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(6) Establish standards for participant contacts that ensure adequate nutrition education in accordance with paragraph (e) of this section.

(7) 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 FNS 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; 65 FR 53528, Sept. 5, 2000]

Subpart E—State Agency Provisions

§ 246.12 Food delivery systems.

(a) *General.* This section sets forth design and operational requirements

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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 delivery systems to be used by local agencies under its jurisdiction.

(3) FNS 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 instruments or otherwise provide supplemental foods to participants.

(1) There shall be a documented on-site 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 es-

tablish 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

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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 vendor or impose a civil money penalty in lieu of disqualification for reasons of program abuse. The State agency does not have to provide the vendor with prior warning that violations were occurring before imposing such sanctions. The vendor has the right to appeal a State agency decision pertaining to disqualification, denial of application to participate, or other adverse actions that affect participation during the contract or agreement performance period; except that, expiration of a contract or agreement with a vendor, disqualification of a vendor as a result of disqualification from the Food Stamp Program, and the State agency's determination regarding participant access are not subject to review.

(xix) The State agency shall disqualify a vendor who has been disqualified from the Food Stamp Program. However, if the State agency determines that disqualification of the vendor would result in inadequate participant access, the State agency shall impose a civil money penalty in lieu of WIC disqualification.

(xx) The State agency shall permanently disqualify a vendor convicted of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments. A vendor shall not be entitled to receive any compensation for revenues lost as a result of such violation. If reflected in its State Plan, the State agency shall impose a civil money penalty in lieu of a disqualification for this violation when it determines, in its sole discretion, and documents (in accordance with paragraph (k)(8) of this section) that—

(A) Disqualification of the vendor would result in inadequate participant access; or

(B) The vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

(xxi) The State agency shall disqualify a vendor for the mandatory

sanctions listed in paragraphs (k)(1)(ii) through (k)(1)(iv) of this section. However, if the State agency determines that disqualification of the vendor would result in inadequate participant access, the State agency shall impose a civil money penalty in lieu of disqualification, except that, as provided in paragraph (k)(1)(vi) of this section, the State agency shall not impose a civil money penalty in lieu of disqualification for third or subsequent sanctions for violations in paragraphs (k)(1)(ii) through (k)(1)(iv) of this section.

(xxii) Disqualification from the WIC Program may result in disqualification as a retailer in the Food Stamp Program. Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program.

(xxiii) 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.

(xxiv) 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.

(3) Other provisions shall be added to the contracts or agreements to implement the State agency options in paragraphs (k)(2)(i), (k)(2)(ii), and (r)(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 FNS 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 FNS 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) *Mandatory vendor sanctions.*

(i) *Permanent disqualification.* The State agency shall permanently disqualify a vendor convicted of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments. A vendor shall not be entitled to receive any compensation for revenues lost as a result of such violation. If reflected in its State Plan, the State agency shall impose a civil money penalty in lieu of a disqualification for this violation when it determines, in its sole discretion, and documents (in accordance with paragraph (k)(8) of this section) that—

(A) Disqualification of the vendor would result in inadequate participant access; or

(B) The vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

(ii) *Six-year disqualification.* The State agency shall disqualify a vendor for six years for: one incidence of buying or selling food instruments for cash (trafficking); or one incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21

U.S.C. 802, in exchange for food instruments.

(iii) *Three-year disqualification.* The State agency shall disqualify a vendor for three years for:

(A) One incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for food instruments; or

(B) A pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time; or

(C) A pattern of charging participants more for supplemental food than non-WIC customers or charging participants more than the current shelf or contract price; or

(D) A pattern of receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person; or

(E) A pattern of charging for supplemental food not received by the participant; or

(F) A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments.

(iv) *One-year disqualification.* The State agency shall disqualify a vendor for one year for a pattern of providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument.

(v) *Second mandatory sanction.* When a vendor, who previously has been assessed a sanction for any of the violations in paragraphs (k)(1)(ii) through (k)(1)(iv) of this section, receives another sanction for any of these violations, the State agency shall double the second sanction. Civil money penalties may only be doubled up to the limits allowed under paragraph (k)(1)(x)(C) of this section.

(vi) *Third or subsequent mandatory sanction.* When a vendor, who previously has been assessed two or more

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sanctions for any of the violations listed in paragraphs (k)(1)(ii) through (k)(1)(iv) of this section, receives another sanction for any of these violations, the State agency shall double the third sanction and all subsequent sanctions. The State agency shall not impose civil money penalties in lieu of disqualification for third or subsequent sanctions for violations listed in paragraphs (k)(1)(ii) through (k)(1)(iv) of this section.

(vii) *Disqualification based on a Food Stamp Program disqualification.* The State agency shall disqualify a vendor who has been disqualified from the Food Stamp Program. The disqualification shall be for the same length of time as the Food Stamp Program disqualification, may begin at a later date than the Food Stamp Program disqualification, and shall not be subject to administrative or judicial review under the WIC Program.

(viii) *Voluntary withdrawal or non-renewal of agreement.* The State agency shall not accept voluntary withdrawal of the vendor from the Program as an alternative to disqualification for the violations listed in paragraphs (k)(1)(i) through (k)(1)(iv) of this section, but shall enter the disqualification on the record. In addition, the State agency shall not use nonrenewal of the vendor agreement as an alternative to disqualification.

(ix) *Participant access determinations.* Prior to disqualifying a vendor for a Food Stamp Program disqualification pursuant to paragraph (k)(1)(vii) of this section or for any of the violations listed in paragraphs (k)(1)(ii) through (k)(1)(iv) of this section, the State agency shall determine if disqualification of the vendor would result in inadequate participant access. The participant access determination shall be made in accordance with paragraph (k)(8) of this section. If the State agency determines that disqualification of the vendor would result in inadequate participant access, the State agency shall impose a civil money penalty in lieu of disqualification. However, as provided in paragraph (k)(1)(vi) of this section, the State agency shall not impose a civil money penalty in lieu of disqualification for third or subsequent sanctions for violations in paragraphs

(k)(1)(ii) through (k)(1)(iv) of this section. The State agency shall include documentation of its participant access determination and any supporting documentation in the file of each vendor who is disqualified or receives a civil money penalty in lieu of disqualification.

