

the provisions of E.O. 12044, Improving Government Regulations, and, thus, does not require the preparation of a regulatory impact analysis. Accordingly, 7 CFR Part 2 is amended as follows:

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, Assistant Secretaries, and the Director of Economics, Policy Analysis and Budget

1. Section 2.17 is amended by adding a new paragraph (b)(34) to read as follows:

§ 2.17 Delegation of authority to the assistant secretary for marketing and transportation services.

(b) * * *

(34) The Swine Health Protection Act (Pub. L. 96-468, 94 Stat. 2229 (7 U.S.C. 3801-3812)).

* * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Transportation Services

2. Section 2.51 is amended by adding a new paragraph (a)(35) to read as follows:

§ 2.51 Administrator, Animal and Plant Health Inspection Service.

(a) * * *

(35) The Swine Health Protection Act (Pub. L. 96-468, 94 Stat. 2229 (7 U.S.C. 3801-3812)).

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953)

For Subpart C:

Dated: December 22, 1980.

Bob Bergland,

Secretary of Agriculture.

For Subpart F:

Dated: December 22, 1980.

Jerry C. Hill,

Deputy Assistant Secretary for Marketing and Transportation Services.

[FR Doc. 80-40462 Filed 12-29-80; 8:45 am]

BILLING CODE 3410-01-M

Food and Nutrition Service

7 CFR Parts 271 and 272

[Amendment Number 187]

Food Stamp Act of 1977: Complaint Procedures

AGENCY: Food and Nutrition Service, USDA.

ACTION: final rule.

SUMMARY: This final rulemaking sets forth State agency procedures for handling complaints about the operation of the Food Stamp Program. These procedures were developed to assure that mechanisms to accept and resolve complaints exist, while not imposing burdensome Federal regulatory requirements on State agencies.

EFFECTIVE DATE: These rules are effective December 30, 1980, and must be implemented by State agencies no later than June 29, 1981.

FOR FURTHER INFORMATION CONTACT: Larry R. Carnes, Policy and Regulations Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C., 20250. (202) 447-9075.

The final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

On April 10, 1979, the Department published a comprehensive proposal concerning the implementation of a State Complaint Procedure. The Department invited public scrutiny of that proposal and encouraged detailed written criticism and comment.

This preamble discusses both the basis and reasons for the significant changes made from the April 10 proposal. A total of 94 comment letters were received concerning the proposed complaint procedure. The Department gave careful consideration to all the comments made.

General Scope

Regulations currently provide for specific procedures to handle discrimination complaints and fair hearings to handle complaints concerning eligibility and level of benefits for specific households.

The proposed regulations were designed to assure that some system also existed to handle other complaints, such as complaints on delays in processing or on general service to participants.

Sixty-four commenters, including 3 regional offices and 5 State agencies, favored the concept of a formalized complaint system. Eighteen commenters opposed the concept of a formalized complaint system for reasons of increased burden on State agencies and

project areas, increase in staff, and increases in administrative funding. Those opposed include 1 regional office, 11 State agencies and 5 local agencies. Four State agencies suggested that the entire section on the complaint regulations be deleted.

After analyzing the comments, the Department concurs with those commenters who believed that many of the specific requirements of the proposed rules represented an unnecessary degree of Federal regulation and unnecessarily limited State flexibility. The type of Federal requirements that are necessary in connection with fair hearings, in order to assure basic due process rights in determinations affecting a household's eligibility or benefit levels, are not really appropriate in this area. As a result, the final rules remove nearly all such requirements. The final rules require that States have a system for accepting complaints, resolving them in an appropriate manner, and responding to complainants on the outcome. How States choose to do this, and how States inform recipients and potential recipients of the complaint system, will be up to them.

The only other requirement in the final rules is that States analyze records of complaints at least annually and provide information on any patterns of deficiencies, as indicated by what the State found in looking into the complaints, to the Performance Reporting System coordinator.

Virtually all other requirements in the proposed rules have been deleted. The following discussion addresses some of these matters in more detail.

Staffing

The proposed rules required that the State agency designate a person to act as the coordinator of activities relating to complaints. Several of the State agencies opposed or questioned why the Department felt it necessary to designate a person to coordinate activities related to program complaints. These State agencies feel that additional staff is not necessary and that States should be allowed flexibility to coordinate program complaint activities with existing staff especially since funds are not always available to hire additional staff.

Twelve interest groups, one government organization and one participant recommended that a full-time State complaint coordinator be required for all States. The requirement could be waived after the situation is evaluated and it is determined by the State that a full-time coordinator is not warranted.

The Department agrees that States should have flexibility in managing complaints, and that a Federal requirement for a complaint coordinator is not necessary. Therefore, this requirement is not contained in the final rules.

Complaint System

The proposed regulations provided States with two options for administering the complaint system: (1) have all complaints handled at State level; or (2) use a two-tiered system to allow complainants to file a complaint at either the State or the local project area.

As a result of comments received on this section, the section has been deleted and the final regulations provide States with flexibility on this matter. Thirty-two comments were received on the complaint system section. One regional office and 22 interest groups indicated that they prefer the State-agency-level-only system. Two State agencies and one local agency favor the two-tiered system. Three State agencies, two local agencies, three government organizations and 10 interest groups, stated that if the two-tiered system is optional, it should be made clear that the complainant has the option to file at either the State or local level. The majority of the interest groups feel that the two-tiered system would be confusing to complainants and that many complainants would be reluctant to file complaints at the project area level. There was also concern among interest groups that local project areas may not provide satisfactory resolution of complaints.

The Department believes this is an area where Federal requirements may prove cumbersome, and where the proposed rules contained too much regulatory detail. The Department has decided to allow State agencies to determine how to structure their own complaint systems.

Filing Complaints

Thirty-five comments were received on this section. The most significant comments on this section concern the proposed time standards for filing complaints. Twenty-seven commenters recommended that the time standard be lengthened to 90 days—consistent with the time allowed for filing for fair hearings, or 180 days—consistent with the time allowed for discrimination complaints or for incidents occurring within a certification period. One regional office, two State agencies and one local agency recommended that the time standard be shortened to 30 days or less. One regional office supports the

60-day time standard. Here again the Department believes that specific federally prescribed time standards are not necessary, and that States should be afforded flexibility to handle individual complaints in an appropriate and timely manner.

Some of the public interest groups indicated that it should be made clear that complaints can be filed by groups and organizations acting on behalf of a complainant or on their own behalf, as one interest group suggested. This was the intent of the Department, and is clarified in the final rule.

Publicizing the complaint procedures

Twenty-eight comments were received on proposed requirements for publicizing addresses and phone numbers for filing complaints. Most comments were from public interest groups, a number of whom recommended that States be required to include the address and phone number of the complaint system on all applications and program notices.

The Department believes that such a requirement is not necessary, and could increase Federal and State printing costs. Moreover, the Department believes that the complaint procedures are not appropriate for Federal requirements of this sort.

As noted, some commenters questioned the need for the detailed Federal requirements contained in the proposed rules. While the final rules do require that State agencies have some method for making information on the complaint system available, the rules do not contain specific Federal requirements regarding how this must be done. The Department believes that State agencies should be provided flexibility to determine how best to publicize the particular complaint systems which they choose to establish.

Receipt of Complaints

The section on Receipt of Complaints received 34 comments, with the majority of commenters indicating a desire for the complainant to have the option of having the complaint processed by the fair hearing and/or the complaint procedures. Several of the interest groups indicated that complainants may be reluctant to use the fair hearing procedures for fear of retaliation. Also, it is believed that some complaints, considering the nature of the complaint, could be more adequately resolved if they were handled by both systems concurrently.

One State agency indicated that State agencies should have the authority to resolve complaints concerning level of benefits, eligibility, a denial or

termination through the complaint system and that the complainants should be advised of their rights to a fair hearing. One government organization stated that only complaints which cannot be resolved to the complainant's satisfaction by a phone call to the local office should be processed through the fair hearing system.

One regional office and three interest groups recommended that the complaint officer accept hearing requests and that the day the complaint is filed be considered day one for the purpose of the fair hearing timeliness standard.

It is not the Department's intent that complaint procedures replace or be consolidated with fair hearing procedures, which are mandated by law. The final rules make clear that States need not handle under their complaint system any matter that can be addressed through a fair hearing. Beyond this, the final rules contain no further requirements in this area. Existing program regulations already require that households be notified of their right to a fair hearing in the event of disagreements over eligibility or benefit determinations.

Documentation of Complaints

The section on Documentation of Complaints prompted 15 comments, the majority of which were from interest groups. It was recommended by 3 interest groups and 2 government organizations that all complaints received be acknowledged by the complaint official sending a copy of the complaint record to the complainant. This acknowledgement should let the complainant know that the complaint was actually filed, that the complaint was described correctly in the record and when to expect corrective action. It was also recommended by 9 interest groups that reference to the State's manual which corresponds with a particular complaint be part of the complaint documentation. These recommendations were not adopted. The final rules require the State agency to respond to the complainant on the resolution of the complaint. The Department believes that additional Federal requirements are not appropriate. Those provisions of the proposed regulations regarding specific information States must take down regarding each complaint are removed as unnecessary. This is in keeping with the Department's decision to allow States flexibility to determine how to set up their complaint systems.

Minimum State Agency Requirements for Handling Program Complaints

One regional office, one State and 18 interest groups felt that the proposed 60-day time standard for notifying the complainant of actions taken or planned was too long. One regional office supported the 60-day time standard and two interest groups felt that the response time and implementation of corrective action on complaints from farmworkers/migrants should be shortened. The Department has removed this standard from the final rules, in accordance with its general determination that State Complaint Systems is not an area where so many specific Federal standards should be imposed. The Department encourages States to act expeditiously in resolving complaints.

Analysis of Complaints

There were 10 comments on the proposed requirement for a semi-annual analysis of complaint findings and records. Nine of the commenters, all interest groups supported this concept and one State agency opposed it. The Department does believe that States should use all available sources of information to identify deficiencies in State operations and has retained a requirement for an analysis of complaint records. However, the final rules require that the analysis only be done annually, and remove some of the detail in the proposed rules regarding the analysis.

Implementation

These final rules are effective upon publication. State agencies must implement these rules no later than 180 days after publication. This will assure State agencies adequate time to implement the new procedures during a period when other changes in the food stamp program are also being made.

Accordingly, Parts 271 and 272 of 7 CFR are amended as set forth below.

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. Section 271.6 is amended by adding paragraph (a), (previously reserved), to include the following provisions:

§ 271.6 Complaint procedure.

(a) *State Agency Responsibility.* (1) *General Scope.* The State agency shall maintain a system of its choosing for handling program complaints filed by participants, potential participants, or other concerned individuals or groups. This shall not include complaints alleging discrimination on the basis of race, sex, age, religious creed, national origin, political beliefs or handicap; such

complaints shall be handled in accordance with § 272.7. This procedure also need not include complaints that can be pursued through a fair hearing. Complaints regarding such areas as processing standards and service to participants and potential participants would generally be handled under this complaint procedure.

(2) *Minimum requirements.* The State agency shall follow up on complaints, resolve complaints and take corrective action where warranted, and respond to the complainant on the State agency's disposition of the complaint. The State agency shall make information on the complaint system and how to file a complaint available to participants, potential participants and other interested persons. The State agency may make the information available through written materials or posters at certification offices or other appropriate means.

(3) *Complaint analysis.* The State agency shall maintain records of complaints received and their disposition, and shall review records at least annually to assess whether patterns of problems may be present in local offices, project areas, or throughout the State. The results of this review shall be provided to the Performance Reporting System coordinator for appropriate action, and for inclusion, if appropriate, in the State Corrective Action Plan in accordance with § 275.16 of this Chapter. The information provided to the Performance Reporting System Coordinator shall include the identification, if any, of potential or actual patterns of deficiencies in local offices, project areas, or throughout the State, and any identification of causes of these problems.

