§ 246.27 Program information.

Any person who wishes information, assistance, records or other public material shall request such information from the State agency, or from the FNS Regional Office serving the appropriate State as listed below:

(a) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont: U.S. Department of Agriculture, FNS, Northeast Region, 10 Causeway Street, room 501, Boston, Massachusetts 02222–1066.

(b) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FNS, Mid-Atlantic Region, Mercer Corporate Park, 300 Corporate Boulevard, Robbinsville, New Jersey 08691–1598.

(c) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 77 Forsyth Street, SW., suite 112, Atlanta, Georgia 30303.

(d) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: U.S. Department of Agriculture, FNS, Midwest Region, 77 West Jackson Boulevard—20th Floor, Chicago, Illinois 60604–3507.

(e) Arkansas, Louisiana, New Mexico, Oklahoma, Texas: U.S. Department of Agriculture, FNS, Southwest Region, 1100 Commerce Street, room 5–C–30, Dallas, Texas 75242.

(f) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: U.S. Department of Agriculture, FNS, Mountain Plains Region, 1244 Speer Boulevard, suite 903, Denver, Colorado 80204.

(g) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, Washington: U.S. Department of Agriculture, FNS, Western Region, 550 Kearny Street, room 400, San Francisco, California 94108.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985, as amended at 59 FR 11508, Mar. 11, 1994]

§ 246.28 OMB control numbers.

The following control numbers have been assigned to the information collection requirements in 7 CFR part 246 by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

7 CFR part 246 section where requirements are described	Currrent OMB control no.
.4(a) (8), (9), (11)	0584–0386
.5	0584–0043
.6	0584–0043
.7(a)	0584–0386
.7(e), (h), (j)	0584–0043
.7(n)	0584–0386
.7(i)	0584–A536
.10	0584–A536
.11(a)(3)	0584–0386
.11(d)	0584–0043
.12(f), (i), (i)(3), (j)	0584–0043
.14(d)(1)	0584–0043
.16(c)	0584–0043
.17(c)(1)	0584–0043
.19	0584–0043
.20(a)	0584–0043
.25(a), (b)	0584–0043, 0584–0347

[50 FR 6121, Feb. 13, 1985, as amended at 53 FR 15653, May 3, 1988; 54 FR 51295, Dec. 14, 1989; 58 FR 11507, Feb. 26, 1993]

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

Sec.
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247.22 Administrative appeal of State agency decisions.
247.23 Miscellaneous provisions.

AUTHORITY: Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c *note*); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c *note*); sec.

209, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c *note*); sec. 2(8), Pub. L. 98–92, 97 Stat. 611 (7 U.S.C. 612c *note*); sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c *note*); sec. 101(k), Pub. L. 100–202; sec. 1771(a), Pub. L 101–624, 101 Stat. 3806 (7 U.S.C. 612c *note*); sec. 402(a), Pub. L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c *note*), Sec. 4201(b), Pub. L. 107–171.

SOURCE: 46 FR 6341, Jan. 21, 1981, unless otherwise noted.

§ 247.1 General purpose and scope.

This part specifies the policies and prescribes the regulations for the Commodity Supplemental Food Program (CSFP) under which women, infants and children in low-income groups, vulnerable to malnutrition, may obtain supplemental nutritious foods donated by the U.S. Department of Agriculture. The purpose of the Program is to provide supplemental foods and nutrition education to eligible persons through State or local agencies.

§ 247.2 Definitions.

For the purpose of this part and of all contracts, guidelines, instructions, forms, and other related documents, the term:

Administrative costs means those direct and indirect costs, identified under FMC 74–4, which State and local agencies determine to be necessary to support Program operations. Such costs are further addressed in § 247.11.

A–90 means Office of Management and Budget Circular A–90 which provides guidance for the coordinated development and operation of information systems.

A–102 means Office of Management and Budget Circular A–102 which sets forth uniform administrative requirements for grants-in-aid to State and local governments and federally recognized Indian tribal governments.

A–110 means Office of Management and Budget Circular A–110 which sets forth uniform administrative requirements for grants to, and other agreements with, institutions of higher education, hospitals, and other quasi-public and private non-profit organizations.

Breastfeeding women means women up to one year postpartum who are breastfeeding their infants.

Caseload means the monthly average number of persons a State agency is authorized by FNS to serve over a specified period of time.

Caseload cycle means the period beginning with the later of (1) each December 1 or (2) a date not to exceed 30 days after enactment of appropriations legislation for the full fiscal year, and ending each November 30.

Categorical ineligibility means persons who do not meet the definition of pregnant women, breastfeeding women, postpartum women, infants, children, or elderly persons.

Certification means the use of criteria and procedures to assess and document each applicant's eligibility for the Program.

Children means persons who are at least one year of age but have not reached their sixth birthday.

Department means the U.S. Department of Agriculture.

Distributing agency means an agency which has entered into an agreement with a State agency and with the Department for the distribution of commodities under 7 CFR part 250, subchapter B—Food Distribution Regulations.

Dual participation means simultaneous participation by an individual in the CSFP in more than one local agency or clinic, or simultaneous participation in the CSFP and in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) 7 CFR part 246.

Elderly persons means persons 60 years of age or older.

Fiscal year means the Federal fiscal year covering the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following year.

FMC 74–4 means Federal Management Circular 74–4, which sets forth principles for determining costs applicable to grants and contracts with State and local governments.

FNS means the Food and Nutrition Service of the U.S. Department of Agriculture.

Homebound elderly persons means persons who are, in the judgment of the local agency, unable to obtain monthly food packages without assistance provided by or through the local agency.

Infants means persons under one year of age.

Local agency means a public or private nonprofit agency which enters into an agreement with the State agency to administer the Program at the local level. A local agency determines the eligibility of applicants, distributes supplemental foods and provides nutrition education to low-income persons, either directly or through another agency with which it has entered into a written agreement in accordance with § 247.6. In addition, existing local agencies are required to maintain the health-ties at the same level that were effective prior to March 3, 1978. All other local agencies are encouraged to develop health services linkages and, at a minimum, are required to advise participants of the importance of health care and where low-income persons can obtain such services. The term local agency includes an IHS service unit, an Indian tribe, band or group recognized by the Department of the Interior, or an intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior.

Nonprofit agency means a private agency which is exempt from income tax under the Internal Revenue Code of 1954, as amended.

Participants means pregnant women, breastfeeding women, postpartum women, infants, children and elderly persons who are receiving supplemental foods under the Program.

Participation means the number of persons who have received supplemental foods through the Program in the reporting period.

Postpartum women means women up to 12 months after termination of pregnancy.

Pregnant women means women determined to have one or more embryos or fetuses in utero.

Program means the Commodity Supplemental Food Program (CSFP) of the Food and Nutrition Service of the U.S. Department of Agriculture.

Secretary means the Secretary of the U.S. Department of Agriculture.

SFPD means the Supplemental Food Programs Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Northern Mariana Islands.

State agency means the agency of a State designated by the State to administer the Program; or an Indian tribe, band or group recognized by the Department of the Interior; or an Intertribal council or group recognized by the Department of the Interior and which has an ongoing relationship with Indian tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service of the Department of Health and Human Services.

State Agency Plan of Program Operation and Administration (State Plan) means the document which, as required by § 247.5 describes the manner in which the State agency intends to implement and operate all aspects of Program administration within its jurisdiction.