(x) *Civil money penalty formula.* For each violation subject to a mandatory sanction, the State agency shall use the following formula to calculate a civil money penalty imposed in lieu of disqualification:

(A) Determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during which the notice of administrative action is dated;

(B) Multiply the average monthly redemptions figure by 10 percent (.10);

(C) Multiply the product from paragraph (k)(1)(x)(B) of this section by the number of months for which the store would have been disqualified. This is the amount of the civil money penalty, provided that the civil money penalty shall not exceed \$10,000 for each violation. For a violation that warrants permanent disqualification, the amount of the civil money penalty shall be \$10,000. When during the course of a single investigation the State agency determines a vendor has committed multiple violations, the State agency shall impose a CMP for each violation. The total amount of civil money penalties imposed for violations investigated as part of a single investigation shall not exceed \$40,000.

(xi) *Notification to FNS.* The State agency shall provide the appropriate FNS office with a copy of the notice of administrative action and information on vendors it has either disqualified or imposed a civil money penalty in lieu of disqualification for any of the violations listed in paragraphs (k)(1)(i) through (k)(1)(iv) of this section. This information shall include the name of the vendor, address, identification number, the type of violation(s), and the length of disqualification or the length of the disqualification corresponding to the violation for which the civil money penalty was assessed, and shall be provided within 15 days after the vendor's opportunity to file

for a WIC administrative review has expired or all of the vendor's WIC administrative reviews have been completed.

(xii) *Multiple violations during a single investigation.* When during the course of a single investigation the State agency determines a vendor has committed multiple violations (which may include violations subject to State agency sanctions), the State agency shall disqualify the vendor for the period corresponding to the most serious mandatory violation. However, the State agency shall include all violations in the notice of administration action. If a mandatory sanction is not upheld on appeal, then the State agency may impose a State agency-established sanction.

(2) *State agency vendor sanctions.*

(i) The State agency may impose sanctions for violations that are not specified in paragraphs (k)(1)(i) through (k)(1)(iv) of this section as long as such violations and sanctions are included in the vendor agreement. State agency sanctions may include disqualifications, civil money penalties assessed in lieu of disqualification, and fines. The total period of disqualification imposed for State agency violations investigated as part of a single investigation may not exceed one year. A civil money penalty or fine shall not exceed \$10,000 for each violation. The total amount of civil money penalties imposed for violations investigated as part of a single investigation shall not exceed \$40,000.

(ii) The State agency may disqualify a vendor who has been assessed a civil money penalty for hardship in the Food Stamp Program, as provided under 7 CFR 278.6. The length of such disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in the Food Stamp Program. If a State agency decides to exercise this option, the State agency shall:

(A) Include notification that it will take such disqualification action in its vendor agreement, in accordance with paragraph (f)(3) of this section; and

(B) Determine if disqualification of the vendor would result in inadequate participant access in accordance with paragraph (k)(8) of this section. If the State agency determines that disquali-

fication of the vendor would result in inadequate participant access, the State agency shall not disqualify the vendor or impose a civil money penalty in lieu of disqualification. The State agency shall include documentation of its participant access determination and any supporting documentation in each vendor's file.

(3) *Prior warning.* The State agency does not have to provide the vendor with prior warning that violations were occurring before imposing any of the sanctions in this paragraph (k).

(4) *Appeal procedures.* The State agency shall provide adequate procedures for vendors to appeal a disqualification from participation under the Program as specified in § 246.18.

(5) *Installment plans.* The State agency may use installment plans for the collection of civil money penalties and fines.

(6) *Failure to pay a civil money penalty.* If a vendor does not pay, only partially pays, or fails to timely pay a civil money penalty assessed in lieu of disqualification, the State agency shall disqualify the vendor for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed (for a period corresponding to the most serious violation in cases where a mandatory sanction included the imposition of multiple civil money penalties as a result of a single investigation).

(7) *Actions in addition to sanctions.* Vendors may be subject to actions in addition to the sanctions in this section, such as claims for improper or overcharged food instruments and penalties outlined in § 246.23, in the case of deliberate fraud.

(8) *Participant access determination criteria.* When making participant access determinations, the State agency shall consider, at a minimum, the availability of other authorized vendors in the same area as the violative vendor and any geographic barriers to using such vendors.

(9) *Participant sanctions.* 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

statements 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.

(10) *Referral for prosecution.* 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 FNS 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 participant 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 instru-

ment 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

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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 FNS 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 FNS 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; 64 FR 13322, Mar. 18, 1999]

EFFECTIVE DATE NOTE: At 65 FR 83278, Dec. 29, 2000, §246.12 was revised effective February, 27, 2001. For the convenience of the user, the revised text is set forth as follows:

§ 246.12 Food delivery systems.

(a) *General.* This section sets forth design and operational requirements for food delivery systems. In recognition of emergent electronic benefits transfer (EBT) technology, FNS may, on a case-by-case basis, modify regulatory provisions to the extent FNS determines the particular EBT system provides adequate safeguards that serve the purpose of the provisions being modified.

(1) *Management.* The State agency is responsible for the fiscal management of, and accountability for, food delivery systems under its jurisdiction. The State agency may permit only authorized vendors, home food delivery contractors, and direct distribution sites to accept food instruments.

(2) *Design.* The State agency must design all food delivery systems to be used by its local agencies.

(3) *FNS oversight.* FNS 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) *Part 3016.* All contracts or agreements entered into by the State or local agency for the management or operation of food delivery systems must conform to the requirements of Part 3016 of this title.

(b) *Uniform food delivery systems.* The State agency may operate up to three types of food delivery systems under its jurisdiction—retail, home delivery, or direct distribution. Each system must be procedurally uniform throughout the jurisdiction of the State agency and must ensure adequate participant access to supplemental foods. When used, food instruments must be uniform within each type of system.

(c) *No charge for authorized supplemental foods.* The State agency must ensure that participants receive their authorized supplemental foods free of charge.

(d) *Compatibility of food delivery system.* The State agency must ensure that the food delivery system(s) selected is compatible with the delivery of health and nutrition education services to participants.

(e) *Retail food delivery systems: General.* Retail food delivery systems are systems in which participants, parents or caretakers of infant and child participants, and proxies obtain authorized supplemental foods by submitting a food instrument to an authorized vendor.

(f) *Retail food delivery systems: Food instrument requirements.* (1) *General.* State agencies using retail food delivery systems must use food instruments that comply with the requirements of paragraph (f)(2) of this section.

