

(b) Upon a finding of a substantial failure to comply with the requirements of §285.4 or the plan of operation, FNS may, in addition to or in lieu of actions taken in accordance with paragraph (a) of this section, refer the matter to the Attorney General with a request that injunctive relief be sought from the appropriate district court of the United States to require compliance with these regulations by the Commonwealth of Puerto Rico.

[Amdt. 209, 47 FR 32409, July 27, 1982. Redesignated by Amdt. 371, 61 FR 60013, Nov. 26, 1996]

PART 292—SUMMER ELECTRONIC BENEFITS TRANSFER PROGRAM

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AUTHORITY: 42 U.S.C. 1762.

SOURCE: 88 FR 90355, Dec. 29, 2023, unless otherwise noted.

Subpart A—General

§ 292.1 General purpose and scope.

(a) This part establishes the regulations under which the Secretary will administer the Summer Electronic Benefits Transfer (Summer EBT) Program. Section 13A of the Richard B. Russell National School Lunch Act authorizes the Secretary to establish a Program under which States, and Indian Tribal Organizations (ITOs) that administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), electing to participate in the Summer EBT Program must, beginning in Summer 2024 and annually thereafter, issue to each eligible household Summer EBT benefits.

(b) This program was established for the purpose of providing nutrition assistance during the summer months for each eligible child, to ensure continued access to food when school is not in session for the summer.

§ 292.2 Definitions.

2 CFR part 200 means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by the Office of Management and Budget (OMB). The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D),

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Cost Principles (subpart E), and Audit Requirements (subpart F).

Act means the Richard B. Russell National School Lunch Act, as amended.

Acquisition means obtaining supplies or services through a purchase or lease, regardless of whether the supplies or services are already in existence or must be developed, created, or evaluated.

Administrative costs means costs incurred by a Summer EBT agency, LEA, or local agencies operating in a formal agreement with a Summer EBT agency related to planning, organizing, and managing a Summer EBT Program.

Adult means, for the purposes of completing an application for eligibility for Program benefits, any individual 18 years of age or older.

Advance Planning Document for project planning or Planning APD (APD or PAPD) means a brief written plan of action that requests Federal financial participation to accomplish the planning activities necessary for a Summer EBT agency to determine the need for, feasibility of, projected costs and benefits of an IS equipment or services acquisition, plan the acquisition of IS equipment and/or services, and to acquire information necessary to prepare an Implementation APD.

Advance Planning Document Update (APDU) means a document submitted annually (Annual APDU) by the Summer EBT agency to report the status of project activities and expenditures in relation to the approved Planning APD or Implementation APD; or on an as needed basis (As Needed APDU) to request funding approval for project continuation when significant project changes occur or are anticipated.

Cash-Value Benefit (CVB) means a type of benefit that is a fixed-dollar amount used to obtain supplemental foods by participants served by an ITO Summer EBT agency for the purposes of the Summer EBT Program.

Categorically eligible means considered income eligible for Summer EBT, as applicable, based on documentation that a child is a member of a *household*, as defined in this section, and one or more children in that household are receiving assistance under *SNAP*, *TANF*, or *FDPIR*, or another means tested program, as approved by the Secretary. A

foster child, *homeless child*, a *migrant child*, a *Head Start child* and a *runaway child*, as defined in §245.2 of this chapter, are also categorically eligible. Categorical eligibility and automatic eligibility may be used synonymously.

Commercial Off-the-Shelf (COTS) means proprietary software products that are ready-made and available for sale to the general public at established catalog or market prices in which the software vendor is not positioned as the sole implementer or integrator of the product.

Continuous school calendar means a situation in which all or part of the student body of a school is:

(1) On a vacation for periods of 15 continuous school days or more during the period October through April; and

(2) In attendance at regularly scheduled classes during most of the period May through September.

Current income means income received during the month prior to application for Summer EBT benefits. If such income does not accurately reflect the household's annual income, income must be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

Department means the U.S. Department of Agriculture.

Direct verification means the process of verifying household income or categorical eligibility by matching against data sources or other records without the need to contact households for documentation.

Disclosure means reveal or use individual children's program eligibility information obtained through the Summer EBT eligibility process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

Dual participation means a child simultaneously receiving benefits from

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more than one State or ITO-administered Summer EBT Program, or simultaneously receiving multiple allotments from the same State or ITO-administered Summer EBT Program.

Electronic Benefit Transfer (EBT) account means a set of records containing demographic, card, benefit, transaction, and balance data for an individual household within the EBT system that is maintained and managed by a Summer EBT agency or its contractor as part of the client case record.

Electronic Benefit Transfer (EBT) card means a method to access EBT benefits issued to a household member or authorized representative through the EBT system by a benefit issuer. This method may include an on-line magnetic stripe card, an off-line smart card, a chip card, a contactless digital wallet with a stored card, or any other similar benefit access technology approved by USDA.

Electronic Benefit Transfer (EBT) contractor or vendor means an entity that is selected to perform EBT-related services for the Summer EBT agency.

Electronic Benefit Transfer (EBT) system means an electronic payments system under which benefits are issued from and stored in a central databank, maintained and managed by a Summer EBT agency or its contractor, and uses electronic funds transfer technology for the delivery and control of food and other public assistance benefits.

Eligible child means a child who meets the requirements to receive Summer EBT benefits as provided in §§ 292.5 and 292.6.

Eligible household means a household that includes at least one eligible child.

Enhancement means modifications which change the functions of software and hardware beyond their original purposes, not just to correct errors or deficiencies which may have been present in the software or hardware, or to improve the operational performance of the software or hardware. Software enhancements that substantially increase risk or cost or functionality will require submission of an IAPD or an As Needed IAPDU.

Enrolled students means students who are enrolled in and attending schools

participating in the NSLP/SBP and who have access to a meal service (breakfast or lunch) on a regular basis.

Expungement means the removal of Summer-EBT benefits from the EBT account to which they were issued, typically by an EBT processor on behalf of a Summer EBT agency.

FDPIR means the food distribution program for households on Indian reservations operated under 7 CFR part 253, and the food distribution program for Indian households in Oklahoma under 7 CFR part 254.

FNS means the Food and Nutrition Service, United States Department of Agriculture.

FNSRO means an FNS Regional Office.

Firm, as used in this part:

(1) Means:

(i) A retail food store that is authorized to accept or redeem Summer EBT benefits;

(ii) A retail food store that is not authorized to accept or redeem Summer EBT benefits; or

(iii) An entity that does not meet the definition of a retail food store in § 271.2 of this chapter.

(2) For purposes of the regulations in this part the terms firm, entity, retailer, and store may be used interchangeably.

Food instrument, as applicable to ITO Summer EBT agencies, means the definition set forth in WIC regulations at § 246.2 of this chapter.

Household means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.

Implementation Advance Planning Document or Implementation APD (IAPD) means a written plan of action requesting Federal financial participation (FFP) to acquire and implement Electronic Benefit Transaction services. The Implementation APD includes the general design, development, testing, and implementation phases of the project during its initiation. Once the Summer EBT process becomes more routine (*e.g.*, after its initial implementation), the IAPD will be streamlined to include one the following documents as outlined in this section and in FNS Handbook 901:

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- (1) Transmittal letter.
- (2) Cost Allocation Plan.
- (3) Pre-conversion outlays (where applicable).
- (4) Brief schedule of events and payments, and budget.

Income eligibility guidelines means the household-size and income standards prescribed annually by the Secretary for determining income eligibility for reduced price meals under the National School Lunch Program and the School Breakfast Program.

Indian Tribal Organization (ITO) means an Indian Tribe, band, or group recognized by the Department of the Interior or an intertribal council or group which is an authorized representative of Indian Tribes, bands or groups recognized by the Department of the Interior and which has an ongoing relationship with such Tribes, bands or groups. For the purposes of the Summer EBT Program, this definition only includes those Indian Tribal Organizations which administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program) established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786). For the purposes of the Summer EBT Program, an administering Indian Tribal Organization is also referred to as a "Summer EBT agency".

Information System (IS) means a combination of hardware and software, data and telecommunications that performs specific functions to support the Summer EBT agency, or other Federal, State, or local organization.

Instructional year means the period from July 1 of the prior year through one day prior to the summer operational period.

ITO Service Area means the geographic area served by an ITO Summer EBT agency.

Local Education Agency (LEA) means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school

districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child care institutions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools.

NSLP/SBP means the National School Lunch Program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*) and/or the School Breakfast Program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*).

NSLP/SBP application means an application for free and reduced price meals, submitted by a household for a child or children enrolled at an NSLP- or SBP-participating school(s). Eligibility determinations based on NSLP/SBP applications may be used to confer eligibility for Summer EBT.

OIG means the Office of Inspector General of the Department.

Period of eligibility means the period of time from the first day of *instructional year*, as defined in this section, immediately preceding the *summer operational period*, as defined in this section, through the last day of the summer operational period.

Planning Advanced Planning Document (PAPD) means a brief written plan of action that requests FFP to accomplish the planning activities necessary for a Summer EBT agency to determine the need for, feasibility of, projected costs and benefits of EBT service acquisitions, plan the acquisition of EBT services, and to acquire information necessary to prepare an Implementation APD when there is a change or an enhancement to the EBT technology.

Program means the Summer Electronic Benefits Transfer for Children Program authorized by section 13A of

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the Richard B. Russell National School Lunch Act, 42 U.S.C. 1762.

Program funds means Federal financial assistance made available to Summer EBT agencies for the purpose of making Program payments.

Project means a related set of information technology related tasks, undertaken by a Summer EBT agency, to improve the efficiency, economy and effectiveness of administration and/or operation of its human services programs. A project may also be a less comprehensive activity such as office automation, enhancements to an existing system, or an upgrade of computer hardware.

Request for Proposal (RFP) means the document used for public solicitations of competitive proposals from qualified sources as outlined in paragraphs (1) through (7) of this definition:

(1) 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.

(2) 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 must apply:

(i) Proposals must 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 must be publicized and reasonable requests by other sources to compete must be honored to the maximum extent practicable.

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

(iii) The Summer EBT agency must 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 Summer

EBT 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.

Rolling verification means sampling applications for verification on a rolling basis from the beginning of the instructional year immediately preceding the summer operational period.

School aged means the years in which a child is required to attend school, or an equivalent program as defined by State or Tribal law. Also known as the age requirement for compulsory education.

Secretary means the Secretary of Agriculture.

SNAP means the program operated pursuant to the Food and Nutrition Act of 2008.

SNAP eligible foods means any food or food product that meets the definition of eligible foods at §271.2 of this chapter.

SNAP retail food store means an establishment that meets the definition of retail food store at §271.2 of this chapter.

Special provision school means, for the purposes of Summer EBT, those schools which do not collect NSLP/SBP applications annually described in section 11(a)(1)(B)-(F) of the Richard B. Russell National School Lunch Act (NSLA) which are provision 1 at §245.9(a) of this chapter, provision 2 at §245.9(b) and (c) of this chapter, provision 3 at §245.9(d) and (e) of this chapter, and the community eligibility provision codified at §245.9(f) of this chapter.

State means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

Streamlined certification means automatically enrolling an eligible child for Summer EBT, without need for further application or confirmation of school enrollment.

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Summer EBT agency, as used in this part:

(1) Means:

(i)(A) Any agency of State government that has been designated by the Governor or other appropriate executive or legislative authority of the State which is responsible for the administration of the Summer EBT Program within the State and enters into a written agreement with USDA to administer Summer EBT. In those States where such assistance programs are operated on a decentralized basis, it includes all State agencies that assist with administration of the Summer EBT Program unless otherwise specified.

(B) Coordinating Summer EBT agencies have an inter-agency written agreement with partnering Summer EBT agencies to administer the Program, as applicable.

(ii) An ITO that is responsible for the administration of the Summer EBT Program and has entered into a written agreement with USDA to administer Summer EBT.

(2) Summer EBT agencies may be further described to clarify roles and requirements, as necessary, including:

(i) *Coordinating Summer EBT agency* means the Summer EBT agency within a State that is designated as the primary point of contact for USDA for the Summer EBT Program within the State or ITO and is responsible for the effective and efficient administration of the Program.

(ii) *Partnering Summer EBT agency* means a Summer EBT agency other than the coordinating Summer EBT agency that has a role in administration of the Program.

(iii) *ITO Summer EBT agency* means an agency of an ITO that administers the Program on behalf of the ITO.

(iv) *State Summer EBT agency* means an agency of a State that administers the Program on behalf of the State.

Summer EBT application means an application submitted to a Summer EBT agency or an NSLP/SBP-participating school by a household for a child or children who are enrolled at a NSLP/SBP-participating school for Summer EBT benefits. Eligibility determinations based on Summer EBT applica-

tions may not be used to confer eligibility for the NSLP/SBP.

Summer operational period means the benefit period that generally reflects the period between the end of classes during the current school year and the start of classes for the next school year, as determined by the Summer EBT agency.

Supplemental foods means, for the purposes of ITOs administering the Summer EBT Program, foods—

(1) Containing nutrients determined by nutritional research to be lacking in the diets of children; and

(2) Promoting the health of the population served by the program under this section, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns, as determined by FNS; and

(3) Supplemental foods authorized for the WIC Program by the applicable WIC ITO meet the requirements set forth in this definition, excluding infant foods and infant formula.

System error means an error resulting from a malfunction at any point in the redemption process. These adjustments may occur after the availability date and may result in either a debit or credit to the household.

TANF means the State funded program under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995. This program is commonly referred to as Temporary Assistance for Needy Families, although States may refer to the program by another name.

Trafficking means:

(1)(i) The buying, selling, stealing, or otherwise effecting an exchange of Summer EBT benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers, and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;

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(ii) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in 21 U.S.C. 802, for Summer EBT benefits;

(iii) Purchasing a product with Summer EBT benefits that has a container requiring a return deposit with the intent of obtaining cash by intentionally discarding the product and intentionally returning the container for the deposit amount;

(iv) Purchasing a product with Summer EBT benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with Summer EBT benefits in exchange for cash or consideration other than eligible food; or

(v) Intentionally purchasing products originally purchased with Summer EBT benefits in exchange for cash or consideration other than eligible food.

(2) Attempting to buy, sell, steal, or otherwise affect an exchange of Summer EBT benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

Vendor means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores enrolled by an ITO for the purposes of the Summer EBT Program to provide supplemental foods in areas approved for service. To be eligible for the Summer EBT Program, the vendor must be authorized by the WIC ITO to provide authorized supplemental foods to WIC participants under a retail food delivery system.

Verification means confirmation of eligibility for the Summer EBT Program when a child's eligibility is established through a Summer EBT application. Verification includes confirmation of income eligibility and, at State or local discretion, may also include confirmation of any other information required in the application. Direct verification, as outlined in §292.14(e), must be attempted prior to contacting

the household. If such efforts are unsuccessful, verification may be accomplished by examining information provided by the household such as wage stubs, or by other means as specified in §292.14(f)(3). If a SNAP or TANF case number or a FDPIR case number or other identifier is provided for a child, verification for such child must only include confirmation that the child is a member of a household receiving SNAP, TANF, or FDPIR benefits.

Verification for cause means verification of questionable applications, on a case-by-case basis, such as an instance when the Summer EBT agency is made aware of conflicting or inconsistent information than what was provided on the application.

WIC or WIC Program means the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

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(a) *Delegation to FNS.* FNS must act on behalf of USDA in the administration of the Program.

(b) *Delegation to a State or ITO.* The Governor or other appropriate executive or legislative authority of the State or ITO will designate one or more Summer EBT agencies to be responsible for the administration of the Summer EBT Program within the State or ITO. If more than one Summer EBT agency is named within a State or ITO, a coordinating Summer EBT agency must be named. All other Summer EBT agencies will be partnering Summer EBT agencies.

(1) *Coordinating Summer EBT agency.*
(i) Each coordinating Summer EBT agency must enter into a written agreement with USDA for the administration of the Program in accordance with the applicable requirements of this part.

(ii) The coordinating Summer EBT agency is:

(A) The primary point of contact for the Summer EBT Program within the State or ITO;

(B) Responsible for the complete and timely submission of any required plans, forms, and reports;

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(C) Responsible for activities as outlined in the inter-agency written agreement; and

(D) Responsible for the effective and efficient administration of the Program in accordance with the requirements of this part; the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a, and 15b); governing administration of grants (2 CFR part 200, subparts A through F, and USDA implementing regulations in 2 CFR parts 400 and 415); governing non-procurement debarment/suspension (2 CFR part 180 and USDA implementing regulations in 2 CFR part 417); governing restrictions on lobbying (2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400, 415, and 418); and governing the drug-free workplace requirements (2 CFR part 182); FNS guidelines; and, instructions issued under the FNS Directives Management System.

(2) *Partnering Summer EBT agencies.*

(i) Each partnering Summer EBT agency must enter into a written agreement with USDA for the administration of the Program in accordance with the applicable requirements of this part.

