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State agency and in advance of the effective date of the action.

(2) The opportunity to appeal the action within the time specified by the State agency in its notification of adverse action.

(3) Adequate advance notice of the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing.

(4) The opportunity to present its case and at least one opportunity to reschedule the hearing date upon specific request. The State agency may set standards on how many hearing dates can be scheduled, provided that a minimum of two hearing dates is allowed.

(5) The opportunity to confront and cross-examine adverse witnesses.

(6) The opportunity to be represented by counsel, or in the case of a recipient appeal, by a representative designated by the recipient, if desired.

(7) The opportunity to review the case record prior to the hearing.

(8) An impartial decision maker, whose decision as to the validity of the State agency's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the FMNP. The basis for the decision shall be stated in writing, although it need not amount to a full opinion or contain formal findings of fact and conclusions of law.

(9) Written notification of the decision in the appeal, within 60 days from the date of receipt of the request for a hearing by the State agency.

(d) *Continuing responsibilities.* Appealing an adverse action does not relieve a farmer/farmers' market or local agency permitted to continue in the FMNP while its appeal is pending, from responsibility for continued compliance with the terms of the written agreement or contract with the State agency.

(e) *Judicial review.* If a State level decision is rendered against the recipient, local agency or farmer/farmers' market and the appellant expresses an interest in pursuing a further review of the decision, the State agency shall explain any further State level review of the decision and any available State level rehearing process. If neither is available or both have been exhausted, the

State agency shall explain the right to pursue judicial review of the decision.

(f) *Additional appeals procedures for State agencies which authorize farmers' markets and not individual farmers.* A State agency which authorizes farmers' markets and not individual farmers shall ensure that procedures are in place to be used when a farmer seeks to appeal an action of a farmers' market or association denying the farmer's application to participate, or sanctioning or disqualifying the farmer. The procedures shall be set forth in the State Plan and in the agreements entered by the State agency and the farmers' market and the farmers' market and the farmer.

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49748, Sept. 27, 1995; 60 FR 57148, Nov. 14, 1995]

Subpart F—Monitoring and Review of State Agencies

§ 248.17 Management evaluations and reviews.

(a) *General.* FNS and each State agency shall establish a management evaluation system in order to assess the accomplishment of FMNP objectives as provided under these regulations, the State Plan, and the written agreement with the Department. FNS will provide assistance to State agencies in discharging this responsibility, and will establish standards and procedures to determine how well the objectives of this part are being accomplished, and implement sanction procedures as warranted by State FMNP performance.

(b) *Responsibilities of FNS.* FNS shall establish evaluation procedures to determine whether State agencies carry out the purposes and provisions of this part, the State Plan, and the written agreement with the Department. As a part of the evaluation procedure, FNS shall review audits to ensure that the FMNP has been included in audit examinations at a reasonable frequency. These evaluations shall also include reviews of selected local agencies, and on-site reviews of selected farmers/farmers' markets. These evaluations will measure the State agency's progress toward meeting the objectives outlined in its State Plan and the

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State agency's compliance with these regulations.

(1) If FNS determines that the State agency has failed, without good cause, to demonstrate efficient and effective administration of its FMNP or has failed to comply with the requirements contained in this section or the State Plan, FNS may withhold an amount up to 100 percent of the State agency's administrative grant.

(2) Sanctions imposed upon a State agency by FNS in accordance with this section (but not claims for repayment assessed against a State agency) may be appealed in accordance with the procedures established in § 248.20. Before carrying out any sanction against a State agency, the following procedures will be followed:

(i) FNS will notify the chief departmental officer of the administering agency in writing of the deficiencies found and of FNS' intention to withhold administrative funds unless an acceptable corrective action plan is submitted by the State agency to FNS within 45 days after mailing of notification.

(ii) The State agency shall develop a corrective action plan, including timeframes for implementation to address the deficiencies and prevent their future recurrence.

(iii) If the corrective action plan is acceptable, FNS will notify the chief departmental officer of the administering agency in writing within 30 days of receipt of the plan. The letter will advise the State agency of the sanctions to be imposed if the corrective action plan is not implemented according to the schedule set forth in the approved plan.

(iv) Upon notification from the State agency that corrective action has been taken, FNS will assess such action, and, if necessary, perform a follow-up review to determine if the noted deficiencies have been corrected. FNS will then advise the State agency of whether the actions taken are in compliance with the corrective action plan, and whether the deficiency is resolved or further corrective action is needed. Compliance buys can be required if during FNS management evaluations by regional offices, a State agency is found to be out of compliance with its

responsibility to monitor and review farmers/farmers' markets.

(v) If an acceptable corrective action plan is not submitted within 45 days, or if corrective action is not completed according to the schedule established in the corrective action plan, FNS may withhold the award of FMNP administrative funds. If the 45-day warning period ends in the fourth quarter of a fiscal year, FNS may elect not to withhold funds until the next fiscal year. FNS will notify the chief departmental officer of the administering State agency.

(vi) If compliance is achieved before the end of the fiscal year in which the FMNP administrative funds are withheld, the funds withheld may be restored to the State agency. FNS is not required to restore funds withheld beyond the end of the fiscal year for which the funds were initially awarded.

(c) *Responsibilities of State agencies.* The State agency is responsible for meeting the following requirements:

(1) The State agency shall establish evaluation and review procedures and document the results of such procedures. The procedures shall include, but are not limited to:

(i) Annual monitoring reviews of participating farmers' farmers' markets, including on-site reviews of a minimum of 10 percent of farmers and 10 percent of farmers' markets, which includes those farmers and markets identified as being the highest risk. First year of operation in the FMNP shall be considered a high-risk indicator. More frequent reviews may be performed as the State agency deems necessary.

(ii) Conducting monitoring reviews of all local agencies within the State agency's jurisdiction at least once every 2 years. Monitoring of local agencies shall encompass, but not be limited to, evaluation of management, accountability, certification, nutrition education, financial management systems, and coupon management systems. WIC State agency reviews of local agencies conducted for the WIC Program may contribute to meeting the FMNP requirement that all local agencies be reviewed once every two years if the reviews include reviews of FMNP practices. When the WIC State agency conducts a review of the local

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agency outside of the FMNP season, a review of documents and procedural plans of the FMNP, rather than actual FMNP activities, is acceptable.

(iii) Instituting the necessary follow-up procedures to correct identified problem areas.

(2) On its own initiative or when required by FNS, the State agency shall provide special reports on FMNP activities, and take positive action to correct deficiencies in FMNP operations.

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49748, Sept. 27, 1995]

§ 248.18 Audits.

(a) *Federal access to information.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, or duly authorized State auditors shall have access to any books, documents, papers, and records of the State agency and their contractors, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *State agency response.* The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a response or statement to FNS as to the action taken or planned regarding the findings. A proposed corrective action plan developed and submitted by the State agency shall include specific time frames for its implementation and for completion of the correction of deficiencies and problems leading to the deficiencies.

(c) *Corrective action.* FNS shall determine whether FMNP deficiencies identified in an audit have been adequately corrected. If additional corrective action is necessary, FNS shall schedule a follow-up review, allowing a reasonable time for such corrective action to be taken.

(d) *State sponsored audits.* State and local agencies shall conduct independent audits in accordance with 7 CFR part 3015, §3016.26 or part 3051, as applicable. A State or local agency may elect to obtain either an organization-wide audit or an audit of the Program if it qualifies to make such an election under applicable regulations.

§ 248.19 Investigations.

(a) *Authority.* The Department may make an investigation of any allegation of noncompliance with this part and FNS guidelines and instructions. The investigation may include, where appropriate, a review of pertinent practices and policies of any State and local agency, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the State and local agency has failed to comply with the requirements of this part.

(b) *Confidentiality.* No State or local agency, recipient, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under this part because that person has made a complaint or formal allegation, or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conducting of any investigation, hearing, or judicial proceeding.

Subpart G—Miscellaneous Provisions

§ 248.20 Claims and penalties.

(a) *Claims against State agencies.* (1) If FNS determines through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any FMNP funds provided to a State agency for food or administrative purposes were, through State agency negligence or fraud, misused or otherwise diverted from FMNP purposes, a formal claim will be assessed by FNS against the State agency. The State agency shall pay promptly to FNS a sum equal to the amount of the administrative funds or the value of coupons so misused or diverted.

(2) If FNS determines that any part of the FMNP funds received by a State agency; or coupons, were lost as a result of theft, embezzlement, or unexplained causes, the State agency shall,