(2) *Printed food instruments.* Each printed food instrument must clearly bear on its face the following information:

(i) *Authorized supplemental foods.* The supplemental foods authorized to be obtained with the food instrument;

(ii) *First date of use.* The first date on which the food instrument may be used to obtain supplemental foods;

(iii) *Last date of use.* The last date on which the food instrument may be used to obtain authorized supplemental foods. This date must be a minimum of 30 days from the first date on which it may be used, except for the participant's first month of issuance, when it may be the end of the month or cycle for which the food instrument is valid. Rather than entering a specific last date of use 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 food instrument may be used;

(iv) *Redemption period.* The date by which the vendor must submit the food instrument for redemption. This date must be no more than 90 days from the first date on which the food instrument may be used. If the date is fewer than 90 days, then the State agency must ensure that the allotted time provides the vendor sufficient time to submit the food instrument for redemption without undue burden;

(v) *Serial number.* A unique and sequential serial number;

(vi) *Purchase price.* A space for the purchase price to be entered. At the discretion of the State agency, a maximum price may be printed on the food instrument that is higher than the expected purchase price of the authorized supplemental foods for which it will be used, but that is low enough to protect against potential loss of funds. When a maximum price is printed on the food instrument, the space for the purchase price must be clearly distinguishable from the maximum price. For example, the words "purchase price" or "actual amount of sale" could be printed larger and in a different area of the food instrument than the maximum price; and

(vii) *Signature space.* A space where participants, parents or caretakers of infant or child participants, or proxies must sign.

(3) *Vendor identification.* The State agency must implement procedures to ensure each food instrument submitted for redemption can be identified by the vendor that submitted the food instrument. Each vendor operated by a single business entity must be identified separately. The State agency may identify vendors by requiring that all authorized vendors stamp their names and/or enter a vendor identification number on all food instruments prior to submitting them for redemption.

(g) *Retail food delivery systems: Vendor authorization.* (1) *General.* The State agency must authorize an appropriate number and distribution of vendors in order to ensure adequate participant access to supplemental foods and to ensure effective State agency

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management, oversight, and review of its authorized vendors.

(2) *Vendor limiting criteria.* The State agency may establish criteria to limit the number of stores it authorizes. The State agency must apply its limiting criteria consistently throughout its jurisdiction. Any vendor limiting criteria used by the State agency must be included in the State Plan in accordance with § 246.4(a)(14)(ii).

(3) *Vendor selection criteria.* The State agency must develop and implement criteria to select stores for authorization. The State agency must apply its selection criteria consistently throughout its jurisdiction. The State agency may reassess any authorized vendor at any time during the vendor's agreement period using the vendor selection criteria in effect at the time of the reassessment and must terminate the agreements with those vendors that fail to meet them. The vendor selection criteria must include the following categories and requirements and must be included in the State Plan in accordance with § 246.4(a)(14)(ii).

(i) *Competitive price and price limitations.* The State agency must consider the prices a vendor applicant charges for supplemental foods as compared to the prices charged by other vendor applicants and authorized vendors. The State agency may evaluate a vendor applicant based on its shelf prices or on the prices it bids for supplemental foods, which may not exceed its shelf prices. The State agency must also establish price limitations on the amount that it will pay vendors. The price limitations must be designed to ensure that the State agency does not pay a vendor at a level that would otherwise make the vendor ineligible for authorization. The State agency may establish different competitive price requirements and price limitations for different vendor peer groups, may include a factor to reflect fluctuations in wholesale prices in its price limitations, and may exempt pharmacy vendors that supply only exempt infant formula and/or WIC-eligible medical foods from both the competitive price selection criterion and the price limitations.

(ii) *Minimum variety and quantity of supplemental foods.* The State agency must establish minimum requirements for the variety and quantity of supplemental foods that a vendor applicant must stock to be authorized. The State agency may not authorize a vendor applicant unless it determines that the vendor applicant meets these minimums. The State agency may establish different minimums for different vendor peer groups.

(iii) *Business integrity.* The State agency must consider the business integrity of a vendor applicant. In determining the business integrity of a vendor applicant, the State agency may rely solely on facts already known to it and representations made by the vendor applicant on its vendor appli-

cation. The State agency is not required to establish a formal system of background checks for vendor applicants. Unless denying authorization of a vendor applicant would result in inadequate participant access, the State agency may not authorize a vendor applicant if during the last six years the vendor applicant or any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity. Activities indicating a lack of business integrity include fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. The State agency may add other types of convictions or civil judgments to this list.

(iv) *Current Food Stamp Program disqualification or civil money penalty for hardship.* Unless denying authorization of a vendor applicant would result in inadequate participant access, the State agency may not authorize a vendor applicant that is currently disqualified from the Food Stamp Program or that has been assessed a Food Stamp Program civil money penalty for hardship and the disqualification period that would otherwise have been imposed has not expired.

(4) *On-site preauthorization visit.* The State agency must conduct an on-site visit prior to or at the time of a vendor's initial authorization.

(5) *Sale of store to circumvent WIC sanction.* The State agency may not authorize a vendor applicant if the State agency determines the store has been sold by its previous owner in an attempt to circumvent a WIC sanction. The State agency may consider such factors as whether the store was sold to a relative by blood or marriage of the previous owner(s) or sold to any individual or organization for less than its fair market value.

(6) *Impact on small businesses.* The State agency is encouraged to consider the impact of authorization decisions on small businesses.

(7) *Application periods.* The State agency may limit the periods during which applications for vendor authorization will be accepted and processed, except that applications must be accepted and processed at least once every three years. The State agency must develop procedures for processing vendor applications outside of its timeframes when it determines there will be inadequate participant access unless additional vendors are authorized.

(8) *Data collection at authorization.* At the time of application, the State agency must collect the vendor applicant's Food Stamp Program authorization number if the vendor applicant is authorized in that program. In addition, the State agency must collect the

vendor applicant's current shelf prices for supplemental foods.

(h) *Retail food delivery systems: Vendor agreements.* (1) *General.* (i) *Entering into agreements.* The State agency must enter into written agreements with all authorized vendors. The agreements must be for a period not to exceed three years. The agreement must be signed by a representative who has legal authority to obligate the vendor and a representative of the State agency. When the vendor representative is obligating more than one vendor, the agreement must specify all vendors covered by the agreement. When more than one vendor is specified in the agreement, the State agency may add or delete an individual vendor without affecting the remaining vendors. The State agency must require vendors to reapply at the expiration of their agreements and must provide vendors with not less than 15 days advance written notice of the expiration of their agreements.