Supplemental foods means foods donated by the Department for use by eligible persons in low-income groups who are vulnerable to malnutrition.

WIC Program means the Special Supplemental Nutrition Program for Women, Infants and Children (7 CFR part 246).

[46 FR 6341, Jan. 21, 1981, as amended at 48 FR 29124, June 24, 1983; 51 FR 32900, Sept. 17, 1986; 53 FR 4838, Feb. 18, 1988]

§ 247.3 Administration.

(a) *Delegation of Authority to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of the Program. Within FNS, SFPD and the Regional Offices are responsible for Program administration. FNS will provide assistance to State and local agencies and evaluate all levels of Program operations to assure that the goals of the Program are achieved in the most effective and efficient manner possible.

(b) *Delegation of authority to State agency.* The State agency is responsible for all operations under the Program within its jurisdiction and shall administer the Program in accordance with the requirements of this part, FMC 74–4, A–90, A–95, A–102, A–110, and 7 CFR

part 250 subchapter B where applicable. The State agency shall provide guidance to local agencies on all aspects of Program operations. If distribution of supplemental foods or other Program operations at the State level are performed by an agency of the State other than the State agency, the State agency shall enter into a written agreement with the other agency. The agreement shall outline the responsibilities of each agency under the Program and shall be included in the State Plan. In addition, when a State agency enters into an agreement with a distributing agency, the distributing agency still must enter into a separate agreement with the Department as required by 7 CFR part 250 subchapter B, Food Distribution.

(c) *Agreement and State plan.* Each State agency desiring to administer the Program shall annually submit a State Plan and enter into a written agreement with the Department for the administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this part.

(d) *Delegation of authority to local agency.* The local agency shall provide Program benefits to participants in the most effective and efficient manner, and shall comply with this part and the State Plan.

(Approved by the Office of Management and Budget under control number 0584–0063)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§247.4 Donation of supplemental foods.

The Department shall donate supplemental foods for use in the Program in accordance with the terms and conditions of this part and with the terms and conditions applicable to distributing agencies under 7 CFR part 250 subchapter B, Food Distribution Regulations, as long as these provisions are not inconsistent with this part. The State agency is strictly liable to FNS for losses of supplemental foods donated by the Department and shall safeguard items from theft, spoilage, other damage or destruction or other loss. If supplemental foods donated by the Department are lost through any cause, prior to issuance to the participant, the State agency shall provide replacement in kind or submit payment to FNS in accordance with §250.6(m) under 7 CFR part 250 subchapter B, Food Distribution regulations.

§247.5 State agency plan of program operation and administration.

(a) *Requirements.* State applications to continue or initiate program operations and requests for additional caseload to expand service to women, infants, children, and elderly persons shall be made through State Plan submissions. By August 15 of each year, the State agency shall submit to FNS for approval a State Plan for the following fiscal year. State agencies whose Plans are approved by the beginning of the fiscal year shall be eligible to commence program operations or receive caseload increases at the beginning of the first caseload cycle to commence after that date. Plans or Plan amendments to initiate or expand operations which are approved after this date may be considered for caseload assignment if additional resources become available during that caseload cycle. The State agency may submit the State Plan in the format provided by FNS guidance. Alternatively, the State agency may submit the Plan in combination with other federally required planning documents or develop its own format, provided that the information required below is included. FNS requests advance notification that a State agency intends to use an alternative format. The State Plan and all amendments shall be signed by the State-designated official responsible for ensuring that the program is operated in accordance with the State Plan. FNS shall provide written approval or denial of a completed State Plan or amendment within 30 days of receipt. Within 15 days after FNS receives an incomplete submission, FNS shall notify the State agency that additional information is needed to complete the Plan. Any disapproval shall be accompanied by a statement of the reasons for the disapproval. Approval of the Plan by FNS is a prerequisite to the assignment of caseload and payment of funds for administration to the State agency. In approving the State Plan or Plan amendment to initiate or

expand program operations, FNS shall specify the number of caseload slots it believes the State agency can use, and which the State agency has the administrative capacity to manage. This determination shall be based on the content of the Plan or amendment, demographic data, past performance of the State agency, and other information which FNS considers relevant. Portions of the State Plan which do not change from year to year need not be resubmitted. However, the State agency shall provide the title of each section that remains unchanged, as well as the year of the last Plan in which the section was submitted. The State Plan shall provide the following:

(1) The names and addresses of each local agency (i) which have an agreement with the State agency for Program administration; and (ii) the name and address of each certification, food distribution and storage site under the jurisdiction of the local agency.

(2) The specific income criteria and nutritional risk criteria (if used) to be used in certifying persons as being in need of supplemental foods and the period of time covered by certifications in each local agency.

(3) A description of any plans for requesting program expansion or major redistribution of caseloads within the State during the fiscal year.

(4) A description of any plans for conducting outreach to ensure that all women, infants, and children, and elderly persons are aware of program benefits.

(5) The plan for nutrition education services for the fiscal year. The nutrition education portion of the State Plan shall include an evaluation component which includes a systematic procedure for participants' input.

(6) A detailed description of the manner in which foods are distributed to each local agency and to participants by the local agency.

(7) A description of the manner in which the State agency plans to monitor each local agency.

(8) A description of plans to involve local agencies, participants and other interested parties in the development of the State Plan for the next fiscal year.

(9) A description of how the financial management system will provide an accurate, current and complete disclosure of the financial status of the State's Program including an accurate accounting of all administrative funds received and expended.

(10) A plan for the detection of dual participation within the jurisdiction of the State agency. In States where the CSFP and either an Indian State agency for CSFP or a WIC Program State agency operate in the same area, a copy of the written agreement between the State agencies for the detection and prevention of dual participation must be submitted.

(11) Procedures developed in accordance with § 250.6(u) and provided to local agencies for reporting, processing and resolving complaints about supplemental foods.

(12) A description of the audit procedures, including: (i) A description of the scope and frequency of audits of the State agency and local agencies and a delineation of the procedures used that assure audit examinations of the CSF Program at reasonable frequency. Audit agency guidelines for selecting a sample of grant programs for audits should be addressed; (ii) a description of the audit organization in sufficient detail to demonstrate the independence of the audit organization; and (iii) the number of local agencies in which the CSF Program was included in the audit in the last four full quarters, and the number of local agency audits planned for the coming fiscal year which include examinations of the CSF Program.

(13) A description of the procedures used to comply with the nondiscrimination requirements of title VI of the Civil Rights Act of 1964, the FNS Civil Rights Instruction 113–2 and with 7 CFR part 15, including racial and ethnic participation data collection, public notification procedures and the annual civil rights compliance review process.

(14) A description of the fair hearing procedures for participants.

(15) If a State agency wishes to initiate service to the elderly, or request expansion caseload to serve the elderly, a description of plans for providing program benefits to elderly persons within

the State during the caseload cycle. Such description shall include—

(i) An identification of the elderly population to be served, including documentation of the extent of need in the proposed service area; and

(ii) A description of the means by which the State agency will meet the needs of the homebound elderly.

(b) *Submission of local agency information.* Local agencies under the State agency's jurisdiction may be required to submit information, similar to the preceding requirements, to the State agency for its use in assuring compliance with this section.

