

## § 249.15

(2) Documentation supporting the funds expansion request as outlined in § 249.4(a)(23); and

(3) Whether the State agency currently issues a participant benefit greater than \$50. Such State agencies will not be eligible to receive additional SFMNP funds for expansion until the maximum participant benefit no longer exceeds \$50.

(f) *Funding of new State agencies.* Funds will be awarded to new SFMNP State agencies in accordance with § 249.5.

(g) *Administrative funding.* A State agency will have available for administrative costs an amount not greater than 10 percent of the total SFMNP funds it receives.

(h) *Recovery of unused funds.* State agencies must return to FNS any unexpended funds made available for a given fiscal year by February 1 of the following fiscal year.

### § 249.15 Closeout procedures.

(a) *General.* State agencies must submit to FNS a final closeout report for the fiscal year on a form prescribed by FNS and on a date specified by FNS.

(b) *Grant closeout procedures.* When grants to State agencies are terminated, the following procedures shall be followed in accordance with part 3016 of this title.

(1) FNS may disqualify a State agency's participation under the SFMNP, in whole or in part, or take such remedies as may be appropriate, whenever FNS determines that the State agency failed to comply with the conditions prescribed in this part, in its Federal-State Agreement, or in FNS guidelines and Instructions. FNS will promptly notify the State agency in writing of the disqualification together with the effective date.

(2) FNS may terminate a grant when both parties agree that continuation under the SFMNP would not produce beneficial results commensurate with the further expenditure of funds.

(3) Upon termination of a grant, the affected agency may not incur new obligations after the effective date of the disqualification, and must cancel as many outstanding obligations as possible. FNS will allow full credit to the State agency for the Federal share of

## 7 CFR Ch. II (1-1-10 Edition)

the noncancellable obligations properly incurred by the State agency prior to disqualification, and the State agency shall do the same for farmers, farmers' markets, roadside stands, and/or CSA programs.

(4) A grant closeout shall not affect the retention period for, or Federal rights of access to, SFMNP records as specified in § 249.23(a). The closeout of a grant does not affect the responsibilities of the State agency regarding property or with respect to any SFMNP 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 FNS 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 § 249.18 may serve as final audits providing such audits meet the needs of requesting agencies. If the grant is closed out without an audit, FNS 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.

### § 249.16 Administrative appeal of State agency decisions.

(a) *Requirements.* The State agency shall provide a hearing procedure whereby applicants, participants, local agencies and farmers, farmers' markets, roadside stands, and/or CSA programs adversely affected by certain actions of the State agency may appeal those actions.

(1) *What may be appealed.*

(i) An applicant may appeal denial of certification of SFMNP benefits, except that no appeal is available if certification is denied solely because of the lack of sufficient funding to provide SFMNP benefits to all eligible applicants.

(ii) A participant may appeal disqualification/suspension of SFMNP benefits.

(iii) A local agency may appeal an action of the State agency disqualifying it from participating in the SFMNP.

(iv) A farmer, farmers' market, roadside stand, and/or CSA program may appeal an action of the State agency denying its application to participate, imposing a sanction, or disqualifying it from participating in the SFMNP.

(2) *What may not be appealed.* Expiration of a contract or agreement shall not be subject to appeal.

(b) *Time limit for request.* The State or local agency must provide individuals, local agencies, farmers, farmers' markets, roadside stands, and/or CSA programs a reasonable period of time to request a fair hearing. Such time limit must not be less than 30 days from the date the agency mails or otherwise issues the notice of adverse action.

(c) *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, roadside stand, and/or CSA program, a postponement is appropriate where the State agency finds that participants 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) Applicants who are denied benefits at initial certification may appeal the denial, but must not receive SFMNP benefits while awaiting the hearing. Participants who appeal the termination of benefits within the period of time provided under paragraph (b) of this section must continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to participants whose certification period has already expired or who become otherwise ineligible for SFMNP benefits. Participants who become ineligible during a certification, or whose certification period expires, may appeal the termination, but must not receive benefits while awaiting the hearing.

(d) *Procedure.* The State agency hearing procedure shall at a minimum provide the participant, local agency or

farmer, farmers' market, roadside stand, and/or CSA program 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 (c) 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 participant appeal, by a representative designated by the participant, 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 SFMNP. 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.

(e) *Continuing responsibilities.* When a farmer, farmers' market, roadside stand, CSA program, and/or local agency appeals an adverse action (and is permitted to continue in the SFMNP while its appeal is pending), it continues to be responsible for compliance

with the terms of the written agreement or contract with the State agency.

(f) *Judicial review.* If a State level decision is rendered against the participant, local agency, farmer, farmers' market, roadside stand, and/or CSA program 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.

(g) *Additional appeals procedures for State agencies that authorize farmers' markets and not individual farmers.* A State agency that 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 into by the State agency and the farmers' market and the farmers' market and the farmer.

### Subpart F—Monitoring and Review of State Agencies

#### §249.17 Management evaluations and reviews.

(a) *General.* FNS and each State agency shall establish a management evaluation system in order to assess the accomplishment of SFMNP objectives as provided under these regulations, the State Plan, and the written agreement with FNS. FNS will:

- (1) Provide assistance to State agencies in discharging this responsibility;
- (2) Establish standards and procedures to determine how well the objectives of this Part are being accomplished; and
- (3) Implement sanction procedures as warranted by State SFMNP performance.

(b) *Responsibilities of FNS.* FNS will 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 FNS. As a part of the evaluation procedure, FNS will review audits to ensure that the SFMNP 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, roadside stands, and community supported agriculture programs. 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) FNS may withhold up to 10 percent of the State agency's total SFMNP grant if FNS determines that the State agency has:

- (i) Failed, without good cause, to demonstrate efficient and effective administration of its SFMNP; or
- (ii) Failed to comply with the requirements contained in this section or the State Plan.

(2) Sanctions imposed upon a State agency by FNS 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 §249.20(a). Before carrying out any sanction against a State agency, the following procedures will be followed:

(i) FNS will notify the chief departmental officer of the administering agency in writing of the deficiencies found and of FNS' intention to withhold administrative funds unless an acceptable corrective action plan is submitted by the State agency to FNS 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, FNS 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.