(ii) *Delegation to local agencies.* The State agency may delegate to its local agencies the authority to sign vendor agreements if the State agency indicates its intention to do so in its State Plan in accordance with §246.4(a)(14)(iii). In such cases, the State agency must provide supervision and instruction to ensure the uniformity and quality of local agency activities.

(2) *Standard vendor agreement.* The State agency must use a standard vendor agreement throughout its jurisdiction, although the State agency may make exceptions to meet unique circumstances provided that it documents the reasons for such exceptions.

(3) *Vendor agreement provisions.* The vendor agreement must contain the following specifications, although the State agency may determine the exact wording to be used:

(i) *Acceptance of food instruments.* The vendor may accept food instruments only from participants, parents or caretakers of infant and child participants, or proxies.

(ii) *No substitutions, cash, credit, refunds, or exchanges.* The vendor may provide only the authorized supplemental foods listed on the food instrument. The vendor may not provide unauthorized food items, non-food items, cash, or credit (including rainchecks) in exchange for food instruments. The vendor may not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments, except for exchanges of an identical authorized supplemental food item when the original authorized supplemental food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical authorized supplemental food item means the exact brand and size as the original authorized supplemental food item obtained and returned by the participant.

(iii) *Treatment of participants, parents/caretakers, and proxies.* The vendor must offer program participants, parents or caretakers of infant or child participants, and proxies the same courtesies offered to other customers.

(iv) *Time periods for transacting food instruments.* The vendor may accept a food instrument only within the specified time period.

(v) *Purchase price on food instruments.* The vendor must ensure that the purchase price is entered on food instruments in accordance with the procedures described in the vendor agreement. The State agency has the discretion to determine whether the vendor or the participant enters the purchase price. The purchase price must include only the authorized supplemental food items actually provided and must be entered on the food instrument before it is signed.

(vi) *Signature on food instruments.* For printed food instruments, the vendor must ensure the participant, parent or caretaker of an infant or child participant, or proxy signs the food instrument in the presence of the cashier. In EBT systems, a Personal Identification Number (PIN) may be used in lieu of a signature.

(vii) *Sales tax prohibition.* The vendor may not collect sales tax on authorized supplemental foods obtained with food instruments.

(viii) *Food instrument redemption.* The vendor must submit food instruments for redemption in accordance with the redemption procedures described in the vendor agreement. The vendor may redeem a food instrument only within the specified time period. As part of the redemption procedures, the State agency may make price adjustments to the purchase price on food instruments submitted by the vendor for redemption to ensure compliance with the price limitations applicable to the vendor.

(ix) *Vendor claims.* When the State agency determines the vendor has committed a vendor violation that affects the payment to the vendor, the State agency will delay payment or establish a claim. The State agency may delay payment or establish a claim in the amount of the full purchase price of each food instrument that contained the vendor overcharge or other error. The State agency will provide the vendor with an opportunity to justify or correct a vendor overcharge or other error. The vendor must pay any claim assessed by the State agency. In collecting a claim, the State agency may offset the claim against current and subsequent amounts to be paid to the vendor. In addition to denying payment or assessing a claim, the State agency may sanction the vendor for vendor overcharges or other errors in accordance with the State agency's sanction schedule.

(x) *No charge for authorized supplemental foods or restitution from participants.* The vendor may not charge participants, parents or

caretakers of infant and child participants, or proxies for authorized supplemental foods obtained with food instruments. In addition, the vendor may not seek restitution from these individuals for food instruments not paid or partially paid by the State agency.

(xi) *Training.* At least one representative of the vendor must participate in training annually. Annual vendor training may be provided by the State agency in a variety of formats, including newsletters, videos, and interactive training. The State agency will have sole discretion to designate the date, time, and location of all interactive training, except that the State agency will provide the vendor with at least one alternative date on which to attend such training.

(xii) *Vendor training of staff.* The vendor must inform and train cashiers and other staff on program requirements.

(xiii) *Accountability for owners, officers, managers, and employees.* The vendor is accountable for its owners, officers, managers, agents, and employees who commit vendor violations.

(xiv) *Monitoring.* The vendor may be monitored for compliance with program requirements.

(xv) *Recordkeeping.* The vendor must maintain inventory records used for Federal tax reporting purposes and other records the State agency may require for the period of time specified by the State agency in the vendor agreement. Upon request, the vendor must make available to representatives of the State agency, the Department, and the Comptroller General of the United States, at any reasonable time and place for inspection and audit, all food instruments in the vendor's possession and all program-related records.

(xvi) *Termination.* The State agency will immediately terminate the agreement if it determines that the vendor has provided false information in connection with its application for authorization. Either the State agency or the vendor may terminate the agreement for cause after providing advance written notice of a period of not less than 15 days to be specified by the State agency.

(xvii) *Change in ownership or location or cessation of operations.* The vendor must provide the State agency advance written notification of any change in vendor ownership, store location, or cessation of operations. In such instances, the State agency will terminate the vendor agreement, except that the State agency may permit vendors to move short distances without terminating the agreement. The State agency has the discretion to determine the length of advance notice required for vendors reporting changes under this provision, whether a change in location qualifies as a short distance, and whether a change in business structure constitutes a change in ownership.

(xviii) *Sanctions.* In addition to claims collection, the vendor may be sanctioned for vendor violations in accordance with the State agency's sanction schedule. Sanctions may include administrative fines, disqualification, and civil money penalties in lieu of disqualification. The State agency does not have to provide the vendor with prior warning that violations were occurring before imposing such sanctions.

(xix) *Conflict of interest.* The State agency will terminate the agreement if the State agency identifies a conflict of interest, as defined by applicable State laws, regulations, and policies, between the vendor and the State agency or its local agencies.

(xx) *Criminal penalties.* A vendor who commits fraud or abuse in the Program is liable to prosecution under applicable Federal, State or local laws. Those who have willfully misapplied, stolen or fraudulently obtained program funds will 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.

(xxi) *Not a license/property interest.* The vendor agreement does not constitute a license or a property interest. If the vendor wishes to continue to be authorized beyond the period of its current agreement, the vendor must reapply for authorization. If a vendor is disqualified, the State agency will terminate the vendor's agreement, and the vendor will have to reapply in order to be authorized after the disqualification period is over. In all cases, the vendor's new application will be subject to the State agency's vendor selection criteria and any vendor limiting criteria in effect at the time of the reapplication.

(xxii) *Compliance with vendor agreement, statutes, regulations, policies, and procedures.* The vendor must comply with the vendor agreement and Federal and State statutes, regulations, policies, and procedures governing the Program, including any changes made during the agreement period.

(xxiii) *Nondiscrimination regulations.* The vendor must comply with the nondiscrimination provisions of Departmental regulations (Parts 15, 15a and 15b of this title).

(xxiv) *Compliance with vendor selection criteria.* The vendor must comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria. Using the current vendor selection criteria, the State agency may reassess the vendor at any time during the agreement period. The State agency will terminate the vendor agreement if the vendor fails to meet the current vendor selection criteria.

(xxv) *Reciprocal Food Stamp Program disqualification for WIC Program disqualifications.* Disqualification from the WIC Program may

result in disqualification as a retailer in the Food Stamp Program. Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program.

(4) *Purchase price and redemption procedures.* The State agency must describe in the vendor agreement its purchase price and redemption procedures. The redemption procedures must ensure that the State agency does not pay a vendor more than the price limitations applicable to the vendor.

(5) *Sanction schedule.* The State agency must include its sanction schedule in the vendor agreement or as an attachment to it. The sanction schedule must include all mandatory and State agency vendor sanctions and must be consistent with paragraph (1) of this section. If the sanction schedule is in State law or regulations or in a document provided to the vendor at the time of authorization, the State agency instead may include an appropriate cross-reference in the vendor agreement.

(6) *Actions subject to administrative review and review procedures.* The State agency must include the adverse actions a vendor may appeal and those adverse actions that are not subject to administrative review. The State agency also must include a copy of the State agency's administrative review procedures in the vendor agreement or as an attachment to it or must include a statement that the review procedures are available upon request and the applicable review procedures will be provided along with an adverse action subject to administrative review. These items must be consistent with § 246.18. If these items are in State law or regulations or in a document provided to the vendor at the time of authorization, the State agency instead may include an appropriate cross-reference in the vendor agreement.

(7) *Notification of program changes.* The State agency must notify vendors of changes to Federal or State statutes, regulations, policies, or procedures governing the Program before the changes are implemented. The State agency should give as much advance notice as possible.

(i) *Retail food delivery systems: Vendor training.* (1) *General requirements.* The State agency must provide training annually to at least one representative of each vendor. Prior to or at the time of a vendor's initial authorization, and at least once every three years thereafter, the training must be in an interactive format that includes a contemporaneous opportunity for questions and answers. The State agency must designate the date, time, and location of the interactive training and the audience (e.g., managers, cashiers, etc.) to which the training is directed. The State agency must provide vendors with at least one alternative date on which to attend interactive training. Examples of acceptable vendor training include on-site cashier training, off-site classroom-style train-the-train-

er or manager training, a training video, and a training newsletter. All vendor training must be designed to prevent program errors and noncompliance and improve program service.

(2) *Content.* The annual training must include instruction on the purpose of the Program, the supplemental foods authorized by the State agency, the minimum varieties and quantities of authorized supplemental foods that must be stocked by vendors, the procedures for transacting and redeeming food instruments, the vendor sanction system, the vendor complaint process, the claims procedures, and any changes to program requirements since the last training.

(3) *Delegation.* The State agency may delegate vendor training to a local agency, a contractor, or a vendor representative if the State agency indicates its intention to do so in its State Plan in accordance with § 246.4(a)(14)(xi). In such cases, the State agency must provide supervision and instruction to ensure the uniformity and quality of vendor training.

(4) *Documentation.* The State agency must document the content of and vendor participation in vendor training.

(j) *Retail food delivery systems: Monitoring vendors and identifying high-risk vendors.* (1) *General requirements.* The State agency must design and implement a system for monitoring its vendors for compliance with program requirements. The State agency may delegate vendor monitoring to a local agency or contractor if the State agency indicates its intention to do so in its State Plan in accordance with § 246.4(a)(14)(iv). In such cases, the State agency must provide supervision and instruction to ensure the uniformity and quality of vendor monitoring.

(2) *Routine monitoring.* The State agency must conduct routine monitoring visits on a minimum of five percent of the number of vendors authorized by the State agency as of October 1 of each fiscal year in order to survey the types and levels of abuse and errors among authorized vendors and to take corrective actions, as appropriate. The State agency must develop criteria to determine which vendors will receive routine monitoring visits and must include such criteria in its State Plan in accordance with § 246.4(a)(14)(iv).

(3) *Identifying high-risk vendors.* The State agency must identify high-risk vendors at least once a year using criteria developed by FNS and/or other statistically-based criteria developed by the State agency. FNS will not change its criteria more frequently than once every two years and will provide adequate advance notification of changes prior to implementation. The State agency may develop and implement additional criteria. All State agency-developed criteria must be approved by FNS.

(4) *Compliance investigations.* (i) *High-risk vendors.* The State agency must conduct compliance investigations of a minimum of five percent of the number of vendors authorized by the State agency as of October 1 of each fiscal year. The State agency must conduct compliance investigations on all high-risk vendors up to the five percent minimum. The State agency may count toward this requirement a compliance investigation of a high-risk vendor conducted by a Federal, State, or local law enforcement agency. The State agency also may count toward this requirement a compliance investigation conducted by another WIC State agency provided that the State agency implements the option to establish State agency sanctions based on mandatory sanctions imposed by the other WIC State agency, as specified in paragraph (1)(2)(iii) of this section. A compliance investigation of a high-risk vendor may be considered complete when the State agency determines that a sufficient number of compliance buys have been conducted to provide evidence of program noncompliance, when two compliance buys have been conducted in which no program violations are found, or when an inventory audit has been completed.

(ii) *Randomly selected vendors.* If fewer than five percent of the State agency's authorized vendors are identified as high-risk, the State agency must randomly select additional vendors on which to conduct compliance investigations sufficient to meet the five-percent requirement. A compliance investigation of a randomly selected vendor may be considered complete when the State agency determines that a sufficient number of compliance buys have been conducted to provide evidence of program noncompliance, when two compliance buys are conducted in which no program violations are found, or when an inventory audit has been completed.

(iii) *Prioritization.* If more than five percent of the State agency's vendors are identified as high-risk, the State agency must prioritize such vendors so as to perform compliance investigations of those determined to have the greatest potential for program noncompliance and/or loss of funds.

(5) *Monitoring report.* For each fiscal year, the State agency must send FNS a summary of the results of its vendor monitoring containing information stipulated by FNS. The report must be sent by February 1 of the following fiscal year. Plans for improvement in the coming year must be included in the State Plan in accordance with § 246.4(a)(14)(iv).