(ii) The partnering Summer EBT agency is:

(A) Responsible for activities as outlined in the inter-agency written agreement. If only one Agency will be responsible for the administration of Summer EBT, designation of partnering agencies is not applicable.

(B) Responsible for the effective and efficient administration of the Program in accordance with the requirements of this part; the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a, and 15b); governing administration of grants (2 CFR part 200, subparts A through F, and USDA implementing regulations in 2 CFR parts 400 and 415); governing non-procurement debarment/suspension (2 CFR part 180 and USDA implementing regulations in 2 CFR part 417); governing restrictions on lobbying (2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400, 415, and 418); and governing the drug-free workplace requirements (2 CFR part 182); FNS guidelines; and, instruc-

tions issued under the FNS Directives Management System.

(c) *Designation of responsibility among Summer EBT agencies and requirements for written inter-agency agreements.* To ensure clear roles and responsibilities, the coordinating Summer EBT agency and any partnering Summer EBT agency or agencies must enter into an inter-agency written agreement that defines the roles and responsibilities of each, as well as the administrative structure and lines of authority, if applicable.

(1) The inter-agency written agreement should outline the Summer EBT agencies assignment of responsibilities including, but not limited to:

(i) Certification and enrollment of children;

(ii) Issuance, control, and accountability of Summer EBT benefits and EBT cards;

(iii) Developing and maintaining complaint procedures;

(iv) Developing, conducting, and evaluating training;

(v) Keeping records necessary to determine whether the program is being conducted in compliance with the requirements in this part for the proper storage and use of data. The records must survive the duration of this agreement;

(vi) Submitting accurate and timely financial and program plans, forms, and reports; and

(vii) Public notification and participant support.

(2) [Reserved]

(d) *Suspension, termination, and close-out procedures.* Whenever it is determined that a Summer EBT agency has materially failed to comply with the provisions of this part, FNS may suspend or terminate the agreement between FNS and the Summer EBT agency or agencies or take any other action as may be available and appropriate. A Summer EBT agency may also terminate the agreement, but must provide FNS at least 60 days advance written notice, including a detailed explanation and the proposed effective date of the change. FNS and the Summer EBT agency shall comply with the provisions of 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415 concerning

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grant suspension termination and closeout procedures.

(e) *Authority to waive statute and regulations for State Summer EBT agencies.*

(1) As authorized under section 12(l) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(l), FNS may waive provisions of such Act or the Child Nutrition Act of 1966, as amended, and the provisions of this part with respect to a State or eligible service provider. The provisions of this part required by other statutes may not be waived under this authority. FNS may only approve requests for a waiver that are submitted by a State Summer EBT agency and comply with the requirements at section 12(l)(1) and the limitations at section 12(l)(4), including that FNS may not grant a waiver that increases Federal costs.

(2) A State Summer EBT agency may submit a request for a waiver under paragraph (e)(1) of this section in accordance with section 12(l)(2) and the provisions of this part.

(3) A State Summer EBT agency may submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. Any waiver where the State concurs must be submitted to the appropriate FNSRO.

(4) An eligible service provider may submit a request for a waiver under paragraph (e)(1) of this section in accordance with section 12(l) and the provisions of this part.

(i) Any waiver request submitted by an eligible service provider must be submitted to the State Summer EBT agency for review.

(ii) A State Summer EBT agency must act promptly on such a waiver request and must deny or concur with a request submitted by an eligible service provider.

(iii) If a State Summer EBT agency concurs with a request from an eligible service provider, the Summer EBT agency must promptly forward to the appropriate FNSRO the request and a rationale, consistent with section 12(l)(2), supporting the request.

(iv) By forwarding the request to the FNSRO, the State Summer EBT agency affirms:

(A) The request meets all requirements for waiver submissions; and,

(B) The State Summer EBT agency will conduct all monitoring requirements related to regular Program operations and the implementation of the waiver.

(v) If the State Summer EBT agency denies the request, the State Summer EBT agency must notify the requesting eligible service provider and state the reason for denying the request in writing within 30 calendar days of the State Summer EBT agency's receipt of the request. The State Summer EBT agency response is final and may not be appealed to FNS.

(f) *Waivers for ITO Summer EBT agencies.* (1) The Secretary may waive or modify specific regulatory provisions of this part for one or more ITO Summer EBT agency. Waivers may be issued following an ITO Summer EBT agency request or at the discretion of USDA.

(2) To be approvable, a waiver must:

(i) Address a specific regulatory provision which cannot be implemented effectively by the requesting ITO operation;

(ii) Result in more effective and efficient administration of the Program;

(iii) Be consistent with the provisions of the Act; and

(iv) Not result in material impairment of any statutory or regulatory rights of participants or potential participants.

(3) When submitting requests for waivers, ITO Summer EBT agencies must provide compelling justification for the waiver in terms of how the waiver will improve the efficiency and effectiveness of the administration of the Program. At a minimum, requests for waivers must include, but not necessarily be limited to:

(i) Reasons why the waiver is needed;

(ii) Anticipated impact on service to participants or potential participants who would be affected;

(iii) Anticipated time period for which the waiver is needed; and

(iv) A thorough description of the proposed waiver and how it would be implemented.

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Subpart B—Eligibility Standards and Criteria**§ 292.5 General purpose and scope.**

(a) Summer EBT eligibility is based on the eligibility standards for the NSLP/SBP, which includes children who are income eligible for free or reduced-price school meals based on the Income Eligibility Guidelines published by the Department by notice in the FEDERAL REGISTER and in accordance with the household size and income standards for free and reduced price school meals, and children who are categorically eligible, as defined in § 292.2.

(b) The Income Eligibility Guidelines are published annually and change on July 1. The guidelines in effect on the date of application must be used to determine eligibility.

§ 292.6 Eligibility.

Children eligible for Summer EBT include those who, at any time during the period of eligibility, are:

(a) School-aged and categorically eligible.

(b) Enrolled in an NSLP/SBP-participating school, except for special provision schools, and:

(1) Categorically eligible;

(2) Meet the requirements to receive free or reduced price meals at § 292.5(a), as determined through an NSLP/SBP application;

(3) Otherwise are determined eligible to receive a free or reduced price meal; or

(4) Determined eligible through a Summer EBT application, consistent with § 292.13.

(c) Enrolled in a special provision school, and:

(1) Categorically eligible;

(2) Otherwise meet the requirements to receive free or reduced price meals at § 292.5(a), as determined through an NSLP/SBP application; or

(3) Determined eligible through a Summer EBT application, consistent with § 292.13.

§ 292.7 Period to establish eligibility.

(a) Eligibility for Summer EBT, as determined through an application or

by streamlined certification, may be established from the first day of the instructional year immediately preceding the summer operational period through the last day of the summer operational period, as defined by the Summer EBT agency in the Plan for Operations and Management (POM).

(b) Households are not required to report changes in circumstances during the instructional year or summer operational period, but a household may voluntarily contact the State or LEA to report any changes in income, household composition, or program participation.

(c) The carryover period in the school meal programs, as required at § 245.6(c)(1) of this chapter, may not be used to confer eligibility for Summer EBT benefits during the summer operational period following the instructional year in which the carryover benefit was provided as it is outside of the period to establish eligibility, as described in paragraph (a) of this section.

Subpart C—Requirements of Summer EBT Agencies**§ 292.8 Plan for Operations and Management.**

(a) Not later than August 15 of each year, the Summer EBT agency must submit to the FNS Regional Office its intent to administer the Summer EBT Program the following summer, along with an interim Plan for Operations and Management (POM) and expenditure plan for the Summer EBT Program for the upcoming fiscal year. For 2024 only, the Summer EBT agency must submit to the FNS regional office its intent to administer the Summer EBT Program by January 1, 2024, and the interim POM and expenditure plan as soon as is practicable. The interim POM must:

(1) Include the Summer EBT agency's forecasted program participation, anticipated administrative funding needs as part of an expenditure plan, and other programmatic information required in paragraphs (e) and (f) of this section, if applicable, to the extent that such information has been determined at the time of submission.

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(2) Be approved by FNS before the Summer EBT agency may draw Federal administrative funds for the fiscal year.

(b) Not later than February 15 of each year, the Summer EBT agency must submit to the FNS Regional Office a final POM. The final POM must:

(1) Address all the requirements of paragraphs (e) and (f) of this section, if applicable.

(2) Be approved by FNS before the Summer EBT agency may draw Federal food benefit funds for the fiscal year.

(c) USDA will respond to the interim and final POM, respectively, within 30 calendar days of receipt. If the plan initially submitted is not approved, the Summer EBT agency and USDA will collaborate to ensure changes to the plan are submitted for approval.

(d) At any time after approval, the Summer EBT agency may amend an interim or final POM to reflect changes. The Summer EBT agency must submit the amendments to USDA for approval. The amendments must be signed by the Summer EBT agency-designated official responsible for ensuring that the Program is operated in accordance with the POM.

(e) Summer EBT agencies must include the following in their final POM, at a minimum:

(1) A copy of the inter-agency written agreement between the Summer EBT coordinating agency and each partnering agency that outlines the roles and responsibilities of each as required in § 292.3(e) if applicable.

(2) An estimate of the number of participants who will be served for the coming year.

(3) The administrative budget on behalf of the State's or ITO's entire program operations which reflects the comprehensive needs of the Summer EBT agencies and local education agencies. The budget must include the Summer EBT agency's plan to comply with any standards prescribed by the Secretary for the use of these funds, as well as an expenditure plan reflecting planned administrative cost requirements for the year. Should administrative fund needs change, an amended expenditure plan is required.

(4) A plan for timely and effective action against program violators.

(5) A plan to comply with the Summer EBT agency requirements in §§ 292.12 through 292.14.

(6) A plan to ensure that Summer EBT benefits are issued to children based on their enrollment at the end of the instructional year immediately preceding each summer.

(7) A description of enrollment procedures including, but not limited to, applications, NSLP enrollment database, direct verification and verification, as applicable.

(8) The plan to coordinate with an ITO Summer EBT Program or State Summer EBT Program, as applicable, in accordance with § 292.9.

(9) The procedures to detect and prevent dual participation including a child simultaneously receiving benefits from more than one Summer EBT Program, or simultaneously receiving multiple allotments from the same State or ITO-administered Summer EBT Program as required in § 292.9(b)(3).

(10) A description of the issuance process including:

(i) The start and end dates of the summer operational period;

(ii) Date(s) when benefits will be issued;

(iii) Benefit issuance dates for LEAs operating on a continuous school calendar, as applicable;

(iv) Whether benefits will be added to an existing EBT card or other mobile payment instrument used to deliver SNAP or WIC benefits or, instead, whether benefits will be issued on a unique Summer EBT card or instrument;

(v) Whether benefits will be issued to each eligible child or to households, as applicable;

(vi) How the Summer EBT agency will provide access to households experiencing homelessness and other vulnerable populations; and

(vii) Claims procedures in cases of erroneous payments in accordance with requirements at § 292.16(g).

(11) Customer service plans including:

(i) A single point of contact for all customer service information and inquiries including a hotline and website;

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(ii) How eligible households will be informed of the availability of program benefits and the process to apply for benefits, if necessary; and

(iii) A simplified process for households to opt out of the program.

(12) A copy of the fair hearing procedure for participants.

(f) In addition to the items listed in paragraph (e) of this section, an ITO Summer EBT agency must include in its POM:

(1) The service area of the ITO, a map or other visual reference aid, and a description of any Tribal areas outside of the ITO's jurisdiction that they propose to serve;

(2) A plan and procedures to enroll children already deemed eligible by a State Summer EBT agency serving the same geographic area, without further application;

(3) A plan and procedures to determine eligibility for and enroll children who must apply through the ITO Summer EBT agency to receive benefits because they have not already been identified as eligible, *e.g.*, by a State Summer EBT agency serving the same geographic area. The ITO Summer EBT agency must use the eligibility criteria under § 292.6;

(4) A description of the benefit delivery model to be used. The ITO Summer EBT agency may use a cash-value benefit (CVB) model, a food package model, a combination of the two, or an alternate model. The ITO Summer EBT agency must use the same benefit model for all participants throughout its service area;

(i) For ITOs using a CVB-only benefit delivery model, a description of how the benefit level equal to the amount set forth in § 292.15(e); or

(ii) For ITOs using a food package benefit delivery model, a combination CVB and food package benefit delivery model, or an alternate benefit delivery model, a description of how the benefit level will not exceed the amount set forth in § 292.15(e);

(5) The list of supplemental foods for which participants can transact upon enrollment, excluding infant formula and infant foods;

(6) Procedures for enrolling applicable vendors to transact and redeem Summer EBT Program benefits. As a

prerequisite, such vendors must be approved for participation in the WIC Program;

(7) A plan for providing technical assistance and training to vendors enrolled to transact and redeem Summer EBT Program benefits; and

(8) A plan for vendor integrity and monitoring, pursuant to § 292.19.

§ 292.9 Coordination between State-administered and ITO-administered Summer EBT Programs.

(a) The ITO Summer EBT agency must receive priority consideration to serve eligible individuals within its service area, as identified in its FNS-approved Plan for Operations and Management (POM) per § 292.8.

(b) An ITO Summer EBT agency and State Summer EBT agency serving proximate geographic areas must coordinate Summer EBT Program services, which may include a written agreement between both parties. ITO Summer EBT agency and State Summer EBT agency coordination must, at minimum, include the following:

(1) The State Summer EBT agency must share data, including household contact information, indicating those individuals deemed eligible in the ITO Summer EBT agency's service area in a manner and timeframe that will allow the ITO Summer EBT agency to issue program benefits timely;

(2) The ITO Summer EBT agency and the State Summer EBT agency must each provide notice to eligible individuals or households that they may choose to receive Summer EBT Program benefits from either Summer EBT agency, in addition to referral information upon individual or household request; and

(3) The ITO Summer EBT agency and State Summer EBT agency must coordinate to detect and prevent dual participation in the same summer operational period when serving proximate service areas in accordance with § 292.15(d). For all student data exchanged applicable to the Summer EBT Program, the ITO Summer EBT agency and State Summer EBT agency must ensure the confidentiality of such data and data must only be used for program purposes in accordance with § 292.13(o).

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(c) Eligible households choosing to participate in either the ITO-operated Summer EBT Program or the State-operated Summer EBT Program must participate in the same program for the duration of the summer operational period in any given year.

§ 292.10 Coordinated Services Plan.

(a) Each State Summer EBT agency must establish, and update annually as needed, a plan to coordinate the statewide availability of services offered through the Summer EBT Program described in this part and the Summer Food Service Program established in 7 CFR part 225. Each ITO Summer EBT agency is encouraged to develop a plan coordinating summer services available to the children and households they serve.

(b) Only one plan must be established for each State in which both the Summer Food Service Program and the Summer EBT Program is administered. If more than one agency administers the Summer Food Service Program and Summer EBT within a respective State, they must work together to develop and implement the plan. States should also ensure that plans include the National School Lunch Program's Seamless Summer Program if appropriate.

(c) The plan must include, at minimum, the following information:

(1) A description of the roles and responsibilities of each Summer Food Service Program and Summer EBT agency, and, as applicable, any other agencies, ITOs, or public or private organizations which will be involved in administering the Programs;

(2) A description of how the Summer EBT agency and any other organizations included in the plan will coordinate outreach and programmatic activities to maximize the reach of the Summer Food Service Program and Summer EBT Program; metrics to assess program reach and coverage; and

(3) The Summer EBT agency's plans to partner with other Federal, State, Tribal, or local programs to aid participants in accessing all Federal, State, Tribal, or local programs for which they are eligible.

(d) States must notify the public about their plan and make it available

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to the public through a website, and should, to the maximum extent practicable, solicit and consider input on plan development and implementation from other State agencies, ITOs, and local agencies; organizations involved in the administration of nutrition and human services programs; participants; and other stakeholders.

(e) States must consult with FNS on the development of and any significant subsequent updates to their plan. Initial plans must be submitted to FNS no later than January 1, 2025. States must submit updates annually when significant changes are made to the plan, and otherwise no less than every 3 years.

§ 292.11 Advance Planning Document (APD) processes.

(a) *APD process for State agencies and ITOs.* As a condition for the initial and continued ability to claim Federal financial participation (FFP) for the costs of the planning, development, acquisition, installation, and implementation of Information System (IS) equipment and services used in the administration of the Summer EBT Program, Summer EBT agencies must adhere to the APD process in this section (see guidance in Food and Nutrition Service's (FNS' Handbook 901 for more information), the State Systems APD process in paragraph (b) of this section, and for SNAP and WIC ITOs the existing APD process requirements for Management Information Systems and/or Information Systems as outlined in 7 CFR parts 246, 274, and 277, respectively. Summer EBT Projects have the option to include the Summer EBT Program in an existing SNAP or WIC EBT APD or to create a separate APD specific to Summer EBT services. Where the Summer EBT agency is a SNAP or WIC agency, changes to the Management Information System to support Summer EBT follow the APD processes as outlined in §§ 246.12 and 277.18 of this chapter (see guidance within FNS' Handbook 901 for more information). Child Nutrition Programs do not have a similar requirement for Management Information Systems, so the APD requirements will only apply the EBT services projects associated with the Summer EBT Program.

