

## Food and Nutrition Service, USDA

## § 249.19

document the results of such procedures. The procedures must include, but are not limited to:

(i) Conducting annual monitoring reviews of participating farmers' markets, roadside stands, and community supported agriculture programs. This includes on-site reviews of a minimum of 10 percent of farmers and 10 percent of each type of authorized outlet (farmers' markets, roadside stands, and community supported agriculture programs), and includes those farmers and authorized outlets identified as being at the highest risk. The first year of operation in the SFMNP shall be considered a high-risk indicator. More frequent reviews may be performed, as the State agency deems necessary. In States where both the SFMNP and the WIC Farmers' Market Nutrition Program are in operation, these reviews may be coordinated to avoid duplication. A review by one program may be counted by the other program toward the monitoring requirement, provided that appropriate sanction action is taken for all violations found.

(ii) Conducting monitoring reviews of all local agencies within the State agency's jurisdiction at least once every 2 years. Monitoring of local agencies shall encompass, but not be limited to, evaluation of management, accountability, certification, nutrition education, financial management systems, and coupon and/or CSA program management systems. When the State agency conducts a local agency review outside of the SFMNP season, a review of documents and procedural plans of the SFMNP, rather than actual SFMNP 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 must provide special reports on SFMNP activities, and take positive action to correct deficiencies in SFMNP operations.

### § 249.18 Audits.

(a) *Federal access to information.* The Secretary of the U.S. Department of Agriculture, 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 must 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 will determine whether SFMNP 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 must conduct independent audits in accordance with parts 3015, 3016 (§3016.26 of this title), or 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: