USDA

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United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive

Alexandria, VA 22302-1500

**SUBJECT:** FMNP Policy Memorandum #2002-3
Maximum Penalty/Fine for Misuse or Illegal Use of FMNP Funds, Property or Assets

**TO:** Regional Directors
Supplemental Food Programs
All Regions

## Purpose

The purpose of this policy memorandum is to advise you of a legislative change that affects the WIC Farmers' Market Nutrition Program (FMNP) regulations concerning the maximum penalty for misuse or illegal use of FMNP funds, assets or property.

## Background

Section 104(b) of Public Law 105-336, the William F. Goodling Child Nutrition Reauthorization Act of 1998, enacted October 31, 1998, amends Section 12(g) of the National School Lunch (NSL) Act, by changing the maximum penalty for misuse or illegal use of funds, assets or property of a grant or other assistance under the NSL Act from $10,000 to $25,000. As set forth in Section 12(g) of the NSL Act, the maximum penalty also applies to programs under the Child Nutrition Act. Currently, Section 248.20(c) of the FMNP regulations establishes a maximum fine of $10,000, in accordance with Section 12(g) of the NSL Act, for individuals that embezzle, willfully misapply, steal or obtain by fraud, any funds, assets or property provided, whether received directly or indirectly from USDA that are of a value of $100 or more. Therefore, based on the legislative change noted above, the maximum penalty or fine for misuse or illegal use of FMNP funds, assets or property is $25,000. At the earliest opportunity, we will revise the FMNP regulations to reflect this change.

## State Agency Action

State agencies should begin reflecting/applying the new penalty limit of $25,000. With regard to agreements, e.g., with farmers/farmers' markets and other agencies, State agencies in the process of revising such agreements should reflect the higher limit of $25,000. For States agencies that are not currently revising agreements, we recommend that they issue an amendment to current agreements to reflect the higher limit of $25,000. If State agencies are unable to amend current agreements due to administrative burdens/hardships, they should incorporate the change in the next cycle of issuing the agreements.

Patricia N. Daniels

PATRICIA N. DANIELS
Director
Supplemental Food Programs Division

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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