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(b) *APD process for States.* Requirements for FNS prior approval of IS projects—

(1) *For the acquisition of IS equipment or services to be utilized in an EBT system regardless of the cost of the acquisition in accordance with the Summer EBT issuance standards (subpart D of this part).* For Summer EBT agencies that administer SNAP and are planning changes to their SNAP information systems to incorporate the Summer EBT requirements, refer to §277.18 of this chapter.

(2) *Specific prior approval requirements.*

(i) For IS projects which require prior approval, as specified in paragraph (b)(1) of this section, the State Summer EBT agency must obtain the prior written approval of USDA for:

(A) Conducting planning activities, entering into contractual agreements or making any other commitment for acquiring the necessary planning services for the development of an initial Summer EBT services project; and

(B) Conducting design, development, testing or implementation activities, entering into contractual agreements or making any other commitment for the acquisition of IS equipment or services.

(ii) For IS equipment and services acquisitions requiring prior approval as specified in paragraph (b)(1) of this section, prior approval of the following documents associated with such acquisitions is also required:

(A) *Requests for Proposals (RFPs).* Unless specifically exempted by FNS, the State Summer EBT agency must obtain prior written approval of the RFP before the RFP may be released. The State Summer EBT agency must obtain prior written approval from FNS for RFPs which are associated with an EBT system regardless of the cost.

(B) *Contracts.* All contracts must be submitted to FNS. The State Summer EBT agency must obtain prior written approval from FNS for contracts which are associated with an EBT system regardless of the cost.

(C) *Contract amendments.* All contract amendments must be submitted to FNS. Unless specifically exempted by FNS, the State Summer EBT agency must obtain prior written approval from FNS of any contract amendments

which cumulatively exceed 20 percent of the base contract costs before being signed by the State Summer EBT agency.

(3) *Procurement requirements.* (i) Procurements of IS equipment and services are subject to §277.14 of this chapter (procurement standards) regardless of any conditions for prior approval contained in this section, except the requirements of §277.14(b)(1) and (2) of this chapter regarding review of proposed contracts. The procurement standards in §277.14(b)(1) and (2) include a requirement for maximum practical open and free competition regardless of whether the procurement is formally advertised or negotiated.

(ii) The standards prescribed by §277.14 of this chapter, as well as the requirement for prior approval in this paragraph (b), apply to IS services and equipment acquired primarily to support Summer EBT regardless of the acquiring entity.

(iii) The competitive procurement policy prescribed by §277.14 of this chapter must be applicable except for IS services provided by the agency itself, or by other State or local agencies.

(iv) The following FNS-required provisions as required under 2 CFR part 200, appendix II, apply to Summer EBT procurements as well:

(A) Compliance with Executive Order 11246 related to equal employment opportunity.

(B) Compliance with Clean Air Act (42 U.S.C. 7401–7671q).

(C) Compliance with Clean Water Act (33 U.S.C. 1251–1387).

(D) Compliance with Anti-Lobbying Act.

(E) Compliance with Americans with Disabilities Act.

(F) Compliance with drug-free workplace requirements.

(G) Compliance with suspension/debarment requirements.

(H) USDA has royalty-free rights to use software and documentation developed.

(I) The State Summer EBT agency must obtain prior written approval from FNS, as specified in paragraphs (b)(1) and (2) of this section, to claim and receive reimbursement for the associated costs of the IS acquisition.

(4) *Document submission requirements.* (i) For IS projects requiring prior approval as specified in paragraphs (b)(1) and (2) of this section, the State Summer EBT agency must submit the following documents to FNS for approval:

(A) Planning APD as described in § 292.2.

(B) Implementation APD as described in § 292.2.

(C) Annual APDU as described in § 292.2 for the initial Summer EBT implementation.

(ii) The Annual APDU must be submitted to FNS 60 days prior to the expiration of the FFP approval, unless the submission date is specifically altered by USDA. In years where an As Needed APDU is required, as described in § 292.2, FNS may waive or modify the requirement to submit the annual APDU. The requirement in this paragraph (b)(4)(ii) will only apply to the initial implementation of Summer EBT.

(iii) As Needed APDU as described in § 292.2. As Needed APDU are required to obtain a commitment of FFP whenever significant project changes occur. Significant project changes are defined as changes in cost, schedule, scope or strategy which exceed FNS-defined thresholds or triggers. Without such approval, the Summer EBT agency is at risk for funding of project activities which are not in compliance with the terms and conditions of the approved APD and subsequently approved APDU until such time as approval is specifically granted by FNS.

(iv) Acquisition documents as described in § 277.14(g) of this chapter for Summer EBT agencies that administer SNAP (see guidance within in FNS Handbook 901 for more information), or for Summer EBT services projects utilizing an existing or new SNAP EBT services contract for Summer EBT.

(v) Emergency acquisition requests as described in paragraph (j) of this section.

(c) *Prior approval.* The State Summer EBT agency must obtain prior FNS approval of the documents specified in paragraph (b)(4)(i) of this section in order to claim and receive reimbursement for the associated costs of the IS acquisition.

(d) *Approval by the State Summer EBT agency.* Approval by the State Summer EBT agency is required for all documents and acquisitions specified in this subpart prior to submission for FNS approval. However, the State Summer EBT agency may delegate approval authority to any subordinate entity for those acquisitions of IS equipment and services not requiring prior approval by FNS.

(e) *Prompt action on requests for prior approval.* FNS will reply promptly to State Summer EBT agency requests for prior approval. If FNS has not provided written approval, disapproval, or a request for additional information within 60 days of FNS' acknowledgment of receipt of the State Summer EBT agency's request, the request will be deemed to have provisionally met the prior approval requirement in paragraph (b) of this section. However, provisional approval will not exempt a State Summer EBT agency from having to meet all other Federal requirements which pertain to the acquisition of IS equipment and services. Such requirements remain subject to Federal audit and review.

(f) *APD content requirements—(1) Planning APD (PAPD).* The PAPD is a written plan of action to acquire proposed services or equipment and to perform necessary activities to investigate the feasibility, system alternatives, requirements and resources needed to replace, modify, or upgrade the State Summer EBT agency's IS. The PAPD must contain adequate documentation to demonstrate the need to undertake a planning process, as well as a thorough description of the proposed planning activities, and estimated costs and timeline (see guidance within FNS' Handbook 901 for more information).

(2) *Implementation APD (IAPD).* The IAPD is a written plan of action to acquire the proposed IS services or equipment and to perform necessary activities to design, develop, acquire, install, test, and implement the new IS. The IAPD must contain detailed documentation of planning and preparedness for the proposed project, (see guidance within FNS' Handbook 901 for more information), demonstrating the feasibility of the project, thorough analysis of system requirements and

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design, a rigorous management approach, stewardship of Federal funds, a realistic schedule and budget, and preliminary plans for key project phases. The IAPD must be submitted and approved prior to incurring any costs under the new EBT service contract.

(3) *Annual APDU content requirements.* The Annual APDU is a yearly update to ongoing IS projects when planning or implementation activities occur. The Annual APDU must contain documentation on the project activity status and a description of major tasks, milestones, budget, and any changes (see guidance within FNS' Handbook 901 for more information).

(4) *As Needed APDU content requirements.*

The As Needed APDU document must contain the items as defined in paragraph (b)(4)(ii) of this section with emphasis on the area(s) where changes have occurred or are anticipated that triggered the submission of the APDU (see guidance within FNS' Handbook 901 for more information)."

Paragraph (d) should read: (q) *APD process for ITOs.* For the acquisition of IS equipment or services to be utilized in an EBT system regardless of the cost of the acquisition in accordance with the Summer EBT issuance standards in subpart D to this part, WIC EBT coordinating Summer EBT agencies, administering WIC, that are planning changes to their ITO Management Information Systems to incorporate the Summer EBT requirements should refer to the APD process requirements outlined in 7 CFR 246.12, 2 CFR part 200, appendix XI, and the APD process in this section (see guidance within FNS' Handbook 901 for more information).

(g) *Service agreements.* (1) The State Summer EBT agency must execute service agreements when IS services are to be provided by a State central IT facility or another State or local agency. *Service agreement* means the document signed by the State or local agency and the State or local central IT facility whenever an IT facility provides IT services to the State or local agency. Service agreements must:

(i) Identify the IS services that will be provided;

(ii) Include a schedule of rates for each identified IS service, and a certification that these rates apply equally to all users;

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

(iv) Include assurances that services provided will be timely and satisfactory;

(v) Include assurances that information in the IS as well as access, use and disposal of IS data will be safeguarded in accordance with provisions of §§272.1(c) (disclosure) and 277.13 (property) of this chapter;

(vi) Require the provider to obtain prior approval from FNS pursuant to paragraph (b) of this section for IS equipment and IS services that are acquired from commercial sources primarily to support federally aided public assistance programs and require the provider to comply with §277.14 of this chapter (procurement standards) for procurements related to the service agreement. IS equipment and services are considered to be primarily acquired to support federally aided public assistance programs when the Programs may reasonably be expected to either be billed for more than 50 percent of the total charges made to all users of the IS equipment and services during the time period covered by the service agreement, or directly charged for the total cost of the purchase or lease of IS equipment or services;

(vii) Include the beginning and ending dates of the period of time covered by the service agreement; and

(viii) Include a schedule of expected total charges to the Program for the period of the service agreement.

(2) The State Summer EBT agency must maintain a copy of each service agreement in its files for Federal review upon request.

(h) *Basis for continued Federal financial participation (FFP)*—(1) General. FNS will continue FFP at the levels approved in the Planning APD and the Implementation APD provided that project development proceeds in accordance with the conditions and terms of the approved APD and that IS resources are used for the purposes authorized. FNS will use the APDU to

monitor IS project development. The submission of the update as prescribed in paragraph (b)(4) of this section for the duration of project development is a condition for continued FFP. In addition, periodic onsite reviews of IS project development and State and local agency IS operations may be conducted by or for FNS to assure compliance with approved APDs, proper use of IS resources, and the adequacy of State or local agency IS operations.

(2) *Pre-implementation.* The State Summer EBT agency must demonstrate through thorough testing that the system meets all program functional and performance requirements. FNS may require a pre-implementation review of the system to validate system functionality prior to Summer EBT agency testing.

(3) *Testing.* The State Summer EBT agency must commit to completing and submitting the following documents for FNS approval and obtaining such approval prior to issuance of benefits to eligible households in the project area:

(i) *Functional demonstration.* A functional demonstration of the functional requirements prescribed in this part in combination with the system components described by the approved system design is recommended in order to identify and resolve any problems prior to acceptance testing. The Department reserves the right to participate in the functional demonstration if one is conducted. FNS may require that any or all of these tests be repeated in instances where significant modifications are made to the system after these tests are initially completed or if problems that surfaced during initial testing warrant a retest.

(ii) *An Acceptance Test Plan.* The Acceptance Test Plan for the project must describe the methodology to be utilized to verify that the EBT system complies with Program requirements and System Design specifications. At a minimum, the Acceptance Test Plan must address:

(A) The types of testing to be performed;

(B) The organization of the test team and associated responsibilities, test database generation, test case development, test schedule, and the docu-

mentation of test results. Acceptance testing must include functional requirements testing, error condition handling and destructive testing, security testing, recovery testing, controls testing, stress and throughput performance testing, and regression testing; and

(C) A “what-if” component must also be included to permit the opportunity for observers and participants to test possible scenarios in a free-form manner.

(iii) *Independent testing.* The Department reserves the right to participate and conduct independent testing as necessary during the acceptance testing and appropriate events during system design, development, implementation, and operation.

(iv) *An acceptance test report.* The State Summer EBT agency must provide a separate report after the completion of the acceptance test only in instances where FNS is not present at the testing or when serious problems are uncovered during the testing that remain unresolved by the end of the test session. The report must summarize the activities, describe any discrepancies, describe the proposed solutions to discrepancies, and the timetable for their retesting and completion. In addition, the report must contain the State Summer EBT agency’s recommendations regarding implementation of the EBT system.

(v) *A prototype food retailer agreement.* The State Summer EBT agency must enter an agreement with each FNS authorized retailer that complies with the requirements under § 274.3 of this chapter.

(vi) *An implementation plan.* (A) The implementation plan must include the following:

(1) A description of the tools, procedures, detailed schedules, and resources needed to implement the project;

(2) The equipment acquisition and installation requirements, ordering schedules, and system and component testing;

(3) A phase-in-strategy which permits a measured and orderly transition from one EBT system to another. In describing this strategy, the plan must address schedules that avoid disruption of

normal shopping patterns and operations of participating children and food retailers. Training of Summer EBT eligible children, State Summer EBT agency personnel and retailers and/or their trainers must be coordinated with the installation of equipment in retail stores;

(4) A description of on-going tasks associated with fine-tuning the system and making any corrective actions necessary to meet contractual requirements. The description must also address those tasks associated with ongoing training, document updates, equipment maintenance, on-site support and system adjustments, as needed to meet Program requirements; and,

(5) A plan for orderly phase-out of the project and/or for continuing benefit issuance operations if it is demonstrated during the pilot project or conversion operations that the new system is not acceptable.

(B) The State Summer EBT agency must submit a written contingency plan for FNS approval. The contingency plan must contain information regarding the back-up issuance system that will be activated in the event of an emergency shut-down which results in short-term or extended system inaccessibility, or total discontinuation of EBT system operations. The contingency plan must be incorporated into the Summer EBT State system security plan after FNS approval as specified in paragraph (p) of this section.

(i) *Disallowance of Federal financial participation (FFP)*. If FNS finds that any acquisition approved under the provisions of paragraph (b) of this section fails to comply with the criteria, requirements and other undertakings described in the approved or modified APD, payment of FFP may be suspended or may be disallowed in whole or in part.

(j) *Emergency acquisition requirements*. The State Summer EBT agency may request FFP for the costs of IS equipment and services acquired to meet emergency situations in which the agency can demonstrate to FNS an immediate need to acquire IS equipment or services in order to continue operation of Summer EBT; and the State Summer EBT agency can clearly document that the need could not have been

anticipated or planned for and precludes the State from following the prior approval requirements of paragraph (c) of this section. FNS may provide FFP in emergency situations if the following conditions are met:

(1) The State Summer EBT agency must submit a written request to FNS prior to the acquisition of any IS equipment or services. The written request must include:

(i) A brief description of the IS equipment and/or services to be acquired and an estimate of their costs;

(ii) A brief description of the circumstances which result in the State Summer EBT agency's need to proceed with the acquisition prior to fulfilling approval requirements at paragraph (c) of this section; and

(iii) A description of the adverse impact which would result if the State Summer EBT agency does not immediately acquire the IS equipment and/or services.

(2) Upon receipt of a written request for emergency acquisition FNS must provide a written response to the State Summer EBT agency within 14 days. The FNS response must:

(i) Inform the State Summer EBT agency that the request has been disapproved and the reason for disapproval.

(ii) If FNS approves the request submitted under paragraph (j)(1) of this section, FFP will be available from the date the State Summer EBT agency acquires the IS equipment and services.

(iii) FNS recognizes that an emergency situation exists and grants conditional approval pending receipt of the State Summer EBT agency's formal submission of the IAPD information specified at paragraph (b)(4) of this section within 90 days from the date of the agency's initial written request.

(iv) If the complete IAPD submission required by paragraph (b)(2) of this section is not received by FNS within 90 days from the date of the initial written request, costs may be subject to disallowance.

(k) *General cost requirements*—(1) *Cost determination*. Actual costs must be determined in compliance with 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400

and 415 and an FNS approved budget and must be reconcilable with the approved FNS funding level. A State Summer EBT agency must not claim reimbursement for costs charged to any other Federal program or uses of IS systems for purposes not connected with Summer EBT. The approved APD cost allocation plan includes the methods which will be used to identify and classify costs to be claimed. This methodology must be submitted to FNS as part of the request for FNS approval of funding as required in this section. Operational costs are to be allocated based on the statewide cost allocation plan rather than the APD cost plan. Approved cost allocation plans for ongoing operational costs must not apply to IS system development costs under this section unless documentation required under paragraph (b) of this section is submitted to and approvals are obtained from FNS. Any APD-related costs approved by FNS must be excluded in determining the Summer EBT agency's administrative costs under any other section of this part.

