

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 responsible 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 has 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