

Food and Nutrition Service, USDA

§ 249.21

3051 of this title, 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.

§ 249.19 Investigations.

(a) *Authority.* FNS may make an investigation of any allegation of non-compliance 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, participant, 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

§ 249.20 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 SFMNP funds provided to a State agency for food or administrative purposes were, through State agency negligence or fraud, misused or otherwise diverted from SFMNP purposes, a formal claim will be assessed by FNS against the State agency. The State agency must pay promptly to FNS a sum equal to the amount of the administrative funds or

the value of coupons and/or eligible foods so misused or diverted.

(2) If FNS determines that any part of the SFMNP funds received, coupons printed, and/or eligible foods otherwise lost by a State agency were lost as a result of theft, embezzlement, or unexplained causes, the State agency must, on demand by FNS, pay to FNS a sum equal to the amount of the money or the value of the SFMNP funds or coupons/eligible foods so lost.

(3) The State agency will 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 SFMNP coupons, and/or for failure to comply with the terms of duly executed CSA program contracts or agreements. When a State agency can demonstrate that all reasonable management efforts have been devoted to reconciliation and 99 percent or more of the SFMNP coupons issued, or of the eligible foods contracted for delivery by the CSA program, 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 SFMNP, the State agency shall provide the funds necessary to maintain SFMNP operations at the grant level authorized by FNS.

§ 249.21 Procurement and property management.

(a) *Requirements.* State agencies must comply with the requirements of part 3016 of this title for procurement of supplies, equipment and other services

with SFMNP funds. These requirements are adopted for use by FNS to ensure that such materials and services are obtained for the SFMNP in an effective manner and in compliance with the provisions of applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in part 3016 of this title 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 SFMNP. 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 provided that:

(1) Such regulations reflect applicable State and local regulations; and

(2) Any procurements made with SFMNP funds adhere to the standards set forth in part 3016 of this title.

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

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

The State agency must ensure compliance with the requirements of FNS' regulations governing nonprocurement debarment/suspension (part 3017 of this title) and drug-free workplace (part 3021 of this title), as well as FNS' regulations governing restrictions on lobbying (part 3018 of this title), where applicable.

§ 249.23 Records and reports.

(a) *Recordkeeping requirements.* Each State agency must maintain full and complete records concerning SFMNP operations. Such records must comply

with part 3016 of this title and the following requirements:

(1) Records must include, but not be limited to, information pertaining to certification, financial operations, SFMNP coupon issuance and redemption, authorized outlet (farmers, farmers' markets, and CSA program) agreements, authorized outlet monitoring, CSA program agreements, invoices, delivery receipts, equipment purchases and inventory, nutrition education, fair hearings, and civil rights procedures.

(2) All records must be retained for a minimum of 3 years following the date of submission of the final expenditure report for the period to which the report pertains. If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the 3-year period, the records must be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later. If FNS deems any of the SFMNP records to be of historical interest, it may require the State agency to forward such records to FNS whenever the State agency is disposing of them.

(3) Records for nonexpendable property acquired in whole or in part with SFMNP funds must be retained for three years after its final disposition.

(4) All records must be available during normal business hours for representatives of FNS of the Comptroller General of the United States to inspect, audit, and copy. Any reports resulting from such examinations shall not divulge names of individuals.

(b) *Financial and participant reports.* State agencies must submit financial and SFMNP performance data on a yearly basis as specified by FNS. Such information must include, but shall not be limited to:

(1) Number of participants served with Federal SFMNP funds;

(2) Value of coupons issued and/or eligible foods ordered under CSA programs;

(3) Value of coupons redeemed and/or eligible foods provided to participants under CSA programs; and

(4) Number of authorized outlets by type; i.e., farmers, farmers' markets, roadside stands, and CSA programs.