

cooperative agreement with such agencies to offer nutrition education relevant to the use and nutritional value of foods available to SFMNP participants. In cases where SFMNP participants are receiving relevant nutrition education from an agency other than the administering State agency, the provision of nutrition education is an allowable administrative cost under the SFMNP.

Subpart E—State Agency Provisions

§ 249.10 Coupon, market, and CSA program management.

(a) *General.* This section sets forth State agency responsibilities regarding the authorization of farmers, farmers' markets, roadside stands, and/or CSA programs. The State agency is responsible for the fiscal management of and accountability for SFMNP-related activities for farmers, farmers' markets, roadside stands, and CSA programs. Each State agency may decide whether to authorize individual farmers and farmers' markets separately, or to authorize only farmers' markets. In addition, each State agency may decide whether to authorize roadside stands and/or CSA programs. The State agency may authorize a farmer for participation in a farmers' market, a roadside stand, and/or CSA program simultaneously. All contracts or agreements entered into by the State agency for the management or operation of farmers, farmers' markets, roadside stands, and/or CSA programs shall conform to the requirements of 2 CFR part 200 and USDA implementing regulations 2 CFR part 400 and part 415.

(1) Only farmers, farmers' markets, and/or roadside stands authorized by the State agency may redeem SFMNP coupons. Only farmers authorized by the State agency, or having a valid agreement with an authorized farmers' market, may redeem coupons. Only CSA programs authorized by the State agency may receive payment from the State agency at the beginning of the planting season, in order to provide eligible foods to senior participants who are shareholders.

(2) The State agency must establish criteria for the authorization of indi-

vidual farmers and/or farmers' markets, roadside stands, and/or CSA programs. Any authorized farmer, farmers' market, roadside stand and/or CSA program must agree to sell participants only those foods identified as eligible by the State agency. State agencies may determine farmers, farmers' markets and/or roadside stands as automatically authorized to participate in the SFMNP based on current authorization to operate in the FMNP under part 248 of this chapter. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the SFMNP, except individuals employed by a farmer otherwise qualified under these regulations, or individuals hired by a non-profit organization to sell produce at roadside stands on behalf of local farmers.

(3) The State agency must ensure that an appropriate number of farmers, farmers' markets, roadside stands, and/or CSA programs are authorized for adequate participant access in the area(s) proposed to be served and for effective management of the farmers, farmers' markets, roadside stands, and/or CSA programs by the State agency.

(4) The State agency may establish criteria to limit the number of authorized farmers, farmers' markets, and/or roadside stands.

(5) The State agency must limit the value of shares awarded to CSA programs to no more than 50 percent of their total Federal SFMNP food grant, except in the case of a State agency that has grandfathered a CSA program model into the permanent SFMNP that uses more than 50 percent of the total Federal SFMNP food grant for the CSA program. The State agency shall make efforts to select the CSA program(s) that provides the greatest variety of eligible foods.

(6) The State agency may purchase bulk quantities of eligible foods directly from authorized farmers. Such foods must then be equitably divided among and distributed directly to eligible SFMNP participants. SFMNP participants who have received checks or coupons to purchase eligible foods earlier in the season may also receive foods through the bulk purchase option

as long as the total combined value of the benefits provided to each SFMNP participant does not exceed \$50, as stipulated in §249.8(b).

(7) The State agency shall ensure that training is conducted prior to start up of the first year of SFMNP participation of an individual farmer, farmers' market, roadside stand, and/or CSA program. The training shall include at a minimum those items listed in paragraph (d) of this section, and may be delivered in a variety of methods, including but not limited to classroom settings, telephone conferences, videoconferences, and web-based training modules.

(8) Authorized farmers shall display a sign stating that they are authorized to redeem SFMNP coupons.

(9) Authorized farmers, farmers' markets, roadside stands, and/or CSA programs shall comply with the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on non-discrimination (parts 15, 15a and 15b of this title), and FNS Instructions as outlined in §249.7.