(4) *Monitoring.* FNS shall monitor State compliance with these requirements through the Performance Reporting System.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In subsection 272.1, a new subparagraph (25) is added to paragraph (g) of that subsection to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

* * * * *

(25) Amendment 187. State agencies shall implement the complaint procedures required by § 271.6(a) no later than 180 days following publication of final regulations.

(91 Stat. 958 (7 U.S.C. 2011-2027))

(Catalog of Federal Domestic Assistance Programs No. 10551, Food Stamps)

Dated: December 19, 1980.

Carol Tucker Foreman,
Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-40257 Filed 12-29-80; 8:45 am]

BILLING CODE 3410-30-M

7 CFR Part 277

[Amdt. No. 188]

Payment of Certain Administrative Costs of State Agencies

AGENCY: Food and Nutrition Service.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking sets forth requirements for payment of certain administrative costs of State agencies which operate the Food Stamp Program, and the Food Distribution Program and the Food Stamp Program on Indian Reservations, under the authority of the Food Stamp Act of 1977, as amended.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Raymond A. Pugh, Sr., Deputy Administrator for Financial Management, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-3545. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing the rule is available from William E. Mothorpe, Director, State Financial Control Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-8275.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under U.S. Department of Agriculture (USDA) procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as not significant.

Introduction:

In order to decrease fraud and abuse in the Food Stamp Program and to encourage participation in the Program by Indians residing on reservations, Congress made a number of changes in the administrative funding formulas formerly used to reimburse State agencies for operation of the program under the Food Stamp Act of 1964. The Food Stamp Act of 1977, Sections 16(a) and 16(c), provides for increasing the Federal reimbursement rate for State administrative costs associated with investigations, prosecutions, and fraud hearings; increasing the reimbursement rate for State agency administrative costs from

50 percent to 60 percent when the States' cumulative allotment error rates with respect to eligibility, overissuance, and underissuance, as calculated in the Quality Control Program, are less than five percent; and allowing for an increase in the Federal share of administrative costs for Program operations on Indian reservations to a level determined by the Secretary to be necessary for effective operation of the program.

The Food Stamp Act Amendments of 1980 (Pub. L. 96-249: May 26, 1980) subsequently increased the number of enhanced funding levels available for low error rates. These changes will allow 65, 60, or 55 percent funding levels based on error rates for participating households, negative error rates for improperly denied households, and the reduction of the State's error rate. Since negative error rates must be included prior to any consideration of payment of enhanced funding, data on this aspect of program operations must be developed and analysis performed to establish the basis for such funding. Because of anticipated public interest, provisions implementing these portions of the Food Stamp Act Amendments of 1980 were published as proposed rules on October 3, 1980 (45 FR 65932) to allow for public comments.

The Food Stamp Act Amendments of 1980 also provided for a higher rate of Federal Financial Participation (FFP) for the acquisition and development of automatic data processing and information retrieval systems. The Amendments provide for 75 percent FFP for these costs, effective October 1, 1980. The Department will issue proposed regulations on this provision to encourage public comment and participation in the development of standards to be used by FNS in determining which costs or systems projects will be covered by the higher federal funding.

On November 9, 1979 (44 FR 65318), the Department published proposed State Plan of Operation rules which included provisions concerning the necessary revisions to the Regulations which define the area and content of administrative funding, formerly 7 CFR Part 275, subsequently changed to Part 277. In addition, in emergency final rulemaking the Department issued Regulations on August 10, 1979 (44 FR 47037) which implemented the provisions for increasing the share of Federal reimbursement for investigation and prosecution of fraud cases from 50 percent to 75 percent. Comments were solicited on this rulemaking as well as on the remainder of Part 277.

The majority of the language in Part 277 was formerly in place as Part 275 and, in turn, was derived from two major Federal Management Circulars (FMCs), FMC 74-4, issued originally by the General Services Administration, but now under the Office of Management and Budget (OMB), and OMB Circular A-102. During the comment period, the Department received 65 letters in response to both the emergency final rulemaking on § 277.15, published August 10, 1979, and the proposed rulemaking for Part 277, published November 9, 1979. Some of the respondents submitted separate comments on each of the two proposals, which resulted in receipt of 65 comment letters from 55 organizations. Twenty-two State welfare agencies, 14 local welfare agencies, 1 public interest group, 5 other government agencies, and 13 letters from our Regional Offices were received. In light of the comments received, the Department made various changes, primarily clarifying details of funding procedures. However, no comments were received on a majority of the proposal. Therefore, significant portions are unchanged from the proposed rulemaking.

In addition, § 277.14, Procurement Standards, has been rewritten since the November 9, 1979 proposal to conform to the requirements of the revised Attachment O to OMB Circular A-102. Also, a new § 277.17 has been added since the November 9 publication, incorporating Attachment P of OMB Circular A-102, Audit Requirements. Since Attachments O and P were both the subject of notice and comment rulemaking and both were adopted without substantial change by FNS, it was not deemed necessary for these parts to be proposed again prior to final publication.

Funding (Part 277.4)

The Food Stamp Act of 1977 required major changes from regulations which previously provided for Federal reimbursement for 50 percent payment of all allowable administrative cost incurred by State agencies. Section 16 of the Act provided for reimbursing specific areas of administrative costs incurred by State agencies at a rate higher than 50 percent. Under this section of the Act, the Department was directed to increase the Federally funded share of a State agency's administrative costs to 60 percent if the State agency's cumulative allotment error rate was less than five percent with respect to basic Program eligibility, overissuance and underissuance as determined by quality control and FNS validation reviews conducted in

accordance with § 275.23. The proposed rules issued on November 9, 1979, included a provision to implement this Section of the Act. However, the 1980 Amendments to the Food Stamp Act, Pub. L. 96-249, changed the enhanced funding provisions. This law, signed on May 26, 1980, raised the possible reimbursement rate to 65 percent but also directed that the reimbursement at this higher level be based on cumulative allotment error rates and error rates in negative case actions.

As pointed out above, the Department proposed rules regarding these issues in the October 3, 1980 Federal Register. The comment period on these proposed rules has just recently closed. Because the comments have not been fully analyzed yet, it is unclear what the final rule on these issues will be. Therefore, the paragraph in § 277.4 of this final rulemaking pertaining to enhanced funding has been reserved. It will be added when final rules on the Quality Control Sanction and Incentive Systems are issued in the near future.

Section 16(a) of the Food Stamp Act of 1977, as amended, authorized the Secretary to pay 75 percent of the costs of State Food Stamp Program investigations and prosecutions. Section 277.4 allows for this increased funding level. The increased funding for this function is discussed in greater detail in § 277.15 of the final Regulations. Section 277.4 also makes changes in the reimbursement of administrative costs of State agencies administering the Program on Indian reservations. The details of this increased rate are discussed in Parts 281 and 282.

A total of sixteen comments were received which specifically addressed this Section. These comments were directed at the revised reimbursement rate. Additional comments were received which dealt with the specifics of the 75 percent funding for investigations and prosecutions. These comments are discussed further under § 277.15. Comments on § 277.4 included four which expressed the view that since State quality control reviews and recipient claim sections both contributed to the successful completion of fraud cases, both of these functions should be made eligible for the higher rate of Federal reimbursement.

The Department believes that quality control reviews are normal, ongoing program activities required of the State agency. The primary purpose or objective of such reviews is not the detection of fraud, although that may be disclosed, but rather to determine the quality of the certification activity conducted by the State. While the reviews may consequently provide

information needed for investigations and prosecutions, the reviews themselves cannot be said to be directly related to the investigation and prosecutive activities discussed in the legislative history. In regard to the comments relating to the eligibility of personnel engaged in recipient claims activities, we felt that a distinction must be made between claims which are established and maintained by eligibility workers (EWs) in the normal completion of their job duties and those which are handled by a unit expressly established for that function. Again returning to Congressional intent, we believe that establishing and maintaining claims is part of the normal duties of the EW and should not be eligible at the higher rate. A separate claims section which is an adjunct to an investigative and/or prosecutive unit would qualify at the higher rate.

However, we have added a provision that allows for an exception in the case of certain EWs whose principal function during some portion of their workweek is as an investigator. Section 277.15 has been revised to specifically require that only employees whose State or local job title is "investigator" are to be claimed at the higher rate. The exception to this requirement was added to allow for the higher payment in those counties or local jurisdictions whose caseload is not large enough to warrant a separate full-time investigator, but, nevertheless must routinely employ some member of their staff in an investigative capacity. Exceptions shall be granted by the FNS Regional Financial Management Officer based on an application for the exception by the county or local jurisdiction. Time sheets or time records must be used to substantiate any such exception.

Administrative Costs Principles (Section 277.9)

Five comments were received specifically addressing the present situation in which the Department cannot be charged for costs associated with the certification for Food Stamps for those households participating in the Aid to Families with Dependent Children (AFDC) Program. Two States were under the mistaken impression that this was a change and that such costs are currently being charged to the Department. This is not the case. Such charges have been allocated to the AFDC Program since the inception of the Food Stamp Program. This ongoing practice of allocating such charges to DHEW (now the Department of Health and Human Services) is contained in § 277.9. Since the cost of determining the eligibility of AFDC cases is not a charge to FNS, the enhanced funding for low

error rates is also clearly not applicable to such costs.

Discussions are currently underway between the Department and the Department of Health and Human Services to more clearly define this area. These discussions may result in a need for some modification of this aspect of these regulations at a subsequent date. Pending any such modifications, the existing practice (as reflected in § 277.9) shall remain in effect.

Food Stamp Investigations and Prosecutions (Section 277.15)

Fifty-four comments were received on this section, 46 of which were received in response to the interim final publication of this section on August 10, 1979. The comments were most positive and supportive of the concept of enhanced funding for Food Stamp fraud investigations, prosecutions, and fraud hearings. However, most of the comments received indicated a desire for further clarification of the funding process. Commenters from both State and Federal agencies requested that additional information be provided to identify what constitutes allowable activities for enhanced funding. A primary concern was handling anti-fraud activities which cross program lines and which are part-time functions of eligibility workers. Various comments also indicated that further clarification was needed on procedures to provide enhanced funding to agencies other than State welfare agencies that are involved in fraud investigations. Two State agencies and two Regional Offices recommended that there be a requirement for the establishment of a contractual relationship between all providers of services and State agencies.

The reference in the preamble, as published August 10, 1979, regarding establishing minimum professional standards, produced varied comments. Three local agencies and one Regional Office recommended that the regulations establish qualification standards for investigative employees. Two State agencies recommended that the establishment of qualification standards be left to the State agencies. One State agency questioned the authority of the Secretary to impose qualification standards. Another State agency recommended that the regulations define minimum functions to be performed by investigators rather than minimum standards. In light of the many questions and comments relating to the areas of coverage of the enhanced funding, we have revised the language of that part of the section which relates to allowable costs. This revision now deals with those cost item in a manner

similar to other allowable charges; that is, as direct and indirect charges for activities relating specifically to the function. The requirements in Appendix A of this Part 277 are now specifically referenced to this section, rather than making references in the section to certain indirect and support costs which are eligible for the enhanced funding.

In addition, we have specified that only those investigative activities related to workers whose State or local job title is "investigator" or similar, would be eligible for the enhanced funding. Accepting the fact that certain jurisdictions would not have a full-time investigator, allowances are made for part-time activity. In addition, an exception to the use of the State and local job title/description is included so that if the majority of the duties include investigations, the cost of this activity may be allowable at the 75 percent rate when approved by FNS. This action places the decision of allowable activities on the State or local civil service requirements for the investigation/prosecution function, rather than attempting to define the duties or mandatory qualifications on a national level for the enhanced funding. We believe that the State agency is in a better position to define its own needs in this area and we believe that current wording will allow for this.

