiscal year.

(c) FCS may recover from the Commonwealth of Puerto Rico, through offsets to funding during any fiscal year, funds previously paid to the Commonwealth of Puerto Rico and later determined by the Secretary to have been overpayments. Funds which may be recovered include, but are not limited to:

(1) Costs not included in the approved plan of operation;

(2) Unallowable costs discovered in audit or investigation findings;

(3) Funds allocated to the Commonwealth of Puerto Rico which exceeded expenditures during the fiscal year for which the funds were authorized; or

(4) Amounts owed to FCS as a result of the nutrition assistance grant which have been billed to the Commonwealth of Puerto Rico and which the Commonwealth of Puerto Rico has failed to pay without cause acceptable to FCS.

(d) Funds for payment of any prior fiscal year expenditures shall be claimed from the funding for that prior year. The payment of funds shall not exceed the authorization for that prior fiscal year.

[Amdt. 209, 47 FR 32409, July 27, 1982, as amended by Amdt. 243, 49 FR 49585, Dec. 21, 1984; Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 371, 61 FR 60012, Nov. 26, 1996]

### § 285.3 Plan of operation.

(a) To receive payments for any fiscal year the Commonwealth of Puerto Rico shall have a plan of operation for that fiscal year approved by FCS. Each plan of operation shall be sumitted for FCS approval by the July 1 preceding the fiscal year for which the plan of operation is to be effective.

(b) The plan of operation shall include the following information:

(1) Designation of the agency or agencies directly responsible for administration, or supervision of the administration, of the nutrition assistance program.

(2) A description of the needy persons residing in the Commonwealth of Puerto Rico and an assessment of the food and nutrition needs of these persons. The description and assessment shall demonstrate that the nutrition assistance program is directed toward the most needy persons in the Commonwealth of Puerto Rico.

(3) A description of the program for nutrition assistance including:

(i) A general description of the nutrition assistance to be provided the needy persons who will receive assistance, and any agencies designated to provide such assistance; and

(ii) To the extent grant funds are not used for direct nutrition assistance payments to needy persons, the plan of operation must demonstrate that the grants funds will provide nutrition assistance benefiting needy persons in the Commonwealth of Puerto Rico.

(4) A budget and an estimate of the monthly amounts of expenditures necessary for the provision of the nutrition assistance and related administrative expenses up to the monthly amounts provided for payment in § 285.2.

(5) Other reasonably related information which FCS may request.

(6) An agreement signed by the governor or other appropriate official to conduct the nutrition assistance program in accordance with the FCS-approved plan of operation and in compliance with all pertinent Federal rules and regulations. The Commonwealth of Puerto Rico shall also agree to comply with any changes in Federal law and regulations.

(c) Any amendments to those provisions of the plan of operation specified in paragraph (b) of this section, must be submitted to FCS for approval.

(d) FCS shall approve or disapprove any plan of operation no later than August 1 of the year of its submission. FCS approval of the plan of operation shall be based on an assessment that the nutrition assistance program, as defined in the plan of operation, is:

(1) Sufficient to permit analysis and review;

(2) Reasonably targeted to the most needy persons as defined in the plan of operation;

(3) Supported by an assessment of the food and nutrition needs of needy persons;

(4) Reasonable in terms of the funds requested;

(5) Structured to include safeguards to prevent fraud, waste, and abuse in the use of grant funds; and

(6) Consistent with all applicable Federal laws.

(e) FCS shall approve or disapprove any amendments to those provisions of the plan of operation specified in paragraph (b) of this section. If FCS fails either to approve or deny the amendment, or to request additional information within 30 days, the amendment to the plan of operation is approved. If additional information is requested, the Commonwealth of Puerto Rico shall provide this as soon as possible, and FCS shall approve or deny the amendment to the plan of operation. Payment schedules and other program operations may not be altered until an amendment to the plan of operation is

approved. The Commonwealth of Puerto Rico shall, for informational purposes, submit to FCS any amendments to those provisions of the plan of operation not specified in paragraph (b) of this section. Such submittal shall be made at least 30 days prior to the effective date of the amendment. If circumstances warrant a waiver of the 30-day requirement, the Commonwealth of Puerto Rico shall submit a waiver request to FCS for consideration. Should FCS determine that such an amendment relates to the provisions of paragraph (b) of this section, FCS approval as established above will be necessary for the amendment to be implemented.

(f) FCS may approve part of any plan of operation or amendment submitted by the Commonwealth of Puerto Rico contingent on appropriate action by the Commonwealth of Puerto Rico with respect to the problem areas in the plan of operation.

(g) If all or part of the plan of operation is disapproved, FCS shall notify the appropriate agency in the Commonwealth of Puerto Rico of the problem area(s) in the plan of operation and the actions necessary to secure approval.

(h) In accordance with the provisions of §285.5, funds may be withheld or denied when all or part of a plan of operation is disapproved.

[Amdt. 209, 47 FR 32409, July 27, 1982, as amended by Amdt. 239, 48 FR 23805, May 27, 1983; Amdt. 243, 49 FR 49585, Dec. 21, 1984; Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 371, 61 FR 60012, Nov. 26, 1996]

### §285.4 Audits.

(a) The Commonwealth of Puerto Rico shall provide an audit of expenditures in compliance with the requirements in part 3015 of this title at least once every two years. The findings of such audit shall be reported to FCS no later than 120 days from the end of each fiscal year in which the audit is made.

(b) Within 120 days of the end of each fiscal year, the Commonwealth of Puerto Rico shall provide FCS with a statement of: (1) Whether the grant funds received for that fiscal year exceeded the valid obligations made that year for which payment is authorized, and if so, by how much, and (2) such additional related information as FCS may require.

[Amdt. 209, 47 FR 32409, July 27, 1982. Redesignated by Amdt. 371, 61 FR 60013, Nov. 26, 1996]

### §285.5 Failure to comply.

(a) Grant funds may be withheld in whole or in part, or denied if there is a substantial failure by the Commonwealth of Puerto Rico to comply with the requirements of §285.4, or to bring into compliance a plan of operation disapproved by FCS, or to comply with program requirements detailed in the plan of operation approved for that fiscal year. (For example, funds shall be paid to the Commonwealth of Puerto Rico to cover only the costs of the part or parts of the plan of operation receiving FCS approval. Withheld payments shall be paid when the unapproved part(s) of the plan are modified and approved.) FCS shall notify the Commonwealth of Puerto Rico that further payments shall not be made until FCS is satisfied that there will no longer be any such failure to comply.

(b) Upon a finding of a substantial failure to comply with the requirements of §285.4 or the plan of operation, FCS may, in addition to or in lieu of actions taken in accordance with paragraph (a) of this section, refer the matter to the Attorney General with a request that injunctive relief be sought from the appropriate district court of the United States to require compliance with these regulations by the Commonwealth of Puerto Rico.

[Amdt. 209, 47 FR 32409, July 27, 1982. Redesignated by Amdt. 371, 61 FR 60013, Nov. 26, 1996]

# SUBCHAPTER D—GENERAL REGULATIONS

## PART 295—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

Sec.
295.1 General statement.
295.2 Organizational description.
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295.9 Appeals.

AUTHORITY: 5 U.S.C. 301, 552; 7 CFR 1.1–1.23.

SOURCE: 61 FR 39047, July 26, 1996, unless otherwise noted.

### § 295.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR 1.1–1.23, and appendix A, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of FCS to the public.

### § 295.2 Organizational description.

The description of the central and field organization of FCS is published as a notice in the FEDERAL REGISTER and may be revised from time to time in like manner. Such description contains a listing of FCS headquarters and field organizational units and their functions.

### § 295.3 Informational and educational publications.

FCS publishes a wide variety of informational and educational periodicals, pamphlets, brochures, leaflets, guides, and educational aids explaining the operation of FCS food assistance programs. For more information concerning FCS publications and how to obtain them, write the Director, Public Information Staff, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302–1500.

### § 295.4 Program evaluation status reports.

FCS also publishes summaries of objectives and findings of completed studies and projects concerning evaluation of FCS food assistance programs. A copy of the current status report on completed studies may be obtained by writing the Director, Office of Analysis and Evaluation, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302–1500.