(2) *Cost identification for purposes of FFP claims.* State Summer EBT agencies must assign and claim the costs incurred under an approved APD in accordance with the following criteria:

(i) *Development costs.* Using its normal departmental accounting system, in accordance with the cost principles set forth in 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415, the State Summer EBT agency must specifically identify what items of costs constitute development costs, assign these costs to specific project cost centers, and distribute these costs to funding sources based on the specific identification, assignment and distribution outlined in the approved APD. The methods for distributing costs set forth in the APD should provide for assigning identifiable costs, to the extent practicable, directly to program/functions. The State Summer EBT agency must amend the cost allocation plan required by 2 CFR part 200, subpart E, to include the approved APD methodology for the identification, assignment, and distribution of the development costs.

(ii) *Operational costs.* Costs incurred for the operation of an IS must be iden-

tified and assigned by the State Summer EBT agency to funding sources in accordance with the approved cost allocation plan required by 2 CFR part 200, subpart E.

(iii) *Service agreement costs.* States that operate a central data processing facility must use their approved central service cost allocation plan required by 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415 to identify and assign costs incurred under service agreements with the State Summer EBT agency. The State Summer EBT agency must then distribute these costs to funding sources in accordance with the development and operational costs outlined in this section.

(iv) *Claiming costs.* Prior to claiming funding under this section the State Summer EBT agency must have complied with the requirements for obtaining approval and prior approval of paragraph (b) of this section.

(v) *Budget authority.* FNS approval of requests for funding must provide notification to the State Summer EBT agency of the budget authority and dollar limitations under which such funding may be claimed. FNS must provide this amount as a total authorization for such funding which may not be exceeded unless amended by FNS. FNS's determination of the amount of this authorization must be based on the budget submitted by the State Summer EBT agency. Activities not included in the approved budget, as well as continuation of approved activities beyond scheduled deadlines in the approved plan, must require FNS approval of an As Needed APDU as prescribed in paragraphs (b)(4) and (f)(4) of this section, including an amended State budget. Requests to amend the budget authorization approved by FNS must be submitted to FNS prior to claiming such expenses.

(1) *Access to the system and records.* Access to the system in all aspects, including but not limited to design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, must be made available by the State Summer EBT agency

to FNS or its authorized representatives at intervals as are deemed necessary by FNS, in order 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 to all parts of the system may result in suspension and/or termination of Summer EBT funds for the costs of the system and its operation.

(m) *Ownership rights.* The State Summer EBT agency must comply with the requirements under this part and the requirement for intangible property in 2 CFR 200.315.

(n) *Software.* (1) The State or local government must include a clause in all procurement instruments which provides that the State or local government must have all ownership rights in any software or modifications thereof and associated documentation designed, developed, or installed with FFP under this section.

(2) FNS reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation.

(3) Proprietary operating/vendor software packages which meet the definition of COTS in § 292.2 must not be subject to the ownership provisions in paragraph (m) of this section. FFP is not available for development costs for proprietary application software developed specifically for Summer EBT.

(o) *Information Systems equipment.* The policies and procedures governing title, use and disposition of property purchased with FFP, which appear at 2 CFR 200.315 are applicable to IS equipment.

(p) *Information system security requirements and review process—(1) Information system security requirements.* State and local agencies are responsible for the security of all IS projects under development, and operational systems involved in the administration of Summer EBT. State and local agencies must determine appropriate IS security requirements based on recognized industry standards or compliance with standards governing security of Federal information systems and information processing.

(2) *Information security program.* State Summer EBT agencies must implement and maintain a comprehensive Security Program for IS and installations involved in the administration of the Summer EBT. Security Programs must include the following components:

(i) Determination and implementation of appropriate security requirements as prescribed in paragraph (p)(1) of this section.

(ii) Establishment of a security plan and, as appropriate, policies and procedures to address the following areas of IS security:

(A) Physical security of IS resources;
(B) Equipment security to protect equipment from theft and unauthorized use;

(C) Software and data security;

(D) Telecommunications security;

(E) Personnel security;

(F) Contingency plans to meet critical processing needs in the event of short- or long-term interruption of service;

(G) Emergency preparedness; and

(H) Designation of an Agency IS Security Manager.

(3) *Periodic risk analyses.* State Summer EBT agencies must establish and maintain a program for conducting periodic risk analyses to ensure that appropriate, cost-effective safeguards are incorporated into new and existing systems. In addition, risk analyses must be performed whenever significant system changes occur.

(4) *IS security reviews.* State Summer EBT agencies must review the security of IS involved in the administration of Summer EBT on a biennial basis. At a minimum, the reviews must include an evaluation of physical and data security, operating procedures and personnel practices. State Summer EBT agencies must maintain reports of their biennial IS security reviews, together with pertinent supporting documentation, for Federal review upon request.

(5) *Applicability.* The security requirements of this section apply to all IS systems used by State and local governments to administer Summer EBT.

(q) *APD process for ITOs.* For the acquisition of IS equipment or services to be utilized in an EBT system regardless

of the cost of the acquisition in accordance with the Summer EBT issuance standards in subpart D of this part, WIC EBT coordinating Summer EBT agencies, administering WIC, that are planning changes to their ITO Management Information Systems to incorporate the Summer EBT requirements should refer to the APD process requirements outlined in 7 CFR 246.12, 2 CFR part 200, appendix XI, and the APD process (see guidance within FNS' Handbook 901 for more information).

(r) *ITO EBT management and reporting.* (1) The Summer EBT agency must follow the Department APD requirements in this section and submit Planning and Implementation APDs and appropriate updates, for Department approval, for planning, development, and implementation of initial and subsequent EBT systems.

(2) If an ITO plans to incorporate additional programs in its EBT system, the ITO must consult with ITO officials responsible for administering the programs prior to submitting the Planning APD (PAPD) document and include the outcome of those discussions in the PAPD submission to the Department for approval.

(3) Annually as part of the State plan, the Summer EBT agency must submit EBT project status reports. At a minimum, the annual status report must contain:

(i) Any information on future EBT changes and procurement updates affecting present operations; and

(ii) Such other information the Secretary may require.

(4) The ITO must be responsible for EBT coordination and management for planning, implementation and ongoing operations of Summer EBT.

(s) *ITO Summer EBT procurements.* The following procurement requirements from title 2 of the Code of Federal Regulations apply to ITO Summer EBT agencies:

(1) 2 CFR 200.315;

(2) 2 CFR 200.317;

(3) 2 CFR 200.326;

(4) 2 CFR part 200, appendix II:

(i) Remedies for violation or breach;

(ii) Termination for cause and for convenience;

(iii) Equal employment opportunity (EEO) provisions;

(iv) Clean Air Act and Federal Water Pollution Control Act;

(v) Debarment and suspension requirements; and

(vi) Anti-lobbying requirements; and

(5) 2 CFR part 400.

(t) *ITO Program costs.* (1) The two kinds of allowable costs under the Program are “food costs” and “nutrition services and administration costs.” In general, costs necessary to the fulfillment of Program objectives are to be considered allowable costs. The two types of nutrition services and administration costs are:

(i) *Direct costs.* Those direct costs that are allowable under 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415.

(ii) *Indirect costs.* Those indirect costs that are allowable under 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415. When computing indirect costs, food costs may not be used in the base to which the indirect cost rate is applied. In accordance with the provisions of 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415, a claim for indirect costs must be supported by an approved allocation plan for the determination of allowable indirect costs.

(2) Program funds may not be used to pay for retroactive benefits.

§ 292.12 Enrolling eligible children.

(a) *Minimum requirements for Program informational activities.* Summer EBT agencies must comply with the following minimum information requirements for applicants and recipients.

(1) Summer EBT agencies must inform participant and applicant households of their Program rights and responsibilities. This information may be provided through whatever means the Summer EBT agency deems appropriate.

(2) All Program informational material must:

(i) Be in an understandable and uniform format, and to the maximum extent practicable, in a language that parents and guardians can understand;

(ii) Include the USDA nondiscrimination statement; and

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(iii) Be provided in alternate formats for individuals with disabilities, as practicable.

(3) All program information material should be provided by households' preferred method of contact, to the maximum extent practicable.

(b) *General requirements.* In enrolling eligible children, Summer EBT agencies must:

(1) Establish procedures to ensure correct eligibility determinations;

(2) Establish procedures to allow households to provide updated contact information for the purpose of receiving Summer EBT; and

(3) Establish procedures to enable anyone who has been determined to be eligible for Summer EBT benefits to confirm their eligibility status and unenroll, or opt out, of the Program, if they do not want to receive benefits; and

(4) Provide assistance to households that seek help in applying for benefits.

(c) *NSLP/SBP enrollment database.* By 2025, Summer EBT agencies must establish and maintain a State- or ITO-wide database of all children enrolled in NSLP- or SBP-participating schools within the State or ITO service area, as applicable, for the purposes of enrolling children for Summer EBT benefits and detecting and preventing duplicate benefit issuance. If an ITO, in consultation with FNS, determines that establishing and maintaining a database meeting the requirements of this section is not feasible or is unnecessary based on their method of enrolling children, the ITO may submit a waiver request under § 292.3(h).

(1) *Database elements.* At a minimum, the database must contain the following information for these children:

- (i) Name;
- (ii) Date of birth;
- (iii) School/school district where enrolled;
- (iv) Mailing address;
- (v) Individual free or reduced price eligibility status, as applicable; and
- (vi) Any other information needed to issue benefits timely and with integrity.

(2) *Data use and confidentiality.* Summer EBT agencies must ensure the confidentiality of all such data, and the data must be used only for the pur-

poses of the Summer EBT Program, or to provide other social service benefits to eligible children.

(3) *Data sharing across Summer EBT Programs.* State Summer EBT agencies must make this data available to ITO Summer EBT agencies for children within an ITO's Summer EBT service area, in a timeframe that allows ITO Summer EBT agencies to issue timely benefits. ITO Summer EBT agencies must ensure confidentiality of the data in accordance with paragraph (c)(2) of this section.

(d) *Automatic enrollment with streamlined certification.* (1) Summer EBT agencies must enroll eligible children through streamlined certification, including those who, during the period of eligibility were:

(i)(A) Individually certified for free or reduced price school meals through the NSLP/SBP, per § 245.6 of this chapter; or

(B) School aged and:

(1) Members of a household receiving assistance under SNAP, as defined in § 292.2;

(2) Members of a household receiving assistance under FDPIR and TANF, if data for these programs are available at the State level; or

(3) A foster, homeless, migrant, runaway, or Head Start child, as defined in § 245.2 of this chapter, if data for these programs are available at the State level.

(ii) Not enrolled in a special provision school but are otherwise determined eligible for a free or reduced priced meal through the NSLP/SBP.

(2) Summer EBT agency may enroll eligible children through streamlined certification who are members of a household receiving assistance under other means-tested programs, as approved by the Secretary.

(3) Streamlined certification does not require further confirmation of school enrollment.

(4) If an ITO, in consultation with FNS, determines that any element of automatic enrollment with streamlined certification is not feasible or is unnecessary based on available resources or circumstances to the population served, the ITO may submit a waiver request under § 292.3(h).

(e) *Enrollment by Summer EBT application.* (1) Summer EBT agencies must enroll eligible children in Summer EBT if it is determined that they meet the requirements to receive free or reduced price meals at § 292.5(a), as determined through a complete Summer EBT application. A Summer EBT application is considered complete if the following information is provided:

- (i) Names of children and other household members;
- (ii) Amount, source, and frequency of income for each household member; and
- (iii) Signature of an adult household member, including electronic signatures, as described in § 292.13(h).

(2) Confirmation of enrollment in an NSLP/SBP- participating school during the immediately preceding instructional year is required for children who apply by Summer EBT application. This can be accomplished by matching against the State or ITO-wide NSLP/SBP enrollment database, as required in paragraph (c) of this section, prior to benefit issuance.

(3) Children who are not in an NSLP or SBP-participating school in the immediately preceding instructional year cannot be certified as eligible, and therefore cannot be deemed eligible for Summer EBT through submission of an application for Summer EBT benefits.

(4) Summer EBT agencies are prohibited from requiring income documentation at the time of application.

(f) *Notice of approval*—(1) *Income applications.* The Summer EBT agency must notify (or place notification in the mail) eligible households of a child's approved status within 15 operational days of receipt of a complete application. This may be included in the mailing containing the EBT card, if applicable, or other communication informing the household about the issuance or use of benefits.

(2) *Streamlined certification.* Households approved for benefits based on information provided by the appropriate State or local agency responsible for the administration of a means-tested program that has been approved by the Secretary must be notified, in writing, that their children are eligible for Summer EBT and that no application is required. The notice of approval

must also inform the household how to opt-out if they do not want their children to receive Summer EBT benefits.

(3) *Households declining benefits.* Children from households that notify the Summer EBT agency that they do not want Summer EBT benefits must not be issued benefits, or have their benefits expunged as soon as possible if already issued. Any notification from the household declining benefits must be documented and maintained on file, as required under § 292.23, to substantiate the change in benefits. Because any expungement in this instance is at the request of the household, the 30 day household notice typically required for expunging benefits is not required in this instance.

(4) *Duplicate benefit issuance.* Summer EBT agencies must include in the notice of approval a statement communicating that households that are erroneously issued duplicate benefits from more than one State or ITO should only use benefits from the State or ITO where their child(ren) completed the instructional year immediately preceding the summer operational period. Under no circumstances may they use both.

(g) *Denied applications and the notice of denial.* When the application furnished by a household is not complete or does not meet the eligibility criteria for Summer EBT benefits, the Summer EBT agency must document and retain the reasons for ineligibility and must retain the denied application. In addition, the Summer EBT agency must provide written notice to each household denied benefits within 15 operational days of receipt of a complete application. At a minimum, this notice must include:

- (1) The specific reason or reasons for the denial of benefits, *e.g.*, income in excess of allowable limits or incomplete application;
- (2) Notification of the right to appeal;
- (3) Instructions on how to appeal; and
- (4) A statement reminding households that they may reapply for benefits at any time.

(h) *Appeals of denied benefits.* A household that wishes to appeal an application that was denied may do so in accordance with the procedures established by the Summer EBT agency as required by §292.26. However, prior to initiating the hearing procedure, the household may request a conference to provide the opportunity for the household to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference must not in any way prejudice or diminish the right to a fair hearing. The Summer EBT agency must promptly schedule a fair hearing, if requested.

(i) *Confidential nature of streamlined certification information.* Information about children or their households obtained through the streamlined certification process must be kept confidential and is subject to the limitations on disclosure of information in section 9 of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758.

§ 292.13 Application requirements.

(a) Statewide application. By 2025, the Summer EBT agency must make a Summer EBT application available to households whose children are enrolled in NSLP- or SBP-participating schools and who do not already have an individual eligibility determination.

(b) Contracting application processes. Summer EBT agencies may not delegate to LEAs the responsibility of making a Summer EBT application available. However, a Summer EBT agency may contract with another entity into order to fulfill the requirement in this paragraph (b).

(c) *Household applications.* The application must be clear and simple in design and the required information must be limited to what is required to demonstrate that the household does, or does not, meet the eligibility criteria for Summer EBT benefits at §292.5(a). The application or associated instructions must also include the income eligibility guidelines and an explanation that households with incomes at or below the income limit may be eligible for Summer EBT. Summer EBT agencies are encouraged to include optional questions on the application to im-

prove customer service including, but not limited to:

(1) Preferred method of communication (*e.g.*, mail, email, phone, text message);

(2) Preferred contact information;

(3) Preferred language of communication;

(4) Preferred method of benefit issuance (*e.g.*, EBT card, electronic benefit);

(5) Interest in receiving information about how to access other assistance program benefits (*e.g.*, Summer Food Service Program, NSLP/SBP, Child and Adult Care Food Program, SNAP, WIC, TANF, FDIPIR, Medicaid);

(6) Membership in an ITO; and

(7) Other program options where a household may have preferences, receipt of information that households may find useful, or information that would aid Summer EBT agencies in successful program implementation.

(d) *Understandable communications.* Any communication with households for eligibility determination purposes must be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and guardians can understand.

(e) *Availability of applications.* Summer EBT agencies must ensure that a Summer EBT application is available throughout the period of eligibility, as defined in §292.2.

(f) *Timely certifications.* Summer EBT agencies must follow-up with a household that submits an incomplete application within 10 operational days of receipt of the application. See notice of approval at §292.12(f) for additional requirements for complete applications that are approved for benefits, and providing benefits to participants at §292.15(c) for requirements around timely issuance of benefits for eligible children.

(g) *Deadline for applications.* Households must submit an application for Summer EBT benefits by the last day of the summer operational period in order to receive benefits for that summer. Applications that are submitted after the last day of the summer operational period may be used to establish eligibility for the following summer. Summer EBT agencies may encourage

households to apply prior to the application deadline, however applications must be accepted and processed up until the application deadline, and benefits must be issued if the application is approved.

(h) *Electronic applications.* In addition to the distribution of information, applications, and descriptive materials in paper form, the Summer EBT agency may establish a system for executing household applications electronically and using electronic signatures. The electronic submission system must comply with the same requirements as paper applications. Descriptive materials may also be made available electronically by the Summer EBT or local educational agency. If the application is made available electronically, a paper version must also be available.