Four comments were received which suggested that there be a requirement for a formal purchase of service agreement or contract between all providers of prosecution services and the State or local agency. We have agreed that such a requirement would be beneficial in spelling out the requirement on each party's part and specifically detailing the method to be used for this function. Therefore, the final regulations require that a formal agreement be signed between the State agency and the third party provider of prosecution or investigation services before funding is approved by FNS. Further, the regulations make clear that FNS does not fund such third party providers directly. All funding at the 75 percent level will go from FNS to the State agency and from the State agency to the service provider under the conditions specified in their formal agreement or contract.

For the reasons set out in the preamble, Part 227 of 7 CFR is amended as set forth below.

Part 277—Payments of Certain Administrative Costs of State Agencies

Part 277 was reserved for administrative cost regulations, formerly designed as Part 275. Sections 277.1—277.9, 277.11—277.15, and 277.17,

formerly reserved, are now added. Sections 277.10 and 277.16, previously issued, are now revised. The new Part 275 supersedes and deletes material formerly designated as § 271.1(h), § 271.2 and Part 275 (including Appendix A). The new Part 277 as added and amended, read as follows:

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

Sec.

- 277.1 General purpose and scope.
- 277.2 Definitions.
- 277.3 Budget and budget revision procedures.
- 277.4 Funding.
- 277.5 Methods of payment.
- 277.6 Standards for financial management systems.
- 277.7 Cash depositories.
- 277.8 Bonding and insurance.
- 277.9 Administrative costs principles.
- 277.10 Program income.
- 277.11 Financial reporting requirements.
- 277.12 Retention and custody of records.
- 277.13 Property.
- 277.14 Procurement standards.
- 277.15 Food Stamp investigations and prosecutions.
- 277.16 Suspension, disallowance and program closeout.
- 277.17 Audit Requirements.

Appendix A—Principles for Determining Costs Applicable to Administration of the Food Stamp Program by State agencies.

Authority: 91 Stat. 958, as amended (7 U.S.C. 2011–2027)

277.1 General purpose and scope.

(a) *Purpose.* This Part establishes uniform requirements for the management of administrative funds provided to State agencies and sets forth principles for claiming costs of activities paid with administrative funds under the Food Stamp Program, and the Food Distribution Program and Food Stamp Program on Indian Reservations.

(b) *Scope and Applicability.* Upon compliance with the provisions of this Part, payments to State agencies will be made for cost(s) incurred for administration of the Food Stamp Program and for administration of the Food Distribution Program on Indian Reservations. To ensure maximum practical uniformity, deviation(s) by a State agency from this Part may be authorized only when necessary to meet program objectives, to conserve program funds, or when essential to the public interest. However, any deviations from this Part must be authorized by the Administrator of FNS.

§ 277.2 Definitions.

For the purpose of this Part the term: "Accrued Expenditures" means the charges incurred by the State agency

during a given period for liabilities incurred, benefits received or for goods and services used during this period.

"Accrued Income" means the net value of earnings during a given period resulting from services and goods provided whether or not payment has been realized.

"Acquisition Cost" refers to nonexpendable personal property acquired by purchase and means the net invoice price of the property including any attachments, accessories or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Ancillary charges such as taxes, duty, protection in-transit insurance, freight or installation shall be included in or excluded from acquisition cost in accordance with the State agency's regular accounting practices.

"Approval or Authorization by FNS" means documentation evidencing consent prior to incurring specific costs.

"Applicable Credits" refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to programs as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

"Disbursements" refers to the transfer of funds by the state agency to pay for Program costs resulting from purchased or expired goods and services.

"Expendable Personal Property" means all tangible personal property other than nonexpendable property.

"Program Funds" means money, or property provided in lieu of money, paid for or furnished by FNS to a State agency.

"Funds Available to the State Agency" may include contributions from third parties including other Federal agencies.

"In-kind Contributions" refers to the value of noncash contributions. Only when authorized by Federal legislation may property purchased with Federal funds be considered as a State agency's in-kind contribution. In-kind contributions may be for the value of real and/or nonexpendable personal property or the value of goods and services provided specifically to the project or program.

"Nonexpendable Personal Property" means tangible personal property having a useful life of more than one year and an acquisition cost of more than \$300 per unit. A State agency may use its own definition of nonexpendable

personal property provided that such definition would at least include all tangible personal property as defined herein.

"Obligations" are the amounts of orders placed, contracts awarded, services received, and similar transactions during a given period which require payment.

"Offset" means a method to recover funds due FNS through use of the Letter of Credit system. Recovery is accomplished by accounting adjustments to increase Federal funds on hand or disbursed.

"OMB" means the Office of Management and Budget.

"Personal Property" means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence) such as patents, inventions and copyrights.

"Program" means both the Food Stamp Program and the Food Distribution Program on Indian Reservations.

"Program Closeout" means the process by which FNS determines that all applicable administrative and financial processes have been completed by the State agency and FNS terminates the program in the affected project area or areas.

"Project Costs" are allowable costs as set forth in this Part.

"Real Property" means land, land improvements, structure and appurtenances thereto, excluding movable machinery and equipment.

"State Agency" means the organization as defined in 7 CFR Part 271.1.

"State Agency Costs" means the State agency outlays from its funds available for program administration. Unless authorized by Federal legislation, costs charged to other Federal grants or to other Federal contracts may not be considered as State agency costs reimbursable under this authority.

"Subagency" means the organization or person to which a State agency makes any payment for acquisition of goods, materials or services for use in administering the program and which is accountable to the State agency for the use of funds provided.

"Terms and Conditions" means legal requirements imposed by the Federal Government under statute, regulations, contracts, agreements or otherwise.

"Unliquidated Obligation" represents the amount of obligations not yet paid.

"Unobligated Balance" means the portion of the Federal funds authorized less all allowable costs and unpaid obligations of the State agency.

§ 277.3 Budgets and budget revision procedures.

The preparation, content, submittal, and revision requirements for the State Food Stamp Program Budget shall be as specified in § 272.2. The application for funds and budget requirements for the Food Distribution Program on Indian Reservations shall be as specified in § 283.9. State agencies must submit a budget to FNS as part of the State Plan each fiscal year. Upon approval of the budget by FNS, administrative funds will be provided.

§ 277.4 Funding.

(a) *General.* This section sets allowable cost standards for activities of State agencies in administering the Food Stamp Program and Food Distribution Program on Indian Reservations.

(b) *Federal Reimbursement Rate.* The base percentage for Federal payment shall be 50 percent of State agencies' allowable Food Stamp Program administrative costs.

(1) A 75 percent Federal reimbursement of Food Stamp Program allowable costs incurred for State fraud investigations, prosecutions, and fraud hearings upon presentation and approval of a State Plan Addendum as outlined in § 277.15.

(2) [Reserved.]

(3) Funding of demonstration projects approved by FNS will be at a rate agreed to by FNS in accordance with the requirements outlined in Part 282.

(4) The reimbursement of administrative costs to State agencies administering the program on Indian reservations shall be in accordance with the requirements of Parts 281 and 283.

(5) [Reserved.]

(c) *Matching Costs.* State agency costs for Federal matching funds may consist of:

(1) Charges reported on a cash or accrual basis by the State agency as project costs.

(2) Project costs financed with cash contributed or donated to the State agency by other non-Federal public agencies and institutions.

(3) Project costs represented by services and real or personal property donated by other non-Federal public agencies and institutions.

(d) All cash or in-kind contributions except as provided in paragraph (e) of this section shall be allowable as part of the State agency's share of program costs when such contributions:

(1) Are verifiable;

(2) Are not contributed for another federally-assisted program, unless authorized by Federal legislation;

(3) Are necessary and reasonable for accomplishment of project objectives;

(4) Are charges that would be allowable under this Part;

(5) Are not paid by the Federal Government under another assistance agreement unless authorized under the other agreement and its subject laws and regulations; and

(6) Are in the approved budget.

(e) The value of services rendered by volunteers or the value of goods contributed by third parties, exclusive of the State and Federal agencies, are unallowable for reimbursement purposes under the Food Stamp Program. The value of services rendered by volunteers shall be allowable only to meet any matching administrative costs requirements for the Food Distribution Program on Indian Reservations.

§ 277.5 Methods of payment.

(a) This section sets forth FNS methods for authorizing funds for State agencies.

(b) The "Letter of Credit" (LOC) (SF-1193A) is the document by which an official of FNS authorizes a State agency to draw funds from the United States Treasury. This shall be the preferred method of payment for State agencies which receive at least \$120,000 per year and meet the requirements prescribed in OMB Circular A-102, Attachment J.

(c) State agencies shall request payment(s) by submitting Request for Payment on Letter of Credit and Status of Funds Report (Treasury Form SF-183) to the appropriate United States Treasury Regional Disbursing Office with a copy to FNS.

(d) State agencies not meeting the requirements for the LOC method of payment or failing to meet LOC reporting requirements, including those requiring adjustments to cash balances to liquidate amounts owed to FNS, shall be provided funds by Treasury check in accordance with the provisions of Department of the Treasury Circular 1075.

(e) Payments for proper charges incurred by State agencies will not be withheld unless such payments are suspended or disallowed pursuant to § 277.16. When a payment is withheld, payment adjustments will be made in accordance with § 277.16. When FNS collects an indebtedness, whether due to a disallowance or an offset for amounts which the State agency has been billed but which it has failed to pay without cause acceptable to FNS, FNS shall provide reasonable notice to the State agency, and shall require appropriate accounting adjustment to cash balances for which the State agency is

accountable to the Federal government to liquidate the indebtedness.

§ 277.6 Standards for financial management systems.

(a) *General.* This section prescribes standards for financial management systems in administering program funds by the State agency and its subagencies or contractors.

(b) *Responsibilities.* Financial management systems for program funds in the State agency shall provide for:

(1) Accurate, current, and complete disclosure of the financial results of program activities in accordance with Federal reporting requirements.

(2) Records which identify the source and application of funds for FNS or State agency activities supporting the administration of the Program. These records shall show authorizations, obligations, unobligated balances, assets, liabilities, outlays and income of the State agency, its subagencies and agents.

(3) Records which identify unallowable costs and offsets resulting from FNS or other determinations as specified in § 277.16 and the disposition of these amounts. Accounting procedures must be in effect to prevent a State agency from claiming these costs under ongoing program administrative cost reports.

(4) Effective control and accountability by the State agency for all program funds, property, and other assets acquired with program funds. State agencies shall adequately safeguard all such assets and shall assure that they are used solely for program authorized purposes unless disposition has been made in accordance with § 277.13.

(5) Controls which minimize the time between the receipt of Federal funds from the United States Treasury and their disbursement for program costs. In the Letter of Credit system, the State agency shall make drawdowns from the U.S. Treasury through a U.S. Treasury Regional Disbursing Office as nearly as possible to the time of making the disbursements.

(6) Procedures to determine the reasonableness, allowability, and allocability of costs in accordance with the applicable provisions prescribed in Appendix A to this Part.

(7) Support and source documents for costs.

(8) An audit trail including identification of time periods, initial and summary accounts, cost determination and allocation procedures, cost centers or other accounting procedures to support any costs claimed for program administration.

(9) Periodic audits by qualified individuals who are independent of those who maintain Federal program funds as prescribed in § 277.17.

(10) Methods to resolve audit findings and recommendations and to follow up on corrective or preventive actions.

(11) [Reserved]

(c) The standards in § 277.6(b) apply to subagencies or contractors involved with program funding.

§ 277.7 Cash depositories.

(a) The term "cash depositories" refers to banks or other institutions which maintain accounts where Food Stamp Program funds are deposited and from which withdrawals are made to meet administrative costs of the State agency.

(b) State agencies are encouraged to use minority owned banks to expand opportunities for minority enterprises.