### § 295.5 Program statistical reports.

Current and historical information on FCS food assistance program size, monetary outlays, geographic distribution, racial and ethnic participation rates, and other data is published throughout the year. Limited supplies are available for public distribution upon request. Write the Director, Program Information Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302–1500.

### § 295.6 Public inspection and copying.

5 U.S.C. 552(a)(2) requires that certain informational materials be made available for public inspection and copying. Such materials maintained by FCS may be inspected and copied during regular office hours (currently 8:30 a.m. to 5 p.m.). Interested parties may submit requests to the FCS Records Management Officer, Information Technology Division, 3101 Park Center Drive, Alexandria, VA 22302–1500.

### § 295.7 Indexes.

5 U.S.C. 552(a)(2) also requires an index of the materials required to be made available for public inspection and copying be published quarterly. Copies of this Index for FCS materials will be maintained for public inspection and copying during regular office hours in FCS Library, Room 810, 3101 Park Center Drive, Alexandria, Va. 22302–1500. Free copies of the current index may be obtained by writing or visiting any of the FCS offices listed in the local telephone directory or those listed below:

(a) Records Management Officer, Information Technology Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Va. 22302–1500.

(b) Director, Financial Management, Food and Consumer Service, USDA, 300 Corporate Blvd., Mercer Corporate Park, Robbinsville, NJ 08691–1518.

(c) Director, Financial Management, Food and Consumer Service, USDA, 77 Forsyth Street, SW, Atlanta, GA 30303–3427.

(d) Director, Financial and Administrative Management, Food and Consumer Service, USDA, 77 W. Jackson Blvd., Chicago, Illinois 60604–3507.

(e) Director, Financial Management, Food and Consumer Service, USDA, 1100 Commerce St., Dallas, Texas 75242–9980.

(f) Director, Financial Management, Food and Consumer Service, USDA, 550 Kearney St., San Francisco, CA 94108–2518.

(g) Director, Financial Management, Food and Consumer Service, USDA, 10 Causeway Street, Boston, MA 02222–1069.

(h) Director, Financial and Administrative Management, Food and Consumer Service, USDA, 1244 Speer Blvd., Denver, CO 80204–3581.

### §295.8 Requests.

(a) Requests for FCS program records under 5 U.S.C. 552(a)(3) shall be made in accordance with USDA Administrative Regulations 7 CFR 1.6 and addressed to the appropriate FCS official listed below:

(1) Food Stamp program records—Requests for Food Stamp information should be addressed to the Director of the appropriate Division (Program Development Division, Benefit Redemption Division, or Program Accountability Division) at the following address: Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, VA, 22302–1500.

(2) Child Nutrition Program records—Director, Child Nutrition Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302–1500.

(3) Food Distribution Program records—Director, Food Distribution Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302–1500.

(4) Supplemental Food Program records—Director, Supplemental Food Programs Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302–1500.

(b) If the requester is unable to determine the official to whom his request should be addressed, he should address it to: Freedom of Information Act Officer, Information Technology Division, 3101 Park Center Drive, Alexandria, VA 22302. The Freedom of Information Act Officer will refer such requests to the appropriate official.

(c) The officials outlined in paragraph (a) are authorized to make determinations in accordance with USDA Administrative Regulations at 7 CFR 1.8.

### §295.9 Appeals.

(a) Any person whose request for records is denied shall have the right to appeal that denial in accordance with USDA Administrative Regulations 7 CFR 1.13. All appeals shall be addressed to: Administrator, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302–1500.

(b) The following officials are delegated authority to make decisions on Freedom of Information Act appeals at the address above:

(1) Food Stamp program (general)—Deputy Administrator, Food Stamp Program;

(2) Food Stamp program (appeals on names of Food Stamp Investigators and Investigative aids)—Director, Benefit Redemption Division;

(3) Child Nutrition program—Deputy Administrator, Special Nutrition Programs;

(4) Food Distribution program—Deputy Administrator, Special Nutrition Programs;

(5) Supplemental Food program—Deputy Administrator, Special Nutrition Programs;

(6) Management offices—Deputy Administrator, Management;

(7) Financial Management offices—Deputy Administrator, Financial Management;

(8) Appeals not covered above—Associate Administrator, FCS.

## PARTS 296–299—[RESERVED]