(i) *Application content requirements.* Summer EBT applications must contain the following elements:

(1) *Required income information.* The information requested on the application with respect to the current income of the household must be limited to:

(i) The income received by each member identified by the household member who received the income or an indication which household members had no income; and

(ii) The source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income). Other cash income includes cash amounts received or withdrawn from any source, including savings, investments, trust accounts, and other resources which are available to pay for a child's meals.

(2) *Household members.* The application must require applicants to provide the names of all household members. However, the application must allow the household to provide a case number if they participate in SNAP, or another means-tested program that has been approved by the Secretary, in lieu of names of all household members and household income information.

(3) *Name of school where child is enrolled.* A State- or ITO-wide application must contain a space for the household to indicate the name of the school or district where each eligible child is enrolled.

(4) *Mailing address.* The application must contain a space for the household to list their mailing address. However, the application must be accepted and processed as complete even if the field was not completed by the applicant. The instructions should communicate that it will be used to mail their EBT card, as applicable, and therefore should be the address that will be used by the household at the time the Summer EBT agency issues benefits.

(5) *Adult member's signature.* The application must be signed by an adult member of the household.

(j) *Attesting to information on the application.* The application must also include a statement, immediately above the space for signature, that the person signing the application certifies that all information furnished in the application is true and correct, that the application is being made in connection with the receipt of Federal funds, that the applicant is not already receiving Summer EBT benefits in another State or ITO, that Summer EBT agencies may verify the information on the application, and that deliberate misrepresentation of the information may subject the applicant to prosecution under applicable State and Federal criminal statutes.

(k) *Race and ethnicity.* The application must contain space for collection of information on race and ethnicity of applicants. The questions should be labeled as optional, and incomplete responses cannot be used as the basis for the denial of benefits.

(l) *Accompanying instructions.* The application must contain clear instructions with respect to the completion and submission of the application to the Summer EBT agency to make eligibility determinations. The instructions should inform households that if they intend to move, or have recently moved, that they should apply for benefits in the State where their child will complete or completed the school year immediately preceding the summer operational period.

(m) *Required statements for the application.* The application and descriptive materials must include substantially the following statements:

(1) "The Richard B. Russell National School Lunch Act requires that we use

information from this application to determine who qualifies for Summer EBT benefits. We can only approve complete forms. We may share your eligibility information with education, health, and nutrition programs to help them deliver program benefits to your household. Inspectors and law enforcement may also use your information to make sure that program rules are met. Some children qualify for Summer EBT without an application. Please contact your State or ITO to get Summer EBT for a foster child, and children who are homeless, migrant, or runaway.”

(2) When either the Summer EBT agency or the LEA plans to use or disclose children’s eligibility information for non-program purposes, additional information, as specified in §245.6(h) of this chapter, must be added to this statement. State agencies and LEAs are responsible for drafting the appropriate statement.

(3) The application must contain the USDA nondiscrimination statement for Child Nutrition Programs.

(4) The Summer EBT agency must inform applicants and prospective applicants that a non-household member may be designated as the authorized representative for application processing purposes if they have difficulty completing the application process.

(n) *Calculating income.* The Summer EBT agency must use the income information provided by the household on the application to calculate the household’s total current income. When a household submits a complete application, and the household’s total current income is at or below the eligibility limits specified in the Income Eligibility Guidelines, the children in that household must be approved for Summer EBT benefits.

(o) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in this section may have access to children’s eligibility information, without parent or guardian consent. Persons considered directly connected with administration or enforcement of a program or activity are Federal, State, ITO, or local program operators responsible for the ongoing operation

of the program or activity or responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies, ITOs, and program operators contract with to assist in the administration or enforcement of their program in their behalf.

(p) *Disclosure of all eligibility information in addition to eligibility status.* In addition to children’s names and eligibility status, the Summer EBT agency, as appropriate, may disclose, without parental consent, all eligibility information obtained through the Summer EBT eligibility process (including all information on the application or obtained through streamlined certification) to:

(1) Persons directly connected with the administration or enforcement of programs authorized under the Richard B. Russell National School Lunch Act, the Child Nutrition Act of 1966, or the Food and Nutrition Act of 2008. This means that all eligibility information obtained for the Summer EBT Program may be disclosed to persons directly connected with administering or enforcing regulations under the Summer EBT Program, National School Lunch or School Breakfast Programs (7 CFR parts 210 and 220, respectively), Child and Adult Care Food Program (7 CFR part 226), Summer Food Service Program (7 CFR part 225), the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (7 CFR part 246), and the Supplemental Nutrition Assistance Program (SNAP) (7 CFR parts 271 through 285);

(2) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in §292.16(b)(1)(iii); and

(3) The Comptroller General of the United States for purposes of audit and examination.

(q) *Phase-in flexibility.* For 2024, alternative income applications that do not

meet the criteria in paragraph (i) of this section can be used to confer eligibility for Summer EBT if the information provided on the alternative application is sufficient for the Summer EBT agency or LEA to determine that the household meets the income eligibility guidelines for Summer EBT. In 2024, Summer EBT agencies may delegate application processing to LEAs. If a Summer EBT agency delegates application processing to LEAs, then it must cover all administrative costs incurred by the LEAs with respect to Summer EBT application processing.

§ 292.14 Verification requirements.

(a) Summer EBT applications are subject to the following verification requirements:

(1) *Verification for cause.* (i) The Summer EBT agency must verify for cause applications, on a case-by-case basis, such as in an instance when the agency is aware of conflicting or inconsistent information from what was provided on the application.

(ii) The Summer EBT agency may verify an application for cause at any time during the instructional year or summer operational period, but verification must be completed within 30 days of receipt of the application.

(iii) Applications verified for cause are not considered part of three (3) percent sample size described in paragraph (a)(2) of this section.

(iv) Applications do not need to be selected for verification for cause during initial application processing. A Summer EBT agency may become aware of a questionable application after the initial certification was completed and benefits were issued. In this case, the Summer EBT agency must verify the application for cause at the time they learn of the questionable or conflicting information.

(v) All verification procedures in this section must be followed for applications selected for verification for cause in the same manner as an application randomly selected as part of the sample described in paragraph (a)(2) of this section.

(2) *Verification sample.* (i) The Summer EBT agency must verify eligibility of children in a sample of household

Summer EBT applications approved for benefits for the summer.

(ii) The sample size for the Summer EBT agency must equal three (3) percent of all applications approved by the Summer EBT agency from the start of the instructional year through April 1 of the school year immediately preceding the summer operational period, selected randomly from all applications.

(3) *Verification alternatives.* (i) In lieu of carrying out provisions in paragraph (a)(2) of this section, Summer EBT agencies may propose alternative methods for verification that strengthen program integrity and preserve participant access.

(ii) Summer EBT agencies that intend to propose alternative procedures must include a detailed description of their plan in their POM submission. Proposals are subject to USDA approval.

(b) *Replacing applications.* The Summer EBT agency may, on a case-by-case basis, replace up to ten percent of applications that are randomly selected as part of the verification sample. Applications may be replaced if the Summer EBT agency determines that the household would be unable to satisfactorily respond to the verification request.

(c) *Rolling verification sample selection.* Summer EBT agencies may choose to conduct verification on a rolling basis, as long as the sample size requirements in paragraph (a)(3) of this section are met.

(1) If conducting rolling verification, the Summer EBT agency must:

(i)(A) Include in each sample pool only applications approved since the last sample was selected; and

(B) Select three (3) percent of approved applications, as required by the sampling method, each time, but round down to the nearest whole number to prevent over-sampling. If rounding down results in a zero, no applications should be verified for the sample period, and the applications received in that sample period should be included in the next sample pool.

(ii) Select the final sample on April 1.

(A) Selecting only from the applications approved since the last sampling;

(B) Summing the number of applications selected for verification to date

(including the final, April 1 sample); and

(C) Calculating three (3) percent of all applications approved as of April 1, and rounding up to the next whole number.

(2) If the number of applications summed per paragraph (c)(1)(ii)(B) of this section is less than the three (3) percent calculated per paragraph (c)(1)(ii)(C) of this section, the Summer EBT agency must fill the remainder of the sample by selecting randomly from all applications.

(3) Summer EBT agencies may choose to sample at any frequency prior to April 1, but may not sample any applications after April 1.

(d) *Verification after April 1.* Applications that come in after April 1 are still subject to verification for cause, on a case-by-case basis, per paragraph (a)(1) of this section.

(e) *Direct verification.* Summer EBT agencies must conduct direct verification activities with the programs eligible for use in streamlined certification, as defined in § 292.12(d), as well as records from other assistance programs and administrative data, where available. Data records are subject to the timeframe specified in paragraph (e)(2) of this section.

(1) Direct verification must be conducted prior to contacting the household for documentation.

(2) For the purposes of direct verification, documentation may indicate participation in an applicable program or income at any point during the period of eligibility. The information provided only needs to indicate eligibility at a single point in time during the period of eligibility, not that the child was eligible at the time of application or verification.

(3) Summer EBT agencies must include in their POM submission all sources of administrative data that is intended to be used for direct verification.

(f) *Verification procedures and assistance for households—(1) Exceptions from verification.* Verification is not required of households if all children in the household are determined eligible based on documentation provided by the State or local agency responsible for the administration of the SNAP,

FDPIR, TANF, or another means tested program, as approved by the Secretary, or if all children in the household are determined to be foster, homeless, migrant, or runaway, as defined in § 245.2 of this chapter.

(2) *Notification of selection.* Households selected for verification must be notified in writing that their applications were selected for verification. The written statement must include a telephone number to contact for assistance. Any communications with households concerning verification must be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and guardians can understand. These households must be advised of the type of information or documents that will be expected. Households selected for verification must be informed that:

(i) They are required to submit the requested information to verify eligibility for Summer EBT benefits, by the date determined by the Summer EBT agency.

(ii) They may, instead, submit proof that the children receive assistance under SNAP, FDPIR, TANF, or another means tested program, as approved by the Secretary.

(iii) They may, instead, request that the Summer EBT agency contact the appropriate officials to confirm that their children are foster, homeless, migrant, or runaway.

(iv) Failure to cooperate with verification efforts will result in the termination of benefits.

(3) *Sources of information.* For the purposes of this section, sources of information for verification may include, but are not limited to, written evidence, individuals outside of the child's household who can verify the child's circumstances, and systems of records as follows:

(i) Written evidence must be used as the primary source of information for verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs,

award letters, and letters from employers. Whenever written evidence is insufficient to confirm income information on the application or current eligibility, the verifying agency may require confirmation from a person outside of the child's household, or accept a statement from an adult member of the child's household.

(ii) Verbal confirmations of a household's circumstances by a person outside of the household may be made in person or by phone. The verifying official may select a person to contact if the household fails to designate one or designates one which is unacceptable to the verifying official. If the verifying official designates a person, contact must not be made without providing written or oral notice to the household. At the time of this notice, the household must be informed that it may consent to the contact or provide acceptable documentation in another form. If the household refuses to choose one of these options, its eligibility must be terminated in accordance with the normal procedures for failure to cooperate with verification efforts. Individuals outside of the child's household who can verify the child's circumstances could include but are not limited to: employers, social service agencies, school officials, and migrant agencies.

(iii) Agency records to which the verifying agency may have access are not considered to be the same as a person outside of the child's household who can verify their circumstances. Information concerning income, household size, or SNAP, FDIPIR, or TANF eligibility, maintained by other government agencies to which the verifying agency can legally gain access, must be used to confirm a household's income, size, or receipt of benefits, as applicable. Information may also be obtained from individuals or agencies serving categorically eligible children, as defined in § 292.2, including foster, homeless, migrant, or runaway children.

(iv) Households which dispute the validity of income information acquired through an individual outside of the child's household or a system of records must be given the opportunity to provide other documentation.

(4) *Documentation timeframe.* Households selected and notified of their selection for verification must provide documentation of income. The documentation must indicate the source, amount and frequency of all household income and may indicate eligibility at any point during the period of eligibility. The information provided only needs to indicate eligibility for participation in the program at a single point in time during the period of eligibility, not that the child was certified for that program's benefits at the time of application or verification.

(5) *Household cooperation.* If a household refuses to cooperate with efforts to verify, eligibility for Summer EBT benefits must be terminated.

(6) *Telephone assistance.* The Summer EBT agency must provide a telephone number to households selected for verification to call free of charge to obtain information about the verification process. The telephone number must be prominently displayed on the letter to households selected for verification.

(7) *Follow-up attempts.* The Summer EBT agency must make at least two attempts, at least one week apart, to contact any household that does not respond to a verification request. The attempt may be through a telephone call, email, or mail, and must be documented. Non-response to the initial request for verification includes no response and incomplete or ambiguous responses that do not permit the Summer EBT agency to resolve the children's eligibility for Summer EBT benefits.

(8) *Eligibility changes.* The Summer EBT agency must complete the following activities if there is an eligibility change as a result of verification:

(i) Make appropriate modifications to the initial eligibility determinations.

(ii) Notify the household of any change in eligibility as a result of verification.

(iii)(A) The notice must advise the household of:

(1) The change;

(2) The reasons for the change;

(3) Notification of the right to appeal and when the appeal must be filed;

(4) Instructions on how to appeal; and

(5) The right to reapply at any time during the instructional year or summer operational period.

(B) Properly document and retain on file at the Summer EBT agency the reasons for ineligibility.

(9) *Issuance of benefits.* Benefits cannot be issued for applications selected for verification until the verification process is completed with the exception of verification for cause, as described in paragraph (a)(1) of this section.

(10) *Timing of verification for continuous school calendars.* In the case of children who are enrolled in a school operating on a continuous school calendar, the Summer EBT agency must receive approval from USDA for any alternative plans for the timing of conducting verification, in accordance with the State or ITO's approved POM.

(11) *Verification after benefit issuance.* If a Summer EBT agency is alerted to a questionable application after initial approval or issuance of benefits, no further benefits should be issued until verification for cause, as outlined in paragraph (a)(1) of this section is complete and eligibility is confirmed.

(12) *Nondiscrimination.* The verification efforts must be applied without regard to race, sex, color, national origin, age, or disability.

(g) *Verification of alternative income applications in 2024.* In 2024, Summer EBT agencies or LEAs should, on a case-by-case basis, verify for cause any questionable Summer EBT application or alternate income applications used to confer Summer EBT eligibility and follow the procedures in paragraphs (e) and (f) of this section.

Subpart D—Issuance and Use of Program Benefits

§ 292.15 General standards.

(a) *Timing.* Summer EBT benefits are intended for use during the summer operational period, in accordance with the Summer EBT agency's approved POM.

(b) *Continuous school calendar.* In the case of children who attend a school operating on a continuous school calendar, the Summer EBT agency must receive approval from USDA for any alternative plans for the periods during

which Summer EBT benefits must be issued and used, in accordance with the State or ITO's approved POM.

(c) *Benefit issuance—(1) Providing benefits to participants.* (i) The Summer EBT agency shall ensure the timely and accurate issuance of benefits.

(A) For children who can be streamline certified or who have an approved Summer EBT application on file, benefits must be issued and available for participants to use at least seven calendar days and not more than 14 calendar days before the start of the summer operational period. When the Summer EBT agency does not have sufficient data to issue a benefit to an eligible child, the agency must work to resolve the case and issue the benefit as expeditiously as possible.

(B) For eligible children who apply after the summer operational period begins, benefits must be issued and available to spend not later than 15 operational days after a complete application is received by the Summer EBT agency, so that participants may use their benefits during the summer.

(ii) If the Summer EBT agency issues benefits after the summer operational period, the Summer EBT agency must submit to FNS a corrective action plan outlining the reasons benefits were not issued in a timely manner, and steps the Summer EBT agency will take to ensure timely issuance in the future.

(iii) The Summer EBT agency's issuance schedule does not need to align with the start of calendar months and may include staggered benefit issuance across multiple days. Regardless of the issuance schedule, Summer EBT agencies may only issue a full three months of benefits for the summer operational period.

(iv) Children on applications that are selected for verification must not be issued benefits until verification is complete and eligibility is confirmed. Additional information about the verification requirements for Summer EBT applications can be found at § 292.14.

(v) Summer EBT agencies must aid households with eligible children who do not reside in a permanent dwelling

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or have a fixed mailing address in obtaining Summer EBT benefits by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means.

(2) *Method of issuance.* Benefits may be issued:

(i) In the form of an EBT card;

(A) Into an existing EBT account associated with an existing EBT card; or

(B) Into a new EBT account associated with a new EBT card;

(ii) Through other electronic methods, as determined by the Secretary; or

(iii) In the case of a Summer EBT agency that does not issue nutrition assistance program benefits electronically, using the same methods by which that Summer EBT agency issues benefits under the nutrition assistance program of that State.

(d) *Dual participation.* (1) Dual participation in Summer EBT in the same summer operational period is not allowed.

(2) Summer EBT agencies must develop procedures to detect and prevent dual participation across multiple States and/or ITOs, and must describe these procedures in their POMs, as explained in § 292.8(e)(9).

