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processors which receive \$75,000 to \$250,000 in donated food each year shall obtain an independent CPA audit every two years and those which receive less than \$75,000 in donated foods each year shall obtain an independent CPA audit every three years. Those multi-State processors which are in the two or three-year audit cycle shall move into the next audit cycle at the point in time in which the value of donated foods received reaches \$75,000 or \$250,000 in any year. The total value of donated food received shall be computed by adding the value of food received under State and National Commodity Processing contracts. In instances in which the Department determines that the audit is not acceptable or that the audit has disclosed serious deficiencies, the processor shall be subject to additional audits at the request of FNS.

(2) Audits shall be conducted in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (7 CFR part 3015, subpart I) and the FNS Audit Guide for Multi-State Processors. At the discretion of FNS, auditors will be required to attend training sessions conducted by the Department.

(3) The costs of the audits, including those costs associated with training, shall be borne by the processors.

(4) Audit findings relative to those elements associated with the processing of donated food shall be submitted to the processor and to FNS concurrently.

(5) Noncompliance with the audit requirements in paragraph (b)(1) of this section will render the processor ineligible to enter into another processing contract with any contracting agency until the required audit has been conducted and deficiencies corrected.

(6) *Processor response.* Multi-State processors shall develop a written response to FNS addressing deficiencies which have been identified in the audit. Such responses shall include:

(i) Corrective action which has already been taken to eliminate the deficiency;

(ii) Corrective action which the processor proposes to take to eliminate the deficiency;

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(iii) The timeframes for the implementation and completion of the corrective action;

(iv) A determination of what caused the deficiency; and

(v) Deficiencies which have been identified that the processor takes exception to and an explanation for the exception.

Multi-State processors shall submit a written response to FNS in accordance with timeframes established by FNS.

[53 FR 20426, June 3, 1988, as amended at 54 FR 7525, Feb. 22, 1989]

§ 250.19 Reviews.

(a) *General.* Each distributing agency shall establish a review system in order to assess the effectiveness of its food distribution program in meeting the requirements of these regulations.

(b) *Responsibilities of distributing agencies.* (1) Each distributing agency shall establish review procedures encompassing eligibility, food ordering procedures, storage practices, inventory controls, reporting and recordkeeping requirements and compliance with non-discrimination provisions. The procedures shall include:

(i) An on-site review of all nutrition programs for the elderly under agreement in accordance with § 250.12(b), at least once every four years, with not fewer than 25 percent of these programs being reviewed each year. These reviews shall also include on-site reviews of the storage facilities of sites receiving donated foods to ensure compliance with § 250.14(b);

(ii) An on-site review of all charitable institutions and nonprofit summer camps for children under agreement in accordance with § 250.12(b), and the food service management companies under contract with these recipient agencies in accordance with § 250.12(d), at a minimum, whenever the distributing agency identifies actual or probable deficiencies in program administration, including compliance with civil rights provisions, through audits, investigations of complaints, reports submitted by recipient agencies, or any other information available to the State agency which, at the discretion of the State agency, warrants an on-site review, or at the request of FNS;

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(iii) An on-site review at least once every 2 years of all processors except those that are multi-State processors as defined in §250.3, with no fewer than 50 percent being reviewed each year;

(iv) An annual on-site review of each storage facility utilized by the distributing agency. On-site reviews conducted by FNS may be considered as contributing to the fulfillment of the minimum coverage required by this paragraph; and

(v) A biennial review of all food service management companies under contract with recipient agencies in accordance with §250.12(d), except that:

(A) Food service management companies under contract with charitable institutions and nonprofit summer camps for children shall be reviewed in accordance with paragraph (b)(1)(ii) of this section; and,

(B) Food service management companies under contract with schools participating in the National School Lunch Program or commodity schools under part 210 of this chapter, or with schools participating in the School Breakfast Program under part 220 of this chapter, shall be reviewed in accordance with the provisions set forth in parts 210 and 220.

(2) Each distributing agency shall design and implement a system to verify sales of end products to all recipient agencies under that distributing agency's authority in instances when a processor transfers end products to a distributor and the distributor sells the end product to the recipient agencies at a discount and the distributor receives a refund from the processor. At a minimum, such a system must:

(i) At a minimum, provide for a semi-annual review of a statistically valid sample of sales for the previous six-month period for all processors which contract with the distributing agency or contracting agencies under the authority of the distributing agency, including multi-State processors. The sample size must ensure a 95 percent confidence level;

(ii) Support the projection of a claim against the processor when, in the review of the sample, it is determined that the value of donated foods has not been passed on to recipient agencies or

when end products have been improperly distributed; and

(iii) Provide for the assessment of claims against the processor in accordance with FNS Instruction 410-1, Non-Audit Claims, Food Distribution Program, in instances when deficiencies have been identified.