(c) *Amendments.* Except as provided in paragraph (a) of this section, the State agency may amend the State Plan at any time. The State agency shall submit the amendments to FNS for approval.

(d) *Retention of copy.* A copy of the approved State Plan shall be kept on file at the State agency for public inspection.

(Approved by the Office of Management and Budget under control number 0584–0063)

(44 U.S.C. 3506; E.O. 12372 (July 14, 1982, 47 FR 30959); secs. 401(b), Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b)))

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982; 48 FR 29123, June 24, 1983; 51 FR 32900, Sept. 17, 1986; 53 FR 4838, Feb. 18, 1988; 62 FR 55145, Oct. 23, 1997]

§247.6 Selection of local agencies.

(a) *Application of local agencies.* The State agency shall require each agency which desires approval as a local agency to submit a written application which contains sufficient information to enable the State agency to make a determination as to the eligibility of that agency. If the State agency and the local agency are the same, this requirement does not apply. The State agency shall notify the agency of the approval or disapproval of its application within 30 days of receipt of the agency's application. If the application is denied the State agency shall advise the agency of the reasons for the denial in writing and the right to appeal as set forth in §247.22 of this part. When an agency submits an application and there are no funds to serve the area, the applicant agency shall be notified within 30 days of receipt of the application that there are currently no funds available for Program initiation or expansion. The State agency shall return the application and maintain a record of the name and address of the applicant agency. The potential agency whose application was returned shall be notified by the State agency when funds become available. The State agency may approve the application of a local agency in an area already served by the Program or a WIC program only if a new local agency is necessary to serve the full extent of need in that area or population. If the State agency approves the operation of a new local agency in an area already served by an existing Program or a WIC Program, documentation which indicates the need for both local agencies in that area shall be maintained on file at the State agency for FNS review and evaluation.

(b) *Agreements between State and local agencies.* (1) State agencies shall enter into agreements with local agencies which are approved to participate in the Program. If the State agency and the local agency are the same, this requirement does not apply. Copies of the agreement shall be kept on file at both the State and local agency for purposes of review and audit. Such agreements shall be in writing and shall contain the following:

(i) An assurance that local agencies will comply with all the fiscal and operational requirements prescribed by the State agency as required by this part; (ii) an assurance that local agencies will provide nutrition education as required by this part; (iii) for those local agencies in existence prior to March 3, 1978, an assurance that they will continue arrangements with health service providers for the provision of services to Program participants at least at the level that existed on March 2, 1978, and for other local agencies, an assurance that they will advise participants of the importance of health care and where low-income persons can obtain such care; (iv) an assurance that issuance of supplemental food is in accordance with this part and FNS food package instructions; (v) a statement that local agencies are responsible to the State agency for any loss resulting from improper

or negligent issuance by them of prescriptions for supplemental foods; (vi) a statement that local agencies are responsible to the State agency for any Program losses caused by other agencies which have entered into agreements with the local agency; (vii) the names and address of each certification, food distribution and storage site under the jurisdiction of the local agency; and (viii) an assurance that the local agencies will maintain accurate and complete records with respect to their activities under the Program and retain such records for a period of 3 years following the date of submission of the final expenditure report for the period to which the report pertains.

(c) *Agreements between local agencies and other agencies.* A local agency which cannot fulfill one or more of these requirements shall enter into written agreement with another agency(s) in order to comply with these requirements. The written agreement shall state the Program responsibilities of the other agency, shall be approved by the State agency, and shall be on file at both the State agency and local agency. State agency approval of agreements with applicant agencies shall be accomplished during the application process.

(Approved by the Office of Management and Budget under control number 0584–0063)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.7 Certification.

(a) *Eligibility requirements.* To be certified as eligible to receive supplemental foods under the Program, each applicant shall meet the following requirements:

(1) Categorical eligibility as an infant, child, pregnant, postpartum or breastfeeding woman, or elderly person;

(2) For women, infants and children, income eligibility for local benefits under existing Federal, State or local food, health or welfare programs for low-income persons;

(3) For elderly persons certified on or after September 17, 1986, household income at or below 130 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services. Elderly persons certified before September 17, 1986, shall be subject to the terms and conditions in effect on the date of their certification.

(4) At the State agency's discretion, be determined by a physician, a staff member of the local agency or his or her designee to be at nutritional risk; and

(5) Meet a residency requirement if one is established by the State agency. The State agency may determine a service area for any local agency, and may require that an applicant be residing within the service area at the time of application to be eligible for the Program. However, the State agency may not impose any durational or fixed residency requirements. For example, migrant and seasonal farmworkers entering a CSFP service area shall be considered as meeting the residency requirement.

(b) *Processing standards.* (1) When there are no funds available to provide program benefits, the local agency shall maintain waiting lists of individuals who visit the local agency to apply for the Program. To enable the local agency to contact the individuals when caseload space becomes available, these waiting lists shall include the name of the applicant, the date placed on the waiting list, an address or phone number of the applicant and the applicant's status, i.e., pregnant, breastfeeding, child's age. Individuals shall be notified of their placement on a waiting list within 20 days after they visit the local agency during clinic office hours to request Program benefits.

(2) The following priorities based on categorical eligibility shall be applied when vacancies occur after the local agency has filled all caseload, except that these priorities shall not apply to the minimum protected caseload assigned under § 247.10(a) (2)(i).

(i) *Priority I.* Pregnant women, breastfeeding women, and infants.

(ii) *Priority II.* Children ages 1 through 3.

(iii) *Priority III.* Children ages 4 through 5.

(iv) *Priority IV.* Postpartum women.

(v) *Priority V.* Elderly persons.

(c) *Issuance of supplemental foods.* Participants shall be issued prescriptions for supplemental foods by personnel of

the local agency or by such other personnel as the local agency may designate. The local agency may choose to issue either a one month supply of supplemental foods each month or a two month supply of supplemental foods every other month. However, local agencies which choose to issue a two month supply every other month shall inform participants that they may still receive one month's supply if they so request.

(d) *Certification forms.* All certification data for each applicant shall be recorded on a certification form. At a minimum the information on the form shall include the following:

(1) The person's name and address.

(2) The date of initial visit to apply for participation and the date of the certification or denial.

(3) The criteria used to determine the person's eligibility or ineligibility and the signature and title of the persons making the eligibility determination.

(4) The following statement shall be located directly above the applicant's signature line and shall be read by or to the applicant, or the applicant's parent or caretaker, before the application is signed:

This certification form is being completed in connection with the receipt of Federal assistance. Program officials may verify information on this form. I am aware that deliberate misrepresentation may subject me to prosecution under applicable State and Federal statutes. I have been advised of my rights and obligations under the Program. I certify that the information I have provided for my eligibility determination is correct to the best of my knowledge.

(e) *Applicant's rights.* The following sentences shall be read by, or read to, the applicant or the applicant's parent or caretaker at the time of certification. When a significant proportion of the population served by a local agency is composed of non-English or limited English speaking persons who speak the same language, the sentences shall be stated to such persons in a language they understand:

(1) Standards for participation in the Program are the same for everyone regardless of race, color, or national origin.

(2) You may appeal any decision made by the local agency regarding your denial or termination from the Program.

(3) If your application is approved, the local agency will make nutrition education available to you and you are encouraged to participate.