(c) FNS shall not:

(1) Require physical segregation in a cash depository of program funds from other State agency funds.

(2) Establish any eligibility requirements for cash depositories in which program funds are deposited by the State agency.

§ 277.8 Bonding and insurance.

(a) *General.* In administering FNS program funds, State agencies shall observe their regular requirements and practices with respect to bonding and insurance. FNS will not impose additional bonding and insurance requirements, including fidelity bonding, above those normally required by the State agency.

(b) *Loan Guarantees.* FNS makes no guarantee of any loan or payment of money borrowed by a State agency for administering the program. State agencies shall not make any assurances to any lender or contractor that FNS will furnish funds for loan payments.

§ 277.9 Administrative costs principles.

(a) This section prescribes specific policies and procedures governing State agencies for funding under this Part.

(b) Any cost related to determining the Food Stamp eligibility of AFDC cases shall be included as part of the AFDC determination costs and claims. They are not allowable costs for FNS reimbursement.

(c) When costs for administering the program are claimed for reimbursement, the audit trail must identify the specific activities, locations, or time periods as defined in this section.

(1) *Direct Cost.* Allowable direct costs may be charged to the Food Stamp Program at the 50 percent or higher funding level as specified in this part.

(2) *Indirect Cost.* Allowable indirect costs may also be claimed at the 50 percent or higher reimbursement funding level as specified in this Part and Appendix A.

(3) Direct and indirect costs claimed for program cost reimbursement must be incurred for the time periods, the activities or for the locations for which the rates are approved by FNS.

(d) All State agency Cost Allocation Plans for determining the costs of administering the program must be approved by the cognizant Federal agency. All Cost Allocation Plans involving program funds shall be submitted to FNS for review.

§ 277.10 Program income.

(a) Program income is gross income resulting from activities financed with program funds. Such earnings exclude interest income but include income from service fees, usage or rental fees, sale of assets purchased with program funds, and royalties on patents and copyrights.

(b) Interest earned on advances of program administrative funds shall be remitted to FNS except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577) and advances to tribal organizations under the Indian Self-Determination Act (Sections 102-104).

(c) Income resulting from the sale of real and personal property whose acquisition cost was borne in whole or in part with Program funds shall be remitted to FNS or applied to the Federal share of current program costs in accordance with § 277.13. All other sales proceeds will be handled in accordance with § 277.13.

(d) Unless there is a prior agreement between FNS and the State agency, the State agency shall have no obligation to FNS with respect to royalties received from copyrights or patents produced as a result of activities financed with program administrative funds.

(e) Any other income earned under activities supported by program administrative funds may be retained by the State agency if they are deducted from the gross program administrative costs for the purposes of determining net costs and FNS's share of net cost.

(f) State agencies shall record the receipt and expenditure of revenues such as taxes, special assessments, levies, fines, etc., as a part of program fund transactions when such revenues are specifically earmarked for program fund projects.

§ 277.11 Financial reporting requirements.

(a) *General.* This section prescribes requirements for the State agencies to report financial information to FNS.

(b) *Authorized Forms and Instructions.* (1) Only forms specified by this Part, or other forms authorized by FNS, may be used for obtaining financial information from State agencies for the program.

(2) All instructions for use in connection with the form specified in § 277.11(c) shall be followed. FNS may prescribe supplementary instructions.

(3) State agencies shall submit the original and two copies of forms required by this section unless FNS approves a waiver of this requirement.

(4) The forms and instructions in this Part shall be available to the State agency and to the public upon request to FNS Regional Offices as set out in § 271.6(b).

(c) *Financial Status Report.* (1) *Form.* State agencies shall use the standard Financial Status Report (Form SF-269) to report program costs.

(2) *Frequency.* The report (Form SF-269) shall be required quarterly.

(3) *Exceptions.* Those State agencies that receive payments under the U.S. Treasury check system shall submit to FNS a Quarterly Report of Federal Cash Transactions (Form SF-272).

(4) *Due Dates.* Quarterly reports shall be due April 30 (for the period January-March), July 30 (April-June), October 30 (July-September), January 30 (October-December). Final reports are due December 30 for all completed Federal fiscal years (October 1-September 30) or 90 days after termination of Federal financial support. Requests from State agencies for extension of reporting due dates may be approved, if necessary.

§ 277.12 Retention and custody of records.

(a) *Retention Period.* All financial records, supporting documents, statistical records, negotiated contracts, and all other records pertinent to program funds shall be maintained for three years from the date of submission of the annual financial status report of the relevant fiscal year to which they apply except that:

(1) If any litigation, claim, or audit is started before the expiration of the three-year period, the applicable records shall be retained until these have been resolved.

(2) In the case of a payment by a State agency to a subagency or contractor using program funds, the State agency, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any book, documents, papers

and records of the subagency or contractor which the State agency, USDA, or the Comptroller General of the United States or any of their duly authorized representatives, determine are pertinent to administration of the specific FNS program funds, for the purpose of making audit, examination, excerpts, and transcripts.

(b) *Restrictions on Public Access.* Unless required by laws, FNS will not place restrictions on State agencies which limit public access to their records or the records of their subagencies or contractors that are pertinent to the administrative funding provided by FNS except when the State agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to FNS.

§ 277.13 Property.

(a) *General.* This section prescribes policies and procedures governing title, use, disposition of real and personal property for which acquisition costs were borne, in whole or in part, as a direct charge to FNS funds, and ownership rights or intangible personal property developed, in whole or in part, with FNS funds. State agencies may follow their own property management policies and procedures provided they observe the requirements of this section. With respect to property covered by this section, FNS may not impose on State agencies any requirement (including property reporting requirements) not authorized by this section unless specifically required by Federal laws.

(b) *Nonexpendable Personal Property.*
(1) *Title.* Title to nonexpendable personal property whose acquisition cost is borne, in whole or in part, by FNS shall vest in the State agency upon acquisition, and shall be subject to the restrictions on use and dispositions set forth in this section.

(2) *Use.* (i) The State agency shall use the property in the program as long as there is a need for such property to accomplish the purpose of the program.

(ii) When there is no longer a need for the property to accomplish the purpose of the program, the State agency shall use the property where needed in administration of other programs in the following order of priority:

(A) Other federally-funded programs of FNS.

(B) Other federally-funded programs of USDA.

(C) Other federally-funded programs.
(iii) When the State agency no longer has need for such property in any of its federally financed activities, the

property may be used for the State agency's own official activities in accordance with the following standards:

(A) If the property had a total acquisition cost of less than \$1,000, the State agency may use the property without reimbursement to FNS.

(B) For all such property not covered under paragraph (b)(2)(iii)(A) of this section, the State agency may retain the property for its own use, provided a fair compensation is made to FNS for the FNS share of the property. The amount of compensation shall be computed by applying the percentage of FNS participation in the cost of the property to the current fair market value of the property.

(3) *Disposition.* If the State agency has no need for the property, disposition of the property shall be made as follows:

(i) If the property had a total acquisition cost of less than \$1,000 per unit, the State agency may sell the property and retain the proceeds.

(ii) If the property had an acquisition cost of \$1,000 or more per unit, the State agency shall:

(A) If instructed to ship the property elsewhere, the State agency shall be reimbursed with an amount which is computed by applying the percentage of the State agency's participation in the cost of the property to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(B) If instructed to otherwise dispose of the property, the State agency shall be reimbursed by FNS for the cost incurred in such disposition.

(C) If disposition or other instructions are not issued by FNS within 120 days of a request from the State agency, the State agency shall sell the property and reimburse FNS an amount which is computed by applying the percentage of FNS participation in the cost of the property to the sales proceeds. The State agency may, however, deduct and retain from FNS's share \$100 or 10 percent of the proceeds, whichever is greater, for the State agency selling and handling expenses.

(c) *Transfer of Title to Certain Property.* (1) Where FNS determines that an item of nonexpendable personal property with an acquisition cost of \$1,000 or more which is to be wholly borne by FNS is unique, difficult, or costly to replace, FNS may reserve the right to require the State agency to transfer title of the property to the Federal Government or to a third party named by FNS.

(2) Such reservation shall be subject to the following:

(i) The right to require transfer of title may be reserved only by means of an expressed special condition under which funds were authorized for acquisition of the property, or, if approval for the acquisition of the property is given after the funds are awarded, by means of a written stipulation at the time such approval is given.

(ii) The property must be sufficiently described to enable the State agency to determine exactly what property is involved.

(3) FNS may not exercise the right to reserve until the State agency no longer needs the property in the activity for which it was acquired. Such need shall be assumed to end with termination of the activity in which the property was used unless the State agency continues to use the property in other program-related activities after the termination date and demonstrates to FNS a continued need for such use in the program.

(4) To exercise the right, FNS must issue disposition instructions to the State agency not later than 120 days after the State agency no longer needs the property in the activity for which it was acquired. If instructions are not issued within that time, FNS's right shall lapse, and the State agency shall act in accordance with the applicable standards in paragraph (b)(2) and (b)(3) of this section.

(5) The State agency shall be entitled to reimbursement with an amount which is computed by applying the percentages of the State agency's participation in the acquisition cost of the property to the current fair market value of the property, and for any reasonable shipping and interim storage costs it incurs pursuant to FNS's disposition instructions.

(d) *Property Management Standards.* State agencies' property management standards for nonexpendable personal property covered by this section shall include the following procedural requirements:

(1) Property records shall be maintained accurately and provide for:

(i) A description of the property.

(ii) Manufacturer's serial number or other identification number.

(iii) Acquisition date and cost.

(iv) Source of the property.

(v) Percentage of FNS funds used in the acquisition of the property, or sufficient information to be able to compute the percentage, if and when the property is disposed of.

(vi) Location, use and condition of the property.

(vii) Ultimate disposition data including sales price or the method used

to determine current fair market value if the State agency reimburses FNS for its share.

(viii) Trade-in value of any property purchased with Federal funds where their trade-in value reduces the acquisition cost of new property.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(3) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable personal property shall be investigated and properly documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be implemented to keep the property in good condition.

(e) *Expendable personal property.* (1) *Title.* Title to expendable personal property, whose acquisition cost was borne in whole or in part by FNS, shall vest in the State agency.

(2) *Use.* The State agency shall use the property in the program as long as there is a need for such property to accomplish the purpose of the program.

(3) *Disposition.* When there is no longer a need for the property in the program and there is a residual inventory exceeding \$1,000 the State agency shall:

(i) Use the property in other federally sponsored projects or programs;

(ii) Retain the property for use on nonfederally sponsored activities; or,

(iii) Sell it.

(4) *Compensation.* FNS must be compensated for its share if the alternative in paragraph (e) (3) (i) of this section is not followed. The amount of compensation shall be computed in the same manner as for nonexpendable personal property.

(f) *Patents and Inventions.* If any program activity produced patents, patent rights, processes or inventions in the course of work aided by FNS, such fact shall be promptly and fully reported to FNS. Unless there is prior agreement between the State agency and FNS on disposition of such items, FNS shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued thereon—shall be disposed of and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of

Executive Departments and Agencies, August 23, 1971), and State of Government Patent Policy as printed in Title 37 CFR, Chapters I and II.

(g) *Copyrights.* When a program activity results in a book or other copyrightable materials, the author or State agency is free to copyright the work, but FNS reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use and to authorize others to use the work for government purposes. This includes copyrights on ADP software as specified in Appendix A.

§ 277.14 Procurement standards.

(a) *General.* This section establishes standards and guidelines for the procurement of supplies, equipment, construction and other services whose cost is borne in whole or in part by FNS program funds. These standards ensure that such materials are obtained in an effective and economical manner and in compliance with the provisions of applicable Federal law and Executive Orders. No additional procurement standards will be imposed by FNS upon State agencies unless specifically required by Federal law, or Executive Orders, or authorized by the Administrator for Federal Procurement Policy, Office of Management and Budget.

(1) These standards do not relieve the State agency of any contractual responsibilities under its contracts. The State agency is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into in support of the program. These include but are not limited to sources evaluations, protests, disputes and claims. FNS shall not substitute its judgment for that of the State agency unless the matter is primarily a Federal concern. Violations of laws shall be referred to the local, State or Federal authority having jurisdiction.

(2) State agencies shall use their own procurement procedures provided that procurements paid in whole or in part with FNS program funds meet the standards set forth in this Part.

(b) *Review of Proposed Contracts.* State agencies shall submit proposed contracts and related procurement documents to FNS for preaward review and approval when:

(1) The procurement is expected to exceed \$10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation;

(2) The procurement expected to exceed \$10,000 specifies a "brand name" product; or

(3) FNS has determined that the State agency's procurement procedures or operation fails to comply with one or more significant aspects of this section.

(c) *Code of Conduct.* The State agency shall maintain a written code or standards of conduct which shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts borne in whole or in part with FNS program funds. No employee, officer, or agent of the State agency shall participate in the selection, or in the award or administration of a contract supported in whole or in part by FNS program funds if a conflict of interest, real or apparent, would be involved. Such conflict would arise when:

(1) The employee, officer, or agent;

(2) Any member of his/her immediate family;

(3) His or her partner; or

(4) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The State agency's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. State agencies may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the State agency's officers, employees, or agents, or by contractors or their agents.

(d) *Procurement Procedures.* The State agency shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by State agency officials to avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidation or dividing the purchase into smaller units, to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analyses, to determine which approach would be the most economical. To foster greater economy and efficiency, State agencies are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(e) *Contracting with Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area*

Firms. (1) It is FNS policy to award a fair share of contracts to small and minority business firms. State agencies must take affirmative steps to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. State agency affirmative steps shall include the following:

(i) Including qualified small and minority businesses on solicitation lists.

(ii) Assuring that small and minority businesses are solicited whenever they are potential sources.

(iii) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(iv) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(v) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration, as appropriate.

(vi) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in paragraphs (e)(1) (i) through (v) of this section.

(2) State agencies shall take similar appropriate affirmative action in support of women's business enterprises.

(3) State agencies are encouraged to procure goods and services from labor surplus areas, as defined by the Department of Labor.

(4) FNS shall impose no additional regulations or requirements in the foregoing areas unless specifically mandated by law or Executive order.

(f) *Selection Procedures.* All State agency procurement transactions shall be conducted in a manner that provides maximum open and free competition with this section. Procurement procedures shall not contain features which restrict or eliminate competition. The State agency shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitation of offers, whether by competitive sealed bid or competitive negotiation, shall contain a clear and accurate description of the technical requirements for the material, product, or service desired. Descriptions shall not, in competitive procurements, contain features which unduly restrict competition. Descriptions may include a statement of the qualitative nature of the material, product or service desired and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform

if it is to satisfy its intended use. When it is impractical or uneconomical to describe clearly and accurately the technical requirements, a "brand name or equal" description may be used to define the performance or requirements of the material, product or service desired. The specific features of the named brand which must be met by offerors shall be clearly stated. State agencies shall clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) State agencies shall make awards only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(g) *Procurement Methods.* State agency procurements made in whole or in part with program funds shall be by one of the following methods:

(1) *Small Purchase Procedures* are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies, or other property, costing in the aggregate not more than \$10,000. State agencies shall comply with State or local small purchase dollar limits under \$10,000. If small purchase procedures are used for a procurement under the program, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) In *competitive sealed bids* (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(i) In order for the State agency to use this method of procurement the following conditions, as a minimum, must prevail:

(A) A complete, adequate, and realistic specification or purchase description is available.

(B) Two or more responsible suppliers are willing and able to compete effectively for the State agency's business.

(C) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(ii) If formal advertising is used for a procurement under a grant, the following requirements shall apply:

(A) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(B) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(C) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(D) A firm-fixed-price contract award shall be made by written notice by the State agency to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest.

Payment discounts may only be used to determine low bid when prior experience of the State agency indicates that such discounts are generally taken.

(E) Any or all bids may be rejected by the State agency when there are sound documented business reasons in the best interest of the program.

(3) In *competitive negotiation*, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are appropriate for the use of formal advertising. If competitive negotiation is used for procurement under a grant, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(iii) The State agency shall provide procedures for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the State agency, price and other factors

considered. Unsuccessful offerors should be notified promptly.

(v) State agencies may utilize competitive negotiation procedures for procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation.

(4) *Noncompetitive negotiation* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Awards of contracts by noncompetitive negotiation are limited to the following:

(i) The item is available only from a single source;

(ii) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive procurement;

(iii) FNS authorizes noncompetitive procurement; or

(iv) After solicitation of a number of sources, competition is determined inadequate.

(h) *Contract Pricing.* The cost plus a percentage of cost and percentage of construction cost method(s) of contracting may not be used by a State agency. State agencies shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts, paid in whole or in part by FNS program funds, shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

(i) *State Agency Procurement Records.* State agencies shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to, information pertinent to the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the cost or price.

(j) *Contract provisions.* In addition to provisions defining a sound and complete procurement contract, State agencies shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by this provision, Federal law, or FNS:

(1) Contracts other than small purchases shall contain provisions or

conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts in excess of \$10,000 shall contain suitable provisions for termination by the State agency including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded in excess of \$10,000 by State agencies and their contractors or subagencies shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (29 CFR Part 60).

(4) All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subagency shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The State agency shall report all suspected or reported violations to FNS.

(5) Where applicable, all contracts awarded by State agencies and subagencies in excess of \$2,000 for construction contracts in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible provided that the work is compensated at a rate of not less than 1½ times the basic rate for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working

conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(6) The contract shall include notice of FNS requirements and regulations pertaining to reporting and print rights under any contract involving research, developmental, experimental, or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of FNS requirements and regulations pertaining to copyrights and rights to data so derived.

(7) All negotiated contracts (except those awarded by small purchases procedures) awarded by State agencies shall include a provision to the effect that the State agency, FNS, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. State agencies shall require contracts to maintain all required records for three years after the State agency makes final payments or all other pending matters are closed, whichever is last.

(8) Contracts, subcontracts, and subgrants of amounts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency (EPA) regulations, which prohibit the use under nonexempt Federal contract, grants, or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the FNS and to the USEPA Assistant Administrator for Enforcement.

(9) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-165).

(k) *Contract Administration.* State agencies shall maintain a contract administration system insuring that contractors perform in accordance with

the terms, conditions, and specifications of their contracts or purchase orders.

§ 277.15 Food stamp investigations and prosecutions.

(a) *General.* This section establishes the standards and procedures for Federal funding of State and local costs of Food Stamp Program Fraud investigations, prosecutions and fraud hearings.

(b) *Funding.* Upon submission to and approval by FNS of a budget revision and the information required by paragraph (c) of this section, State agencies will be funded at 75 percent of all allowable direct and indirect costs in accordance with the requirements contained in this section. This higher rate may apply retroactively beginning October 1, 1978 and carry forward to the current period. In no case will 75 percent funding apply prior to October 1, 1978. In cases where an agency other than the State welfare agency is or will be involved, an information statement shall be submitted by each State agency to include this operation.

(c) *State Agency Descriptions.* Concurrent with the budget revision required in paragraph (d) of this section, the State agency shall submit the following information:

(1) Identification of the organizational units, with a brief description of the fraud hearing, investigation or prosecution function assigned, that is claimed at the 75 percent rate;

(2) A copy of the statutes or court decisions under which food stamp fraud cases are prosecuted;

(3) A detailed description of the coordination between the investigative units and the prosecuting units, and the process by which prosecuting officials present indictments regarding food stamp fraud cases;

(4) Agreement that investigative reports, prepared by the investigation or prosecution units, and other related records will be made available to USDA upon request; and

(5) Assurance that the fraud hearing activity claimed under this part is conducted in accordance with § 273.17.

(d) *Budget Revision.* The State agency shall prepare and submit a budget revision in compliance with §§ 272.2 and 277.3 to FNS for approval.

(e) *Eligible Activity.* The following activities performed at the State or local level shall be eligible for funding at 75 percent of the costs if they are an integral element of food stamp investigations, prosecutions, and fraud hearings.

(1) *Direct charges.* Direct charges are costs which may be directly attributable to employees assigned specifically to the

food stamp fraud investigation and prosecution functions. Such employees need not be assigned full time, but in the event they are employed less than full time, time sheets or time records must be used to document the amount of time spent on these functions.

(i) For investigation function, only employees whose State or local job title is "Investigator" or a similar descriptive title shall be eligible for the increased funding. Exceptions shall be granted based on adequate justification that the majority of the job duties are specifically related to the investigative function.

(ii) Costs related to the investigative or prosecutive function which are performed by agencies other than the State agency shall be based on a formal agreement between the State or local agency and provider agency. These interagency agreements shall meet the requirements of this Part in regard to allowable charges. Funding under these interagency agreements shall be provided by the State agency from their funds and funds made available by FNS.

(iii) Costs relating to the establishment and collection of claims, when performed by investigators or prosecutors or by any separate unit having claims establishment or collection as its primary function, shall be eligible for the increased funding.

(2) *Indirect charges.* Indirect charges are, in general, those costs which are attributable through allocation to the food stamp fraud investigation and prosecution functions.

(3) *Documentation.* The requirements of appendix A, Part 277, Section (2)(E), and (2)(F) will be followed for the classification and documentation of costs by the State or local agency.

(f) *Ineligible Activity.* The following activities, whether performed at the State or local level, shall be allowable only at the 50 percent funding level, and shall be ineligible for funding at the 75 percent level.

(1) Administrative reviews, such as fair hearings as required per 7 CFR 273 or Performance Reporting System reviews required per 7 CFR 275.

(2) Investigations of authorized retail or wholesale food concerns except when performed in coordination with USDA Office of Inspector General and FNS.

(3) Investigations or establishing claims against households by workers whose regular duties include the determination of a household's eligibility for participation in the Food Stamp Program, except as may be granted under the provisions of (e)(1)(i).

(4) Verification of eligibility information provided by the household

for the purpose of making an eligibility determination, and

(5) Audits.

§ 277.16 Suspension, disallowance and program closeout.

(a) *Suspension.* When a State agency has materially failed to comply with any of the provisions contained in the Act, regulations, or FNS-approved State Plan of Operation, FNS may, after written notification to the State agency, temporarily withhold some or all Federal reimbursements for costs of administration of the Food Stamp Program in accordance with § 276.4. Adjustments will be made either by adjusting the Letter of Credit authorization or by not allowing the State agency to withdraw funds.

(b) *Disallowance.* (1) FNS may disallow costs in accordance with Section 276 and effect nonpayment for some or all costs incurred by a State agency which are normally allowable but are determined by FNS to be nonreimbursable because the State agency has failed to comply with any of the provisions contained in the Act, regulations, or FNS-approved State Plan of Operation.

(2) FNS may also disallow costs and institute recovery of Federal funds when a State agency fails to adhere to the cost principles of this Part and Appendix "A".

(c) *Offsets to the Letter of Credit.* (1) FNS may recover funds when owed by the State agency to FNS through offsets to the Letter of Credit. Offsets shall include:

(i) Costs determined by FNS to be disallowed under the provisions of this Part;

(ii) Unallowable costs resulting from audit or investigation findings; or

(iii) Amounts owed which have been billed to the State agency and which the State agency has failed to pay without cause acceptable to FNS.

(2) The amounts recovered through the offset procedure should be in one lump sum. If recovery of funds through the offset procedure is not possible in one lump sum, FNS shall make appropriate adjustments to recover the funds in not more than three fiscal years.