(6) *Documentation.*

(i) *Monitoring visits.* The State agency must document the following information for all monitoring visits, including routine monitoring visits, inventory audits, and compliance buys:

(A) the date of the monitoring visit, inventory audit, or compliance buy;

(B) the name(s) and signature(s) of the reviewer(s); and

(C) the nature of any problem(s) detected.

(ii) *Compliance buys.* For compliance buys, the State agency must also document:

(A) the date of the buy;

(B) a description of the cashier involved in each transaction;

(C) the types and quantities of items purchased, current shelf prices or prices charged other customers, and price charged for each item purchased, if available. Price information may be obtained prior to, during, or subsequent to the compliance buy; and

(D) the final disposition of all items as destroyed, donated, provided to other authorities, or kept as evidence.

(k) *Retail food delivery systems: Vendor claims.* (1) *System to review food instruments.*

The State agency must design and implement a system to review food instruments submitted by vendors for redemption to ensure compliance with the applicable price limitations and to detect questionable food instruments, suspected vendor overcharges, and other errors. This review must examine either all or a representative sample of the food instruments and may be done either before or after the State agency makes payments on the food instruments. The review must include a price comparison or other edit designed to ensure compliance with the applicable price limitations and to assist in detecting vendor overcharges. For printed food instruments, the system also must detect the following errors: purchase price missing; participant, parent/caretaker, or proxy signature missing; vendor identification missing; food instruments transacted or redeemed after the specified time periods; and, as appropriate, altered purchase price. The State agency must take follow-up action within 120 days of detecting any questionable food instruments, suspected vendor overcharges, and other errors and must implement procedures to reduce the number of errors when possible.

(2) *Delaying payment and establishing a claim.* When the State agency determines the vendor has committed a vendor violation that affects the payment to the vendor, the State agency must delay payment or establish a claim. Such vendor violations may be detected through compliance investigations, food instrument reviews, or other reviews or investigations of a vendor's operations. The State agency may delay payment or establish a claim in the amount of the full purchase price of each food instrument that contained the vendor overcharge or other error.

(3) *Opportunity to justify or correct.* When payment for a food instrument is delayed or a claim is established, the State agency must provide the vendor with an opportunity to justify or correct the vendor overcharge

or other error. If satisfied with the justification or correction, the State agency must provide payment or adjust the proposed claim accordingly.

(4) *Timeframe and offset.* The State agency must deny payment or initiate claims collection action within 90 days of either the date of detection of the vendor violation or the completion of the review or investigation giving rise to the claim, whichever is later. Claims collection action may include offset against current and subsequent amounts owed to the vendor.

(5) *Food instruments redeemed after the specified period.* With justification and documentation, the State agency may pay vendors for food instruments submitted for redemption after the specified period for redemption. If the total value of such food instruments submitted at one time exceeds \$500.00, the State agency must obtain the approval of the FNS Regional Office before payment.

(1) *Retail food delivery systems: Vendor sanctions—(1) Mandatory vendor sanctions—(i) Permanent disqualification.* The State agency must permanently disqualify a vendor convicted of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments. A vendor is not entitled to receive any compensation for revenues lost as a result of such violation. If reflected in its State Plan, the State agency may impose a civil money penalty in lieu of a disqualification for this violation when it determines, in its sole discretion, and documents that:

(A) Disqualification of the vendor would result in inadequate participant access; or

(B) The vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

(ii) *Six-year disqualification.* The State agency must disqualify a vendor for six years for:

(A) One incidence of buying or selling food instruments for cash (trafficking); or

(B) One incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments.

(iii) *Three-year disqualification.* The State agency must disqualify a vendor for three years for:

(A) One incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for food instruments;

(B) A pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time;

(C) A pattern of vendor overcharges;

(D) A pattern of receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person;

(E) A pattern of charging for supplemental food not received by the participant; or

(F) A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments.

(iv) *One-year disqualification.* The State agency must disqualify a vendor for one year for a pattern of providing unauthorized food items in exchange for food instruments, including charging for supplemental foods provided in excess of those listed on the food instrument.

(v) *Second mandatory sanction.* When a vendor, who previously has been assessed a sanction for any of the violations in paragraphs (1)(1)(ii) through (1)(1)(iv) of this section, receives another sanction for any of these violations, the State agency must double the second sanction. Civil money penalties may only be doubled up to the limits allowed under paragraph (1)(1)(x)(C) of this section.

(vi) *Third or subsequent mandatory sanction.* When a vendor, who previously has been assessed two or more sanctions for any of the violations listed in paragraphs (1)(1)(ii) through (1)(1)(iv) of this section, receives another sanction for any of these violations, the State agency must double the third sanction and all subsequent sanctions. The State agency may not impose civil money penalties in lieu of disqualification for third or subsequent sanctions for violations listed in paragraphs (1)(1)(ii) through (1)(1)(iv) of this section.

(vii) *Disqualification based on a Food Stamp Program disqualification.* The State agency must disqualify a vendor who has been disqualified from the Food Stamp Program. The disqualification must be for the same length of time as the Food Stamp Program disqualification, may begin at a later date than the Food Stamp Program disqualification, and is not subject to administrative or judicial review under the WIC Program.

(viii) *Voluntary withdrawal or nonrenewal of agreement.* The State agency may not accept voluntary withdrawal of the vendor from the Program as an alternative to disqualification for the violations listed in paragraphs (1)(1)(i) through (1)(1)(iv) of this section, but must enter the disqualification on the record. In addition, the State agency may not use nonrenewal of the vendor agreement as an alternative to disqualification.

(ix) *Participant access determinations.* Prior to disqualifying a vendor for a Food Stamp Program disqualification pursuant to paragraph (1)(1)(vii) of this section or for any of

the violations listed in paragraphs (1)(1)(ii) through (1)(1)(iv) of this section, the State agency must determine if disqualification of the vendor would result in inadequate participant access. The State agency must make the participant access determination in accordance with paragraph (1)(8) of this section. If the State agency determines that disqualification of the vendor would result in inadequate participant access, the State agency must impose a civil money penalty in lieu of disqualification. However, as provided in paragraph (1)(1)(vi) of this section, the State agency may not impose a civil money penalty in lieu of disqualification for third or subsequent sanctions for violations in paragraphs (1)(1)(ii) through (1)(1)(iv) of this section. The State agency must include documentation of its participant access determination and any supporting documentation in the file of each vendor who is disqualified or receives a civil money penalty in lieu of disqualification.