(f) *Notification requirements.* The following responsibilities shall be performed by the State or local agency;

(1) Each applicant shall be informed during the certification procedure of the right to a fair hearing and of the illegality of participation in the Commodity Supplemental Food Program in more than one local agency, or simultaneous participation in the Commodity Supplemental Food Program and in the WIC Program.

(2) A person found ineligible for the Program during a certification visit shall be advised in writing of the ineligibility and of the right to a fair hearing in accordance with the provisions in §247.20. The reasons for ineligibility shall be properly documented and shall be retained on file at the local agency.

(3) A person found ineligible for the Program at any time during the certification period shall be advised in writing 15 days before termination of eligibility of the reasons for ineligibility and of the right to a fair hearing.

(4) Each participant shall be notified at least 15 days before the expiration of each certification period that eligibility for the Program is about to expire.

(5) Each participant shall receive an explanation of how the food delivery system in the local agency operates.

(6) Each participant shall be advised of the importance of participating in ongoing routine health care, the types of health services available, where they are located and how they may be obtained.

(g) *Certification periods.* (1) Program benefits shall be based upon certifications established in accordance with the following time frames.

(i) Pregnant women shall be certified for the duration of their pregnancy and for up to 6 weeks postpartum;

(ii) Postpartum and breastfeeding women, infants and children shall be certified at intervals prescribed by the State agency, provided such intervals do not exceed 6 months in length; and

(iii) Elderly persons, except those certified before September 17, 1986, shall be certified at intervals prescribed by the State agency, provided such intervals do not exceed 6 months in length. The Initial and any subsequent odd-numbered certifications of elderly persons first certified on or after September 17, 1986 shall be based on an assessment of newly submitted information for all applicable eligibility requirements, except that age need be established only at the first certification. The State agency may authorize local agencies to certify such elderly participants for an additional 6 months without reviewing the case record or collecting new eligibility data at the second and any subsequent even-numbered certifications if there are no women, infants or children waiting to be served. State agencies shall, however, require local agencies to establish contact with such participants prior to such even-numbered certifications in order to confirm each participant's address and continued interest in program participation.

(iv) Elderly persons certified before September 17, 1986 shall be subject to the terms and conditions in effect on the date of their certification.

(2) Program benefits may be continued until the end of the month in which categorical ineligibility begins, for example, until the end of the month in which a child reaches its sixth birthday.

(h) *Restrictions.* The following restrictions shall be observed by State agencies:

(1) Participants shall not be required to make any payments in money, materials or services for, or in connection with, the receipt of supplemental foods. Also, they shall not be solicited in connection with the receipt of supplemental foods for voluntary cash contributions for any purpose.

(2) Distribution of supplemental foods shall not be used as a means for furthering the political interest of any person or party.

(i) *Transfer of certification.* Each State agency shall ensure issuance of a verification of certification form to every participant who intends to relocate during the certification period. The State agency shall require the local agencies under its jurisdiction to accept verification of certification forms from participants who have been participating in the Program or the WIC Program in another local agency within or outside of the jurisdiction of the State agency. The verification of certification is valid until the certification period expires, and shall be accepted as proof of eligibility for Program benefits. However, if the receiving local agency has waiting lists for participation, the transferring participant shall be placed on the list ahead of all waiting applicants. The verification of certification shall include the name of the participant, the date the certification was performed, the date the certification period expires, the signature and printed or typed name of the local agency official in the originating jurisdiction, the name and address of the certifying local agency and an identification number or some other means of accountability. The verification of certification form shall be uniform throughout the jurisdiction of the State agency.

(j) *Dual participation.* The State agency shall be responsible for the following:

(1) In conjunction with the local agency, the detection and prevention of dual participation within each local agency and between local agencies. As part of the certification process, applicants shall be informed of the illegality of simultaneous participation in the WIC Program and this Program or of simultaneous participation in more than one CSFP.

(2) In areas where a local agency serves the same area as an Indian State agency or WIC Program, the CSFP State agency for the Program or the WIC State agency shall agree to a plan for the detection and prevention of dual participation. The agreement must be in writing and must be made prior to operation within the same area.

(3) Participants found committing dual participation shall be terminated from one of the Programs immediately and shall be notified of termination from the other program as specified in § 247.7.

(4) At certification the local agency shall check the identification of each participant. For a child participant, an immunization record, birth certificate, or other records that local agency personnel consider adequate identification shall be acceptable. Also, when issuing supplemental foods, the local agency shall check the identification of each participant or the identity of the adult responsible for picking up the food for a child participant.

(k) *Disqualification.* (1) The State agency may disqualify applicants and participants from Program participation for a period not to exceed 3 months if it is established by the State or local agency that the applicant, participant, parent, or caretaker fraudulently applied for and/or obtained Program benefits. However, if the person who determined the participant's eligibility determines that a serious health risk will result from disqualification from the Program and the participant is currently eligible, the disqualification shall be waived. In addition, participants may request a fair hearing, as specified in §247.20, to contest a disqualification.

(2) For Program purposes, fraud includes, but is not limited to, the following actions if they are taken knowingly, willfully and deceitfully:

(i) Making false statements orally or in writing in order to obtain benefits to which the individual would not otherwise be eligible; (ii) concealing information in order to obtain benefits to which the individual is not eligible; (iii) altering Program documents for the purpose of receiving increased benefits to which the individual is not eligible or for the purpose of transferring benefits to an unauthorized individual; (iv) using supplemental foods in an unauthorized manner, such as trading or selling the foods; or (v) committing dual participation.

[46 FR 6341, Jan. 21, 1981, as amended at 51 FR 32901, Sept. 17, 1986; 53 FR 4839, Feb. 18, 1988]

§247.8 Nutrition education.

(a) *General.* Nutrition education shall be thoroughly integrated into Program operations. Nutrition education shall be designed to be easily understood by individual participants and shall bear a practical relationship to their nutritional needs and household situations.

(b) *Goals.* Nutrition education shall be based on the following two broad goals: (1) To emphasize the relationship of proper nutrition to the total concept of good health, with special emphasis on the nutritional needs of pregnant, postpartum, and breastfeeding women, infants and children under 6 years of age; and

(2) To assist participants in obtaining a positive change in food habits, resulting in improved nutritional status and in the prevention of nutrition related problems through maximum use of the supplemental and other nutritious foods. This use is to be within the context of ethnic, cultural and geographic preferences. Consideration should also be given to tailoring nutrition education to meet any limitations experienced by groups of participants, such as lack of running water, lack of electricity, and limited cooking or refrigeration facilities.

(c) *State agency responsibilities.* The State agency shall ensure that the local agency fully performs its responsibilities as set forth in paragraph (d) of this section. The State agency shall also ensure that an evaluation procedure is maintained to determine the effectiveness of the nutrition education. Such evaluation procedure shall include a systematic procedure for participant input and may be conducted directly by State and local agencies or by contract for such services, so long as the evaluation is directed by a nutritionist or other professional determined by the State agency to be qualified to perform the evaluation procedure.

(d) *Local agency responsibilities.* (1) The local agency shall make nutrition education available to all adult participants and to parents or guardians of infant and child participants. Where appropriate, nutrition education for child participants is encouraged.

(2) The local agency shall direct Program funds for nutrition education to the benefit of participants and local agency staff members involved in nutrition education, in accordance with this part.