(e) *Benefit amount.* (1) In 2024, the benefit will be \$40 per month in the summer operational period for each eligible child, and will be adjusted in subsequent years to reflect changes in the cost of food as measured by the Thrifty Food Plan (TFP). Any year-to-year decrease of the TFP will not be implemented.

(2) In Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands, the Secretary may establish appropriate adjustments for each such State to the national average payment rates to reflect the differences between the costs of foods in those States and the costs of foods in all other States.

(3) Benefit amounts will be issued in an amount equal to the unrounded benefit amount from the prior year, adjusted to the nearest lower dollar increment to reflect changes to the cost of the diet described in section 3(u) of the Food and Nutrition Act of 2008 (7

U.S.C. 2012(u)) for the 12-month period ending on November 30 of the preceding calendar year and rounded to the nearest lower dollar increment. Rates will be effective January 1 through December 31 of each year.

(4) Summer EBT agencies may not prorate benefits for partial months and must issue the full three months of summer benefits to each eligible child.

(f) *Benefit allotments.* (1) The Summer EBT agency may issue benefit allotments to a child in a single issuance prior to the start of the summer operational period, or multiple issuances provided that the first issuance occurs before the start of the summer operational period.

(2) In providing benefit allotments Summer EBT agencies:

(i) May stagger issuance throughout the month.

(ii) Must establish an availability date for household access to their benefits and inform households of this date.

(iii) Must issue the full benefit amount for all summer months to each eligible child who applies before the last day of the summer period, independent of the date of application submission or eligibility determination.

(iv) Must adhere to the reporting requirements specified by USDA, regardless of the issuance schedule used.

(g) *Participant support—(1) Household training.* The Summer EBT agency must provide written training materials to each eligible household prior to Summer EBT benefit issuance and as needed during ongoing operation of the Summer EBT Program. At a minimum, the household training must include:

(i) Content which will familiarize each eligible household with:

(A) Where benefits can be used;

(B) What benefits can be used to purchase; and

(C) Unallowable uses of benefits, and penalties for misuse;

(ii) The appropriate utilization and security of the personal identification number (PIN);

(iii) The established procedures to provide customer service during non-business hours that enable participants or proxies to report a lost, stolen, or damaged card, report other card or benefit issues, receive information on

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the EBT food balance, and receive the current benefit end date;

(iv) Eligibility criteria for the Program;

(v) Written materials and other information, including the specific rights to benefits. This must include the USDA statement of non-discrimination. Written materials must be prepared at an educational reading level suitable for participant households; and

(vi) Disclosure information regarding adjustments and a household's rights to notice, fair hearings, and provisional credits. The disclosure must also state where to call to dispute an adjustment and request a fair hearing.

(2) *EBT cards and PINs.* Summer EBT agencies which issue EBT cards by mail must, at a minimum, use first class mail and sturdy non-forwarding envelopes or packages to send Summer EBT cards to households.

(i) The Summer EBT agency must permit a Summer EBT eligible household to select their PIN.

(ii) PIN assignment procedures must be permitted in accordance with industry standards as long as PIN selection is available to households if they so desire and households are informed of this option.

(iii) If assigning a PIN by mail in conjunction with card issuance, Summer EBT agencies must mail the PIN separate from the card one business day after the card is mailed.

(3) *Adjustments.* The Summer EBT agency:

(i) May make adjustments to benefits posted to household accounts after the posting process is complete but prior to the availability date for household access in the event benefits are erroneously posted.

(ii) Must make adjustments to an account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error.

(4) *Providing replacement EBT cards or PINs.* The Summer EBT agency must make replacement EBT cards available for pick up or place the card in the mail within two business days following notice by the household to the Summer EBT agency that the card has been lost, stolen or damaged.

(i) The Summer EBT agency must ensure a duplicate account is not established which would permit households to access more than one account in the system.

(ii) An immediate hold must be placed on accounts at the time notice is received from a household regarding the need for card or PIN replacement. The Summer EBT agency must implement a reporting system which is continually operative. Once a household reports their EBT card has been lost or stolen, the agency must assume liability for benefits subsequently drawn from the account and replace any lost or stolen benefits to the household. The Summer EBT agency must maintain a record showing the date and time of all reports by households that their card is lost or stolen.

(5) *Providing replacement EBT benefits.* The Summer EBT agency must make replacement EBT benefits available to a household when the household reports that food purchased with Summer EBT benefits was destroyed in a household misfortune or disaster.

(h) *Expungement—(1) General expungement procedures—(i)* Summer EBT agencies shall expunge Summer EBT benefits 122 calendar days after their issuance.

(ii) No less than 30 days before benefit expungement is scheduled to begin, Summer EBT agencies must provide notice to the household of the expungement date and amount that is scheduled for expungement.

(iii) Expunged benefits shall not be reinstated.

(2) *Procedures to adjust Summer EBT accounts.* The Summer EBT agency shall establish procedures to adjust Summer EBT benefits that have already been posted to an EBT account prior to the household accessing the account, or to remove benefits from inactive accounts for expungement.

(i) Whenever benefits are expunged, the Summer EBT agency must document the date and amount of the benefits in the household case file.

(ii) Issuance reports must reflect the adjustment to the Summer EBT agency issuance totals to comply with reporting requirements in § 292.23.

(i) *Expungement Procedures specific to States that administer the supplemental*

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nutrition assistance program (SNAP). (1) Summer EBT agencies that load Summer EBT benefits onto existing SNAP accounts must draw down Summer benefits prior to drawing from the household's SNAP benefits.

(2) Expunged benefits must be returned to the State's Summer EBT account and must not be co-mingled with SNAP funds.

§ 292.16 Issuance and adjustment requirements specific to States that administer SNAP.

(a) *Basic issuance requirements.* State Summer EBT agencies must establish issuance and accountability systems which ensure that only certified eligible households receive benefits; that Program benefits are timely distributed in the correct amounts; and that benefit issuance and reconciliation activities are properly conducted and accurately reported to FNS.

(1) *On-line issuance of electronic benefits.* State Summer EBT agencies may issue benefits to households through an on-line EBT system in which Program benefits are stored in a central computer database and electronically accessed by households at the point of sale via reusable plastic cards.

(2) *Alternative benefit issuance system.*

(i) If the Secretary, in consultation with the Office of the Inspector General, determines that Program integrity would be improved by changing the issuance system of a State, the Secretary shall require the State Summer EBT agency to issue or deliver benefits using another method.

(ii) The cost of documents or systems which may be required as a result of a permanent alternative issuance system must not be imposed upon retail food firms participating in the Program.

(3) *Contracting or delegating issuance responsibilities.* State Summer EBT agencies may assign to others such as banks, savings and loan associations, and other commercial businesses, the responsibility for the issuance of benefits. State Summer EBT agencies may permit contractors to subcontract assigned issuance responsibilities.

(i) Any assignment of issuance functions must clearly delineate the responsibilities of both parties. The State Summer EBT agency remains re-

sponsible, regardless of any agreements to the contrary, for ensuring that assigned duties are carried out in accordance with these regulations. In addition, the State Summer EBT agency is strictly liable to FNS for all losses of benefits, even if those losses are the result of the performance of issuance, security, or accountability duties by another party.

(ii) All issuance contracts must follow procurement standards set forth in § 292.27.

(iii) The State Summer EBT agency must not assign the issuance of benefits to any retail food firm.

(4) *EBT system administration.* (i) The State Summer EBT agency must be responsible for the coordination and management of the EBT system. The Secretary may suspend or terminate some or all EBT system funding or withdraw approval of the EBT system from the State Summer EBT agency upon a finding that the State Summer EBT agency or its contracted representative has failed to comply with the requirements of this part.

(ii) The State Summer EBT agency must indicate how it plans to incorporate additional programs into the EBT system if it anticipates the addition of other public assistance programs concurrent with or after implementation of the EBT system. The State Summer EBT agency must also consult with the State agency officials responsible for administering the WIC prior to submitting the Planning APD for FNS approval.

(5) *Master issuance file.* (i) The State Summer EBT agency must establish a master issuance file which is a composite of the issuance records of all eligible children. The master issuance file must contain all the information needed to identify eligible children, issue Summer EBT benefits, record the participation activity for each household, and supply all information necessary to fulfill the reporting requirements in § 292.23.

(ii) The master issuance file must be kept current and accurate. It must be updated and maintained through the use of documents such as notices of change and controls for expired certification periods.

(iii) Before entering an eligible child's data on the master issuance file, the State Summer EBT agency must review the master issuance file to ensure that the child is not currently participating in, or disqualified from, the Program.

(6) *Shared responsibility of issuance activities.* State Summer EBT agencies may divide issuance responsibilities between at least two persons to prevent any single individual from having complete control over the authorization of issuances and the issuances themselves. Responsibilities to be divided include maintenance of inventory records, the posting of benefits to an EBT account, and preparation of EBT cards and PINs for mailing. If issuance functions in an office are handled by one person, a second-party review must be made to verify card inventory, the reconciliation of the mail log, and the number of mailings prepared.

(7) *Summer EBT monitoring, examinations, and audits.* State Summer EBT agency's accountability system monitoring procedures must be included in the monitoring procedures for SNAP as described at § 274.1(i) of this chapter.

(8) *Compliance investigations.* State Summer EBT agencies must provide on-line read-only access to State EBT systems for compliance investigations.

(i) The State Summer EBT agency is required to provide software and telecommunications capability as necessary to FNS Retailer Investigation Branch Area offices, Regional offices, and Field offices so that FNS compliance investigators, other appropriate FNS personnel, and USDA OIG investigators have access to the system in order to conduct investigations of program abuse and alleged violations; and

(ii) The State Summer EBT agency must ensure that FNS compliance investigators and USDA OIG investigators have access to EBT cards and accounts that are updated as necessary to conduct SNAP investigations.

(9) *Federal financial participation.* Access to system documentation, including cost records of contractors or subcontractors shall be made available and incorporated into contractual agreements.

(b) *Disclosure.* (1) Use or disclosure of information obtained from Summer EBT recipients must be restricted to:

(i) Persons directly connected with the administration or enforcement of the provisions of section 13A of the Richard B. Russell National School Lunch Act, the Food and Nutrition Act of 2008, or regulations in this chapter, other Federal assistance programs, or federally-assisted State programs providing assistance on a means-tested basis to low income individuals;

(ii) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(iii) Local, State, or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the NSLA, Food and Nutrition Act of 2008, or regulations in this chapter. The written request shall include the identity of the individual requesting the information and their authority to do so, violation being investigated, and the identity of the person on whom the information is requested.

(2) Local educational agencies administering the National School Lunch Program established under the Richard B. Russell National School Lunch Act or the School Breakfast Program established under the Child Nutrition Act of 1966, for the purpose of directly certifying the eligibility of school-aged children for receipt of free and reduced price meals under the School Lunch and School Breakfast programs.

(3) Recipients of information released under this section must adequately protect the information against unauthorized disclosure to persons or for purposes not specified in this section.

(4) If there is a written request by a responsible member of the household, its currently authorized representative, or a person acting on its behalf to review material and information contained in its casefile, the material and information contained in the casefile shall be made available for inspection during normal business hours. However, the Summer EBT agency may withhold confidential information, such as the names of individuals who have disclosed information about the household without the household's

knowledge, or the nature or status of pending criminal prosecutions.

(5) Copies of regulations, plans of operation, State Summer EBT agency manuals, State Summer EBT agency corrective action plans, and Federal procedures may be obtained from FNS in accordance with 7 CFR part 295.

(c) *Program administration*—(1) *Automation of Summer EBT operations*. All State Summer EBT agencies are required to sufficiently automate their Summer EBT operations and computerize their systems for obtaining, maintaining, utilizing, and transmitting information concerning Summer EBT.

(2) *Requirements*. In order to safeguard certification and issuance records from unauthorized creation or tampering, the Summer EBT agencies must establish an organizational structure which divides the responsibility for eligibility determinations and benefit issuance among certification, data management, and issuance units within coordinating or partnering Summer EBT agencies.

(3) *Court suit reporting*—(i) *State Summer EBT agency responsibility*. (A) In the event that a State Summer EBT agency is sued by any person(s) in a State or Federal Court in any matter which involves the State Summer EBT agency's administration of Summer EBT, the Summer EBT agency shall immediately notify FNS that suit has been brought and shall furnish FNS with copies of the original pleadings. Summer EBT agencies involved in suits shall, upon request of FNS, take such action as is necessary to join the United States and/or appropriate officials of the Federal Government, such as the Secretary of USDA or the Administrator of FNS, as parties to the suit. FNS may request to join the following types of suits:

(1) Class action suits;

(2) A suit in which an adverse decision could have a national impact;

(3) A suit challenging Federal policy such as a provision of the NSLA, Food and Nutrition Act of 2008, or regulations in this part or an interpretation of the regulations in this part; or,

(4) A suit based on an empirical situation that is likely to recur.

(B) FNS may advise a Summer EBT agency to seek a settlement agreement of a court suit if the Summer EBT agency is being sued because it misapplied Federal policy in administering the Summer EBT Program.

(C) State Summer EBT agencies shall notify FNS when court cases have been dismissed or otherwise settled. State Summer EBT agencies shall also provide FNS with information that is requested regarding the State Summer EBT agency's compliance with the requirements of court orders or settlement agreements.

(4) *Notification of lawsuits*. FNS shall notify all Summer EBT agencies of any suits brought in Federal court that involve FNS' administration of the Program and which have the potential of affecting many Summer EBT agencies' Program operations. Summer EBT agencies may not be notified of suits brought in Federal Court involving FNS' administration of the Program which may only affect Program operations in one or two States or ITOs. The notification provided to Summer EBT agencies shall contain a description of the Federal policy that is affected.

(d) *Procedures for program administration in Alaska*—(1) *Purpose*. To achieve the efficient and effective administration of Summer EBT in rural areas of Alaska, FNS has determined that it is necessary to develop additional regulations which are specifically designed to accommodate the unique demographic and climatic characteristics which exist in these rural areas. The regulations established in this paragraph (d) apply only in those areas of Alaska designated as "rural" in § 272.7(b) of this chapter. All regulations in this part not specifically modified by this paragraph (d) shall remain in effect.

(2) *Fee agents*. *Fee agent* means a paid agent who, on behalf of the State Summer EBT agency, is authorized to make applications available to low-income households, assist in the completion of applications, conduct required interviews, secure required verification, forward completed applications and supporting documentation to the State Summer EBT agency, and provide other services as required by the State Summer EBT agency. Such services

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shall not include making final decisions on household eligibility or benefit levels.

(3) *Application processing.* The State Summer EBT agency may modify the application processing requirements in this part as necessary to insure prompt delivery of services to eligible households. The following restrictions apply:

(4) *Fee agent processing.* If the signed application is first submitted by a household to a fee agent, the fee agent shall mail the application to the State Summer EBT agency within 5 days of receipt.

(5) *Application filing date.* An application is considered filed for purposes of timely processing when it is received by an office of the State Summer EBT agency.

(6) *Expedited service.* (i) If the signed application is first submitted by a household to a fee agent, the fee agent shall mail the application to the State Summer EBT agency within 5 days of receipt. If the household is eligible for expedited service, the State agency will mail the benefits no later than the close of business of the second working day following the date the application was received by the State Summer EBT agency.

(ii) If the signed application is submitted directly to the State Summer EBT agency in person by a rural resident or its authorized representative or by mail, the State Summer EBT agency shall process the application and issue benefits to households eligible for expedited service in accordance with the time standards contained in this part.

(iii) If an incomplete application is submitted directly to the State Summer EBT agency by mail, the State Summer EBT agency shall conduct the interview by the first working day following the date the application was received if the fee agent can contact the household or the household can be reached by telephone or radio-telephone and does not object to this method of interviewing on grounds of privacy. Based on information obtained during the interview, the State Summer EBT agency shall complete the application and process the case. Because of the mailing time in rural areas, the State Summer EBT agency shall not return

the completed application to the household for signature. The processing standard shall be calculated from the date the application was filed.

(7) *Social Security insurance (SSI) joint processing.* Social Security Administration (SSA) workers shall mail all jointly processed applications to the appropriate Summer EBT agency office within 5 days of receipt of the application. A jointly processed application shall be considered filed for purposes of timely processing when it is received by an office of the State Summer EBT agency. The household, if determined eligible, shall receive benefits retroactive to the first day of the month in which the jointly processed application was received by the SSA worker.

(8) *Fair hearings, fraud hearings, and agency conferences.* The Summer EBT agency shall conduct fair hearings, administrative fraud hearings, and agency conferences with households that wish to contest denial of expedited service in the most efficient manner possible, either by face-to-face contact, telephone, radiophone, or other means of correspondence including written correspondence, in order to meet the respective time standards contained in this part.

(e) *Disqualification.* (1) The Summer EBT agency shall be responsible to investigate cases of alleged intentional Program violation, and to ensure that appropriate cases are acted upon. The State Summer EBT agency must ensure investigations are consistent with §273.16(a) of this chapter.

(2) The penalties for intentional Summer EBT Program violations specified at §273.16(b) of this chapter as well as the definition of intentional program violations at §273.16(c) of this chapter are applicable to individuals 18 years of age or over who:

(i) Allegedly committed an intentional Summer EBT Program violation; or

(ii) Allegedly ordered, coerced, persuaded, encouraged, or otherwise induced a person under the age of 18 to commit an intentional Summer EBT Program violation.

(3) Requirements for notifying households about disqualification penalties that are specified at §273.16(d) of this chapter apply to Summer EBT.

(4) Disqualification hearing procedures for individuals accused of intentional Program violation specified at § 273.16(e)(f) through (h) of this chapter also apply to Summer EBT.

(5) Each State Summer EBT agency must report to FNS information concerning individuals disqualified for an intentional Program violation in accordance with § 273.16(i) of this chapter for Summer EBT.

(6) In cases where the determination of intentional program violation is reversed by a court of appropriate jurisdiction, the State agency must reinstate the individual in the program if the household is eligible.

(f) *Restoration of lost benefits*—(1) *Entitlement.* (i) The Summer EBT agency must restore benefits which were lost whenever the loss was caused by an error by the Summer EBT agency or by an administrative disqualification for intentional Program violation which was subsequently reversed, or if there is a statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits. Furthermore, unless there is a statement elsewhere in this part that a household is entitled to lost benefits for a longer period, benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

(A) The date the Summer EBT agency receives a request for restoration from a household; or

(B) The date the Summer EBT agency is notified or otherwise discovers that a loss to a household has occurred.

(ii) The Summer EBT agency must restore benefits which were found by any judicial action to have been wrongfully withheld. If the judicial action is the first action the recipient has taken to obtain restoration of lost benefits, then benefits must be restored for a period of not more than twelve months from the date the court action was initiated. When the judicial action is a review of a Summer EBT agency action, the benefits must be restored for a period of not more than twelve months from the first of the following dates:

(A) The date the Summer EBT agency receives a request for restoration.

(B) If no request for restoration is received, the date the fair hearing action was initiated; but

(C) Never more than one year from when the Summer EBT agency is notified of, or discovers, the loss.

(D) Benefits must be restored even if the child is currently ineligible.

(2) *Errors discovered by the Summer EBT agency.* If the Summer EBT agency determines that a loss of benefits has occurred, and the household is entitled to restoration of those benefits, the Summer EBT agency must automatically take action to restore any benefits that were lost. No action by the household is necessary. However, benefits must not be restored if the benefits were lost more than 12 months prior to the month the loss was discovered by the State agency in the normal course of business, or were lost more than 12 months prior to the month the State agency was notified in writing or orally of a possible loss to a specific household. The State agency shall notify the household of its entitlement, the amount of benefits to be restored, any offsetting that was done, the method of restoration, and the right to appeal through the fair hearing process if the household disagrees with any aspect of the proposed lost benefit restoration.

(3) *Disputed benefits.* (i) If the Summer EBT agency determines that a household is entitled to restoration of lost benefits, but the household does not agree with the amount to be restored as calculated by the Summer EBT agency or any other action taken by the Summer EBT agency to restore lost benefits, the household may request a fair hearing within 90 days of the date the household is notified of its entitlement to restoration of lost benefits. If a fair hearing is requested prior to or during the time lost benefits are being restored, the household shall receive the lost benefits as determined by the Summer EBT agency pending the results of the fair hearing. If the fair hearing decision is favorable to the household, the Summer EBT agency must restore the lost benefits in accordance with that decision.

(ii) If a household believes it is entitled to restoration of lost benefits but

the Summer EBT agency, after reviewing the case file, does not agree, the household has 90 days from the date of the Summer EBT agency determination to request a fair hearing. The Summer EBT agency must restore lost benefits to the household only if the fair hearing decision is favorable to the household. Benefits lost more than 12 months prior to the date the Summer EBT agency was initially informed of the household's possible entitlement to lost benefits shall not be restored.

(4) *Lost benefits to individuals disqualified for intentional Program violation.* Individuals disqualified for intentional Program violation are entitled to restoration of any benefits lost during the months that they were disqualified, not to exceed twelve months prior to the date of Summer EBT agency notification, only if the decision which resulted in disqualification is subsequently reversed.

(5) *Method of restoration.* Regardless of whether a household is currently eligible or ineligible, the Summer EBT agency must restore lost benefits to a household by issuing an allotment equal to the amount of benefits that were lost. The amount restored shall be issued in addition to the allotment currently eligible households are entitled to receive.

(6) *Accounting procedures.* The Summer EBT agency shall be responsible for maintaining an accounting system for documenting a child's entitlement to restoration of lost benefits and for recording the balance of lost benefits that must be restored. The Summer EBT agency must at a minimum, document how the amount to be restored was calculated and the reason lost benefits must be restored. The accounting system must be designed to readily identify those situations where a claim against a household can be used to offset the amount to be restored.

(g) *Retailers.* Retail food operations authorized to participate as a SNAP retailer must also accept State Summer EBT benefits.

(h) *Record retentions and forms of security.* The State Summer EBT agency must maintain issuance, inventory, reconciliation, and other accountability records related to Summer EBT.

(1) *Availability of records.* (i) The State Summer EBT agency shall maintain issuance, inventory, reconciliation, and other accountability records for a period of three years. This period may be extended at the written request of FNS.

(ii) In lieu of the records themselves, easily retrievable microfilm, microfiche, or computer tapes which contain the required information may be maintained.

(2) *Control of issuance documents.* The State Summer EBT agency shall control all issuance documents which establish household eligibility while the documents are transferred and processed within the State Summer EBT agency. The State Summer EBT agency shall use numbers, batching, inventory control logs, or similar controls from the point of initial receipt through the issuance and reconciliation process.

(3) *Accountable documents.* (i) EBT cards shall be considered accountable documents. The State Summer EBT agency shall provide the following minimum security and control procedures for these documents:

- (A) Secure storage;
- (B) Access limited to authorized personnel;
- (C) Bulk inventory control records;
- (D) Subsequent control records maintained through the point of issuance or use; and

(E) Periodic review and validation of inventory controls and records by parties not otherwise involved in maintaining control records.

(ii) For notices of change which initiate, update or terminate the master issuance file, the State Summer EBT agency shall, at a minimum, provide secure storage and shall limit access to authorized personnel.

(i) *Benefit redemption by eligible households—(1) Eligible food.* Program benefits may be used only by the household, or other persons the household selects, to purchase eligible food for the household from SNAP-authorized retailers, which includes, for certain households, the purchase of prepared meals, and for other households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with benefits.

(2) *Prior payment prohibition.* Program benefits must not be used to pay for any eligible food purchased prior to the time at which an EBT card is presented to authorized retailers or meal services. Benefits must not be used to pay for any eligible food in advance of the receipt of food, except when prior payment is for food purchased from a nonprofit cooperative food purchasing venture.

(3) *Transaction limits.* No minimum dollar amount per transaction or maximum limit on the number of transactions can be established. In addition, no transaction fees can be imposed on Summer EBT households utilizing the EBT system to access their benefits.

(4) *Access to balances.* (i) Households shall be permitted to determine their Summer EBT account balances without making a purchase or standing in a checkout line.

(ii) The Summer EBT agency must ensure that the EBT system is capable of providing a transaction history for a period of up to 2 calendar months to households upon request.

(iii) Households must be provided printed receipts at the time of transaction. At a minimum this information must:

(A) State the date, merchant's name and location, transaction type, transaction amount and remaining balance for the Summer EBT account;

(B) Comply with the requirements of 12 CFR part 205 (Regulation E) in addition to the requirements of this section; and

(C) Identify the Summer EBT household member's account number using a truncated number or coded transaction number. The child's name must not appear on the receipt except when a signature is required when utilizing a manual transaction voucher.

(5) *Equal treatment.* The EBT system must be implemented and operated in a manner that maintains equal treatment for Summer EBT households. Summer EBT benefits must be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store. However, nothing in this part may be construed as authorizing FNS to specify the prices at which retail food stores may

sell food. However, public or private nonprofit homeless meal providers may only request voluntary use of Summer EBT benefits from homeless Summer EBT recipients and may not request such household using Summer EBT benefits to pay more than the average cost of the food purchased by the public or private nonprofit homeless meal provider contained in a meal served to the patrons of the meal service. For purposes of this section, "average cost" is determined by averaging food costs over a period of up to one calendar month. Voluntary payments by Summer EBT recipients in excess of such costs may be accepted by the meal providers. The value of donated foods from any source must not be considered in determining the amount to be requested from Summer EBT recipients. All indirect costs, such as those incurred in the acquisition, storage, or preparation of the foods used in meals shall also be excluded. In addition, if others have the option of eating free or making a monetary donation, Summer EBT recipients must be provided the same option of eating free or making a donation in money or Summer EBT benefits. No retail food store may single out Summer EBT recipients for special treatment in any way. The following requirements for the equal treatment of Summer EBT households must directly apply to EBT systems:

(i) Retailers must not establish special checkout lanes which are only for Summer EBT households. If special lanes are designated for the purpose of accepting other electronic debit or credit cards and/or other payment methods such as checks, Summer EBT customers with EBT cards may also be assigned to such lanes as long as other commercial customers are assigned there as well.

(ii) Checkout lanes equipped with POS devices shall be made available to Summer EBT households during all retail store hours of operation.

(6) *Households eligible for prepared meals*—(i) *Meals-on-wheels.* Eligible guardians of Summer EBT recipients 60 years of age or over or guardians who

are housebound, physically handicapped, or otherwise disabled to the extent that they are unable to adequately prepare meals may use Summer EBT benefits to purchase meals for the participant that are prepared for and delivered to them by a nonprofit meal delivery service authorized by FNS.

(ii) *Communal dining facilities.* Eligible guardians of Summer EBT recipients 60 years of age or over may use Summer EBT benefits issued to purchase meals for the participant that are prepared at communal dining facilities authorized by FNS for that purpose.

(iii) *Residents of certain institutions.* (A) Eligible residents of a group living arrangement may use Summer EBT benefits issued to them to purchase meals prepared especially for them at a group living arrangement which is authorized by FNS to redeem Summer EBT benefits in accordance with paragraph (g) of this section.

(B) Residents of shelters for battered women and children may use their Program benefits to purchase meals prepared especially for the participant at a shelter which is authorized by FNS to redeem benefits in accordance with paragraph (g) of this section.

(iv) *Homeless households.* (A) Homeless Summer EBT households may use their benefits to purchase prepared meals for the participant from authorized homeless meal providers.

(B) Eligible homeless Summer EBT households may use their benefits to purchase meals for the participant from restaurants authorized by FNS for such purpose.

(7) *Allowable purchase of equipment for hunting and fishing.* Eligible Summer EBT households residing in areas of Alaska determined by FNS as areas where access to authorized retailers is difficult and which rely substantially on hunting and fishing for subsistence may use all or any part of their benefits issued to purchase hunting and fishing equipment such as nets, hooks, rods, harpoons and knives, but may not use benefits to purchase firearms, ammunition, and other explosives.

(8) *Limiting hunting and fishing purchases to eligible households.* State Summer EBT agencies shall implement a method to ensure that access to pre-

pared meals and hunting and fishing equipment is limited to eligible households as described in paragraphs (i)(6) and (7) of this section.

(9) *Container deposit fees.* Program benefits may not be used to pay for deposit fees in excess of the amount of the State fee reimbursement required to purchase any food or food product contained in a returnable bottle or can, regardless of whether the fee is included in the shelf price posted for item. The returnable container type and fee must be included in State law in order for the customer to be able to pay for the upfront deposit with Summer EBT benefits. If a Summer EBT eligible product has a State deposit fee associated with it, the product remains eligible for purchase with Summer EBT benefits, and the State deposit fee may be paid with Summer EBT benefits as well; however, any fee in excess of the State deposit fee must be paid in cash or other form of payment other than with Summer EBT benefits.

(j) *Reconciliation.* State Summer EBT agencies must account for all issuance through a reconciliation process as described by USDA.

§ 292.17 Retailer integrity requirements specific to States that administer SNAP.

(a) *Participation of retail food stores and wholesale food concerns, and redemption of Summer EBT benefits.* Requirements and restrictions on the participation of retail food stores and wholesale food concerns and the redemption of benefits described at §§ 278.2, 278.3 and 278.4 of this chapter, including the acceptance of benefits for eligible food at authorized firms, also apply to activities involving Summer EBT benefits.

(b) *Firm eligibility standards.* A firm may be subject to the following actions described at § 278.1 of this chapter for noncompliance or violations involving Summer EBT benefits:

(1) The requirements described at § 278.1(b)(4) of this chapter regarding a collateral bond or irrevocable letter of credit for applicant firms with certain sanctions apply to applicant firms with sanctions imposed for violations involving Summer EBT benefits. The

amount of the collateral bond or irrevocable letter of credit shall be calculated in accordance with §278.1(b)(4)(i)(D) and shall also include the amount of Summer EBT benefit redemptions when calculating the average monthly benefit redemption volume.

(2) Authorization shall be denied or withdrawn based on a determination by the Food and Nutrition Service (FNS) that a firm lacks or fails to maintain necessary business integrity and reputation, in accordance with the standards and time periods described at §278.1(b)(3), (k)(3), and (l)(1)(iv) of this chapter. When making such determinations, FNS shall consider the criteria referred to in §278.1(b)(3), (k)(3), and (l)(1)(iv) where the underlying activities involve Summer EBT benefits.

(3) Firm authorization shall be denied or withdrawn for failure to pay any claims, fines, or civil money penalties in the manner described at §278.1(k)(7) and (l)(1)(v) and (vi) of this chapter where such sanctions were imposed for violations involving Summer EBT benefits.

(c) *Penalties.* For firms that commit certain violations described at §§278.6 and 278.2 of this chapter where such violations involve Summer EBT benefits, FNS shall take the corresponding action prescribed at §278.6 or §278.2 for that violation. For the purposes of assigning a period of disqualification, a warning letter shall not be considered to be a sanction. Specifically, FNS shall:

(1) Disqualify a firm permanently, as described at §278.6(e)(1)(i) of this chapter, for trafficking, as defined at §284.1(b)(1) of this chapter, or impose a civil money penalty in lieu of permanent disqualification, as described at §278.6(i) of this chapter, where such compliance policy and program is designed to prevent violations of the regulations in this section;

(2) Disqualify a firm permanently, as described at §278.6(e)(1)(ii) of this chapter, for any violation involving Summer EBT benefits committed by a firm that had already been sanctioned at least twice before under this section or 7 CFR part 278;

(3) Disqualify the firm for 5 years, as described at §278.6(e)(2)(v) of this chap-

ter, or for 3 years, as described at §278.6(e)(3)(iv) of this chapter, for unauthorized acceptance violations involving Summer EBT benefits, and impose fines, as described at §278.6(m) of this chapter, for unauthorized acceptance violations involving Summer EBT benefits;

(4) Disqualify the firm for 5 years in circumstances described at §278.6(e)(2) of this chapter when the amount of redemptions, which shall also include the amount of Summer EBT redemptions, exceed food sales for the same period of time, as described at §278.6(e)(2)(ii) through (iv);

(5) Disqualify the firm for 3 years as described at §278.6(e)(3)(ii) of this chapter for situations described at §278.6(e)(2) of this chapter involving Summer EBT benefits;

(6) Disqualify the firm for 1 year for credit account violations as described at §§278.6(e)(4)(ii) and 278.2(f) of this chapter, where such violations involve Summer EBT benefits;

(7) Disqualify the firm for ineligibles violations for such circumstances and corresponding time periods as described at §278.6(e)(2)(i), (e)(3)(i), (e)(4)(i), and (e)(5) of this chapter, where such violations involve Summer EBT benefits;

(8) Double the appropriate period of disqualification for a violation, as described at §278.6(e)(6) of this chapter, where such violation involves Summer EBT benefits, when the firm has once before been assigned a sanction under this section or 7 CFR part 278;

(9) Issue a warning letter to the violative firm when violations are too limited to warrant a period of disqualification, as described at §278.6(e)(7) of this chapter, where such violations involve Summer EBT benefits;

(10) Impose a civil money penalty for hardship or transfer of ownership, as described at §278.6(g) of this chapter, in amounts calculated using the described formula at §278.6(g), which shall also include the relevant amount of Summer EBT redemptions when calculating the average monthly benefit redemptions; and

(11) Impose a civil money penalty in lieu of permanent disqualification for trafficking as described at §278.6(j) of this chapter in an amount calculated

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using the described formula at §278.6(j), which shall also include the relevant amount of Summer EBT redemptions when calculating the average monthly benefit redemptions.