(d) *Program Transfer or Termination.* (1) When termination or transfer of a State program has been agreed upon by FNS, the following closeout procedure shall be observed:

(i) Upon request, FNS shall make or arrange for prompt payment to the State agency for allowable costs not covered by previous payments.

(ii) The State agency shall immediately refund to FNS any

unobligated balance of cash withdrawn by the State agency for the administration of the program in the affected State or Indian reservation.

(iii) The State agency shall submit to FNS within 90 days after the date of termination of the program, all required financial, performance, and other reports. FNS may grant extensions when requested by the State agency.

(iv) FNS shall adjust the amount authorized by the Letter of Credit in order to effect payment of any amounts due the State agency, and if appropriate, shall bill the State agency for any amounts due to FNS. The amounts of such billings shall be promptly remitted to FNS.

(v) In the event a final audit has not been performed prior to the closeout of the program, FNS shall retain the right to disallow costs or recover funds resulting from the final audit findings.

(2) Provisions of § 277.13 apply for any property acquired with program funds or received from the Federal Government in connection with the program and which was in use in the affected project area or areas.

§ 277.17 Audit requirements.

(a) *General.* This section sets forth the audit requirements for State agencies that receive FNS program funds. Audits shall be conducted on an organization-wide basis. Such audits are to determine whether:

(1) Financial operations are conducted properly;

(2) The financial statements are presented fairly;

(3) The organization has complied with laws and regulations affecting the expenditure of Federal funds;

(4) Internal procedures have been established to meet the objectives of Federally assisted programs; and

(5) Financial reports to the Federal Government contain accurate and reliable information.

Except where required by law, no additional requirements for audit will be imposed by FNS unless approved by the Office of Management and Budget (OMB). The provisions of this section do not limit the authority of FNS to make audits of State agencies, their subdivisions, and subcontracts. However, if independent audits arranged for by State agencies meet the requirements prescribed herein, FNS shall rely on them, and any additional audit work already done.

(b) *Audit Standards.* (1) State agencies shall use their own procedures to arrange for independent audits, and to prescribe the scope of audits, provided that the audits comply with the requirements set forth in this section.

Where contracts are awarded for audit services, the contracts shall include a reference to OMB Circular A-102, Attachment P.

(2) Audits shall be made in accordance with the General Accounting Office "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Program," and any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(c) *Purpose of Audit.* Audits will include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of State agencies. These examinations are to determine whether:

(1) There is effective control over and proper accounting for revenues expenditures, assets, and liabilities.

(2) The financial statements are presented fairly in accordance with generally accepted accounting principles.

(3) The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data; and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of OMB Circular A-102.

(4) Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

(d) *Audit Coverage.* A representative number of charges to Federal funds shall be tested. The test shall be representative of:

(1) The universe of Federal funds received, and

(2) All cost categories that materially affect the award. The test is to determine whether the charges:

(i) Are necessary and reasonable for the proper administration of the program;

(ii) Conform to any limitations or exclusions in the award;

(iii) Were given consistent accounting treatments and applied uniformly to both Federally assisted and other activities of the State agency;

(iv) Were net of applicable credits;

(v) Did not include costs properly chargeable to other Federally assisted programs;

(vi) Were properly recorded (i.e., correct amount, date) and supported by source documentation;

(vii) Were approved in advance, if subject to prior approval in accordance with Financial Management Circular 74-4;

(viii) Were incurred in accordance with competitive purchasing procedures, if covered by OMB Circular A-102, Attachment O; and

(ix) Were allocated equitably to benefiting activities, including non-Federal activities.

(3) Audits usually will be made annually, but not less frequently than every two years.

(4) If the auditors become aware of irregularities in the State agency, subagency or subcontractor, the auditor shall promptly notify the cognizant agency and State agency management officials above the level of involvement. Irregularities include such matters as conflict of interest, falsification of records or reports, and misappropriation of funds and other assets.

(e) *Audit Report.* The audit report shall include:

(1) Financial statements, including footnotes, of the State agency, subagency, or subcontractor organization.

(2) The auditor's comments on the financial statements which should:

(i) Identify the statements examined and the period covered.

(ii) Identify the various programs under which the organization received Federal funds, and the amounts received for each program.

(iii) State that the audit was done in accordance with paragraph (d) above.

(iv) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

(3) The auditor's comments on compliance and internal control which should:

(i) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses.

(ii) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulation that could have a material effect on the financial statements and reports.

(iii) Contain an expression of positive assurance with respect to compliance

with requirements for tested items, and negative assurance for untested items.

(4) Comments on the accuracy and completeness of financial reports and claims for advances or reimbursements to Federal agencies.

(5) Comments on corrective action taken or planned by the State agency.

(f) *Record Retention.* Work paper and reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the cognizant agency of the need to extend the retention period. The audit workpapers shall be made available upon request to the cognizant agency or its designees and the General Accounting Office or its designees.

(g) *Cognizant Agency Responsibilities.* The cognizant agency shall have the following responsibilities:

(1) Obtain or make quality assessment reviews of the work of non-Federal audit organizations, and provide the results to other interested audit agencies. If a non-Federal audit organization is responsible for audits of State agencies that have different cognizant audit agencies, a single quality assessment review will be arranged.

(2) Assure that all audit reports of State agencies that affect Federally assisted programs are received, reviewed, and distributed to appropriate Federal audit officials. These officials will be responsible for distributing audit reports to their program officials.

(3) Whenever significant inadequacies in an audit are disclosed, the State agency will be advised and the auditor will be called upon to take corrective action. If corrective action is not taken, the cognizant agency shall notify the State agency and Federal awarding agencies of the facts and its recommendation. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies.

(4) Assure that satisfactory audit coverage is provided in a timely manner and in accordance with the provisions of this section.

(5) Provide technical advice and act as a liaison between Federal agencies, independent auditors and State agencies.

(6) Maintain a followup system on audit findings and investigative matters to assure that audit findings are resolved.

(7) Inform other affected audit agencies of irregularities uncovered. The audit agencies, in turn, shall inform all appropriate officials in their agencies. State or local government law enforcement and prosecuting authorities

shall also be informed of irregularities within their jurisdiction.

(8) Recipients shall require subrecipients that are local governments of Indian tribal governments to adopt the requirements in paragraph (d) through (f). The recipient shall ensure that the subrecipient audit reports are received as required, and shall submit the reports to the cognizant agency. The cognizant agency will have the responsibility for those reports described in paragraph (g).

Appendix A—Principles for Determining Costs Applicable to Administration of the Food Stamp Program by State Agencies

This appendix sets forth the procedures implementing uniform requirements for the negotiations and approval of cost allocation plans with State agencies, in accordance with the provisions of Federal Management Circular (FMC) 74-4 and OASC-10, "Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government," U.S. Department of Health, Education, and Welfare. This material is adapted substantially from the circular; changes have been made only when necessary in order to conform with legislative constraints.

A. Purpose and scope.

(1) Objectives. This Appendix sets forth principles for determining the allowable costs of administering the Food Stamp Program by State agency under FNS approved State Plans of Operation. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of the Program. They are designed to provide that all federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

(2) Policy guides. The application of these principles is based on the fundamental premises that:

(a) State agencies are responsible for the efficient and effective administration of the Food Stamp Program through the application of sound management practice.

(b) The State agency assumes the responsibility for seeing that Food Stamp Program funds have been expended and accounted for consistent with underlying agreements and program objectives.

(c) Each State agency, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques as may be necessary to assure proper and efficient administration.

(3) Application. These principles will be applied by FNS in determining costs incurred by State agencies receiving FNS payments for administering the Food Stamp Program.

(B) Definitions. Approval or authorization by FNS means documentation evidencing consent prior to incurring specific costs.

Cognizant Federal Agency means the Federal agency recognized by OMB as having the predominate interest in terms of program dollars.

Cost allocation plan means the documentation identifying, accumulating, and distributing allowable costs of program administration together with the allocation methods used.

Cost, as used herein, means cost as determined on a cash, accrual, or other basis acceptable to FNS as a discharge of the State agency's accountability for FNS funds.

Cost center means a pool, summary account, objective or area established for the accumulation of costs. Such areas include objective organizational units, functions, objects or items of expense, as well as ultimate cost objective(s) including specific costs, products, projects, contracts, programs and other operations.

Federal agency means FNS and also any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to or contracts with State or local governments.

Payments for administrative costs means reimbursement or advances for costs to State agencies pursuant to any agreement whereby FNS provides funds to carry out programs, services, or activities in connection with administration of the Food Stamp Program. The principles and policies stated in this Appendix as applicable to program payments in general also apply to any State agency obligations under a cost reimbursement type of agreement performed by a subagency, including contracts and subcontracts.

Food Stamp Program administration means those activities and operations of the State agency which are necessary to carry out the purposes of the Food Stamp Act, including any portion of the Program financed by the State agency.

Local unit means any political subdivision of government below the State level.

Other agencies of the State means departments or agencies of the State or local unit which provide goods, facilities, and services to a State agency.

Subagencies means the organization or person to which a State agency makes any payment for acquisition of goods, materials or services for use in administering the Food Stamp Program and which is accountable to the State agency for the use of the funds provided.

Service, as used herein, means goods and facilities, as well as services.

Supporting services means auxiliary functions necessary to sustain the direct effort of administering the Program. These services may be centralized in the State agency or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

(C) Basic guidelines.

(1) Factors affecting allowability of costs. To be allowable under the Program, costs must meet the following general criteria:

(a) Be necessary and reasonable for proper and efficient administration of the Program, be allocable thereto under these principles, and, except as specifically provided herein,

not be a general expense required to carry out the overall responsibilities of State or local governments.

(b) Be authorized or not prohibited under State or local laws or regulations.

(c) Conform to any limitations or exclusions set forth in these principles, Federal Laws, or other governing limitations as to types or amounts of cost items.

(d) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the State agency is a part.

(e) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(f) Not be allocable to or included as a cost to any other federally financed program in either the current or a prior period.

(g) Be the net of all applicable credits.

(2) Allocable costs.

(a) A cost allocable to a particular cost objective to the extent of benefits received by such objective.

(b) Any cost allocable to a particular program or cost objective under these principles may not be shifted to other Federal programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreement, or for other reasons.

(c) Where an allocation of joint cost will ultimately result in charges to the Program, an allocation plan will be required as prescribed in Section 1 of these principles.

(3) Applicable credits.

(a) Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to programs as direct or indirect costs. Examples of such transactions are: Purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

(b) Applicable credits may also arise when Federal funds are received or are available from sources other than FNS to finance operations or capital items donated or financed by the Federal Government to fulfill matching requirements under another program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given program.

(D) Composition of cost.

(1) Total cost. The total cost of a program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credit.

(2) Classification costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to a program or other ultimate cost objective. However, it is essential that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under the Program are provided in the section which follows.

(E) Direct costs.

(1) General. Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to the Program, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in the course to programs and other ultimate cost objectives.

(2) Application. Typical direct costs chargeable to the Program are:

(a) Compensation of employees for the time and effort devoted specifically to the administration of the Program.

(b) Cost of materials acquired, consumed, or expended specifically for the purpose of the Program.

(c) Equipment and other approved capital expenditures.

(d) Other items of expense incurred specifically for efficiently and effectively administering the Program.

(e) Service furnished specifically for the Program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

(F) Indirect costs.

(1) General. Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the result achieved. The term indirect cost as used herein applies to costs of this type originating in the State agency, as well as those incurred by other departments in supplying goods, services, and facilities, to the State agency. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a State agency or in other agencies providing services to a State agency. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

(2) State agency indirect costs. All State agency indirect costs, including the various levels of supervision, are eligible for allocation to the program provided they meet the conditions set forth in their principles. In lieu of determining the actual amount of State agency indirect cost allocable to the program the following methods may be used:

(a) Predetermined fixed rates for indirect costs. A predetermined fixed rate for computing indirect costs applicable to program administration may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties to reach an informed judgment (1) as to the probable level of indirect costs in the State agency during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect costs.

(b) Negotiated lump sum for overhead. A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a State agency's indirect services cannot be readily determined as in the case of a small self-contained or isolated activity.

When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the State agency before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

(3) Limitation on indirect costs.

(a) Some Federal programs may be subject to laws that limit the amount of indirect cost that may be allowed. Agencies that sponsor programs of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such program does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under these principles, whichever is the smaller.

(b) When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under a program may not be shifted to another federally sponsored program or contract.

(G) Cost incurred by other agencies of the State.

(1) General. The cost of service provided by other agencies may only include allowable direct costs of the service plus a pro rata share of allowable supporting costs and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

(2) Alternative methods of determining indirect cost. In lieu of determining actual indirect cost related to a particular service furnished by other agencies of the State, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

(a) Standard indirect rate. An amount equal to ten percent of direct labor cost in providing the service performed by other agencies of the State (excluding overtime, shift, or holiday premiums, and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

(b) Predetermined fixed rate. A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in section F(2)(a) of these principles.

(H) Cost incurred by State agency for others. The principles provided in section G will also be used in determining the cost of services provided by the State agency to another agency.

(I) Cost Allocation Plan

(1) A cost allocation will be required to support the distribution of any indirect costs. All costs allocable to the Food Stamp Program under cost allocation plans will be supported by formal accounting records

which will substantiate the propriety of eventual charges.

(2) There are two types of cost allocation plans:

(a) Statewide or central service cost allocation plan identifies and distributes the cost of services provided by support organizations to those departments or units participating in Federal programs.

(b) Indirect cost proposals distribute the administrative or joint costs incurred by the State agency and the cost of service allocable to it under the Statewide or central service cost allocation plan in a ratio to all work performed by the State agency. The process involves applying a percentage relationship of indirect cost to direct cost.

(3) Requirements. The cost allocation plan of the State agency shall cover all allocated costs of the department as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the State agency, to the extent feasible, should be presented in a single document.

(4) Instructions for preparation of cost allocation plans. The Department of Health and Human Services, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State agencies in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government level and indirect cost proposals of individual State agencies.

(5) Submitting Plans for Approval

(a) Responsibility for approving cost allocation plans for individual State agencies has been assigned by the Office of Management and Budget to the cognizant Federal agency.

(b) State cost allocation plans must be submitted to the cognizant Federal agency within six months after the last day of the State's fiscal year. Upon request by the State agency, an extension of time for submittal of the cost allocation plan may be granted by the cognizant Federal agency. It is essential that cost allocation plans be submitted in a timely manner. Failure to submit the plans when required will cause the State agency to become delinquent. In the event a State becomes delinquent, FNS will not provide for the recovery of central service and indirect costs, and such costs already made and claimed against Food Stamp Program funds will be subject to disallowance.

(6) Negotiation and Approval of Cost Allocation Plans for States. The cognizant Federal agency, in collaboration with Federal agencies concerned, will be responsible for negotiation, approval, and audit of cost allocation plans.

(7) Negotiation and Approval of Cost Allocation Plans for Local Governments. Cost allocation plans will be retained at the local government level for audit by the cognizant Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

(8) A current list of cognizant Federal agencies is maintained by the Office of Management and Budget.

(9) Resolution of problems. The Office of Management and Budget will lend assistance in resolving problems encountered by Federal agencies on cost allocation plans.

(10) Approval by FNS. FNS reserves the right to disapprove costs not meeting the general criteria outlined in Section C of these principles. FNS shall promptly notify the State agency in writing of the disapproval, the reason for the disapproval and the effective date. Costs incurred by State agencies after disapproval may not be charged to FNS unless if FNS subsequently approves the cost.

Standards for Selected Items of Cost

A. *Allowable Cost.* Standards for allowability of costs are established by Federal Management Circular 74-4. These standards will apply regardless of whether a particular item of cost is treated as direct or indirect. Failure to mention a particular item of cost in these standards is not intended to imply that it is either allowable or unallowable. Rather, determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles as stated in Attachment A to Federal Management Circular 74-4.

(1) *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of the Food Stamp Program is allowable. This includes costs incurred by central service agencies of the State government for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

(2) *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

(a) Recruitment of personnel required for the Program;

(b) Solicitation of bids for the procurement of goods and services required;

(c) Disposal of scrap or surplus materials acquired in the performance of the agreement; and

(d) Other purposes specifically provided for by FNS regulations or approved by FNS in the administration of the Food Stamp Program.

(3) *Advisory Councils.* Costs incurred by State advisory councils or committees established to carry out Food Stamp Program goals are allowable. The cost of like organizations is allowable when used to improve the efficiency and effectiveness of the Program.

(4) *Audit Service.* The cost of audits necessary for the administration and management of functions related to the Program is allowable.

(5) *Bonding.* Costs of premiums on bonds covering employees who handle Food Stamp Program funds or food coupons are allowable. The amount of allowable coverage

shall be limited to the anticipated maximum amount of food stamp funds or food coupons handled at one time by that employee.

(6) *Budgeting.* Costs incurred for the development, preparation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the State agency's budget process, the cost of services identifiable to the Food Stamp Program are allowable.

(7) *Building Lease Management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

(8) *Central Stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for the Food Stamp Program is allowable.

(9) *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

(10) *Compensation For Personal Services.*

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance in the administration of the program including but not necessarily limited to wages, salaries, and supplementary compensation and benefits as defined in Section A (13) of these principles. The costs of such compensation are allowable to the extent that total compensation for individual employees: is reasonable for the services rendered; follows an appointment made in accordance with State or local government laws and rules and which meets Federal Merit System or other requirements, where applicable; and is determined and supported as provided in Section A of these principles. Compensation for employees engaged in federally-assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the Food Stamp Program activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

(b) *Payroll and distribution of time.* Amounts charged to the program for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with the generally accepted practice of the State or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Distribution of salaries and wages of employees chargeable to more than one

program or other cost objective will be supported by appropriate time reports or approved time study methodologies. The method used should be included in the cost allocation plan and should be approved by FNS.

(11) *Depreciation and Use Allowance.*

(a) State agencies may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

(b) The computation of depreciation or use allowances will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost of any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of acquisition of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by FNS.

(c) Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

(d) In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment.

(e) No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

(12) *Disbursing Service.* The cost of disbursing program funds by the State Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

(13) *Employee Fringe Benefits.* Costs identified are allowable to the extent that

total compensation for employees is reasonable as defined in paragraph (10)(a) of these principles.

(a) Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are provided pursuant to an approved leave system, and the cost thereof is equitably allocated to all related activities, including federally-assisted programs.

(b) Employee benefits in the form of employers' contributions or expense for social security, employees' life and health insurance plans, unemployment insurance coverage, workers' compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to programs and to other activities.

(14) *Employee Morale, Health And Welfare Costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State or local policy, are allowable. Income generated from any of these activities will be offset against expenses.

(15) *Exhibits.* Costs of exhibits relating specifically to the Food Stamp Program are allowable.

(16) *Legal Expenses.* The cost of legal expenses required in the administration of the program is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are allowable. Legal expenses for the prosecution of claims against the Federal Government is allowable.

(17) *Maintenance and Repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

(18) *Materials and Supplies.* The cost of materials and supplies necessary to carry out the program is allowable. Purchases made specifically for the program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the State agency. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

(19) *Memberships, Subscriptions and Professional Activities.*

(a) The cost of membership in civic, business, technical, and professional organizations is allowable, provided:

(i) The benefit from the membership is related to the program,

(ii) The expenditure is for agency membership,

(iii) The cost of the membership is reasonably related to the value of the services or benefits received, and

(iv) The expenditure is not for membership in an organization which devotes a

substantial part of its activities to influencing legislation.

(b) *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the program.

(c) *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the program and they are consistent with regular practices followed for other activities of the State agency.

(20) *Motor pools.* The costs of a service organization which provides automobiles to user State agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

(21) *Payroll preparation.* The cost of preparing payrolls and maintaining necessary wage records is allowable.

(22) *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for the program are allowable.

(23) *Printing and reproduction.* Cost for printing and reproduction services necessary for program administration including but not limited to forms, reports, manuals, and information literature, is allowable. Publication costs of reports or other media relating to program accomplishments or results are allowable.

(24) *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for the program is allowable.

(25) *Taxes.* In general, taxes or payments in lieu of taxes which the State agency is legally required to pay are allowable.

(26) *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits the program is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by FNS.

(27) *Transportation.* Costs incurred for freight, cartage, express, postage, and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

(28) *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to the program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two. The charges must be consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is allowable except when less-than-first-class air accommodations are not reasonably available. Notwithstanding the provisions of paragraphs C (7) and (10), travel costs of officials covered by those paragraphs, when specifically related to grant programs, are allowable with the prior approval of a grantor agency.

B. *Costs allowable with approval of FNS*

(1) *General-Acquisition requirement.* A State shall obtain prior written approval from FNS when it plans to acquire ADP equipment or services that it anticipates will have total acquisition costs of \$100,000 or more in Federal and State funds over a 12-month period, or \$200,000 or more in Federal or State funds for the total acquisition. A State shall also obtain prior written approval from FNS when it plans to acquire noncompetitively from a commercial source ADP equipment or services that cost more than \$25,000 in Federal and State funds. A State shall notify FNS when it plans to acquire ADP equipment or services that will cost \$25,000 to \$100,000 over a 12-month period in Federal and State funds. The State shall send the prior notice of acquisition to FNS 60 days before the planned acquisition.

(2) *Definitions.*

(a) "Acceptance documents" means written evidence of satisfactory completion of an approved phase of work or contract, and acceptance thereof by the State agency.

(b) "Advance Planning Document" or "APD" means a written plan of action to acquire the proposed ADP services, system, or equipment. The APD must contain a statement of needs and objectives:

- (i) The feasibility study;
- (ii) A preliminary cost/benefit analysis including lease/purchase options;
- (iii) A personnel resource statement indicating availability of qualified and adequate staff including a project director to accomplish the project objectives;
- (iv) A detailed description of the nature and scope of the activities to be undertaken and the methods to be used;
- (v) A proposed schedule;
- (vi) A proposed budget; and
- (vii) A statement indicating the period of time for which the services, system, or equipment described are expected to be used; for integrated computer systems, a statement of the percentage allocated to FNS and a breakdown or explanation of how the percentage was determined.

(c) "Automatic Data Processing" or "ADP" means data processing performed by a system of electronic or electrical machines so interconnected and interacting as to minimize the need for human assistance or intervention.

(d) "Automatic Data Processing equipment" or "ADP equipment" means:

- (i) Electronic digital computers, regardless of size, capacity, or price, that accept data input, store data, perform calculations, and other processing steps, and prepare information;
 - (ii) All peripheral or auxiliary equipment used in support of electronic computers whether selected and acquired with the computer or separately;
 - (iii) Data transmission or communications equipment that is selected and acquired solely or primarily for use with a configuration of ADP equipment which includes an electronic computer; and
 - (iv) "Data input equipment" means equipment used to enter data directly or indirectly into an electronic digital computer; peripheral or auxiliary equipment; or data transmission or communication equipment.
- (e) "Automatic Data Processing services" or "ADP services" means:

(i) Services to operate ADP equipment, either by private sources, or by employees of the State agency, or by State or local organizations other than the State agency; and/or

(ii) Services provided by private sources or by employees of the State agency or by State and local organizations other than the State agency to perform such tasks as feasibility studies, system studies, system design efforts, development of system specifications, system analysis, programming and system implementation.

(f) "Data processing" means the preparation of source media containing data or basic elements of information and the use of such source media according to precise rules of procedures to accomplish such operations as classifying, sorting, calculating, summarizing, recording and transmitting.

(g) "Feasibility study" means a preliminary study to determine whether it is sufficiently probable that effective and efficient use of ADP equipment or systems can be made to warrant the substantial investment of staff, time, and money. The study shall project for a three year period the requirements for ADP equipment, services, and systems.

(h) "Request for proposal" or "RFP" means the document used for public solicitations of competitive proposals from qualified sources as outlined in 7 CFR 277.14.

(i) "Service agreement" means a document signed by the State or local agency and a second State or local organization providing ADP services to the State or local agency which: (i) Identifies those ADP services to be provided by the provider agency;

(ii) Includes, preferably as an amendable attachment, a schedule of changes for each identified ADP service, and a certification that these charges apply equally to all users;

(iii) Includes a description of the method(s) of accounting for the services rendered under the agreement and computing services charges;

(iv) Includes assurances that services provided shall be timely and satisfactory; and

(v) Requires the provider agency to obtain prior State agency approval and to follow competitive procurement procedures equivalent to those contained in 7 CFR 277.14 for the acquisition of any ADP services in support of or in addition to the service agreement.

(j) "Software" means a set of computer programs, procedures, and associated documentation by which ADP equipment is used and operated.

(k) "System design" means the putting together of a new or more efficient ADP system which avoids the deficiencies and discrepancies in the old system.

(l) "System specifications" means information about the new ADP system—such as workload descriptions, input data, information to be maintained and processed, data processing techniques, and output data which is required to determine the ADP equipment and software necessary to implement the system design.

(m) "System study" means the examination of existing information flow and operational procedures within an organization to determine how to provide more timely, accurate, and meaningful information for

management decision-making and to develop new or improved ADP systems to service, control and coordinate the activities of the organization to improve operational efficiency. The study essentially consists of three basic phases: data gathering or investigation of the present system and new information requirements; analysis of the data gathered in the investigation; and synthesis, or refitting, of the parts and relationships uncovered through the analysis into an efficient system.

(3) *Obtaining approval.* Prior approval by FNS is required for costs of ADP equipment or ADP services in support of the Food Stamp Program which exceed \$100,000 in combined Federal and State funds per project. Requests for Approvals must be forwarded through the State agency prior to submittal to FNS. Approval by FNS will be based on a review of the studies conducted by or for the agency that will justify the acquisition of the proposed ADP equipment or ADP services. Written approval or the Advance Planning Document must be obtained from FNS by the State agency prior to entering into contractual agreements or making any other commitment for acquisition of ADP equipment or ADP services.

(4) *Approval by the State agency.* Approval by the State agency is required for all documents specified in this regulation prior to submittal for FNS approval. In addition, State agency approval is also required for those acquisitions of ADP equipment and ADP services not requiring prior approval by FNS.

(5) *Competitive procurement.* Acquisition of ADP equipment and purchase of ADP services shall be based on competitive procurement procedures specified in 7 CFR 277.14 when Food Stamp Program funds are involved. State agency officials responsible for such procurement will ensure that formal advertising is the method of procurement unless the conditions for negotiation in 7 CFR 277.14 are met. Notwithstanding the existence of circumstances justifying negotiation, competitive procurement shall be obtained to the maximum extent practicable. The competitive procurement policy shall be applicable except for ADP services provided by the agency itself, or by other State or local agencies.

(6) *Submittal of documents.*

(a) Prior to claiming funding under the Food Stamp Program the State agency will be required to submit:

- (i) The Advance Planning Document;
- (ii) The Service Agreement (when data processing services are to be provided by a State central data processing facility or by another State or local agency);
- (iii) The Request for Proposal, prior to its issuance when service or equipment proposals are being solicited from commercial sources; and

(iv) The Contract, prior to signature of the contracting officer when services or equipment are to be acquired commercially.

(b) Voluntary submittal, or when requested by FNS, will be made of:

- (i) The system study,
- (ii) The system design,
- (iii) The system specifications,
- (iv) The acceptance document.

(7) *Methods for charging costs.* Methods and procedures for properly charging the

costs of all systems whether acquired from public or private sources shall be in accordance with this regulation and applicable FNS instructions.

(8) *Access.* Access to the system by FNS in all of its aspects, including design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, shall be made available by the State at intervals as are deemed necessary by FNS to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system. Failure to provide full access by appropriate State and Federal representatives to all parts of the system shall result in termination of Food Stamp Program funds in the costs of the system and its operation.

(9) *Ownership rights.*

(a) *Software.* The State will have all ownership rights in software or modification thereof and associated documentation designed, developed or installed with Food Stamp Program funds except that FNS reserves a royalty-free, nonexclusive license to reproduce, publish, or otherwise use, and to authorize others to do so, such software, modification and documentation. Proprietary software which is provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions of this section.

(b) *Automatic data processing equipment.* The policies and procedures governing title, use and disposition of property purchased with Food Stamp Program funds, which are covered in 7 CFR 277.13 are applicable to automatic data processing equipment.

(10) *Use of ADP system.* ADP systems designed, developed or installed with Food Stamp Program funds shall be used for a period of time consistent with the Advance Planning Document as approved, or which FNS shall determine is sufficient to justify the Federal funds invested.

(11) *Basis for continued Federal Financial Participation.* Periodic onsite surveys and reviews of State and local agency ADP methods and practices may be conducted by or for FNS to determine the adequacy of such methods and practices and to assure that ADP equipment and services are utilized for the purposes for which Federal funds were authorized. Such surveys may include:

(a) *Pre-installation readiness.* A pre-installation survey including an onsite evaluation of the physical site and the State agency's readiness to use the proposed ADP services, equipment or system when installed and operational.

(b) *Post-installation.* A review conducted after installation of ADP equipment or systems to assure that the objectives for which Federal Financial Participation was approved is being accomplished.

(c) *Utilization.* A continuing review of ADP facilities to determine whether or not the ADP equipment or services are being efficiently and effectively utilized in support

of the Food Stamp Program. Should FNS determine from such surveys or reviews or otherwise that the State agency has improperly used Food Stamp Program funds, funding may be invoked. Such termination would be limited to the costs of the data processing services or equipment in question as specified in the written notification of termination by FNS.

(12) *Application of this Section.* The conditions of this section apply for initial and continuing authority to claim Food Stamp Program funding for automatic data processing services and equipment. Due to the nature of the procurement of ADP equipment and services, approved cost allocation plans will not be valid unless documentation required under B(1) of this Section is submitted and approvals are obtained.

(13) *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the Program is allowable subject to the following conditions.

(a) The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality.

(b) The cost of space may not be charged to FNS for periods of nonoccupancy, without authorization of FNS.

(i) *Rental Cost.* The rental cost of space in a privately-owned building is allowable.

(ii) *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

(iii) *Rearrangements and alterations.* Costs incurred for rearrangement and alteration of facilities required specifically for the program or those that materially increase the value or useful life of the facilities (Section B(3) of these principles) are allowable when specifically approved by FNS.

(iv) *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in paragraph A(11) of these principles.

(v) *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by FNS.

(14) *Capital expenditures.* The cost, net of any credits, of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets, and/or of nonexpendable personal property, having a useful life of more than one year and a net acquisition cost of more than \$5,000 per unit after allocation to FNS as projected for one year after purchase, is allowable when such procurement is specifically approved by FNS. No such approval shall be granted unless the State

agency shall demonstrate to FNS that such a cost is:

(a) Necessary and reasonable for proper and efficient administration of the program, and allocable thereto under the principles provided herein; and

(b) That procurement of such item or items has been or will be made in accordance with the standards set out in 277.14. In no case shall such a cost become a program charge against FNS prior to approval in writing by FNS of the procurement and the cost. When assets acquired with Food Stamp funds are (i) sold, (ii) no longer available for use in a Federally-sponsored program, or (iii) used for purposes not authorized by FNS, FNS's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

(15) *Insurance.*

(a) Cost of insurance to secure the State agency against financial losses involved in the acceptance, storage, and issuance of food coupons and ATP cards is allowable with FNS approval.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(i) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(ii) Costs of insurance or contributions to any reserve covering the risk of loss of, or damage to, Federal government property are unallowable except to the extent that FNS approves such cost.

(16) *Management Studies.* The cost of management studies to improve the effectiveness and efficiency of program management for the Food Stamp Program is allowable. However, FNS must approve cost in excess of \$2,500 for studies performed by outside consultants or agencies other than the State agency.

(17) *Preagreement costs.* Costs incurred prior to the effective date of approval of the amended indirect cost proposal or the revised Statewide cost allocation plan, whether or not they would have been allowable thereunder if incurred after such date, are allowable only when subsequently provided for in the plan or approved indirect cost proposal.

(18) *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the State agency is allowable. Prior authorization must be obtained from FNS for cost exceeding a total of \$2,500.

(19) *Proposal costs.* Costs of preparing indirect cost proposals or amendments for allocating, distributing, and implementing provisions for payment of portions of the costs of administering the Food Stamp Program by the State agency are allowable.

(20) *Cost incurred by Agencies other than the State.* The cost of services provided by

other agencies (including municipal governments) may only include allowable direct costs plus a pro rata share of allowable supporting costs and supervision directly required in performing the service. Allowable supporting costs are those services which may be centralized and includes such functions as procurement, payroll, personnel services, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service and the like. Supervision costs will not include supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in the operation of the program. In lieu of determining actual indirect cost related to a particular service performed by another agency, either of the following alternative methods may be used during the fiscal year involved and is specifically provided for in the indirect cost proposal:

(a) Standard indirect rate equal to ten percent of direct labor cost in providing the service (excluding overtime, shift or holiday premiums, and fringe benefits) may be allowed in lieu of actual allowable cost.

(b) A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated.

C. Unallowable costs. The following costs shall not be allowable:

(1) Costs of determining Food Stamp eligibility incidental to the determination of AFDC eligibility are not chargeable to FNS.

(2) Bad debts. Any losses arising from uncollectable accounts or other claims, and related costs, are unallowable.

(3) Contingencies. Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

(4) Contributions and donations. Unallowable.

(5) Entertainment. Costs whose purpose is for amusement, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities are unallowable.

(6) Fines and penalties. Costs resulting from violations of or failure to comply with Federal, State and local laws and regulations are unallowable.

(7) Governor's expenses. The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable. However, for a federally-recognized Indian tribal government, only that portion of the salaries and expenses of the office of the chief executive that is a cost of general government is unallowable. The portion of salaries and expenses directly attributable to managing and operating programs is allowable.

(8) Indemnification. The cost of indemnifying the State against liabilities to third parties and other losses not compensated by insurance is unallowable.

(9) Interest and other financial costs.

Interest on borrowings, bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable.

(10) Legislative expenses. Salaries and other expenses of the State legislature or similar local governmental bodies are unallowable.

(11) Losses. Losses which could have been covered by permissible insurance are unallowable.

(12) Underrecovery of cost under agreements. Any excess of cost over Federal contribution under one agreement is unallowable under another agreement.

(13) The acquisition of land or buildings is an unallowable cost.

Note.—The reporting and recordkeeping requirement contained in this rule are being submitted for approval by the Office of Management and Budget in accordance with the Federal Reports Act of 1942. The reporting and recordkeeping requirements may be subject to revision prior to implementation if the requirements as presently formulated are not approved without change by OMB.

(91 Stat. 958 (7 U.S.C. 2011-2027))

(Catalog of Federal Domestic Assistance Program No. 10551 Food Stamp)

Dated: December 22, 1980.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 80-40407 Filed 12-29-80; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 285]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Services, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period December 28-January 3, 1981. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: December 28, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202-447-5975.

SUPPLEMENTARY INFORMATION: Findings. This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The

agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980-81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

The committee met again publicly on December 22, 1980, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is good.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Section 910.585 is added as follows:

§ 910.585 Lemon Regulation 285.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period December 28, 1980, through January 3, 1981, is established at 210,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)