(10) The State agency shall ensure that there is no conflict of interest between the State or local agency and any participating farmer, farmers' market, roadside stand and/or CSA program.

(b) *Farmer, farmers' market, roadside stand, and/or CSA program agreements.* The State agency shall ensure that all participating farmers' markets, roadside stands, and/or CSA programs enter into written agreements with the State agency. State agencies that authorize individual farmers shall also enter into written agreements with the individual farmers. The agreement must be signed by a representative who has legal authority to obligate the farmer, farmers' market, roadside stand, and/or CSA program. Agreements must include a description of sanctions for noncompliance with SFMNP requirements and shall contain, at a minimum, the following specifications, although the State agency may determine the exact wording to be used:

(1) The farmer, farmers' market and/or roadside stand shall:

(i) Provide such information as the State agency may require for its periodic reports to FNS;

(ii) Assure that SFMNP coupons are redeemed only for eligible foods;

(iii) Provide eligible foods at or less than the price charged to other customers;

(iv) Accept SFMNP coupons within the dates of their validity and submit such coupons for payment within the allowable time period established by the State agency;

(v) In accordance with a procedure established by the State agency, mark each transacted coupon with a farmer identifier. In those cases where the agreement is between the State agency and the farmer and/or roadside stand, each transacted SFMNP coupon shall contain a farmer identifier and shall be batched for reimbursement under that identifier. In those cases where the agreement is between the State agency and the farmers' market, each transacted SFMNP coupon shall contain a farmer identifier and be batched for reimbursement under a farmers' market identifier.

(vi) Accept training on SFMNP procedures and provide training to farmers and any employees with SFMNP responsibilities on such procedures;

(vii) Agree to be monitored for compliance with SFMNP requirements, including both overt and covert monitoring;

(viii) Be accountable for actions of farmers or employees in the provision of eligible foods and related activities;

(ix) Pay the State agency for any coupons transacted in violation of this agreement;

(x) Offer SFMNP participants the same courtesies as other customers;

(xi) Comply with the nondiscrimination provisions of USDA regulations as provided in §249.7; and

(xii) Notify the State agency if any farmer, farmers' market or roadside stand ceases operation prior to the end of the authorization period.

(2) The farmer, farmers' market and/or roadside stand shall neither:

(i) Seek restitution from SFMNP participants for coupons not paid by the State agency; nor

§ 249.10

7 CFR Ch. II (1-1-20 Edition)

(ii) Issue cash change for purchases that are in an amount less than the value of the SFMNP coupon(s); nor

(iii) Collect tax on SFMNP coupon purchases.

(3) The CSA program shall:

(i) Provide such information as the State agency may require for its periodic reports to FNS;

(ii) Assure that SFMNP participants receive only eligible foods;

(iii) Provide eligible foods to their SFMNP shareholders at or less than the price charged to other customers;

(iv) Assure that the shareholder receives eligible foods that are of equitable value and quantity to their share;

(v) Assure that all funds from the State agency are used for planting of crops for SFMNP shareholders;

(vi) Provide to the State agency access to a tracking system that determines the value of the eligible foods provided and the remaining value owed to each SFMNP shareholder;

(vii) Assure that SFMNP shareholders/authorized representatives provide written acknowledgement of receipt of eligible foods;

(viii) Accept training on SFMNP procedures and provide training to farmers and any employees with SFMNP responsibilities for such procedures;

(ix) Agree to be monitored for compliance with SFMNP requirements, including both overt and covert monitoring;

(x) Be accountable for actions of farmers or employees in the provision of eligible foods and related activities;

(xi) Offer SFMNP shareholders the same courtesies as other customers;

(xii) Notify the State agency immediately when the CSA program is experiencing a problem with its crops, and may be unable to provide SFMNP shareholders with the complete amount of eligible foods agreed upon between the CSA program and the State agency;

(xiii) Comply with the non-discrimination provisions of USDA regulations as provided in § 249.7; and

(xiv) Notify the State agency if any CSA program ceases operation prior to the end of the authorization period.

(4) The CSA program shall not substitute ineligible produce when eligible foods are not available.

