

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, FNS 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 FNS, FNS 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, FNS 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, FNS 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.* FNS shall issue a formal warning to a State agency if the State fails to correct to the satisfaction of FNS the deficiencies noted in an advance notification within the time specified in the advance notification. FNS 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 FNS' willingness to assist State agencies in 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, FNS shall hold the formal warning in abeyance pending completion of the actions contained in the plan within the time specified in the plan.

(iv) FNS shall cancel a formal warning when the State agency submits evidence that shows, to the satisfaction of FNS, that the deficiency has been eliminated.

(e) *Suspension/disallowance of funds.* The Administrator of FNS 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 FNS; 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 FNS 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 FNS determines that a State agency has failed to comply with the Food Stamp Act, the regulations issued pursuant to the Act, or the FNS-approved State Plan of Operations, the Secretary may seek injunctive relief

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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, FNS shall notify the State agency of the determination of non-compliance 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 FNS-approved State Plan of Operation, and, thus, is subject to the suspension/disallowance and injunctive relief provisions in §§ 276.4 and 276.5, FNS may determine that the State had good cause for the noncompliance. FNS 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 FNS determines good cause to exist.

(b) If FNS determines that food cause existed for a State agency's failure to comply with required provisions and standards, FNS 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]

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§ 276.7 Administrative review process.

(a) *General.* (1) Whenever FNS asserts a claim against a State agency, the State agency may appeal the claim by requesting an administrative review. FNS 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 FNS-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.* When asserting a claim against a State agency, FNS shall provide the notice to the State agency using any delivery method as long as the method provides evidence of the delivery.

(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 Nutrition 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 FNS 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 FNS 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