(3) The local agency shall conduct or arrange for nutrition education in a

manner consistent with the nutrition education portion of the State Plan.

(4) The local agency shall include the following subject matter in the instruction given to participants:

(i) An explanation of the importance of the consumption of the supplemental foods by the participant for whom they are prescribed rather than by other family members; (ii) reference to any special nutritional needs of participants and ways to provide adequate diets; (iii) an explanation of the Program as a supplemental rather than a total food program; (iv) information on the use of the supplemental foods and on the nutritional value of these foods; (v) information on the benefits of breastfeeding; and (vi) an explanation of the importance of health care.

(e) *Food demonstrations.* Any food demonstrations using supplemental foods shall be conducted by the State or local agency solely in conjunction with nutrition education and primarily for participants under the Program. Supplemental foods may not be used for outreach, refreshments for participants, or any other such purpose. Supplemental foods may not be provided to any other community agency or facility for any purpose whatsoever, unless such agency has entered into a signed written agreement with the State or local agency to provide nutrition education services under the Program.

(Approved by the Office of Management and Budget under control number 0584–0063)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.9 Financial management systems.

(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 assets and all Program funds received and expended each fiscal year.

(b) *Reports.* The State agency shall maintain its financial and donated food accounts in a manner sufficient to permit the preparation of the reports required in § 247.13.

(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 agency shall implement procedures which ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocation of costs in accordance with the cost principles and standard provisions of this part, and FMC 74–4.

(e) *Identification of obligated funds.* The State agency shall implement procedures which accurately identify obligated Program funds at the time obligations are made.

(f) *Resolutions 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) *Letters of Credit.* All administrative funds made available under this section shall be provided to participating State agencies by means of issuance of Letters of Credit unless other funding arrangements are made with FNS. If at the end of the fiscal year, funds authorized by a Letter of Credit issued to any State agency exceed obligations, FNS shall reduce the amount of the Letter of Credit by the unobligated portion.

(h) *Payments.* Letters of Credit shall be issued to the appropriate Regional Disbursing Office in favor of the State agency. The State agency shall obtain funds needed through presentation by designated officials of a payment voucher on the Letter of Credit in accordance with procedures prescribed by FNS and consistent with the U.S. Treasury Department Circular 1075.

(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 disbursement 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 possible to the time of the actual disbursement of

funds. Advances made by the State agency to local agencies shall also conform to these same standards.

(j) *Local agency financial management.* The State agency shall ensure that all local agencies develop and implement a financial management system consistent with the requirements prescribed by the State agency pursuant to the requirements of this section.

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[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.10 Caseload assignment and administrative funding.

(a) *State agency caseload assignment.* (1) FNS shall assign caseload to State agencies on December 1 of each year or within 30 days after enactment of appropriations legislation covering the full fiscal year, whichever comes later. In the event appropriations legislation for the year is not enacted by December 1, caseload assignments for the previous caseload cycle shall remain in effect, subject to the availability of sufficient funding, until assignments are made for the current caseload cycle. Any caseload assigned for a period beyond the end of the current fiscal year shall be available only to the extent that program funds are appropriated for the next fiscal year.

(2) To the extent that funds are available, FNS shall assign caseload to State agencies in the following order.

(i) State agencies for the three elderly feeding projects in Detroit, New Orleans, and Des Moines shall be assigned caseload equal to the level of participation for each project in December 1985.

(ii) Currently participating State agencies, except those entering their second cycle of program service, shall receive caseload in amounts equal to the greatest of their total participation of women, infants, and children, and elderly persons (except for caseload equal to the December 1985 level of participation at the three elderly feeding projects) during September, or monthly average participation for the period July through September, or for the prior fiscal year; provided, however, that a State agency shall not receive caseload under this paragraph in excess of caseload assigned for the preceding caseload cycle. State agencies entering their second caseload cycle of program service shall receive caseload equal to the caseload level assigned for their first cycle of program service.

(iii) Requests from currently participating State agencies to expand service to women, infants, and children, and the elderly, shall be addressed in the following manner. Expansion requests to increase service to women, infants, and children shall receive priority over expansion requests to increase service to the elderly.

(A) State agencies shall be eligible to receive expansion caseload only if, during the preceding September, the period July through September, or the prior fiscal year, their monthly average participation equaled at least 90 percent of their assigned caseload level for the preceding caseload cycle.

(B) State agencies requesting expansion caseload to increase service to women, infants, and children shall be assigned the lesser of an equal share of available caseload or the amount of expansion caseload FNS has determined that the State agency needs and can effectively manage. If any State agencies' shares exceed their approved requests, the excess caseload shall be divided equally among State agencies whose approved requests exceed their shares.

(C) State agencies requesting expansion caseload to increase service to the elderly shall be assigned the lesser of an equal share of available caseload or the amount of expansion caseload FNS has determined that the State agency needs and can effectively manage. If any State agencies' shares exceed their approved requests, the excess caseload shall be divided equally among State agencies whose approved requests exceed their shares.

(iv) Requests from State agencies to initiate program service for women, infants, and children, and the elderly shall be addressed in the following manner. Requests to initiate service to women, infants, and children shall receive priority over requests to initiate service to the elderly.

(A) State agencies with approved State plans incorporating requests for program initiation to provide service to women, infants, and children shall

be assigned caseload in the same manner described in paragraph (a)(2)(iii)(B) of this section.

(B) State agencies with approved State plans incorporating requests for program initiation to provide service to the elderly shall be assigned caseload in the same manner described in paragraph (a)(2)(iii)(C) of this section.

(b) *Administrative funding.* This subsection provides the policies and procedures for payment by FNS of funds for administrative costs to participating State agencies and disbursement by State agencies to local agencies. Funds shall be paid to State agencies as specified in § 247.9, Financial Management Systems. As a prerequisite to the receipt of such funds each fiscal year, the State agency shall have executed a written agreement with the Department and shall have received FNS approval of its State Plan.

(1) FNS allocates to each State agency an administrative grant per assigned caseload slot, adjusted each year for inflation.

(2) For fiscal year 2003, the amount of the grant per assigned caseload slot is equal to the per-caseload slot amount provided in fiscal year 2001, adjusted by the percentage change between:

(i) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30, 2001; and

(ii) The value of that index for the 12-month period ending June 30, 2002.

(3) For subsequent fiscal years, the amount of the grant per assigned caseload slot is equal to the amount of the grant per assigned caseload slot for the preceding fiscal year, adjusted by the percentage change between:

(i) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

(ii) The value of that index for the 12-month period ending June 30 of the preceding fiscal year.

(4) To ensure that State agencies can properly budget for program operations, FNS guarantees that 75 percent of the administrative funding provided to each State under paragraph (b)(2) of this section will be protected from recoveries during the current fiscal year.

(5) The State agency may retain a percentage of administrative funding for State level use, based on the following formula: 15 percent of the first $50,000; plus 10 percent of the next $100,000; plus 5 percent of the next $250,000. The State may retain a maximum amount of $30,000 annually for its administrative expenditures. However, if the State agency provides warehousing services, FNS approval may be requested at the beginning of the applicable fiscal year for funds greater than those allowed under the formula, provided that the State agency can document the need and ensure that the increase will not impose undue hardship on local agencies. The remaining funds and any unused funds at the State level shall be distributed to the local agencies.