(5) Neither the State agency nor the farmer, farmers' market, roadside stand, and/or CSA program has an obligation to renew the agreement. The State agency or the farmer, farmers' market, roadside stand and/or CSA program may terminate the agreement for cause after providing advance written notification.

(6) The State agency may deny payment to the farmer, farmers' market and/or roadside stand for improperly redeemed SFMNP coupons and may demand refunds for payments already made on improperly redeemed coupons.

(7) The State agency may demand a refund from any CSA program that fails to provide the full benefit to all SFMNP shareholders as specified in its contract, or that provides ineligible foods as substitutes for eligible foods.

(8) The State agency may disqualify a farmer, farmers' market, roadside stand, and/or CSA program for SFMNP violations. The farmer, farmers' market, roadside stand, and/or CSA program has the right to appeal a denial of an application to participate, a disqualification, or a SFMNP sanction by the State agency. Expiration of a contract or agreement with a farmer, farmers' market, roadside stand, and/or CSA program, and claims actions under § 249.20, are not appealable.

(9) A farmer, farmers' market, roadside stand, and/or CSA program, which commits fraud or engages in other illegal activity is liable to prosecution under applicable Federal, State or local laws.

(10) Agreements may not exceed 3 years.

(c) *Agreements with farmers' markets that do not authorize individual farmers.* Those State agencies that authorize farmers' markets but not individual farmers shall require authorized farmers' markets to enter into a written agreement with each farmer within the market that is participating in SFMNP. The State agency must set forth the required terms for the agreement and provide a sample agreement that may be used.

(d) *Annual training for farmers, farmers' market managers and/or farmers that operate a roadside stand or CSA program.* State agencies shall conduct annual training for farmers, farmers' market

managers, and/or farmers who operate a CSA program in the SFMNP. The State agency must conduct interactive training for all farmers and farmers' market managers who have never previously participated in the SFMNP. After a farmer/farmers' market manager's first year of SFMNP operation, State agencies have discretion in determining the method used for annual training purposes. At a minimum, annual training shall include instruction emphasizing:

- (1) Eligible food choices;
- (2) Proper SFMNP coupon redemption procedures, including deadlines for submission of coupons for payment, and/or receipt of payment for CSA programs' distribution of eligible foods;
- (3) Equitable treatment of SFMNP participants, including the availability of eligible foods to SFMNP participants that are of the same quality and cost as that sold to other customers;
- (4) Civil rights compliance and guidelines;
- (5) Guidelines for storing SFMNP coupons safely; and
- (6) Guidelines for cancelling SFMNP coupons, such as punching holes or rubber-stamping.

(e) *Monitoring and review of farmers, farmers' markets, roadside stands, CSA programs and local agencies.* The State agency shall be responsible for the monitoring of farmers, farmers' markets, roadside stands, CSA programs and local agencies within its jurisdiction. This shall include developing a system for identifying high risk farmers, farmers' markets, roadside stands, and/or CSA programs, and ensuring on-site monitoring, conducting further investigation, and sanctioning of such farmers, farmers' markets, roadside stands, and/or CSA programs as appropriate. In States where both the SFMNP and the FMNP are in operation, these monitoring/review requirements may be coordinated to avoid duplication. If the same farmers, farmers' markets, and/or roadside stands are authorized for both programs, a review conducted by one program may be counted toward the requirement for the other program.

(1) Where coupon reimbursement responsibilities are delegated to farmers' market managers, farmers' market as-

sociations, or nonprofit organizations, the State agency may establish bonding requirements for these entities. Costs of such bonding are not reimbursable administrative expenses.

(2)(i) Each State agency shall rank participating farmers, farmers' markets, roadside stands, and/or CSA programs by risk factors, and shall conduct annual, on-site monitoring of at least 10 percent of farmers, 10 percent of farmers' markets, 10 percent of roadside stands, and 10 percent of the CSA programs or one of each program model, whichever is greater, which shall include those farmers, farmers' markets, roadside stands, and/or CSA programs identified as being the highest-risk.