(x) *Civil money penalty formula.* For each violation subject to a mandatory sanction, the State agency must use the following formula to calculate a civil money penalty imposed in lieu of disqualification:

(A) Determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during which the notice of adverse action is dated;

(B) Multiply the average monthly redemptions figure by 10 percent (.10);

(C) Multiply the product from paragraph (1)(1)(x)(B) of this section by the number of months for which the store would have been disqualified. This is the amount of the civil money penalty, provided that the civil money penalty shall not exceed \$10,000 for each violation. For a violation that warrants permanent disqualification, the amount of the civil money penalty shall be \$10,000. When during the course of a single investigation the State agency determines a vendor has committed multiple violations, the State agency must impose a CMP for each violation. The total amount of civil money penalties imposed for violations investigated as part of a single investigation may not exceed \$40,000.

(xi) *Notification to FNS.* The State agency must provide the appropriate FNS office with a copy of the notice of adverse action and information on vendors it has either disqualified or imposed a civil money penalty in lieu of disqualification for any of the violations listed in paragraphs (1)(1)(i) through (1)(1)(iv) of this section. This information must include the name of the vendor, address, identification number, the type of violation(s), and the length of disqualification or the length of the disqualification corresponding to the violation for which the civil money penalty was assessed, and must be provided within 15 days after the vendor's

opportunity to file for a WIC administrative review has expired or all of the vendor's WIC administrative reviews have been completed.

(xii) *Multiple violations during a single investigation.* When during the course of a single investigation the State agency determines a vendor has committed multiple violations (which may include violations subject to State agency sanctions), the State agency must disqualify the vendor for the period corresponding to the most serious mandatory violation. However, the State agency must include all violations in the notice of administration action. If a mandatory sanction is not upheld on appeal, then the State agency may impose a State agency-established sanction.

(2) *State agency vendor sanctions.* (i) *General requirements.* The State agency may impose sanctions for vendor violations that are not specified in paragraphs (1)(1)(i) through (1)(1)(iv) of this section as long as such vendor violations and sanctions are included in the State agency's sanction schedule. State agency sanctions may include disqualifications, civil money penalties assessed in lieu of disqualification, and administrative fines. The total period of disqualification imposed for State agency violations investigated as part of a single investigation may not exceed one year. A civil money penalty or fine may not exceed \$10,000 for each violation. The total amount of civil money penalties and administrative fines imposed for violations investigated as part of a single investigation may not exceed \$40,000.

(ii) *Food Stamp Program civil money penalty for hardship.* The State agency may disqualify a vendor that has been assessed a civil money penalty for hardship in the Food Stamp Program, as provided under § 278.6 of this chapter. The length of such disqualification must correspond to the period for which the vendor would otherwise have been disqualified in the Food Stamp Program. If a State agency decides to exercise this option, the State agency must:

(A) Include notification that it will take such disqualification action in its sanction schedule; and

(B) Determine if disqualification of the vendor would result in inadequate participant access in accordance with paragraph (1)(8) of this section. If the State agency determines that disqualification of the vendor would result in inadequate participant access, the State agency may not disqualify the vendor or impose a civil money penalty in lieu of disqualification. The State agency must include documentation of its participant access determination and any supporting documentation in each vendor's file.

(iii) *A mandatory sanction by another WIC State agency.* The State agency may disqualify a vendor that has been disqualified or assessed a civil money penalty in lieu of disqualification by another WIC State agency

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for a mandatory vendor sanction. The length of the disqualification must be for the same length of time as the disqualification by the other WIC State agency or, in the case of a civil money penalty in lieu of disqualification assessed by the other WIC State agency, for the same length of time for which the vendor would otherwise have been disqualified. The disqualification may begin at a later date than the sanction imposed by the other WIC State agency. If a State agency decides to exercise this option, the State agency must:

(A) Include notification that it will take such action in its sanction schedule; and

(B) Determine if disqualification of the vendor would result in inadequate participant access in accordance with paragraph (1)(8) of this section. If the State agency determines that disqualification of the vendor would result in inadequate participant access, the State agency must impose a civil money penalty in lieu of disqualification, except that the State agency may not impose a civil money penalty in situations in which the vendor has been assessed a civil money penalty in lieu of disqualification by the other WIC State agency. Any civil money penalty in lieu of disqualification must be calculated in accordance with paragraph (1)(2)(x) of this section. The State agency must include documentation of its participant access determination and any supporting documentation in each vendor's file.

(3) *Prior warning.* The State agency does not have to provide the vendor with prior warning that violations were occurring before imposing any of the sanctions in paragraph (1) of this section.

(4) *Administrative reviews.* The State agency must provide administrative reviews of sanctions to the extent required by § 246.18.

(5) *Installment plans.* The State agency may use installment plans for the collection of civil money penalties and administrative fines.

(6) *Failure to pay a civil money penalty.* If a vendor does not pay, only partially pays, or fails to timely pay a civil money penalty assessed in lieu of disqualification, the State agency must disqualify the vendor for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed (for a period corresponding to the most serious violation in cases where a mandatory sanction included the imposition of multiple civil money penalties as a result of a single investigation).

(7) *Actions in addition to sanctions.* Vendors may be subject to actions in addition to the sanctions in this section, such as claims pursuant to paragraph (k) of this section and the penalties set forth in § 246.23(c) in the case of deliberate fraud.

(8) *Participant access determination criteria.* The State agency must develop participant access criteria. When making participant ac-

cess determinations, the State agency must consider the availability of other authorized vendors in the same area as the violative vendor and any geographic barriers to using such vendors.

(9) *Termination of agreement.* When the State agency disqualifies a vendor, the State agency must also terminate the vendor agreement.

(m) *Home food delivery systems.* Home food delivery systems are systems in which authorized supplemental foods are delivered to the participant's home. Home food delivery systems must provide for:

(1) *Procurement.* 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.

(2) *Accountability.* The accountable delivery of authorized supplemental foods to participants. The State agency must ensure that:

(i) Home food delivery contractors are paid only after the delivery of authorized supplemental foods to participants;

(ii) A routine procedure exists to verify the correct delivery of authorized supplemental foods to participants, and, at a minimum, such verification occurs at least once a month after delivery; and

(iii) Records of delivery of supplemental foods and bills sent or payments received for such supplemental foods are retained for at least three years. Federal, State, and local authorities must have access to such records.