(iv) Provide for the adjustment of performance reports and processing inventory reports to reflect any invalid sales;

(v) Provide for the development and submission by processors to the distributing agency of a corrective action plan designed to correct problems identified during the sales verification; and

(vi) In instances in which the distributing agency has delegated the responsibility of sales verification to processors, the distributing agency must:

(A) Establish guidelines which ensure that the criteria contained in paragraphs (b)(2)(i)-(v) are met;

(B) Ensure that processors report their findings to the distributing agency on a semi-annual basis in accordance with §250.30(m);

(C) Review the processor's findings and select a random sub-sample of at least 10 percent of all sales verified by the processor and reverify the sale by contacting the recipient agency by telephone or through written correspondence; and

(D) Submit a copy of the processor's review report and findings and the results of the reverification efforts to the appropriate FNSRO. In instances of poor processor performance, the distributing agency shall require the processor to discontinue the abused value pass-through-system, initiate an audit or review to determine the extent to which sales are to be disallowed, establish a claim, and/or terminate the contract.

(3) The distributing agency shall submit a report of review findings to each entity reviewed. The report shall include:

(i) Each deficiency found;

(ii) The factors contributing to each deficiency;

(iii) Recommendations for needed corrective action, including timetables for completion and/or claims action to be pursued, if any; and

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(iv) Provisions for evaluating effectiveness of corrective actions.

A copy of each processor review report shall be provided to the appropriate FNSRO.

(4) Distributing agencies shall monitor progress toward completion and the effectiveness of corrective actions taken in eliminating program deficiencies.

(5) In addition to the review requirements of paragraph (b)(1) of this section, each distributing agency shall make a continuing evaluation of all recipient agencies, and processors by monitoring performance reports, food requests, participation data, and data regarding refunds and discounts to recipient agencies and distributors for the receipt of end products.

(6) Distributing agencies shall, where applicable, require that subdistributing agencies monitor and review their operations in accordance with this paragraph.

(c) *Corrective action plans.* Corrective action plans shall be submitted whenever a distributing agency is found by the FNSRO to be substantially out of compliance with a performance standard or any other provision of this part. The corrective action plan shall identify the corrective actions and the timeframes needed to correct the deficiencies found by the FNSRO. The plan shall be written, signed by the proper official in the State, and submitted to the FNSRO within 60 days after the distributing agency receives notification from the FNSRO of a deficiency. Extensions beyond 60 days may be made, for cause, with written justification to and approved by the FNSRO.

(d) *Responsibilities of State Agencies on Aging.* State Agencies on Aging which receive cash payments in lieu of donated foods in accordance with the provisions of § 250.42(c) shall monitor use of such cash after disbursement to nutrition programs for the elderly to ensure that the amounts so received are expended solely for the purchase of U.S. agricultural commodities and other foods of U.S. origin for such programs.

[53 FR 20426, June 3, 1988, as amended at 54 FR 7525, Feb. 22, 1989, 54 FR 25564, June 16, 1989; 54 FR 42477, Oct. 17, 1989; 62 FR 53731, Oct. 16, 1997]

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§ 250.20 Sanctions.

Any distributing agency which has failed to comply with the provisions of this part or any instructions or procedures issued in connection with it or any agreements entered into pursuant to it, may, at the discretion of the Department, be disqualified from further participation in any distribution program. Reinstatement may be made at the option of the Department. Disqualification shall not prevent the Department from taking other action through other available means when considered necessary, including prosecution under applicable Federal statutes.

§ 250.21 Civil rights.

Distributing agencies, subdistributing agencies and recipient agencies shall comply with the Department's nondiscrimination regulations (7 CFR parts 15, 15a, and 15b) and the FNS civil rights instructions to ensure that in the operation of the program no person is discriminated against because of race, color, national origin, age, sex or handicap.

§ 250.22 Complaints.

Distributing agencies shall investigate promptly complaints received in connection with the distribution or use of donated foods. Irregularities which are disclosed shall be corrected immediately. Serious irregularities shall be promptly reported to the Department. Distributing agencies shall maintain or file evidence of such investigations and actions. The Department also reserves the right to make investigations and shall have the final determination as to when a complaint has been properly handled. Complaints alleged on the basis of race, color, national origin, age, sex or handicap shall be handled in accordance with § 250.21.

§ 250.23 Buy American.

(a) *Purchase requirements.* When purchasing food products with Federal funds, whenever possible, recipient agencies shall purchase only food products that are produced in the United States (U.S.). Food products produced in the U.S. means: