

§ 246.20

7 CFR Ch. II (1-1-10 Edition)

will then advise the State agency of whether the actions taken are in compliance with the corrective action plan, and whether the deficiency is resolved or further corrective action is needed.

(v) If an acceptable corrective action plan is not submitted within 60 days, or if corrective action is not completed according to the schedule established in the corrective action plan, FNS may withhold nutrition services and administration funds through a reduction of the State agency Letter of Credit or by assessing a claim against the State agency. FNS will notify the Chief State Health Officer or equivalent of this action.

(vi) If compliance is achieved before the end of the fiscal year in which the nutrition services and administration funds are withheld, the funds withheld shall be restored to the State agency's Letter of Credit. FNS is not required to restore funds withheld if compliance is not achieved until the subsequent fiscal year. If the 60-day warning period ends in the fourth quarter of a fiscal year, FNS may elect not to withhold funds until the next fiscal year.

(b) *State agency responsibilities.* (1) The State agency shall establish an ongoing management evaluation system which includes at least the monitoring of local agency operations, the review of local agency financial and participation reports, the development of corrective action plans to resolve Program deficiencies, the monitoring of the implementation of corrective action plans, and on-site visits. The results of such actions shall be documented.

(2) Monitoring of local agencies must encompass evaluation of management, certification, nutrition education, participant services, civil rights compliance, accountability, financial management systems, and food delivery systems. If the State agency delegates the signing of vendor agreements, vendor training, or vendor monitoring to a local agency, it must evaluate the local agency's effectiveness in carrying out these responsibilities.

(3) The State agency shall conduct monitoring reviews of each local agency at least once every two years. Such reviews shall include on-site reviews of a minimum of 20 percent of the clinics in each local agency or one clinic,

whichever is greater. The State agency may conduct such additional on-site reviews as the State agency determines to be necessary in the interest of the efficiency and effectiveness of the program.

(4) The State agency must promptly notify a local agency of any finding in a monitoring review that the local agency did not comply with program requirements. The State agency must require the local agency to submit a corrective action plan, including implementation timeframes, within 60 days of receipt of a State agency report of a monitoring review containing a finding of program noncompliance. The State agency must monitor local agency implementation of corrective action plans.

(5) As part of the regular monitoring reviews, FNS may require the State agency to conduct in-depth reviews of specified areas of local agency operations, to implement a standard form or protocol for such reviews, and to report the results to FNS. No more than two such areas will be stipulated by FNS for any fiscal year and the areas will not be added or changed more often than once every two fiscal years. These areas will be announced by FNS at least six months before the beginning of the fiscal year.

(6) The State agency shall require local agencies to establish management evaluation systems to review their operations and those of associated clinics or contractors.

[50 FR 6121, Feb. 13, 1985, as amended at 59 FR 11508, Mar. 11, 1994]

§ 246.20 Audits.

(a) *Federal audit responsibilities.* (1) OIG reserves the right to perform audits of State and local agencies and other organizations involved in the Program as determined by OIG to be necessary. In performing such audits, OIG will rely to the extent feasible on audit work performed by other Federal and non-Federal auditors.

(2) 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 a proposed corrective action plan regarding

Food and Nutrition Service, USDA

§ 246.22

the findings. A proposed corrective action plan developed and submitted by the State agency shall include specific timeframes for its implementation and for completion of correction of deficiencies and their causes.

(3) FNS will determine whether Program deficiencies 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.

(b) *State audit responsibilities.* (1) State agencies must obtain annual audits in accordance with part 3052 of this title. In addition, States must require local agencies under their jurisdiction to obtain audits in accordance with part 3052 of this title.

(2) Each State agency shall make all State or local agency sponsored audit reports of Program operations under its jurisdiction available for the Department's review upon request. The cost of these audits shall be considered a part of nutrition services and administration costs and may be funded from the State or local agency nutrition services and administration funds, as appropriate. For purposes of determining the Program's pro rata share of indirect costs associated with organization-wide audits, the cost of food shall not be considered in the total dollar amount of the Program.

[50 FR 6121, Feb. 13, 1985, as amended at 71 FR 56731, Sept. 27, 2006]

§ 246.21 Investigations.

(a) *Authority.* The Department may make an investigation of any allegation of noncompliance with this part and FNS guidelines and instructions. The investigation may include, where appropriate, a review of pertinent practices and policies of any State or 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 or 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

§ 246.22 Administrative appeal of FNS decisions.

(a) *Right to appeal.* When FNS asserts a sanction against a State agency under the provisions of § 246.19, the State agency may appeal and must be afforded a hearing or review by an FNS Administrative Review Officer. The right of appeal shall not apply to claims for repayment assessed by FNS against the State agency under § 246.23(a). A State agency shall have the option of requesting a hearing to present its position or a review of pertinent documents and records including any additional written submission prepared by the State agency.

(1) FNS will send a written notice by Certified Mail-Return Receipt Requested to the state agency or otherwise ensure receipt of such notice by the agency when asserting a sanction against a State agency as specified in § 246.19(a).

(2) A State agency aggrieved by a sanction asserted against it may file a written request with the Director, Administrative Review Division, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Va. 22302, for a hearing or a review of the record. Such request shall be sent by Certified Mail-Return Receipt Requested and postmarked within 30 days of the date of receipt of the sanction notice. The envelope containing the request shall be prominently marked "REQUEST FOR REVIEW OR HEARING." The request shall clearly identify the specific FNS sanction(s) being appealed and shall include a photocopy of the FNS notice of sanction. If the State agency does not