

Food and Nutrition Service, USDA

§ 248.21

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, 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 deter-

mine 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 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 lobbying (7 CFR part 3018), where applicable.

§ 248.23 Records and reports.

(a) *Recordkeeping requirements.* Each State agency shall maintain full and complete records concerning FMNP operations. Such records shall comply with 7 CFR part 3016 and the following requirements:

(1) Records shall include, but not be limited to, information pertaining to financial operations, FMNP coupon issuance and redemption, equipment purchases and inventory, nutrition education, and civil rights procedures.

(2) All records shall 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 shall 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 FMNP 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 FMNP funds shall be retained for three years after its final disposition.

(4) All records shall be available during normal business hours for representatives of the Department 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 recipient reports.* State agencies shall submit financial and FMNP performance data on a yearly basis as specified by FNS and required by section 17(m)(8) of the CNA. Such information shall include, but shall not be limited to:

(1) Number and type of recipients (Federal and non-Federal).

(2) Value of coupons issued.

(3) Value of coupons redeemed.

(c) *Source documentation.* To be acceptable for audit purposes, all financial and FMNP performance reports shall be traceable to source documentation.

(d) *Certification of reports.* Financial and FMNP reports shall be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(e) *Use of reports.* FNS will use State agency reports to measure progress in achieving objectives set forth in the State Plan, and this part, or other State agency performance plans. If it is determined, through review of State agency reports, FMNP or financial analysis, or an audit, that a State agency is not meeting the objectives set forth in its State Plan, FNS may request additional information including, but not limited to, reasons for failure to achieve these objectives.