(6) The State agency, in providing administrative funds to local agencies, shall apportion such funds among the local agencies on the basis of their respective needs so as to ensure that those local agencies evidencing higher administrative costs, while demonstrating prudent management and fiscal controls, receive a greater portion of the administrative funds.

(c) *Reallocation.* FNS reserves the right to periodically recover and redistribute unused caseload slots and unspent administrative funds (subject to the limitation in paragraph (b)(4) of this section). In the event that caseload slots are recovered, they shall be allocated in accordance with the order of funding established in § 247.10(a)(2).

[51 FR 32901, Sept. 17, 1986, as amended at 53 FR 4840, Feb. 18, 1988; 62 FR 55145, Oct. 23, 1997; 68 FR 51677, Aug. 28, 2003]

§ 247.11 Administrative costs.

(a) *General.* Funds provided to State and local agencies may be used to cover administrative costs identified under FMC 74–4 which State agencies determine to be necessary to carry out the Program within their jurisdiction.

(b) *Allowable costs.* The following costs are specifically identified as illustrative of costs allowable under the Program:

(1) The cost of certification procedures including: (i) Laboratory fees incurred for tests conducted to determine the eligibility of persons to participate in the Program; (ii) expendable medical supplies necessary to determine the eligibility of persons to participate in the Program; and (iii) centrifuges, measuring boards, skin fold calipers, spectrophotometers, hematofluorometers, hemoglobinometers, and scales used for determining the eligibility of persons, provided that expenditure limits will be set by FNS for each piece of equipment and expenditures which exceed the limits shall receive prior approval by the FNS Regional Office.

(2) The cost of nutrition education services provided to participants and parents and guardians of participants, and used for training local agency staff members;

(3) The cost of transporting food and of administering the food distribution system;

(4) The cost of interpreters and translators for Program materials;

(5) The cost of outreach services;

(6) The cost of audits and fair hearings;

(7) General administration of the State and local agencies including, but not limited to, personnel, warehousing, and insurance;

(8) The cost of monitoring and reviewing Program operations; and

(9) The cost of transportation for participants to and from the local agency when the local agency has determined and documented the need for such assistance.

(c) *Restrictions on allowable costs.* The following costs are allowable only with the prior approval of FNS.

(1) Automatic Data Processing equipment and system purchases whether by outright purchase, rental-purchase agreement or other method of purchase;

(2) Capital expenditures over $2,500.00 such as the cost of facilities, equipment, other capital assets and any repairs that materially increase the value or useful life of capital assets, provided that any subsequent sale of real or personal properties, purchased in whole or in part with Program funds, shall be used to reimburse FNS in an amount computed by applying to the sale proceeds the percentage of FNS participation in the original acquisition costs;

(3) Occupancy of space under rental-purchase or a lease with option to purchase agreements;

(4) Equipment rental costs where the agreement provides for rental-purchase or a lease with option to purchase; and

(5) Management studies performed by agencies or departments other than the State or local agency or those performed by outside consultants under contract with the State or local agency.

(d) *Unallowable costs.* Expenditures by a State agency or local agencies which result in costs that may not be applicable to the Program objectives are ''unallowable costs.'' A State agency's system for financial management shall identify such unallowable costs. In addition to unallowable costs identified in FMC 74–4 the following are specifically unallowable costs for reimbursement by FNS:

(1) Costs incurred for rearrangement and alteration of facilities not required specifically for the program;

(2) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise).

§ 247.12 Program income.

Program income means gross income the State agency or local agencies earn from grant supported activities, with the exception of income from the sale of property as specified in § 247.11(c)(2). Program income earned during the agreement period shall be retained by the State agency in accordance with the provisions of A–102, Attachment E and used to further Program objectives; except that interest earned on Program funds at the State or local levels shall be used in accordance with the provisions of A–102, Attachment E. A State agency's financial management system shall provide guidelines to assure that: income earned is recorded as individual transactions within the accounting records in conformance with generally accepted accounting principles for recording expenditures and revenues; and specifically earmarked Program income is used for the purpose(s) intended.

§ 247.13 Records and reports.

(a) *Recordkeeping requirements.* Each State agency shall, in accordance with § 250.6(r), maintain accurate and complete records with respect to the receipt, disposal, and inventory of supplemental foods, including the determination made as to liability for any improper distribution or use of, or loss of, or damage to, such foods and the result obtained from the pursuit of claims arising in favor of the State agency. Accurate and complete records shall also be maintained with respect to the receipt and disbursement of administrative funds. State agencies shall require all local agencies to maintain accurate and complete records with respect to the receipt, disposal and inventory of supplemental foods and with respect to receipt and disbursement of administrative funds. All records required by this section shall be retained for a period of 3 years following the date of submission of the annual expenditure report for the period to which the reports pertain. All records, except medical case records of participants (unless they are the only source of certification data), shall be available during normal business hours for representatives of the Department and the General Accounting Office of the United States to inspect, audit, and copy. Any reports resulting from such examinations shall not divulge names of individuals.

(b) *Financial reports.* All financial data shall be submitted quarterly on the S.F. 269(WIC/CSFP) and/or the S.F. 272 for State agencies on the check payment system.

(c) *Participation and food distribution reports.* Participation and Food Distribution reports FNS–153 and FNS–155 shall be submitted as required by FNS, at a frequency prescribed by FNS. Annually, a physical inventory of all foods at each storage and distribution site is required to be submitted to FNS at a date specified by FNS.

(d) *Civil rights.* Each local agency participating under the Program shall submit a report of racial and ethnic participation data FNS–191, at a frequency prescribed by FNS.

(e) *Audit acceptability of reports.* To be acceptable for audit purposes, all financial and Program performance reports shall be traceable to source documentation.

(f) *Certification of reports.* Financial and Program reports shall be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(g) *Use of reports.* FNS shall use State agency reports to measure progress in achieving objectives set forth in the State Plan. If it is determined, through review of State agency reports, Program or financial analysis, or an audit, that a State agency is not operating according to its State Plan, FNS may request additional information and take other appropriate actions.

(Approved by the Office of Management and Budget under control number 0584–0063)

(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.14 Procurement and property management standards.

(a) *Requirements.* State and local agencies shall comply with the requirements of Circular A–102, Attachment 0 for procurement of equipment and other services with Program funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the Program in an effective manner and in compliance with the provisions of applicable law and executive orders.

(b) *Contractual responsibilities.* The standards contained in Circulars A–90, A–102 and A–110, where applicable, do not relieve the State or local agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to: Disputes, claims, protests of awards, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State or local agency may use its own procurement regulations which reflect applicable State and local regulations, provided that procurements made with Program funds adhere to the standards set forth in Circulars A–90, A–102 and Circular A–110, where applicable.

(d) *Property acquired with Program funds.* State and local agencies shall observe the standards prescribed in A–102, Attachment N, and A–110, Attachment N, where applicable, in their utilization and disposition of property acquired in whole or in part with Program funds.

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(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.15 Audits.

(a) *Federal access to information.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, or State auditors shall have access to any books, documents, papers, and records of the State and local agencies 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 Program deficiencies have been adequately corrected. If additional corrective action is necessary, FNS shall schedule a followup review, allowing a reasonable time for such corrective action to be taken.