(ii) Mandatory high-risk indicators include:

(A) A proportionately high volume of SFMNP coupons redeemed by a farmer within a farmers' market or at a single roadside stand (as compared to other farmers within the farmers' market or within the State);

(B) Participant complaints;

(C) In the case of CSA programs, an extended or ongoing inability to provide the full SFMNP benefit to each shareholder as contracted; and

(D) Farmers, farmers' markets, roadside stands, and/or CSA programs in their first year of SFMNP operation. States are encouraged to formally establish other high-risk indicators for identifying potential problems.

(iii) If additional high-risk indicators are established, they must be set forth in the farmers, farmers' market, roadside stand, and/or CSA program agreement and in the State Plan. If application of the high-risk indicators results in fewer than 10 percent of farmers, farmers' markets, roadside stands, and/or CSA programs being designated as high-risk, the State agency shall randomly select additional farmers, farmers' markets, roadside stands, and/or CSA programs to be monitored in order to meet the 10 percent minimum. The high-risk indicators listed above generally apply to a State agency already participating in the SFMNP. A State agency participating in the SFMNP for the first time shall, in lieu of applying the high-risk indicators, randomly select 10 percent of its participating

farmers, 10 percent of its participating farmers' markets, 10 percent of its participating roadside stands, and 10 percent of its participating CSA programs or at least one farmers' market, roadside stand, and/or CSA program, whichever is greater, for monitoring visits.

(3)(i) The following shall be documented for all on-site monitoring visits to farmers, farmers' markets, roadside stands, and/or CSA programs, at a minimum:

(A) Names of both the farmer, farmers' market, roadside stand, and/or CSA program and the reviewer;

(B) Date of review;

(C) Nature of problem(s) detected or the observation that the farmer, farmers' market, roadside stand, and/or CSA program appears to be in compliance with SFMNP requirements;

(D) Record of interviews with participants, market managers, farmers, and/or farmers who operate a CSA program; and

(E) Signature of the reviewer.

(ii) Reviewers are not required to notify the farmer, farmers' market, roadside stand, and/or CSA program of the monitoring visit before, during, or immediately after the visit. The State agency shall do so after a reasonable delay when necessary to protect the identity of the reviewer(s) or the integrity of the investigation.

(iii) In instances where the farmer, farmers' market, roadside stand, and/or CSA program will be permitted to continue participating in the SFMNP after being informed of any deficiencies detected by the monitoring visit, the farmer, farmers' market, roadside stand, and/or CSA program shall provide plans as to how the deficiencies will be corrected.

(4) At least every 2 years, the State agency must review all local agencies within its jurisdiction.

(f) *Control of SFMNP coupons.* The State agency must:

(1) Control and provide accountability for the receipt and issuance of SFMNP coupons;

(2) Ensure that there is secure transportation and storage of unissued SFMNP coupons; and

(3) Design and implement a system of review of SFMNP coupons to detect errors. At a minimum, the errors the sys-

tem must detect are a missing participant signature (if such signature is required by the State agency), a missing farmer and/or market identification, and redemption by a farmer outside of the valid date. The State agency must have procedures in place to reduce the number of errors in transactions.

(g) *Payment to farmers, farmers' markets, roadside stands, and/or CSA programs.* The State agency must ensure that farmers, farmers' markets, roadside stands, and/or CSA programs are promptly paid for food costs.

(h) *Reconciliation of SFMNP coupons.* The State agency shall identify the disposition of all SFMNP coupons as validly redeemed, lost or stolen, expired, or not matching issuance records. Validly redeemed SFMNP coupons are those that are issued to a valid participant and redeemed by an authorized farmer, farmers' market, and/or roadside stand within valid dates. SFMNP coupons that were redeemed but cannot be traced to a valid participant or authorized farmer, farmers' market, and/or roadside stand shall be subject to claims action in accordance with § 249.20.

(1) If the State agency elects to replace lost, stolen or damaged SFMNP coupons, it must describe its system for doing so in the State Plan.

