

## Food and Nutrition Service, USDA

## § 250.18

reports relative to distribution operations in such form as may be required from time to time by the Department.

(f) *Report transmission.* Where a report is to be postmarked by a specific date and such report is transmitted by means of a facsimile machine, the date printed by the facsimile machine on the facsimile copy may serve as the postmark.

(Reporting requirements contained in paragraph (a) approved by the Office of Management and Budget under control number 0584-0001. Reporting requirements contained in paragraph (e) approved by the Office of Management and Budget under control numbers 0584-0028, 0584-0109, 0584-0288 and 0584-0293)

[53 FR 20426, June 3, 1988, as amended at 53 FR 27476, July 21, 1988; 59 FR 62983, Dec. 7, 1994; 62 FR 53730, Oct. 16, 1997]

### § 250.18 Audits.

(a) *Right of inspection and audit.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, may inspect and inventory donated foods in storage or the facilities used in the handling or storage of such donated foods, and may inspect and audit all records, including financial records, and reports pertaining to the distribution of donated foods and may review or audit the procedures and methods used in carrying out the requirements of this part at any reasonable time. Subdistributing agencies, recipient agencies, processors, food service management companies and warehouses shall be required to permit similar inspection and audit by such entities or their representatives. Fiscal matters shall continue to be reviewed in audits under the Single Audit Act (31 U.S.C. 7501-07) and the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

(b) *Independent CPA audits of multi-State processors.* (1) For any year in which a multi-State processor receives more than \$250,000 in donated foods, the processor shall obtain an independent CPA (certified public accountant) audit for that year. Multi-State 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;

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

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

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(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;

(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-