(d) *State sponsored audits.* (1) Each State agency shall provide for an independent audit of the financial operations of the State agency and local agencies. Audits may be conducted by State and local government audit staffs, State licensed public accountants who were licensed on or before December 31, 1970, or by Certified Public Accountants and audit firms under contract to the State or local agencies. Audits shall conform to: ''The Standards of Audit of Governmental Organizations, Program Activities and Functions,'' issued by the Comptroller General of the United States (Reprint 1974, for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402); the ''Guidelines for Financial and Compliance Audits of Federally Assisted Programs,'' issued by the U.S. General Accounting Office, October 1978 (for sale by the U.S. General Accounting Office, Distribution Section, Room 1518, 441 G Street, NW., Washington, DC 20013); any compliance supplements approved by OMB; and generally accepted auditing standards established by the American Institute of Certified Public Accountants. An audit shall be used to determine whether:

(i) Financial operations are properly conducted; (ii) the financial reports are fairly presented; (iii) the State or local agency has complied with applicable laws, regulations, and administrative requirements pertaining to financial management; and (iv) proper inventory controls (physical and paper) are being maintained.

(2) The State agency shall conduct audits in accordance with the provisions of A–102, Attachment P. Audits of the State agency and the local agencies under the State agency's jurisdiction shall be performed in a representative sample of grant program audit examinations during each audit cycle which occurs, not less frequency than once every two years. In some audit cycles, a grant program or programs other than this Program may be audited. However, audits of the Program shall be performed at intervals frequent enough to ensure consistency with good Program management. Also, at any time, the Department, FNS or the State agency may at its discretion audit a Program if an audit appears to be warranted. If FNS in the course of

Program reviews of State agency operations finds that the efficiency and effectiveness of the State agency's financial management system is in question, FNS may request the State agency to include the Program in the sample for the next audit examination.

(3) Each State agency shall make all State or local agency sponsored audit reports of Program operations under its jurisdiction available for the Department's review upon request. The cost of these audits shall be considered a part of administrative costs and funded from either State or local agency administrative funds.

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(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.16 Investigations.

(a) *Authority*. The Department may make an investigation of any allegation of noncompliance with this part. The investigation may include, where appropriate, a review of pertinent practices and policies of any State or 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 or local agency has failed to comply with the requirements of this part.

(b) *Confidentiality*. No State or local agency, participant, 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 the individual has made a complaint or formal allegation, or 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 purpose of this part, including the conduct of any investigation, hearing, or judicial proceeding.

§ 247.17 Claims.

If FNS determines through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any Program funds provided to a State agency for administrative purposes were, through State agency or local agency negligence or fraud, misused or otherwise diverted from Program purposes, a claim shall be made by FNS against the State agency, and the State agency shall pay promptly to FNS a sum equal to the amount of the administrative funds so misused or diverted. Further, if FNS determines that any part of the money received by a State agency was lost as a result of thefts, embezzlements, or unexplained causes, the State agency shall, on demand by FNS, pay to FNS a sum equal to the amount of the money so lost. Claims for losses or misuse of supplemental foods shall be handled in accordance with § 250.6(m), 7 CFR part 250—Subchapter B—Food Distribution. The State agency shall have full opportunity to submit evidence, explanations or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.

§ 247.18 Closeout procedures.

(a) *Fiscal year closeout reports*. State agencies shall submit preliminary and final closeout reports for each fiscal year or part thereof. All obligations shall be liquidated before final closure of a fiscal year grant. Obligations shall be reported for the fiscal year in which they occur State agencies shall:

(1) Submit to FNS, within 30 days after the end of the fiscal year, preliminary financial reports which show cumulative actual expenditures and obligations for the fiscal year, or part thereof, for which Program funds were made available; and

(2) Submit to FNS, within 90 days after the end of the fiscal year, final fiscal year closeout reports.

(b) *Revised closeout reports*. Revised closeout reports may be submitted at any time. However, FNS shall not be responsible for reimbursing unpaid obligations later than one year after the close of the fiscal year in which they were incurred.

(c) *Grant closeout procedures.* When grants to State agencies are terminated, the following closeout procedures for the Program shall be performed in accordance with OMB Circular A–102.

(1) *Termination for cause.* FNS may terminate a State agency's participation under the Program, in whole or in part, whenever FNS determines that the State agency has failed to comply with the conditions prescribed in this part. FNS shall promptly notify the State agency in writing of the termination and the reasons for the termination, including the effective date. A State agency shall terminate a local agency's participation under the Program by written notice whenever it is determined by FNS or the State agency that the local agency has failed to comply with the requirements of the Program. When a State agency's participation under the Program is terminated for cause, any payments made to the State agency, or any recoveries by FNS from the State agency, shall be in conformance with the legal rights and liabilities of the parties.

(2) *Termination for convenience.* FNS or the State agency may terminate the State agency's participation under the Program, in whole or in part, when both parties agree that continuation under the Program would not produce beneficial results commensurate with the further expenditure of funds. The State agency or the local agency may terminate the local agency's participation, in whole or in part, under the same conditions. The two parties shall agree upon the termination conditions, including the effective date thereof and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. FNS shall allow full credit to the State agency for the Federal share of the noncancellable obligations, properly incurred by the State agency prior to termination.

§ 247.19 Nondiscrimination.

(a) *Requirement.* The State agency shall comply with the requirements of title VI of the Civil Rights Act of 1964, the FNS Civil Rights Instruction 113–2 and the Department's regulations concerning nondiscrimination (7 CFR part 15), including requirements of racial and ethnic participation data collection, public notification of the nondiscrimination policy, and annual reviews of each local agency to assure compliance with such policy, to the end that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program.

(b) *Non-English materials and staff.* Where a significant proportion of the population of the area served by a local agency is composed of non-English or limited English speaking persons who speak the same language, the State agency shall take action to ensure that Program information, except certification forms, is provided to such persons in the appropriate language orally and in writing. The State agency shall ensure that there are bilingual staff members or interpreters available to serve these persons.

(c) *Complaints.* Complaints of discrimination filed by applicants or participants shall be referred to the Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S.D.A., Washington, DC 20250.

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(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.20 Fair hearing procedures.

(a) *Availability of hearings.* The State agency shall provide a hearing procedure through which any individual may appeal a State or local agency action which results in the denial or termination of benefits to the individual. The State agency shall conform to Program hearing procedures as outlined in this section at all times unless the State has an alternate hearing procedure whereby participants can appeal State or local agency actions. This alternate procedure may be used with FNS approval.

(b) *Notification of appeal rights.* At the time of application each applicant

shall be informed of the right to a fair hearing.

At the time of denial or termination of benefits, each individual shall be informed in writing of the right to a fair hearing, of the method by which a hearing may be requested, and that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel or other spokesperson. Such notification is not required at the expiration of a certification period.

(c) *Request for hearing.* A request for a hearing is defined as any clear expression by the individual or the individual's parent, guardian or other representative, that an opportunity to present its case to a higher authority is desired. The State or local agency shall not limit or interfere with the individual's freedom to request a hearing.

(d) *Time limit for request.* The State or local agency shall provide individuals a reasonable period of time to request fair hearings. Such time limit shall not be less than 60 days from the date the agency mails or gives the applicant or participant the notice of adverse action to deny or terminate benefits, as required in § 247.7(f)(2).

(e) *Denial or dismissal of request.* A request for a hearing shall not be denied or dismissed unless:

(1) The request is not received within the time limit set by the State agency in accordance with paragraph (d) of this section.

(2) The request is withdrawn in writing by the applicant or a writing by the applicant or a representative.

(3) The applicant or representative fails, without good cause, to appear at the scheduled hearing.

(f) *Continuation of benefits.* Participants who appeal the termination of benefits within the 15 day advance adverse notice period provided by § 247.7(f)(2) shall continue to receive Program benefits until the hearing official reaches a decision. Applicants who are denied benefits at initial certification or at subsequent certifications may appeal the denial but shall not receive benefits while awaiting the hearing.

(g) *Rules of procedure.* The State and local agency shall process each request for a hearing under uniform rules of procedure. The uniform rules of procedure shall be available for public inspection and copying. At a minimum, the uniform rules of procedure shall include: The time limits for requesting and conducting a hearing; all advance notice requirements; the rules of conduct at the hearing; and the rights and responsibilities of the applicant. The procedures shall not be unduly complex or legalistic and the applicant's background shall be taken into consideration.

(h) *Hearing official.* Hearings shall be conducted by an impartial official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested. The hearing official shall:

(1) Administer oaths or affirmations if required by the State;

(2) Ensure that all relevant issues are considered;

(3) Request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised;

(4) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;

(5) Render a hearing decision which will resolve the dispute.

(i) *Conduct of the hearing.* The hearing shall be accessible to the applicant. The State or local agency shall provide the applicant with a minimum of 10 days advance written notice of time and place of the hearing and shall enclose the rules of procedure. The State and local agency shall also provide the applicant or representative an opportunity to:

(1) Examine, prior to and during hearing, the documents and records presented to support the decision under appeal; (2) be assisted or represented by an attorney or other persons; (3) bring witnesses; (4) advance arguments without undue interference; (5) question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and (6) submit evidence to establish all pertinent facts and circumstances in the case.

(j) *Hearing decisions.* (1) Decisions of the hearing official shall comply with Federal law or regulations and shall be based on facts in the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding shall constitute the exclusive record for a final decision by the hearing official. This record shall be retained in accordance with § 247.13. This record shall also be available, for copying and inspection, to the appellant or representative at any reasonable time.

(2) A decision by the hearing official shall be binding on the local agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations. The decision shall become a part of the record.

(3) Within 45 days of the request for the hearing, the applicant or representative shall be notified in writing of the decision and the reasons for the decision in accordance with paragraph (j)(2) of this section. Also, if the decision is in the favor of the applicant and benefits were denied, benefits shall begin within this 45-day time period. If the decision is in favor of the agency, as soon as administratively feasible any continued benefits shall be terminated as decided by the hearing official.

(4) All State and local agency hearing records and decisions shall be available for public inspection and copying, subject to the disclosure safeguards provided in § 247.22(d), and provided the names and addresses of participants and other members of the public are kept confidential.

(k) *Judicial review.* If a State level decision upholds the agency action, the State agency shall explain any available State review of the decision and any State rehearing process. If neither are available or have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

(Approved by the Office of Management and Budget under control number 0584–0063)

(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.21 Management evaluation and reviews.

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

(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 performed by the State agency to ensure that the Program at both the State and local levels has been included in audit examinations at a reasonable frequency. These evaluations shall include a review of each State agency, including on-site reviews of selected local agencies. These evaluations will measure the State agency's progress toward meeting the objective outlined in its State Plan and compliance with these regulations.

(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 not be limited to:

(i) Annual monitoring of the operation of all local agencies to evaluate certification procedures, management,

nutrition education, civil rights compliance, food storage, inventory accountability, and financial management systems. However, more frequent reviews may be performed as the State agency deems necessary. The State agency shall provide a continuing evaluation of each local agency through on-site reviews of the local agency, reviews of local agency reports including inventory reports, reviews of storage facilities and safeguards for supplemental foods.

(ii) Instituting the necessary followup procedures to correct identified problem areas.

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

(3) The State agency shall require that local agencies establish Program review procedures to be used in reviewing their own operations and those of subsidiaries or contractors.

(Approved by the Office of Management and Budget under control number 0584–0063)

(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.22 Administrative appeal of State agency decisions.

(a) *Requirements.* The State agency shall provide a hearing procedure whereby a local agency adversely affected by a State action may appeal the action. The right to appeal shall be granted when the local agency's application to participate is denied, when participation is terminated, when a contract is not renewed by the State agency or when any other adverse action which affects participation is taken. The adverse action shall be postponed until a hearing decision is reached.

(b) *Procedure.* The State agency hearing procedure shall at a minimum provide the local agency:

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

(2) The opportunity to present its case;

(3) The opportunity to confront and cross-examine adverse witnesses;

(4) The opportunity to be represented by counsel, if desired;

(5) The opportunity to review the case record prior to the hearing;

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

(7) Written notification of the decision concerning the appeal, within 60 days from the date of the request for a hearing.

§ 247.23 Miscellaneous provisions.

(a) *No aid reduction.* The value of benefits or assistance available under the Program shall not be considered as income to or resources of participants or their families for any purpose under Federal, State or local laws, including, but not limited to, laws relating to taxation, welfare and public assistance programs.

(b) *Statistical information.* FNS reserves the right to use information obtained under the Program in a summary, statistical or other form which does not identify particular individuals. FNS may require the State or local agencies to supply data and other information collected under the Program in a form that does not identify particular individuals, to enable the Secretary or the State agencies to evaluate the effect of food intervention upon low-income individuals determined to be eligible for Program benefits.

(c) *Confidentiality.* Each State agency shall restrict the use or disclosure of information obtained from Program applicants or participants to persons directly connected with the administration or enforcement of the Program.

(d) *Public information.* Any person who wishes information, assistance, records or other public material shall request such information from the

State agency, or from the FNS Regional Office serving the appropriate State as listed below:

(1) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont:

U.S. Department of Agriculture, FNS, New England Region, 33 North Avenue, Burlington, Massachusetts 01803.

(2) Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia:

U.S. Department of Agriculture, FNS, Mid-Atlantic Region, One Vahlsing Center, Robbinsville, New Jersey 08691.

(3) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee:

U.S. Department of Agriculture, FNS, Southeast Region, 1100 Spring Street, NW, Atlanta, Georgia 30309.

(4) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin:

U.S. Department of Agriculture, FNS, Midwest Region, 536 South Clark Street, Chicago, Illinois 60605.

(5) Arkansas, Louisiana, New Mexico, Oklahoma, Texas:

U.S. Department of Agriculture, FNS, Southwest Region, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75242.

(6) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming:

U.S. Department of Agriculture, FNS, Mountain Plains Region, 2420 West 26th Avenue, Room 430–D, Denver, Colorado 80211.

(7) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, Washington:

U.S. Department of Agriculture, FNS, Western Region, 550 Kearney Street, Room 400, San Francisco, California 94108.

PART 248—WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)

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AUTHORITY: 42 U.S.C. 1786.

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Subpart A—General

§248.1 General purpose and scope.

This part announces regulations under which the Secretary of Agriculture shall carry out the WIC Farmers' Market Nutrition Program. The dual purposes of the FMNP are:

(a) To provide resources in the form of fresh, nutritious, unprepared foods (fruits and vegetables) from farmers' markets to women, infants, and children who are nutritionally at risk and who are participating in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) or