

Food and Nutrition Service, USDA

§ 248.16

have limited access to locally grown fruits and vegetables.

(i) *Transfer of funds.* A State agency may use not more than 5 percent of the Federal FMNP funds made available for the fiscal year to reimburse expenses incurred by the FMNP during a preceding fiscal year. The State agency shall provide such justification for its request to spend back funds under this paragraph as FNS may require.

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

(k) *Reallocation of funds.* Any funds recovered under paragraphs (d)(3) and (j) of this section will be reallocated in accordance with the appropriate method determined by FNS.

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49747, Sept. 27, 1995; 60 FR 57148, Nov. 14, 1995; 64 FR 48076, Sept. 2, 1999]

§ 248.15 Closeout procedures.

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

(b) *Grant closeout procedures.* When grants to State agencies are terminated, the following procedures shall be performed in accordance with 7 CFR part 3016.

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

(2) FNS may disqualify the State agency or restrict its participation in the FMNP when both parties agree that continuation under the FMNP would not produce beneficial results commensurate with the further expenditure of funds.

(3) Upon termination of a grant, the affected agency shall not incur new obligations after the effective date of the disqualification, and shall cancel as many outstanding obligations as pos-

sible. FNS will allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to disqualification, and the State agency shall do the same for farmers/farmers' markets.

(4) A grant closeout shall not affect the retention period for, or Federal rights of access to, FMNP records as specified in §248.24(b) and (c). The closeout of a grant does not affect the responsibilities of the State agency regarding property or with respect to any FMNP income for which the State agency is still accountable.

(5) A final audit is not a required part of the grant closeout and should not be needed unless there are problems with the grant that require attention. If FNS considers a final audit to be necessary, it shall so inform OIG. OIG will be responsible for ensuring that necessary final audits are performed and for any necessary coordination with other Federal cognizant audit agencies or State or local auditors. Audits performed in accordance with §248.18 may serve as final audits providing such audits meet the needs of requesting agencies. If the grant is closed out without an audit, FNS reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

§ 248.16 Administrative appeal of State agency decisions.

(a) *Requirements.* The State agency shall provide a hearing procedure whereby recipients, local agencies and farmers/farmers' markets adversely affected by certain actions of the State agency may appeal those actions. A recipient may appeal disqualification/suspension of FMNP benefits. A local agency may appeal an action of the State agency disqualifying it from participating in the FMNP. A farmer/farmers' market may appeal an action of the State agency denying its application to participate, imposing a sanction, or disqualifying it from participating in the FMNP. Expiration of a contract or agreement shall not be subject to appeal.

(b) *Postponement pending decision.* An adverse action may, at the State agency's option, be postponed until a decision in the appeal is rendered.

(1) In a case where an adverse action affects a local agency or farmer/farmers' market, a postponement is appropriate where the State agency finds that recipients would be unduly inconvenienced by the adverse action. In addition, the State agency may determine other relevant criteria to be considered in deciding whether or not to postpone an adverse action.

(2) In a case where a recipient appeals the termination of benefits, that recipient shall continue to receive FMNP benefits until the hearing official reaches a decision or the expiration of the current FMNP season, whichever occurs first. Applicants who are denied benefits may appeal the denial, but shall not receive benefits while awaiting the decision.

(c) *Procedure.* The State agency hearing procedure shall at a minimum provide the recipient, local agency or farmer/farmers' market with the following:

(1) Written notification of the adverse action, the cause(s) for the action, and the effective date of the action, including the State agency's determination of whether the action shall be postponed under paragraph (b) of this section if it is appealed, and the opportunity for a hearing. Such notification shall be provided within a reasonable timeframe established by the State agency and in advance of the effective date of the action.

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

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

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

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

(6) The opportunity to be represented by counsel, or in the case of a 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 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 pro-

cedures 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.