

Food and Nutrition Service, USDA

§ 248.20

agency outside of the FMNP season, a review of documents and procedural plans of the FMNP, rather than actual FMNP activities, is acceptable.

(iii) Instituting the necessary follow-up procedures to correct identified problem areas.

(2) On its own initiative or when required by FNS, the State agency shall provide special reports on FMNP activities, and take positive action to correct deficiencies in FMNP operations.

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49748, Sept. 27, 1995]

§ 248.18 Audits.

(a) *Federal access to information.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, or duly authorized State auditors shall have access to any books, documents, papers, and records of the State agency and their contractors, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *State agency response.* The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a response or statement to FNS as to the action taken or planned regarding the findings. A proposed corrective action plan developed and submitted by the State agency shall include specific time frames for its implementation and for completion of the correction of deficiencies and problems leading to the deficiencies.

(c) *Corrective action.* FNS shall determine whether FMNP deficiencies identified in an audit have been adequately corrected. If additional corrective action is necessary, FNS shall schedule a follow-up review, allowing a reasonable time for such corrective action to be taken.

(d) *State sponsored audits.* State and local agencies shall conduct independent audits in accordance with 7 CFR part 3015, §3016.26 or part 3051, as applicable. A State or local agency may elect to obtain either an organization-wide audit or an audit of the Program if it qualifies to make such an election under applicable regulations.

§ 248.19 Investigations.

(a) *Authority.* The Department may make an investigation of any allegation of noncompliance with this part and FNS guidelines and instructions. The investigation may include, where appropriate, a review of pertinent practices and policies of any State and local agency, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the State and local agency has failed to comply with the requirements of this part.

(b) *Confidentiality.* No State or local agency, recipient, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under this part because that person has made a complaint or formal allegation, or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conducting of any investigation, hearing, or judicial proceeding.

Subpart G—Miscellaneous Provisions

§ 248.20 Claims and penalties.

(a) *Claims against State agencies.* (1) If FNS determines through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any FMNP funds provided to a State agency for food or administrative purposes were, through State agency negligence or fraud, misused or otherwise diverted from FMNP purposes, a formal claim will be assessed by FNS against the State agency. The State agency shall pay promptly to FNS a sum equal to the amount of the administrative funds or the value of coupons so misused or diverted.

(2) If FNS determines that any part of the FMNP funds received by a State agency; or coupons, were lost as a result of theft, embezzlement, or unexplained causes, the State agency shall,

§ 248.21

7 CFR Ch. II (1-1-08 Edition)

on demand by FNS, pay to FNS a sum equal to the amount of the money or the value of the FMNP coupons so lost.

(3) The State agency shall have full opportunity to submit evidence, explanation or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.

(4) FNS is authorized to establish claims against a State agency for unreconciled FMNP coupons. When a State agency can demonstrate that all reasonable management efforts have been devoted to reconciliation and 99 percent or more of the FMNP coupons issued have been accounted for by the reconciliation process, FNS may determine that the reconciliation process has been completed to satisfaction.

(b) *Interest charge on claims against State agencies.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit within 30 days from the date of the first demand letter from FNS, FNS will assess an interest (late) charge against the State agency. Interest accrual shall begin on the 31st day after the date of the first demand letter, bill or claim, and shall be computed monthly on any unpaid balance as long as the debt exists. From a source other than the FMNP, the State agency shall provide the funds necessary to maintain FMNP operations at the grant level authorized by FNS.

(c) *Penalties.* In accordance with section 12(g) of the National School Lunch Act, whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under section 17 of the Child Nutrition Act of 1966, as amended, whether received directly or indirectly from USDA, or whoever receives, conceals or retains such funds, assets or property for his or her own interest, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets or property are of the value of \$100 or more, be fined not more than \$10,000 or imprisoned not more than five years, or both, or if such funds, assets or property are of a value of less than \$100, shall be fined

not more than \$1,000 or imprisoned for not more than one year, or both.

§ 248.21 Procurement and property management.

(a) *Requirements.* State agencies shall comply with the requirements of 7 CFR part 3016 for procurement of supplies, equipment and other services with FMNP funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the FMNP in an effective manner and in compliance with the provisions of applicable law and executive orders.

(b) *Contractual responsibilities.* The standards contained in 7 CFR part 3016 do not relieve the State agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the FMNP. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State agency may use its own procurement regulations which reflect applicable State and local regulations, provided that procurements made with FMNP funds adhere to the standards set forth in 7 CFR part 3016.

(d) *Property acquired with program funds.* State and local agencies shall observe the standards prescribed in 7 CFR part 3016 in their utilization and disposition of real property and equipment acquired in whole or in part with FMNP funds.

§ 248.22 Nonprocurement debarment/suspension, drug-free workplace, and lobbying restrictions.

The State agency shall ensure compliance with the requirements of the Department's regulations governing nonprocurement debarment/suspension (7 CFR part 3017), drug-free workplace (7 CFR part 3017), and the Department's regulations governing restrictions on