(n) *Direct distribution food delivery systems.* Direct distribution food delivery systems are systems in which participants, parents or caretakers of infant or child participants, or proxies pick up authorized supplemental foods from storage facilities operated by the State agency or its local agencies. Direct distribution food delivery systems must provide for:

(1) *Storage and insurance.* Adequate storage and insurance coverage that minimizes the danger of loss due to theft, infestation, fire, spoilage, or other causes;

(2) *Inventory.* Adequate inventory control of supplemental foods received, in stock, and issued;

(3) *Procurement.* 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;

(4) *Availability.* The availability of program benefits to participants and potential participants who live at great distance from storage facilities; and

(5) *Accountability.* The accountable delivery of authorized supplemental foods to participants.

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(o) *Participant, parent/caretaker, proxy, vendor, and home food delivery contractor complaints.* The State agency must have procedures to document the handling of complaints by participants, parents or caretakers of infant or child participants, proxies, vendors, home food delivery contractors, and direct distribution contractors. Complaints of civil rights discrimination must be handled in accordance with §246.8(b).

(p) *Food instrument security.* The State agency must develop standards for ensuring the security of food instruments from the time the food instruments are created to the time they are issued to participants, parents/caretakers, or proxies. For pre-printed food instruments, these standards must include maintenance of perpetual inventory records of food instruments throughout the State agency's jurisdiction; monthly physical inventory of food instruments on hand throughout the State agency's jurisdiction; reconciliation of perpetual and physical inventories of food instruments; and maintenance of all food instruments under lock and key, except for supplies needed for immediate use. For EBT and print-on-demand food instruments, the standards must provide for the accountability and security of the means to manufacture and issue such food instruments.

(q) *Food instrument disposition.* The State agency must account for the disposition of all food instruments as either issued or voided, and as either redeemed or unredeemed. Redeemed food instruments must be identified as validly issued, lost, stolen, expired, duplicate, or not matching valid enrollment and issuance records. In an EBT system, evidence of matching redeemed food instruments to valid enrollment and issuance records may be satisfied through the linking of the Primary Account Number (PAN) associated with the electronic transaction to valid enrollment and issuance records. This process must be performed within 150 days of the first valid date for participant use of the food instruments and must be conducted in accordance with the financial management requirements of §246.13. The State agency will be subject to claims as outlined in §246.23(a)(4) for redeemed food instruments that do not meet the conditions established in paragraph (q) of this section.

(r) *Issuance of food instruments and authorized supplemental foods.* The State agency must:

(1) *Parents/caretakers and proxies.* Establish uniform procedures that allow parents and caretakers of infant and child participants and proxies to obtain and transact food instruments or obtain authorized supplemental foods on behalf of a participant. In determining whether a particular participant or parent/caretaker should be allowed to designate a proxy or proxies, the State agency must require the local agency or clinic to

consider whether adequate measures can be implemented to provide nutrition education and health care referrals to that participant or, in the case of an infant or child participant, to the participant's parent or caretaker;

(2) *Signature requirement.* Ensure that the participant, parent or caretaker of an infant or child participant, or proxy signs for receipt of food instruments or authorized supplemental foods, except as provided in paragraph (r)(4) of this section;

(3) *Instructions.* Ensure that participants, parents or caretakers of infant and child participants, and proxies receive instructions on the proper use of food instruments, or on the procedures for obtaining authorized supplemental foods when food instruments are not used. The State agency must also ensure that participants, parents or caretakers of infant and child participants, and proxies are notified that they have the right to complain about improper vendor and home food delivery contractor practices with regard to program responsibilities;

(4) *Food instrument pick up.* Require participants, parents and caretakers of infant and child participants, and proxies to pick up food instruments in person 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 through an alternative means such as EBT or mailing, unless FNS determines that such actions would jeopardize the integrity of program services or program accountability. If a State agency opts to mail food instruments, it must provide justification, as part of its alternative issuance system in its State Plan, as required in §246.4(a)(21), for mailing food instruments to areas where food stamps are not mailed. State agencies that opt to mail food instruments must establish and implement a system that ensures the return of food instruments to the State or local agency if a participant no longer resides or receives mail at the address to which the food instruments were mailed; and

(5) *Maximum issuance of food instruments.* Ensure that no more than a three-month supply of food instruments or a one-month supply of authorized supplemental foods is issued at any one time to any participant, parent or caretaker of an infant or child participant, or proxy.

(s) *Payment to vendors and home food delivery contractors.* The State agency must ensure that vendors and home food delivery contractors are paid promptly. Payment must be made within 60 days after valid food instruments are submitted for redemption. Actual payment to vendors and home food delivery contractors may be made by local agencies.

(t) *Conflict of interest.* The State agency must ensure that no conflict of interest exists, as defined by applicable State laws, regulations, and policies, between the State agency and any vendor or home food delivery contractor, or between any local agency and any vendor or home food delivery contractor under its jurisdiction.

(u) *Participant violations and sanctions.* (1) *General requirements.* The State agency must establish procedures designed to control participant violations. The State agency also must establish sanctions for participant violations. Participant sanctions may include disqualification from the Program for a period of up to one year.

(2) *Mandatory disqualification.* (i) *General.* Except as provided in paragraphs (u)(2)(ii) and (u)(2)(iii) of this section, whenever the State agency assesses a claim of \$100 or more, assesses a claim for dual participation, or assess a second or subsequent claim of any amount, the State agency must disqualify the participant for one year.

(ii) *Exceptions to mandatory disqualification.* The State agency may decide not to impose a mandatory disqualification if, within 30 days of receipt of the letter demanding repayment, full restitution is made or a repayment schedule is agreed on, or, in the case of a participant who is an infant, child, or under age 18, the State or local agency approves the designation of a proxy.

(iii) *Terminating a mandatory disqualification.* The State agency may permit a participant to reapply for the Program before the end of a mandatory disqualification period if full restitution is made or a repayment schedule is agreed upon or, in the case of a participant who is an infant, child, or under age 18, the State or local agency approves the designation of a proxy.

(3) *Warnings before sanctions.* The State agency may provide warnings before imposing participant sanctions.

(4) *Fair hearings.* At the time the State agency notifies a participant of a disqualification, the State agency must advise the participant of the procedures to follow to obtain a fair hearing pursuant to §246.9.

(5) *Referral to law enforcement authorities.* When appropriate, the State agency must refer vendors, home food delivery contractors, and participants who violate program requirements to Federal, State, or local authorities for prosecution under applicable statutes.

§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 as-

sets 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 FNS 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