(d) *Claims.* The standards for determination and disposition of claims against retail food stores and wholesale food concerns described at §278.7 of this chapter apply to Summer EBT benefits.

(e) *Administrative and Judicial review.* Firms aggrieved by administrative action under 7 CFR parts 271, 278, and 279 may request administrative review of the administrative action with USDA in accordance with 7 CFR part 279, subpart A. Firms aggrieved by the determination of such an administrative review may seek judicial review of the determination under 5 U.S.C. 702 through 706.

§ 292.18 Requirements specific to States that administer Nutrition Assistance Program (NAP) programs.

Summer EBT benefits issued by a Territory that administers the Nutrition Assistance Program in lieu of SNAP may only be used by the eligible household that receives such summer benefits to purchase eligible foods from retail food stores that have been approved for participation in the Nutrition Assistance Program in American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands. States that administer NAP shall establish issuance and accountability systems which ensure that only certified eligible households receive Summer EBT benefits.

§ 292.19 Requirements specific to ITO Summer EBT agencies.

(a) The ITO Summer EBT Agency must ensure that Summer EBT Program benefits are used by the eligible household that receives such benefits to transact for supplemental foods from retailers that have been approved for participation in the WIC Program. The ITO Summer EBT agency must:

(1) Use the same benefit delivery model for all participants throughout its service area, in accordance with its FNS-approved POM:

(i) For ITOs using a CVB-only benefit delivery model, issue a benefit level equal to the amount set forth in §292.15(e); and

(ii) For ITOs using a food package benefit delivery model, a combination CVB and food package benefit delivery model, or an alternate benefit delivery model, issue a benefit not to exceed the amounts set forth in §292.15(e);

(2) Ensure vendors charge prices for eligible food items which are reasonable for the area(s) served and are at the current price or less than the current price charged to other customers. Vendors may not charge Summer EBT participants more for an item than the price in the retail environment for all other customers;

(3) Provide participants supplemental foods deemed eligible for Summer EBT via an FNS-approved POM. Supplemental foods authorized for the WIC Program by the applicable WIC ITO must meet the requirements set forth in this paragraph (a)(3). The POM must identify a list of supplemental foods that:

(i) Contain nutrients determined by nutritional research to be lacking in the diets of children, and promote the health of the population served by the program, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns; and

(ii) Do not include infant formula and infant foods.

(b) ITO Summer EBT procedures and operations related to basic issuance requirements, reconciliation, benefit redemption, and functional and technical EBT system requirements, should be consistent with WIC regulations at §246.12 of this chapter as applicable to the benefit delivery model used, to the extent such requirements do not conflict with the requirements set forth for ITO Summer EBT agencies in this part.

(c) To ensure effective vendor integrity, the ITO Summer EBT agency must set forth a system which ensures:

(1) Requirements and restrictions on the participation of vendors and the transaction of food benefits described at §246.12 of this chapter, apply to activities involving Summer EBT benefits; and

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(2) Vendors are subject to the actions and penalties described at §246.12 of this chapter for noncompliance or violations involving Summer EBT benefits; and

(3) The standards for determination and disposition of claims against vendors described at §246.12 of this chapter apply to Summer EBT benefits; or

(4) Set forth an alternate system to ensure effective vendor management and vendor integrity.

Subpart E—General Administrative Requirements

§ 292.20 Payments to Summer EBT agencies and use of administrative program funds.

(a) *General requirements for grant awards.* Grant awards are all subject to procedures established by USDA in accordance with 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415.

(b) *Program benefit funds.* FNS shall provide a grant to the Summer EBT agency that administers the EBT benefit issuance in an amount equal to 100 percent of issued eligible benefit funds as reflected in the final POM. Summer EBT benefits must be tracked separately from SNAP benefits, or other benefit types.

(c) *State administrative funds.* FNS must pay to each Summer EBT agency an amount equal to 50 percent of the administrative expenses incurred by the Summer EBT agency in operating the program under this section, including the administrative expenses of LEAs and other agencies in each State or ITO, as applicable, relating to the operation of the program under this section. Summer EBT agencies will report their incurred administrative expenses on a financial status report. Generally, Summer EBT agencies must cover the balance of their administrative costs, *i.e.*, their “match,” with non-Federal funds.

(d) *Applicable terms and conditions on grant awards.* All grant awards described in paragraphs (a) through (c) of this section shall be subject to terms and conditions and standard reporting requirements of the Federal grant and Federal-State Agreement.

(e) *Use of State administrative funds—*
(1) *Matching funds.* Summer EBT agency costs for Federal matching funds may consist of:

(i) Charges reported on a cash or accrual basis by the Summer EBT agency as project costs.

(ii) Project costs financed with cash contributed or donated to the Summer EBT agency.

(iii) Project costs represented by services and real or personal property donated to the Summer EBT agency.

(2) *Cash and in-kind contributions.* All cash or in-kind contributions except as provided in paragraph (f) of this section must be allowable as part of the Summer EBT agency’s share of program costs when such contributions:

(i) Are verifiable;

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

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

(iv) Are charges that would be allowable under this part;

(v) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs; and

(vi) Are in the approved budget.

(f) *Volunteer services.* The value of services rendered by volunteers is unallowable for reimbursement purposes.

(g) *Recovery of funds.* The Summer EBT agency must return any Federal funds made available under this part which are in excess of obligations reported at the end of each fiscal year, in accordance with the reconciliation procedures specified in paragraph (h) of this section. The Summer EBT agency shall reflect such recoveries by a related adjustment in the Summer EBT agency’s Letter of Credit.

(h) *Substantiation and reconciliation process.* The Summer EBT agency must maintain Program records necessary to support administrative costs claimed and the reports submitted to USDA under this paragraph (h). The Summer EBT agency must ensure such records are retained for a period of 3 years or as otherwise specified in §292.23.

Partnering agencies must also meet these requirements consistent with the inter-agency agreement with the Summer EBT agency.

§ 292.21 Standards for financial management systems.

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

(b) *Responsibilities.* Financial management systems for program funds in Summer EBT must provide for the following. The standards in this paragraph (b) also apply to subagencies or contractors involved with program funding.

(1) Accurate, current, and complete disclosure of the financial results of program activities in accordance with Federal reporting requirements in § 292.23.

(2) Records which identify the source and application of funds for FNS or Summer EBT agency activities supporting the administration of the Program. These records must show authorizations, obligations, unobligated balances, assets, liabilities, outlays and income of the Summer EBT agency, its sub-agencies and agents.

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

(4) Effective control and accountability by the Summer EBT agency for all program funds, property, and other assets acquired with program funds. Summer EBT agencies must adequately safeguard all such assets and must assure that they are used solely for program-authorized purposes unless disposition has been made in accordance with paragraph (b)(3) of this section.

(5) If necessary, Summer EBT agencies will be expected to complete an Automated Standard Application for Payment (ASAP) setup form so that FNS may set up a Letter of Credit by which Summer EBT funds will be made available.

(6) 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 Summer EBT agency must 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.

(7) Procedures to determine the reasonableness, allowability, and allocability of costs in accordance with the applicable provisions prescribed in 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415.

(8) Support and source documents for costs.

(9) 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.

(10) Periodic audits by qualified individuals who are independent of those who maintain Federal program funds as prescribed in § 292.24(a).

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

(12) The standards in this paragraph (b) also apply to subagencies, or contractors involved with program funding.

(13) Identification in Summer EBT agency accounts of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the Assistance Listings title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.

§ 292.22 Performance criteria.

The Summer EBT agency must monitor and document data on each of the following performance criteria:

(a) Performance Criteria 1—Percentage of children eligible for Summer EBT benefits who participated by using their benefits at least once.

(b) Performance Criteria 2—Percentage of Summer EBT benefits that are

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issued to children not eligible for Summer EBT.

(c) Performance Criteria 3—Percentage of children issued benefits who receive their first issuance before the start of the summer operational period.

(d) Performance Criteria 4—Percentage of eligible children who can be identified through streamlined certification who are enrolled without further application.

§ 292.23 Records and reports.

(a) Summer EBT agencies and LEAs may retain necessary records in their original or electronic form.

(b) Summer EBT agency records must be retained for a period of 3 years after the date of submission of the final Financial Reports for the fiscal year. If audit and investigation findings have not been resolved, the records must be retained beyond the 3-year period as long as is required for the resolution of the issues raised by the audit or investigation.

(c) Summer EBT agencies receiving Federal awards will be required to submit periodic financial management planning and reporting documentation in the Food Program Reporting System (FPRS), on standard schedules that will be announced annually.

(d) For Summer EBT Administrative Grants, Summer EBT agencies will be required to submit an expenditure plan for State expenditure planning by August 15th, prior to the beginning of each fiscal year. Regional approval for those documents will set funding levels for the Summer EBT agency. These documents may be amended on a rolling basis throughout the year as agency needs evolve.

(e) State Administrative Grant expenditures will be reported to FNS quarterly on a Summer EBT financial status report.

(f) Summer EBT agencies must report participation and issuance on a monthly basis.

§ 292.24 Audits and management control evaluations.

(a) *Audits.* Summer EBT agencies must arrange for audits of their own operations to be conducted in accordance with 2 CFR part 200, subpart F, and USDA implementing regulations in

2 CFR parts 400 and 415. Unless otherwise exempt, LEAs must arrange for audits to be conducted in accordance with 2 CFR part 200, subpart F, and USDA implementing regulations in 2 CFR parts 400 and 415. Summer EBT agencies must provide the USDA Office of the Inspector General (OIG) with full opportunity to audit the Summer EBT agency and LEAs. Unless otherwise exempt, audits at the Summer EBT agency and LEA levels must be conducted in accordance with 2 CFR part 200, subpart F and appendix XI, and USDA implementing regulations in 2 CFR parts 400 and 415. While OIG must rely to the fullest extent feasible upon Summer EBT agency-sponsored or LEA-sponsored audits, it must, when considered necessary:

(1) Make audits on a State or ITO-wide basis;

(2) Perform on-site test audits; and

(3) Review audit reports and related working papers of audits performed by or for Summer EBT agencies.

(b) *Management control evaluations.* Summer EBT agencies must provide USDA with full opportunity to conduct management control evaluations of all operations of the Summer EBT agency and must provide OIG with full opportunity to conduct audits of all Summer EBT agency Program operations. The Summer EBT agency must make available its records, including records of the receipts and expenditures of funds, upon a reasonable request by USDA.

(c) *Error reduction strategies.* USDA may omit designated areas of review, in part or entirely, where a Summer EBT agency has implemented FNS-approved error reduction strategies.

§ 292.25 Investigations.

The Summer EBT agency must promptly investigate complaints received or irregularities noted in connection with the operation of the Program and must take appropriate action to correct any irregularities. The Summer EBT agency must maintain on file all evidence relating to such investigations and actions. The Summer EBT agency must inform the appropriate FNSRO of any suspected fraud or criminal abuse in the Program which would result in a loss or misuse of Federal funds. The Department may make

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investigations at the request of the Summer EBT agency, or where the Department determines investigations are appropriate.

§ 292.26 Hearing procedure for families and Summer EBT agencies.

(a) Each Summer EBT agency must establish a fair hearing procedure that is applicable to the State or ITO program as a whole. Fair hearing procedures must:

(1) Allow a household to appeal, within 90 days after the end of the summer operational period, a decision made with respect to:

(i)(A) An application the household has made for Summer EBT benefits;

(B) A streamlined certification for Summer EBT benefits; or

(C) A verification process or procedure.

(ii) Any adverse action taken against the household by the Summer EBT agency.

(2) Require the State to provide a household with back-benefits for Summer EBT if the fair hearing determines that the Summer EBT agency erroneously failed to issue such benefits in the correct amount to an eligible family, an administrative disqualification for intentional Program violation was subsequently reversed, or if there is a statement elsewhere in this part specifically stating that the household is entitled to restoration of lost benefits.

(b) In response to an appeal, the Summer EBT agency may defend its initial decision to deny the eligibility of the child for Summer EBT benefits or take an adverse action against a household. The fair hearing procedure must provide for both the household and the Summer EBT agency:

(1) A simple, publicly announced method to make an oral or written request for a hearing;

(2) An opportunity to be assisted or represented by an attorney or other person;

(3) An opportunity to examine, prior to and during the hearing, any documents and records presented to support the decision under appeal;

(4) That the hearing must be held with reasonable promptness and convenience, and that adequate notice

must be given as to the time and place of the hearing;

(5) An opportunity to present oral or documentary evidence and arguments supporting a position without undue interference;

(6) An opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(7) That the hearing must be conducted and the decision made by a hearing official who did not participate in making the decision under appeal or in any previously held conference;

(8) That the decision of the hearing official must be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record;

(9) That the parties concerned and any designated representative must be notified in writing of the decision of the hearing official;

(10) That a written record must be prepared with respect to each hearing, which must include the challenge or the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefor, and a copy of the notification to the parties concerned of the decision of the hearing official; and

(11) That the written record of each hearing must be preserved for a period of 3 years and must be available for examination by the parties concerned or their representatives at any reasonable time and place during that period.

(12) That the household may request a conference to provide the opportunity for the household to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference must not in any way prejudice or diminish the right to a fair hearing. The Summer EBT agency must promptly schedule a fair hearing, if requested.

(13) Any communication with households related to fair hearings must be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and guardians can understand.

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§ 292.27 Claims.

(a) *Basis for claims.* Summer EBT agencies are responsible to ensure that program benefits are provided only to eligible children and in the correct amount in accordance with program regulations in this part. Erroneous issuances include, but are not limited to:

(1) Benefits issued to ineligible children or in the incorrect amount.

(2) Duplicate benefit issuances, including situations where the Summer EBT agency allows an eligible household to access more than one Summer EBT account for the same time period, or an eligible household receives program benefits from more than one State or ITO for the same time period.

(b) *Claims against Summer EBT agencies.* (1) USDA may hold Summer EBT agencies liable for erroneous payments. USDA may pursue erroneous claims in the aggregate when merited, based on the nature of the error that gave rise to the over-issuance, the size of the error, and whether such action would advance program purposes.

(2) Summer EBT agencies must develop a process to allow households to submit a claim for benefits that were not issued or issued in the incorrect amount.

(c) *Claims against households.* (1) Summer EBT agencies must develop a process to manage cases of erroneous issuances and pursue claims against a household, as appropriate.

(2) Summer EBT agencies have the discretion to determine when to pursue a claim based on cost effectiveness or the individual circumstances. To the maximum extent practicable, Summer EBT agencies should limit claims against households to situations where there is evidence that the household knowingly obtained benefits through fraudulent activities.

(i) Summer EBT agencies must include in their POM submission a proposed plan for identifying instances of fraudulent activity for use in pursuing claims against households.

(ii) Procedures described in paragraph (c)(2)(i) of this section must outline steps the Summer EBT agency will take to ensure that Civil Rights provision at § 292.29(a) are upheld.

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(3) Summer EBT agencies must not reclaim Summer EBT benefits by reducing a household's SNAP, NAP, or WIC benefit.

§ 292.28 Procurement standards.

(a) *Applicability of the Advance Planning Document (APD) process.* If an EBT services contract established for the purpose of benefit issuance includes Summer EBT, the State Systems Advance Planning Document (APD) process must be followed in accordance with § 292.11(b)(3) for States and § 292.11(u) for ITOs, respectively.

(b) *General requirements on the procurement of goods and services with Federal funds.* All other Summer EBT agency and local agency costs, including eligibility systems, must comply with the requirements of this part and 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415, as applicable, which implement the applicable requirements concerning the procurement of all goods and services with Federal funds.

(c) *Contractual responsibilities.* The standards contained in this part and 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415, as applicable, do not relieve any Summer EBT agency or local agency of any contractual responsibilities under its contracts. The Summer EBT agency or local agency is the responsible authority, without recourse to USDA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State, or Federal authority that has proper jurisdiction.

(d) *Procedures.* The Summer EBT agency must follow either the State or ITO laws, policies and procedures as authorized by 2 CFR 200.317, or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with 2 CFR 200.318 through 200.326. Regardless of the option selected, Summer EBT agencies must ensure that all contracts include any clauses required by Federal

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statutes and Executive orders and that the requirements in 2 CFR 200.236 and 2 CFR part 200, appendix II, are followed.

§ 292.29 Miscellaneous administrative provisions.

(a) *Civil rights.* In the operation of the Program, no child may be denied benefits or be otherwise discriminated against because of race, color, national origin, age, sex, or disability. Summer EBT agencies and LEAs must 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; and Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a, and 15b).

(b) *Program evaluations.* States, ITOs, Summer EBT agencies, LEAs, schools, and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department related to programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966.

(c) *General responsibilities.* The criminal penalties and provisions established in section 12(g) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(g)) provide that whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under

the Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*), whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud must, if such funds, assets, or property are of the value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than \$100, must be fined not more than \$1,000 or imprisoned for not more than one year, or both.

§ 292.30 Severability.

Any provision of this part held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this part is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this part and shall not affect the remainder thereof.

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