(2) The State agency must use uniform SFMNP coupons within its jurisdiction.

(3) SFMNP coupons must include, at a minimum, the following information:

(i) The last date by which the participant may use the coupon. This date shall be no later than November 30 of each year.

(ii) A date by which the farmer or farmers' market must submit the coupon for payment. When establishing this date, State agencies shall take into consideration the date financial statements are due to the FNS, and allow time for the corresponding coupon reconciliation that must be done by the State agency prior to submission of financial statements. Financial statements are due to FNS by January 30.

(iii) A unique and sequential serial number.

(iv) A denomination (dollar amount).

Food and Nutrition Service, USDA

§ 249.11

(v) A farmer identifier for the redeeming farmer when agreements are between the State agency and the farmer.

(vi) In those instances where State agencies have agreements with farmers' markets, there must be a farmer identifier on each coupon and a market identifier on the cover of coupons that are batched by the market manager for reimbursement.

(i) *Instructions to participants.* Each participant must receive instruction on the redemption of the SFMNP coupons, or participation in a CSA program (where applicable), including, but not limited to:

(1) A list of names and addresses of authorized farmers, farmers' markets, and/or roadside stands at which SFMNP coupons may be redeemed, or procedures on the home-delivery process;

(2) Procedures to designate a proxy;

(3) The name and address of the authorized farmer of the CSA program, and locations of distribution sites;

(4) A description of eligible foods and the prohibition against cash change for SFMNP purchases of eligible foods;

(5) A description of eligible foods that will be provided through the CSA program;

(6) A schedule outlining a timeframe for distribution of the eligible foods from the CSA program; and

(7) An explanation of his/her right to complain about improper farmer, farmers' market, roadside stand, and/or CSA program practices with regard to SFMNP responsibilities and the process for doing so.

(j) *Participant and farmer, farmers' market, roadside stand, and/or CSA program complaints.* The State agency must have procedures that document the handling of complaints from participants and farmers/farmers' markets, roadside stands, and/or CSA programs. Complaints of civil rights discrimination shall be handled in accordance with § 249.7(b).

(k) *Participant and farmer, farmers' market, roadside stand, and/or CSA program sanctions.* (1) The State agency must establish policies which determine the type and level of sanctions to be applied against participants and farmers, farmers' markets, roadside

stands, and/or CSA programs based upon the severity and nature of the SFMNP violations observed, and such other factors as the State agency determines appropriate, such as whether repeated offenses have occurred over a period of time. Farmers, farmers' markets, roadside stands, and/or CSA programs may be sanctioned, disqualified, or both, when appropriate. Sanctions may include fines for improper SFMNP coupon redemption and the penalties outlined in § 249.20, in the case of deliberate fraud.

(2) In those instances where compliance purchases are conducted, the results of covert compliance purchases can be a basis for farmer, farmers' market, and/or roadside stand sanctions.

(3) A farmer, farmers' market, roadside stand, and/or CSA program committing fraud or other unlawful activities are liable to prosecution under applicable Federal, State or local laws.

(4) State agency policies must ensure that a farmer that is disqualified from the SFMNP at one market, roadside stand, or CSA program shall not participate in the SFMNP at any other farmers' market, roadside stand or CSA program in the State's jurisdiction during the disqualification period.

(5) State agency policies must ensure that a farmer, farmers' market, roadside stand, and/or CSA program that is disqualified from participating in the WIC Farmers' Market Nutrition Program is also disqualified from participating in the SFMNP in the State's jurisdiction during the disqualification period.

[71 FR 74630, Dec. 12, 2006, as amended at 74 FR 48375, Sept. 23, 2009; 81 FR 66497, Sept. 28, 2016]

§ 249.11 Financial management system.

(a) *Disclosure of expenditures.* The State agency must maintain a financial management system that provides accurate, current and complete disclosure of the financial status of the SFMNP. This must include an accounting for all property and other assets and all SFMNP funds received and expended each fiscal year.

(b) *Internal controls.* The State agency shall maintain effective controls over and accountability for all SFMNP