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FOOD ASSISTANCE

USDA's
Implementation of
Legislated Commodity
Distribution Reforms





United States
General Accounting Office
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**Resources, Community, and
Economic Development Division**

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The Honorable Patrick J. Leahy
Chairman, Committee on Agriculture,
Nutrition and Forestry
United States Senate

The Honorable E (Kika) de la Garza
Chairman, Committee on Agriculture
House of Representatives

The Honorable Augustus F. Hawkins
Chairman, Committee on Education
and Labor
House of Representatives

This report discusses the Department of Agriculture's implementation of the Commodity Distribution Reform Act and WIC Amendments of 1987 (P.L. 100-237).

We are recommending several administrative actions to improve the Department's implementation and oversight of the legislated commodity reforms. We believe that our recommended changes are consistent with the intent of the Congress to ensure the uniform and consistent application of the reforms at the federal, state, and local levels.

We are sending copies of this report to the appropriate House and Senate committees; interested members of Congress; the Secretary of Agriculture; the Director, Office of Management and Budget; and other interested parties.

This work was done under the direction of John W. Harman, Director, Food and Agriculture Issues, (202) 275-5138. Other major contributors are listed in appendix VII.



J. Dexter Peach
Assistant Comptroller General

Results in Brief

As of May 1989, the Secretary had implemented 25 of the 31 legislated reforms; 6 remained to be implemented; and 4 of the 25 implemented awaited USDA action to formalize procedures or provide guidance for federal, state, or local operations. USDA had not updated its January 1988 work plan with revised time lines and tasks for completing the remaining reform actions and ensuring the uniform, consistent implementation intended by the act. USDA implemented 6 of the 16 reforms with statutory deadlines early, but missed the deadlines for the other 10 because of its sometimes lengthy review and approval procedures, the complexity of some reforms, and the act's broad application.

Public and national association commenters did not cite any adverse impacts from USDA's implementation delays. The comments did tend to show a broad range of concerns for how the 1987 act and the rules would affect the respondents' involvement in the commodity distribution system. The associations noted both some improvement in the program's operation under the reforms and the need for additional improvements. Some expressed concern about USDA ability to effectively monitor state and recipient agencies' compliance with the reforms. FNS officials expressed similar concern and are improving the design of management evaluations used to monitor state and local operations. Related work by GAO and USDA's Office of Inspector General has identified deficiencies in FNS' monitoring of state and local inventory management practices. GAO believes planned inventory management reforms should be included in FNS' evaluation improvements.

Principal Findings

Status of Secretarial Actions and Reform Implementation

USDA officials recognized the reforms' importance to the commodity distribution program's future operation and implemented reform initiatives. For example, over a year before the reform legislation's enactment, the Secretary (1) ordered a comprehensive review of the commodity distribution program, (2) established "special commodity initiatives" to improve commodity donations through the National School Lunch Program, and (3) appointed a departmental task force to coordinate USDA's reform activities.

USDA had implemented 25 of the 31 reforms as of May 1989. The six reforms not implemented are covered by proposed USDA regulations pub-

developing evaluation guidance that limit USDA's ability to effectively monitor state and recipient agency compliance with reforms.

In this regard, a continuing concern of GAO and USDA's Office of Inspector General is FNS' ability to effectively monitor and account for inventories of donated commodities stored at the state and local levels for school and nonschool programs. At the time of GAO's review, FNS was acting to improve its method for planning future management evaluations with full implementation targeted for August 1989. FNS also planned to resolve related inventory management deficiencies by the end of fiscal year 1989. Considering past delays in providing evaluation guidance and continuing problems with inventory accountability, GAO believes FNS needs to ensure the timely implementation of its plan to conduct future management evaluations and provide inventory management information. In a draft of this report, GAO proposed that FNS complete changes to its management evaluation planning process and ensure that specific program monitoring improvements are included. USDA subsequently changed its planning process and some monitoring improvements are ongoing.

Recommendation

GAO recommends that the Secretary of Agriculture direct the Administrator of FNS, in concert with other service Administrators, to develop a revised work plan to ensure that the remaining reforms are implemented in a consistent and uniform manner at federal, state, and local levels.

Agency Comments

USDA stated that the report gives too much attention to incomplete reform actions and disagreed with (1) the need for a revised implementation work plan and (2) emphasis on reform actions that it views as refinements not required by the act. USDA also stated the report's tone could leave an incorrect impression that USDA did not implement the act in good faith. GAO believes the report accurately reflects the status of USDA's implementation efforts as of May 1989, the conclusion of GAO's review, and the need for the actions GAO recommends; but it revised the report, as appropriate, to more clearly emphasize USDA's positive actions in implementing reforms, both before and after the 1987 act. The report should not be interpreted as implying that USDA's actions lacked good faith. While USDA has taken many actions, the additional actions GAO recommends will enhance those efforts. USDA's comments and GAO's response are treated in more detail at the end of chapters 2 and 3 and in appendix VI. USDA also provided technical comments and legal citations that have been incorporated throughout the report as appropriate.

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and the acquisition and distribution of donated commodities to maintain programed levels of assistance to eligible recipient agencies. FNS is also responsible for monitoring and evaluating the program's operation at the federal, state, and local levels.

- AMS purchases surplus items such as meat, poultry, fruits, and vegetables to encourage the domestic consumption of such commodities. These items are purchased with funds authorized under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), which allows the domestic distribution of these purchases to needy persons. AMS also purchases foods with funds appropriated to FNS for various food assistance programs. Most AMS commodity purchases are donated to schools through the National School Lunch Program.
- ASCS buys price-supported items that include dairy products such as cheese, butter, and nonfat dry milk and other basic foods such as fats and oils, rice, peanuts, wheat, and other grains. These are generally the commodities acquired by the Commodity Credit Corporation (CCC)¹ with funds authorized under section 416 of the 1949 Agricultural Act. ASCS also purchases these products, without regard to price-support or surplus restrictions, with funds appropriated to FNS for purposes of section 6 of the National School Lunch Act and section 4(a) of the Agriculture and Consumer Protection Act of 1973. These foods are donated through FNS to child-feeding programs as well as to special categories of institutions and needy individuals. Schools receive the largest percentage of the section 416 commodities.

Other legislation also authorizes AMS and ASCS to purchase commodities for domestic donation (see app. I). ASCS arranges shipments for all donated commodities distributed through FNS regardless of the purchaser.

Recently, USDA has been spending about \$2 billion annually to purchase and distribute donated commodities. These foods are funneled to eligible participants through state agencies, called distributing agencies, whose activities are coordinated and regulated through FNS and its seven regional offices.

The amount and value of commodities donated by program category for the combined 1988 school and fiscal years are shown in table 1.1. The types of commodities distributed are listed in appendix II.

¹USDA's Commodity Credit Corporation, a wholly owned government corporation, purchases price-supported surplus commodities at prices designated by the Congress.

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- eliminate inconsistencies in the program's overall operations at the federal, state, and local levels;
- better identify and consider recipient agencies' needs regarding the type, size, form, and quantity of donated commodities;
- establish procedures to ensure that recipient agencies are offered commodity options consistent with their needs; and
- identify and implement ways to improve the timing of donated commodity deliveries at the federal and state levels.

Several studies were conducted over more than a decade to evaluate the most effective way to provide assistance to schools and others participating in the commodity distribution program.² Some advocated that commodity donations should be replaced with a cash or letter-of-credit voucher system. These systems were tested and evaluated under a 4-year USDA demonstration project begun in 1981,³ and certain school districts remain eligible to continue using these systems through 1990. Others recommended the continuation of USDA's commodity donations on the condition that USDA implement suggested reforms. Their concerns included school program issues identified by the American School Food Service Association (ASFSFA) and the National Frozen Food Association (NFFA) in a joint commodity-reform resolution provided to USDA in March 1986. The resolution established a 16-month period for USDA to complete specific improvements in the commodity distribution program, including improvements in communication, staff training, the variety and quality of foods offered, product specifications, packaging, and the commodity delivery system. The resolution also stressed the need for USDA to develop regulations and procedures, and any necessary legislative proposals, to ensure that the commodity distribution program is administered consistently by state distributing agencies and USDA's divisions and regional offices. If USDA did not respond in a satisfactory manner to the

²Costs of Foods Purchased by USDA and Local School Systems, 1973-74, USDA Economic Research Service (Washington, D.C.: 1975); The National School Program—Is It Working? (PAD-77-6, July 26, 1977); Improving Federal Food Procurement and Distribution Programs, Schnittker Associates (Washington, D.C.: Nov. 1979); A Study of Cash in Lieu of Commodities in School Food Service Programs, USDA, Food and Nutrition Service (Washington, D.C.: Jan. 1980); More Can Be Done to Improve the Department of Agriculture's Commodity Donation Program (GAO/CEd-81-83, July 9, 1981); D.B. Erickson, Cost of Producing School Lunches Using USDA-Donated Commodities vs. Cash in Lieu of Commodities, School Food Service Research Review, 1982, 6(1), 26-31; Special Blue Ribbon Study Committee on the USDA Food Distribution Program, Jan. 1982; Evaluation of Alternatives to Commodity Donation in the National School Lunch Program, USDA, Food and Nutrition Service (Washington, D.C.: March 1985 and May 1986).

³USDA believes the study results did not provide compelling evidence to warrant implementation of an alternative system. We reported limitations and weaknesses, some beyond USDA's control, in the demonstration project's methodology that significantly reduce the statistical validity and usefulness of the USDA data. (See School Lunch Program: Evaluation of Alternatives to Commodity Donations (GAO/RCED-87-113, June 11, 1987).)

be implemented within 90-, 120-, or 270-day time frames, went beyond the reforms in ASFSA's and NFFA's joint resolution, and were applicable to all recipient agencies participating in the program. Appendix III lists the 31 reform provisions mandated under section 3.

The reforms under section 3 were designed, in part, to clarify the Secretary's duties in directing and overseeing commodity distribution program operations including an improvement in state distributing agencies' performance under the program. To improve the states' operations, section 3 requires (1) information dissemination both to and from recipient agencies, (2) a cost effective system for warehousing and distributing commodities, (3) equitable treatment of all participants, and (4) uniform guidance, direction, and oversight of state operations by the Secretary.

Information dissemination includes the Secretary making commodity specification summaries available to state agencies; providing technical assistance to recipient agencies on handling, storage, and menu planning; and delivering suggested recipes to all recipient agencies.

To ensure a cost-effective system for warehousing and distribution, section 3 requires each state distribution agency to evaluate and compare its system with a commercial system and implement the most cost-effective and efficient system. The Secretary is required, among other things, to establish regulations to ensure that delivery schedules are consistent with the needs of eligible recipient agencies. The Secretary is also required to establish procedures for replacing commodities that are stale, spoiled, out of condition, or not in compliance with the specifications required.

Equitable treatment is covered in a number of the provisions of the 1987 act. The act requires the Secretary to ensure that USDA's regional offices uniformly interpret the policies and regulations issued to implement the reforms under section 3. Also, the Secretary is to establish mandatory criteria for storage and distribution fees charged to recipient agencies and establish a value for donated commodities to be used by state agencies in the allocating or charging of commodities against entitlements (legislated commodity assistance levels).

To direct and oversee the commodity distribution program and help to ensure its uniform and consistent operation, the Secretary is required to provide regulations establishing minimum performance standards to be uniformly followed by state agencies responsible for distributing

- 15 of the reforms were being implemented through the same April notice;
- 9 were to be implemented through interim rules⁷ (subsequently published on June 16, 1988, and July 21, 1988); and
- 7 were to be implemented by first using proposed rules⁸ (subsequently published on Oct. 20, 1988) to obtain public comments before USDA finalized its planned regulatory actions for these 7 reforms.

Appendix III shows USDA's implementation method for each of the 31 reforms, which include 16 that were required to be implemented within 90-, 120-, or 270-day time frames. Appendix IV describes each reform's implementation status as of May 1989.

Objectives, Scope, and Methodology

Section 7 of the 1987 act directs us to monitor USDA's implementation of the act's provisions and to report the results to the House Committees on Agriculture and on Education and Labor and to the Senate Committee on Agriculture, Nutrition, and Forestry. As subsequently agreed with the Chairmen's offices, this report focuses on the Secretary of Agriculture's response to section 3's extensive reforms to improve the distribution, form, and quality of the agricultural products that USDA donates through the commodity distribution program. Specifically, we determined

- the status of USDA's actions (as of May 1989) to implement the reforms, including determining if USDA met the act's deadlines;
- the reasons for instances where USDA did not meet the 1987 act's deadline requirements for implementing some reforms; and
- to the extent possible, any adverse impacts that USDA's implementation actions or delays in meeting some statutory reform deadlines may have had on the distribution of commodities to state and recipient agencies.

In looking at possible adverse impacts, our work also identified concerns raised by USDA officials and others regarding USDA's ability to effectively monitor state and recipient agency compliance with required reforms.

⁷An interim rule is a regulation that is in effect for a temporary period until replaced by a final regulation. Agencies issue interim rules when they believe good cause exists to dispense with the required notice and comment period under the Administrative Procedure Act. Generally, interim rules invite public comments that are analyzed and, as appropriate, incorporated into final regulations.

⁸Substantive agency rule making under the Administrative Procedure Act begins with a proposed rule requesting public comment before the regulation becomes effective. The proposed rule is issued as a final rule after the agency evaluates public comments on the proposed regulation.

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review in accordance with generally accepted government auditing standards.

We discuss USDA's response to section 3's reform mandates in chapter 2. Chapter 3 addresses the reaction of program participants to USDA's response to the reforms, including USDA's implementation delays.

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time-consuming and contributed to USDA's missing statutory deadlines for implementing 10 of the 16 time-specific reforms (see table 2.2). USDA's procedures for developing the Federal Register notice and the rules used to implement the reforms or announce proposed regulatory actions require several time-intensive layers of review that are part of a 3-phase USDA regulatory clearance process. In each case, the notice and rules had to be reviewed and approved by a broad range of USDA officials.² These included the Director of FNS' Food Distribution Division (FDD) whose staff were responsible for developing and processing the notice and rules in accordance with FNS' January 5, 1988, work plan.³

FNS' work plan established the target dates and the methods USDA would use for implementing the 31 reforms through administrative actions and regulatory changes. Under the plan, 15 of the reforms, including 3 with statutory deadlines, were to be implemented through a Federal Register notice in February 1988. These involved USDA operations and did not require regulatory changes. The remaining 16 reforms required regulatory changes and were to be implemented through a combination of interim, proposed, and final rules. These included 13 reforms with statutory deadlines.

The interim and proposed rules were to be published in April 1988 and be followed by final rules in October 1988. USDA subsequently determined that 10 of the 16 regulatory reforms, including 7 with statutory deadlines, would be implemented through interim rules without prior public notice. The remaining six regulatory reforms, all with statutory deadlines, were determined by USDA to require the use of proposed rules to obtain public comments before their implementation.

Table 2.1 compares the target dates for the implementation actions covered by the work plan with the status of these actions as of May 1989. Table 2.2 compares the number of reforms covered by USDA's implementation actions with their respective statutory deadlines and shows that

²Within FNS, the regulatory clearance process involved product review and approval by officials within the responsible program division, the Administrative Services and Information Resources divisions, the Office of Analysis and Evaluation, the Deputy Administrator of Special Nutrition Programs, the Regional Program directors, and the Administrator. At the departmental level, the notice and rules had to be cleared by the Office of the General Counsel and the Assistant Secretary for Food and Consumer Affairs. The clearance process also requires approval by the Office of Management and Budget. In addition, some provisions were coordinated with AMS and ASCS officials.

³The work plan is required for the development of all regulations. Its purpose is to inform the FNS Administrator and the Assistant Secretary for Food and Consumer Services of planned regulatory action and to obtain the Assistant Secretary's approval and direction regarding the regulation's classification as a major or nonmajor regulatory action.

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Table 2.2: Reform Provisions Under Public Law 100-237 Compared With Implementation Deadlines

Implementation deadlines ^a	Reform provisions			Proposed rules— 10/20/88	Total
	Notice— 04/19/88	Interim rules			
		06/16/88	07/21/88		
90 days (04/07/88)		2 ^b			2
120 days (05/07/88)			2 ^b		2
270 days (10/04/88)	3 ^c		3 ^c	6 ^{b, d}	12
None specified	12		3		15
Total	15	2	8	6	31

^aStatutory deadlines under Public Law 100-237 enacted on January 8, 1988. To be consistent with the implementation dates established in the law, the 90- and 120-day provisions implemented by the June and July 1988 interim rules were determined by USDA to be effective retroactive to April 8, 1988, and May 7, 1988, respectively. Two of the 270-day provisions implemented by the July 1988 interim rules became effective October 4, 1988, and one became effective on the rule's publication. The provisions that were not time-specific generally became effective on January 8, 1988.

^bTime-specific reforms that missed their statutory implementation deadlines.

^cTime-specific reforms that met their statutory implementation deadlines.

^dUSDA used proposed rules to obtain public comments on these six reforms prior to their implementation. As of May 1989, FNS officials estimated that the final regulatory actions needed to implement these reforms would not be completed until July 1989.

Three-Phase Process

The regulatory clearance process consists of three phases. The first phase covers the program division's development of the planned notice or rule and concludes with its clearance by USDA's Office of General Counsel. This initial phase includes all activities involved in the product's design and drafting stages including incorporating review comments by the various USDA organizations whose approval is required before the second phase when it is sent to the Office of Management and Budget (OMB) for its required clearance. The second phase covers the period that the approved draft is with OMB for approval and suggested changes are made to the draft. The third and last phase is the period covering the FNS Administrator's review and approval of the OMB-cleared product. This phase concludes with the notice's or rule's publication in the Federal Register. Table 2.3 shows the number of days it took to complete each of these phases for the notice and the interim rules used to implement 25 of the reform provisions and for the proposed rules that announced planned regulatory actions for the remaining 6 reforms that had not been implemented as of May 1989.

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Table 2.4: Reforms With Mandated 90- and 120-Day Deadlines and the Additional Time USDA Used to Implement Them

Reform provisions	Mandated deadline	Interim rules published	Additional days used
Completion within 90 days of enactment: Procedures for the replacement of commodities received by recipient agencies that are stale, spoiled, out-of-condition, or not in compliance with USDA's product specifications (Section 3(b)(5)) Delivery schedule for the distribution of commodities that are consistent with the needs of recipient agencies (Section 3(e)(1)(D))	04/07/88	06/16/88	70
Completion within 120 days of enactment: Dissemination of commodity specification summaries to distributing agencies and to recipient agencies upon request (Section 3(b)(3)) Procedures that ensure the receipt of information from recipient agencies at least semiannually about the types and forms of commodities that are most useful to persons participating in programs operated by recipient agencies (Section 3(f)(2))	05/07/88	07/21/88	75

On the average, USDA used more than 70 days beyond what the law required to implement the 90- and 120-day reforms. According to USDA officials, to keep these delays to a minimum, they took steps to expedite the rule-making process by using interim rules that were made retroactive to the legislated deadlines. This allowed USDA to put in place the required regulatory changes without prior public notice and comment. This differed from USDA's using proposed rules for six reforms that USDA determined required public comments before being implemented. The six reforms the proposed rules covered had October 1988 statutory deadlines and had not yet been implemented as of May 1989.

The June and July 1988 interim rules state that because of the 90- and 120-day statutory deadlines involved, the FNS Administrator determined that

- prior notice and comment were impractical, unnecessary, and contrary to public interest and

expressly authorized in the law. A concurring opinion noted that a statutory deadline may be an implicit authorization for retroactive rule making.⁶

Complexity of Some Reforms

USDA officials told us that another reason for the implementation delays was the complexity of some reforms. Specifically, these were the changes that required

- state agencies to offer school food authorities participating in the National School Lunch Program not less than the national average per-meal-value of donated commodities established by USDA (section 3(j));
- distributing agencies to (1) evaluate their current warehousing and distribution systems for donated commodities, (2) implement the most cost-effective and efficient system for providing warehousing and distribution services to recipient agencies, and (3) use commercial facilities for providing these services to recipient agencies unless they demonstrate that their present or alternative facilities are more cost-effective and efficient (sections 3(d)(1), (2) and (3));
- USDA to establish mandatory criteria for the service fees that state distributing agencies assess recipient agencies for the storage and intra-state distribution of donated commodities (section 3(e)(1)(A)); and
- recipient agencies to purchase, whenever possible, only food products that are produced in the United States unless specifically exempt from the “buy American” requirement⁷ (section 3(h)).

To design the rules USDA used to implement or announce proposed regulations for these reforms, it developed a series of position papers that detailed the key issues and concerns involved and the options that were examined to resolve them. USDA officials used the papers to discuss the various reform options that were considered in deciding on the regulatory actions implemented through the July 21, 1988, interim rules and the proposed regulatory actions issued for public comment on October 20, 1988. Table 2.5 outlines the key issues that USDA considered in determining its response to these reforms and shows the implementation date and method used. Appendix IV shows the status of USDA’s implementation actions under the interim and proposed rules as of May 1989.

⁶(57 LW4063)

⁷The law exempted recipient agencies in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. In addition, the Secretary of Agriculture can grant recipient agencies waivers for unusual or ethnic food preference or other circumstances the Secretary considers appropriate.

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Reform/issue(s) or concern(s) status	Implementation status
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Resource and record-keeping requirements to sufficiently monitor recipient agencies' compliance.	
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According to USDA officials, the most complex provisions were the warehousing and distribution system reforms due, in part, to the wide variety of storage and delivery systems involved and state distributing agencies' concerns about the costs and technical expertise needed to conduct required evaluations of these systems. These reforms were to be implemented within 270 days of the 1987 act's enactment. USDA issued proposed rules for these and some other controversial 270-day reforms on October 20, 1988, 16 days past the legislated deadline for their full implementation. According to USDA officials, they used the proposed rules to provide prior public notice and the opportunity for comment before the six reforms covered by the proposed rules would become final. They said the delay in getting the rules out, even in proposed form, was due in large part to the complexity of the reforms that were packaged together under the rules. They said the complexity also made it difficult to predict when the proposed regulations, which were in USDA's regulatory clearance process at the time of our review, would become final. Initially, USDA expected to issue final rules by October 1988. This date was later revised to February 1989, April 1989, May 1989, and then to July 1989—the most recent estimate available, based on our discussions with FNS officials.

Difficult to Match Some Programs' Operations With Reform Requirements

According to USDA officials, the considerable differences in some of the donated commodities themselves and in the ways they are distributed to eligible recipients serviced by the various child nutrition, food distribution, and supplemental food programs had to be considered in designing the necessary regulatory and procedural changes. The officials believe that some of the differences in program operations at the state and recipient agency level are, in some cases, difficult to match with some of the reforms under the 1987 act. These differences include

- program-specific limitations on the types and forms of food products that eligible recipients receive under some programs' operating procedures or the legislation authorizing the food assistance provided,
- the systems used to deliver and store donated foods that are distributed for home consumption at the recipient agency level, and
- the part-year periods during which some programs are in operation.

Food Distribution Program on Indian Reservations distributes monthly food packages to eligible households on or near Indian reservations. As a result, the program operates in largely rural, sometimes isolated environments and relies on manual, over-the-counter, and vehicle tailgate distribution methods to deliver monthly food packages to the households it serves. In contrast, TEFAP agencies rely heavily on volunteer labor and donated storage facilities. Schools, on the other hand, use another type of system since they have a need to receive and store, on a frequent basis, large quantities of processed and unprocessed foods that are used in daily meal preparation. In addition, some recipient agencies are charged for the storage and delivery services provided by state distributing agencies while others benefit from systems that are partially or fully subsidized from state revenues. In this regard, USDA has questioned the fairness of the 1987 act requiring programs such as TEFAP and the Food Distribution Program on Indian Reservations to conduct complex cost/benefit analyses of their current warehousing and distribution systems. As discussed later, USDA has recommended legislative change in this regard.

Periods of Operation

To implement some reforms, such as the required semiannual gathering of commodity acceptability data from recipient agencies, USDA had to consider the agencies' periods of operation. While most food assistance programs operate year-round, others, such as the National School Lunch Program and the School Breakfast Program, are in operation for only part of a year. These programs are operated while schools are in session and typically close down for about 3 months during the summer. USDA reports that consistent with school year needs, well over 75 percent of all commodities donated to school programs are shipped to state distributing agencies by January 31 of each year. Other programs, such as the summer camp and migrant children feeding operations under the Summer Food Service Program also operate on a seasonal basis. The Summer Food Service Program provides food service to needy children during summer vacation through public and private nonprofit school food authorities and units of state and local governments. In addition to their seasonal operations, these summer programs also vary in their scope of operation. In some cases daily meal service is limited to lunch and either breakfast or a snack. Other programs are able to provide needy children with up to three meals and a snack. These variations in periods of operation and scope of service translate to different needs that have to be considered by USDA and state distributing agencies under the 1987 act's reforms. With regard to data collection, USDA has questioned the benefit

required to ensure the report's consistency with the agency's legislative proposals. The report includes several recommended legislative changes that would

- limit the applicability of the warehousing and distribution system evaluations under section 3(d) only to school programs where food distribution program costs are funded primarily through recipient agency assessments as opposed to other methods of funding such as state subsidies (the provision now applies to all programs regardless of funding),
- reduce the present semiannual gathering of commodity acceptability information under section 3(f)(2) to an annual requirement, and
- change the basis for determining school program meal reimbursements under section 3(j) to reflect previous year program participation rates rather than the number of meals served in the current school year.

Additional USDA Actions Needed to Complete Some Reforms

Four of the 25 reforms that were implemented by USDA through the Federal Register notice and interim rules require additional actions intended by USDA for the reforms' completion. Specifically, the yet-to-be completed actions involve USDA's publicly announced intent to

- establish formal procedures for the ongoing field testing program required under section 3(g) and implemented through the April 1988 Federal Register notice.
- formalize procedures for a systematic review of the cost and benefits of providing commodities in forms and quantities that meet recipient agencies' needs as required under section 3(f)(1) and implemented through the April notice, and
- develop guidance for distributing agencies to use for testing and monitoring processed end-product acceptability with eligible recipient agencies as required under sections 3(d)(5)(A) and 3(d)(5)(B) and implemented through the July 21, 1988, interim rules.

Completing these reforms is primarily the responsibility of FNS with involvement by AMS and ASCS. As of May 1989, however, USDA had no current plan in place directed at completing these actions.

Commodity Field Testing Procedures

In responding to the requirement under section 3(g) that USDA establish an ongoing field testing program for testing the acceptability of present and anticipated commodity and product purchases with recipients, USDA stated in its April 1988 Federal Register notice that it (1) has informal procedures for testing new commodities in the form of small pilot

instruction that specifies FNS' field testing procedures. The OMB clearance is required for surveys that go to more than nine individuals. The form had not yet been developed as of May 1989 and FDD officials did not know when the form would be completed or submitted to OMB for review. The FNS instruction was drafted by FDD in March 1989 but had not yet been submitted for FNS and department clearance as of May 1989. FDD's Director did not know when the clearance process would begin or when formalization of the test procedures would be completed.

Formal Cost/Benefit Reviews of Commodity Types and Quantities

Section (3)(f)(1) required USDA to establish procedures before October 4, 1988, to provide for a systematic review of the cost and benefits of providing commodities of the kind and quantity that are suitable to the needs of recipient agencies. In its April 1988 response¹¹ to this requirement, USDA stated that (1) AMS now analyzes the costs of each purchase prior to buying surplus removal commodities and (2) the analysis includes the assessment of the quantity and type of commodities available and the needs of recipient agencies. In addition, USDA said that it now considers the needs of state distributing agencies when determining the quantity and form of purchased commodities and the requested time frames for their shipment and delivery. Then, as a follow-up to these actions, USDA said FNS uses existing complaint reports, acceptability surveys, and state advisory council reports to determine the benefit of specific commodities and whether purchases were suitable.

In concluding its position, USDA stated in the April notice that it intends to comply with the law by formalizing the procedures for the analysis of recipient agency needs to determine the suitability of commodity purchases and the benefits derived. Because the April notice did not state what USDA would do to formalize the procedures for the systematic cost/benefit review required by the 1987 act, or say when USDA intended formalization to be complete, we asked AMS and FNS officials to explain USDA's expectations in this regard.

AMS officials told us they were uncertain about how or when the intended formalization of the recipient agency needs analysis procedures would take place. They said that FNS has overall administrative responsibility for implementing the commodity distribution program's reforms and, at the time of our review, had not yet provided AMS with the direction and information it would need regarding AMS' role in any

¹¹USDA's notice of the implementation of P. L. 100-237, published Apr. 19, 1988, in the Federal Register, pp. 12797 and 12798.

data submission form that requires OMB's approval, were in process but would not likely be completed before fall 1989. As of May 1989, FDD's Director did not know when all the activities involved in USDA's formalizing the recipient agency needs analysis procedures would be completed. The FDD Director also told us that FNS has no formal plan or agenda directed at completing these activities. We believe, however, that such a plan would help to provide needed coordination of USDA's expectations in this regard and with regard to other reforms that also involve AMS or ASCS activities.

Guidance for State Distributing Agencies' Product Testing and Monitoring

On July 21, 1988, USDA published regulatory changes to implement the end-product testing and monitoring provisions under section 3(d)(5). The law directed USDA to require by regulation that each distributing agency that enters into a processing contract¹³ for recipient agencies must first test the processed end product with these agencies and afterward monitor its acceptability. The interim rule used to implement these changes restated the requirements exactly as set forth in the law and established October 4, 1988, their statutory deadline, as the effective date by which distributing agencies were required to

- test products with the recipient agencies eligible to receive them prior to entering into a processing contract with commercial firms to convert donated commodities into more usable forms and products (section 3(d)(5)(A)), and
- develop a system to monitor product acceptability (section 3(d)(5)(B)).

The rule encouraged distributing agencies to begin testing and monitoring end products as soon as possible but did not establish specific, detailed procedures for distributing agencies to use in this regard. Instead, the rule solicited comments from all interested parties about establishing these procedures and requested that the comments include a description of (1) any proposed system to be used for testing products and (2) the system to be used for monitoring product acceptability. USDA said that it would use these comments to develop further guidance for distributing agencies to use in testing and monitoring processed end products. Although the 1987 act did not specifically require USDA to provide states with guidance for their required testing and monitoring activities under section 3(d)(5), USDA's providing the guidance would give greater assurance that the reforms would be designed to operate

¹³A processing contract provides for (1) the conversion of USDA donated food(s) into a different end product, pizza for example, or (2) the repackaging of donated food(s).

discussed even though the April notice states that the formalization is “required by law.”

In the absence of a revised FNS implementation plan or other formal FNS agenda directed at bringing the full implementation of the 1987 act to closure, we requested the FDD Director to provide us with a written position statement on FNS’ expectations for finalizing the proposed rule and the yet-to-be completed actions that USDA intends for

- formalizing the field testing and the recipient agency needs-analysis procedures addressed by the April 19, 1988, implementation notice and
- establishing the guidance promised regarding the processed end-product testing and monitoring procedures noted under the July 21, 1988, interim rules.

In response to our request, the FDD Director provided us with documents that described the status of some of the results of FNS’ efforts through mid-March 1989 to implement the reforms. The documents included USDA’s section-by-section analysis of the 1987 act’s implementation provided to the Congress on March 3, 1989, in its required report under section 3(k) of the act. None of the documents, however, provided the information we requested that would describe how and when FNS expected to complete the act’s full implementation including the previously discussed procedure formalizations that involve some AMS and ASCS activities.

In subsequent discussions with FDD officials, we were told that FNS expects to finalize the proposed rules in July 1989,¹⁴ assuming that no delays occur from USDA’s regulatory clearance process. We were also told that some of the reforms implemented under the June 16, 1988, and July 21, 1988, interim rules would be amended to reflect public comments. These officials told us that final rule making involving the interim rules had not begun the regulatory clearance process at the time of our review but that FNS expected to complete this rule making in July 1989. They also said that FNS expects to use these final rules to inform state distributing agencies that the guidance USDA promised in the July 1988 interim rule regarding required processed end-product testing and monitoring procedures would not be provided leaving development of the procedures to the individual state agencies. As noted previously, USDA’s decision not to provide this guidance was due to the lack of public comments on the procedures’ design that USDA requested as a part of the interim

¹⁴Final rules were issued by USDA on October 17, 1989.

regulations under the October 1988 rules¹⁵ and the formalized procedures that will facilitate consistent and uniform operation of its commodity field tests and recipient agency needs assessments that involve FNS, AMS, and ASCS. It is also our view that unless USDA develops guidance for the conduct of processed end-product testing and monitoring by state distributing agencies, then the procedures developed by the individual agencies will likely lack the uniformity and consistency intended by the 1987 act.

Recommendation

The Secretary of Agriculture should direct the Administrator of FNS, in concert with the Administrators of AMS and ASCS, to develop a revised work plan for completing section 3's full implementation under the 1987 act. The plan should detail how and when USDA intends to complete all remaining actions that involve the full implementation of the commodity distribution program reforms required under section 3 of the act in a manner that provides for

- uniform and consistent application of the reforms at the federal, state, and local levels;
- developing and issuing all USDA guidance needed by state distributing agencies to meet their responsibilities under the reforms including their conduct of required testing and monitoring activities; and
- specifying (1) the responsibilities of FNS, AMS, and ASCS for any actions needed by these agencies to complete USDA's formalization of procedures relating to its commodity field testing and recipient agency needs assessments and (2) deadlines for these agencies to complete their respective responsibilities.

Agency Comments

USDA took exception to the report's tone and the actions we report as yet-to-be-completed to bring the act's full implementation to closure. USDA stated that the report fails to recognize USDA's implementation achievements and overstates what remains to be done by focusing on intended reform actions involving formalized procedures and state agency guidance that it views as beyond the requirements of the 1987 act. USDA said it believes the report's tone could leave the incorrect impression that USDA did not implement the act in good faith. USDA further stated that its imminent finalization of the reforms under its October 20, 1988, proposed rules will bring USDA into compliance with

¹⁵Subsequent to our review, on October 17, 1989, USDA issued final rules covering the reforms under its October 20, 1988, proposed rules.

Impacts and Concerns About Commodity Reforms

Our review of public comments on the interim and proposed rules and additional information provided to us by associations representing program participants found that neither cited any adverse impacts that might have resulted from USDA's delay in implementing any of the reforms. A broad range of concerns, however, were expressed in reaction to USDA's implementation efforts. Although the comments on program changes were mixed, those commenting tended to express concern for how the law and the rules would affect their involvement in the commodity distribution system. In addition, national associations representing program participants noted some program improvements resulting from USDA efforts but also expressed concern about how effectively USDA would comply with some of the changes in its operations required under the 1987 act. Their concerns included some raised by FNS officials regarding USDA's ability to monitor state and recipient agencies' compliance with the reforms.

Overall, respondents commenting publicly were generally concerned with the cost to implement the law and corresponding rules, and many asked for a clarification of the rules. Some respondents were concerned that several mandated requirements and proposed regulations were not doable or were incompatible with the commodity system as it currently exists. A few respondents viewed some mandated requirements and proposals as unreasonable or in conflict with state laws.

The associations' concerns included a need for USDA to further improve the reliability of shipment and delivery schedules, provide adequate technical assistance and training to state and recipient agencies, complete required actions involving field testing and recipient agency cost/benefit needs assessments, and effectively coordinate program management and monitoring activities within the agency itself and with program participants. With respect to FNS' program monitoring activities, some associations and FNS officials expressed concern about FNS' ability to effectively conduct management evaluations it will use to monitor state and recipient agencies' compliance with rules implementing the 1987 act.

As a result of our discussions with FNS officials and our examination of the agency's files, we identified several concerns regarding FNS' ability to effectively conduct management evaluations of the 1987 act's implementation at the state and local levels. These include FNS' limited staff and travel resources, the growing number and complexity of the programs FNS administers, and the need for more effective systems for managing FNS' work load and for coordinating the planning of the agency's

Appendix V describes the public comments in response to the regulatory changes in more detail.

Associations' Reaction to Nonregulatory Changes and to USDA's Delay in Implementing Some Reforms

We requested comments on USDA's nonregulatory changes and implementation delays from 15 national associations that had commented on USDA's interim or proposed rules or participated in the legislative hearings that helped to shape the reforms. We did this to obtain the reactions of their state, recipient, and commercial members to the nonregulatory changes USDA announced through the April 1988 notice, i.e., administrative or procedural changes shown in appendix IV that were directed at USDA operations and did not require public notification. We asked for their position on the adequacy of the reform implementation actions described in the notice. We also asked them if USDA's delay in implementing any of the time-specific reforms required under the 1987 act had had any adverse effect on the commodity distribution program's operation. We received responses from six associations—two that primarily represent state distributing agency and school program recipient agency interests and four that primarily represent commercial interests.¹

State and Recipient Agency Concerns

In general, the representatives of the associations that primarily represent state and recipient agency concerns told us that because of the commodity reforms under the 1987 act, USDA is (1) now more aware of their commodity distribution problems than in the past and (2) more receptive to making changes to improve the program. They stated that recent administrative and procedural changes have significantly improved the form, packaging, and labeling of donated commodities. They also stated, however, that some problems are still unresolved including changes needed to further improve the reliability of shipment and delivery schedules and to provide state and recipient agencies with adequate technical assistance and training.

The associations believe that some of the implementation time frames in both the law and regulations were unrealistic and that the implementation delays caused no significant problems at the state and recipient agency levels. They said they preferred that the agency take the time it needs to effectively implement the reforms, especially those covered by

¹The associations that responded are the National Association of State Agencies for Food Distribution, the American School Food Service Association, the National Frozen Food Association, the American Tunaboat Association, the United States Tuna Foundation, and the International Association of Refrigerated Warehouses.

regarding USDA's ability to effectively monitor state distributing agencies. The association told us that the changes directed at improving the performance of state distributing agencies are critical to the success of the commodity distribution program's reform.

Some of the associations that provided us with comments on the adequacy of USDA's implementation efforts highlighted the importance of USDA's monitoring the effectiveness of the program changes made under the 1987 act on a continual basis and in a manner that effectively coordinates monitoring of the program's operations at the federal, state, and local levels.

FNS' Ability to Monitor Reforms Warrants Further Consideration

Some associations, FNS officials, and reports by us and USDA's Office of Inspector General (OIG), have raised concerns involving FNS' ability to effectively monitor state and recipient agencies' operations under the commodity distribution program and the 1987 act's reforms. Some of the association representatives we talked with stated that effective oversight, which is crucial to the success of the reforms and the program's future improvement, sometimes has been lacking or inconsistent in the past and because of that should warrant USDA's further consideration. In this regard, FNS officials have raised concerns regarding the agency's ability to conduct management evaluations it intends to use to monitor agencies' compliance with the reforms and the need to better plan these evaluation activities in the future. In addition, related reports by us and USDA's OIG have identified deficiencies in FNS' monitoring of donated commodities stored at the state and local levels. This monitoring is part of the agency's evaluations used to implement the program oversight required under section 3(b)(1)(B).

Over the past 6 years, budget cuts have reduced the FNS staff resources directed at the monitoring efforts needed to ensure state and recipient agency compliance with the legislated reforms. Because of the reduced staff levels and other constraints, such as increased program responsibilities, FNS was unable to do the number of commodity distribution program management evaluations called for in the agency's fiscal year 1988 and 1989 guidance for these activities. At the time of our review, FNS was in the process of improving its method for planning future evaluations with full implementation targeted for August 1989. Also, FNS expected to resolve some related inventory management deficiencies by the end of fiscal year 1989.

- entering into contracts for processing commodities or permitting qualified recipient agencies to negotiate processing agreements, as well as assessing conformance with USDA rules and regulations.

About half of the 31 commodity distribution program reforms required under the 1987 act (see app. IV) involve state distributing agency responsibilities. How well these agencies meet their responsibilities will be determined, for the most part, through the FNS management evaluation process.

In responding to the 1987 act's requirement that USDA monitor state distributing agency operations (section 3(b)(1)(B)), FNS has 30 commodity distribution reform evaluations planned for fiscal year 1989. A goal of these evaluations is an assessment of how well the state distributing agencies and the recipient agencies they service are complying with the reforms that USDA has implemented under the 1987 act. Table 3.1 shows that the composition of the recipient agency networks, to which the reforms and management evaluations apply, can vary considerably from state to state.

Table 3.1: Number of Recipient Agencies Under Various Food Assistance Programs Operating in USDA-Surveyed States, 1985-86

State	Schools	Charitable institutions	TEFAP	Elderly	Child care	Other	Total
Florida	101	401	50	13	122	127	814
Georgia	227	90	27	0	0	106	450
Illinois	1,198	549	61	32	289	266	2,395
Maryland	46	207	24	0	27	0	304
Montana	243	91	16	12	87	87	536
North Carolina	204	199	100	36	321	135	995
Pennsylvania	970	733	67	0	0	119	1,889
Rhode Island	276	89	12	6	35	23	441
Texas	1,221	292	89	24	183	99	1,908
Virginia	216	175	132	19	75	22	639

Source: USDA-sponsored, Survey of State Distributing Agencies, August 1986.

FNS headquarters' managers annually place on their regional offices varying requirements for conducting each year's evaluations. The requirements are program specific and, for the most part, reflect the program managers' expectations for the number and focus of the evaluations for the fiscal year involved. For fiscal years 1988 and 1989, this guidance stated that an evaluation was to be conducted in each state distributing agency each year and that "standards of practice" for the

evaluations was established, the agency has experienced about a 24-percent reduction in its staff-year ceilings—from 2,475 staff years for fiscal year 1982 to 1,890 staff years for fiscal year 1988.

Limited Regional Office Resources

Our review of agency records showed that at the regional office level, limited travel resources, unexpected attrition, and problems in obtaining new staff were key reasons given by agency officials in 4 of FNS' 7 regions for their offices' inability to perform 11 of the 21 management evaluations of commodity programs they had planned for fiscal year 1988. Limited travel or staff resources were also noted by the majority of FNS' regional offices as principal reasons for limiting to 30 the total number of reform evaluations they had planned for fiscal year 1989. Two associations we talked to also expressed their concern about the adequacy of resources available at the regional level to conduct these evaluations. According to association representatives, program improvements through management evaluations at the state level are largely dependent on how well trained federal and state personnel are in conducting these evaluations and in consistently applying the standards used to assess progress throughout FNS' regions. The association representatives said that this will require adequate numbers of trained staff at all levels and some believe FNS has not had adequate numbers in the past. They told us they believe it is important for FNS to direct adequate resources for training its staff in this regard and to transfer that training to the state and local levels through the increased information sharing and technical assistance activities required under the 1987 act.

Program Growth and Increased Work Load

FNS' work load, according to the Administrator, has increased since fiscal year 1982 because of both new programs, such as the Temporary Emergency Food Assistance Program, being added by the Congress and other programs becoming more complex. An agency position paper states that, as a result, the agency's program responsibilities have increased while at the same time there are fewer staff to administer them. To obtain information needed to manage this situation, the FNS Administrator directed the Office of Regional Operations to conduct an agency-wide functional survey of FNS' program activities for fiscal year 1988. The survey was done in March 1988 and was designed, in part, to (1) capture work load information by program and special initiative across headquarters, regional office, and field office operations and (2) isolate those areas where sufficient staff are not available to meet required work load. The survey showed, largely on the basis of FNS managers' work load perceptions, that

New Planning Process Proposed

In response to the agency officials' concerns and related matters discussed at a November 1988 meeting of FNS' regional administrators, the FNS Office of Regional Operations developed a proposal for improving the management evaluation planning process. The proposal assumes that FNS will not obtain sufficient resources within the foreseeable future to enable it to achieve a goal of an annual in-depth assessment of each state distributing agency and the services it provides to recipient agencies and, therefore, should develop a systematic method of determining

- what its management evaluation goals should be, given existing staff constraints, and
- the actual performance of regional offices when compared to the agreed-upon goals.

The proposal was approved by the FNS Administrator in December 1988 and was targeted for full implementation in August 1989. The mechanics of the planning process are being developed by headquarters and regional managers who are considering the following steps:

1. An annual planning meeting scheduled close to the beginning of each fiscal year and far enough in advance of that year's evaluation cycle to permit regional administrators to develop internal staff expertise, if necessary.
2. Guidance provided to regional offices in advance of the meeting that outlines the program priorities and expectations for the coming year.
3. Regional resource estimates to accomplish the guidance requirements on a program-by-program basis.
4. Deputy and Regional Administrator negotiations of their requirements at the planning meeting. The evaluation plans would be developed and the trade-offs recognized on a program-by-program and region-by-region basis. The plans would also include the program areas of concern to be targeted and the specific states to be reviewed within each region.

The proposal noted that the planning process was expected to give the agency a better grasp of the FNS program areas that should be reviewed but would not be covered because of a lack of resources.

Past Inventory Management Deficiency Reports

Past reports by us and USDA's OIG⁷ have identified deficiencies in commodity inventory management practices at the state and local levels. In July 1981 and again in December 1985, we identified the need for FNS to implement a sound inventory management system and to properly evaluate and monitor that system to help prevent both spoilage and loss of product and ensure that the USDA-donated products are going to eligible participants.

More recently, in March 1988, USDA's OIG reported that FNS' regional offices were not reconciling required monthly product disposition reports from state distributing agencies⁸ with ASCS commodity shipment information. The OIG said the comparisons are needed to ensure the accuracy of the states' reports. The OIG report also noted that ASCS' commodity shipment information was not in a usable form and that the necessary reconciliation was not included as part of an automated inventory management system being designed for use by ASCS, AMS, and FNS.⁹ In an August 1988 response to the OIG, FNS' Deputy Administrator for Special Nutrition Programs stated that FNS was considering several options to resolve the inventory management deficiencies and that these would involve a combination of required regulatory changes and computer monitoring. The Deputy Administrator stated that FNS planned to have the new procedures established by the end of fiscal year 1989.

Extent of Problem Is Unclear

The extent of inventory management deficiencies at the state and local levels and their consequences cannot be determined from our or the OIG's audits. However, the results from FNS' review of management evaluations for 1987 and 1988 appear to give cause for concern. According to FNS' trends analysis of 14 evaluations reviewed for 1987, often during the review of the states' commercial warehouses it was discovered that significant discrepancies existed between physical and recorded inventories. The analysis also stated that half of the management evaluations reported that the distributing agencies had not suitably reacted to their most recent evaluation and attributed this trend to staffing problems in most state agencies. FNS also reviewed 18 evaluations for 1988 and

⁷More Can Be Done to Improve the Department of Agriculture's Commodity Donation Program (GAO/CEd-81-83, July 9, 1981); Food Inventories: Inventory Management of Federally Owned and Donated Surplus Foods (GAO/RCED-86-11, Dec. 5, 1985); and Audit of Food Distribution Program Commodity Inventory Accountability, U.S. Department of Agriculture, Office of Inspector General, Audit Number 27002-7-NY, Mar. 3, 1988.

⁸FNS instructions require state distributing agencies to report monthly to the appropriate FNS regional office the receipt and distribution of donated commodities using FNS Form 155.

⁹The Processed Commodity Inventory Management System was being developed for USDA by a contractor and was estimated, at the time of our review, to be completed by August 1989.

fiscal year 1988 and 1989 evaluations until 3 and 4 months after their respective evaluation cycles began; and (4) as part of its fiscal year 1989 evaluation guidance, specified the use of performance standards focused on school program operations for conducting commodity reform compliance reviews but did not specify how the 1987 act's implementation would be assessed with regard to nonschool programs. In addition, a continuing and related concern of ours and USDA's OIG is FNS' need to overcome previously reported inventory management deficiencies to conduct its management evaluations in a manner that effectively monitors and accounts for donated-commodity inventories that are stored at the state and local levels for use in school and nonschool programs. An important consideration in this regard is the timely resolution of OIG-identified informational needs for reconciling these inventories.

We agree that the commodity distribution program's successful future operation and improvement will require effective and continual monitoring by USDA and others at the federal, state, and recipient agency levels. The oversight will be especially important for assessing the degree to which the extensive reforms being implemented under the 1987 act bring about improvements in resolving the problems that they were designed to correct. An important element in the oversight process is USDA's ability to conduct management evaluations for this purpose in a manner that makes optimum use of the travel and staff resources currently available to FNS' headquarters and regional offices. We believe, therefore, that it is essential that the FNS staff conducting these evaluations be provided the guidance and information needed to plan each year's reviews in a timely fashion and in a manner that (1) ensures adequate coverage of commodity distribution operations across the broad range of school and nonschool programs that come under the 1987 act's reforms and (2) helps to assess the adequacy of inventory management practices for donated commodities stored at the state and local levels.

At the time of our review, FNS was taking actions to improve its method for planning future management evaluations and had full implementation targeted for August 1989. FNS also planned to resolve related inventory management deficiencies by the end of fiscal year 1989. However, considering FNS' past delays in implementing some of the 1987 act's reforms and its management evaluation guidance and continuing problems with state and local inventory accountability, we believe it is important for USDA to ensure the timely implementation of FNS' planning process for conducting future management evaluations and that FNS provide the inventory management information needed in this regard.

Chapter 3
Impacts and Concerns About
Commodity Reforms

FNS' efforts to resolve OIG-identified inventory reconciliation needs were ongoing. We did not independently verify the status of these actions.

USDA's comments and GAO's response are detailed in appendix VI.

the level and extent of such assistance. Major factors considered in determining those commodities that require assistance are

- existence and size of surplus,
- whether the commodities are perishable nonbasic items, and
- potential recipients.

Sections 9 and 13 of the National School Lunch Act (42 U.S.C. 1758 and 1761, respectively) and section 8 of the Child Nutrition Act of 1966 (42 U.S.C. 1777) authorize the Secretary to donate section 32 and section 416 (see below) commodities to child-feeding programs. Section 14 of the National School Lunch Act authorizes the expenditure of funds from section 32 and the Commodity Credit Corporation (CCC) to purchase in certain circumstances agricultural commodities that are customarily acquired and donated for (1) child nutrition programs under that act and the Child Nutrition Act of 1966 and (2) elderly nutrition programs under title III of the Older Americans Act of 1965, as amended (42 U.S.C. 3045 et seq.).

The amount of any one commodity purchased with section 32 funds is subject to several constraints: (1) the amount of the commodity usable by the various programs, (2) the amount of section 32 funds available, and (3) the requirement that not more than 25 percent of the available section 32 funds be spent on any one commodity. In addition, commodities purchased with section 32 funds must be produced in the United States.

Purchases of some commodities are made once or twice annually at the peak of the packing season. Other commodities are purchased repeatedly, sometimes weekly, when a surplus continues.

Section 416

Commodities donated under section 416 of the Agricultural Act of 1949 are acquired under USDA's price-support program. These commodities are primarily basic nonperishable items. According to USDA, prices are supported by removing surplus commodities from the market and storing them for return to the market when conditions are more favorable. Section 416 authorizes the Secretary of Agriculture to distribute food commodities and the CCC to pay the cost of processing commodities into a form more suitable for home or institutional use, plus the cost of packaging, transporting, handling, and other charges accruing up to the time of their delivery to the designated state or other recipient agency.

buy commodities that states prefer. Section 6 foods have included ground beef, frozen chicken, fruits, cereals, grains, and various vegetables.

Section 6 also establishes the mandated national average value of commodity assistance for lunches served in the National School Lunch Program and for lunches and suppers served in the Child Care Food Program at 11 cents per meal. That amount is subject to annual adjustments to reflect changes in the Price Index for Food Used in Schools and Institutions. For school year 1989 (July 1, 1988, through June 30, 1989) the per-meal value was adjusted to 12.25 cents.

Section 311

Section 311 of the Older Americans Act of 1965 requires USDA to donate an annually programmed level of assistance of not less than 56.76 cents per meal during fiscal years 1986 through 1991 to nutrition programs for the elderly funded under the Older Americans Act. This programmed level of assistance may consist of commodities or cash in lieu of commodities.

Section 4(a)

Section 4(a) of the Agriculture and Consumer Protection Act of 1973 authorizes the purchase of foods for distribution to Indians and participants in the Commodity Supplemental Food Program. It also authorizes the purchase of foods for summer camps, institutions, and disaster relief.

Section 14

Section 14 of the National School Lunch Act gives USDA special purchase authority to buy, with funds from section 32 and CCC, commodities at current market prices even though they do not meet surplus or price-support conditions.

Other authorizing legislation for USDA's commodity purchases and/or donations for fiscal year 1988 are shown in table I.1.

Program Operations

FNS is responsible for the overall administration of the program with AMS and ASCS buying surplus commodities from regular market channels (price assistance) and other commodities to maintain programmed levels of assistance to schools, elderly feeding, and other domestic food assistance programs.

to early spring. Fruits and vegetables, being seasonal products, are usually purchased once yearly following harvest, with staggered delivery periods.

Offers accepted are those considered to be the most advantageous to USDA considering price, transportation costs, and other factors. In analyzing bids, personnel compare prices offered with raw material prices quoted in USDA market news reports and list prices quoted in trade reports, magazines, and journals. Also considered for those programs operating on a continual basis is the supply/price outlook for future procurements.

Following approval of awards at the agency level, a Food Purchase Report is issued and successful bidders are notified.

ASCS distributes program announcements identifying commodities that it plans to purchase from time to time. These announcements, depending on the commodity, are mailed to all applicable vendors and prospective bidders on ASCS mailing lists. Copies also go to trade groups, associations, carriers, and other interested parties. ASCS solicits bids on the various commodities by issuing invitations for bid. Invitations for bid on grain products are issued subsequent to the receipt of consolidated state agency orders from FNS regional offices. On dairy products, ASCS invites bids based on an FNS estimate of the need for dairy products. The invitations remain open for 3 months or until amended, depending on commodity type. As bids are received, they are logged in and filed. Once the invitations for bids close, the bids are analyzed.

Bids received for grain products are separated by commodity, checked for compliance with government contracting requirements, logged in, and assigned official bid numbers. The bids are then prepared for computer input by bid number and price. Several different printouts are generated. One lists all bids by vendor and commodity. Another ranks all bids from lowest to highest. Finally, a special linear program is run against the data to determine the lowest bidder and to prepare an award by bidder listing.

In fiscal year 1988, federal costs for the program totaled \$862.3 million. This figure included entitlement commodities and bonus commodities.

School Breakfast Program

Initially authorized on a pilot basis by section 4 of the Child Nutrition Act of 1966 (P.L. 89-642, 80 Stat. 886), the School Breakfast Program was permanently established in October 1975 by the National School Lunch Act and the Child Nutrition Act of 1966 Amendments of 1975, (P. L. 94-105, 89 Stat. 511). The School Breakfast Program, which is similar to the lunch program, provides nutritious breakfasts to children at schools and at residential child care institutions.

Currently, USDA is mandated by the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)) to provide cash payments and by the Child Nutrition Amendments of 1986 (42 U.S.C. 1773, 1773 nt) to provide not less than 3 cents worth of bonus commodities per breakfast to schools and other eligible institutions when such commodities are available. USDA informed us that commodities for the program are not accounted for separately but are accounted for in the National School Lunch Program.

In fiscal year 1988, the average daily participation in the School Breakfast Program totaled 3.7 million. The number of schools and residential child care institutions offering the program totaled 38,700 while the proportion of meals served free or at reduced-price totaled 87.5 percent. Federal costs for this program totaled \$473 million.

Child Care Food Program

Authorized by section 17 of the National School Lunch Act (42 U.S.C. 1766), this program provides cash and commodity assistance for meal service to children enrolled in nonresidential child care institutions, including child care centers, family day care homes, and outside-school-hour centers. The amount of funding provided is based on the number, type (breakfast, lunch/supper, or supplement), and category (free, reduced price, or full price) of meals served.

In 1987, section 401 of the Older Americans Act Amendments of 1987, (P.L. 100-175, 101 Stat. 972) authorized USDA to consider (under the Child Care Food Program) adult day care centers as eligible institutions for reimbursement for meals or supplements served to persons 60 years of age or older or to chronically impaired disabled persons.

In fiscal year 1988, total USDA expenditures for this program amounted to about \$627.4 million. This included \$560.1 million for meal payments, \$21.7 million for commodities (including cash in lieu of commodities),

Commodity Supplemental Food Program

The Commodity Supplemental Food Program was originally authorized under the Department of Agriculture and Related Agencies Appropriation Act of 1969 (P.L. 90-463, 82 Stat. 639 (1968)) to target certain women and infants with a direct food distribution program. The program is currently authorized by sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c nt). Specific authorization for “supplemental feeding programs” was first added by section 1 of Public Law 93-347 (88 Stat. 340 (1974)), which amended section 4(a) of the Agriculture and Consumer Act of 1973. Administrative funding for state and local agencies was added by section 1304(b) of the Food and Agriculture Act of 1977 (P.L. 95-113, 92 Stat. 980).

Two pilot projects for low-income elderly persons in Iowa and Michigan, authorized by section 1335 of the Agriculture and Food Act of 1981 (P.L. 97-98, 95 Stat. 1293), initiated operations in September 1982. A third project in Louisiana, authorized by the Agriculture, Rural Development, and Related Agencies Appropriations for Fiscal Year 1983 (P.L. 97-370, 96 Stat. 1806), was established in December 1982. Section 1562 of the Food Security Act of 1985 (7 U.S.C. 612c nts) provided that unused caseload slots for women, infants, and children could be converted to serve elderly persons beyond those participating in the original pilot project sites.

In addition to the authorized commodities, participants may receive surplus foods from CCC inventories as bonus commodities. States are given 15 percent of appropriated program funds to cover administrative expenses, such as storage and delivery of food, participant certification, and nutrition education.

During fiscal year 1988, 20 states participated in the program. Average participation was 212,870, while total program costs equaled \$59.7 million. Entitlement commodities accounted for \$30.3 million, bonus and free commodities for \$18.9 million, and administrative expenses for \$10.5 million.

Special Supplemental Food Program for Women, Infants, and Children (WIC)

WIC was initially established as a 2-year pilot project by section 9 of Public Law 92-433, 86 Stat. 729 (1972), and was officially started in fiscal year 1974 to provide supplemental foods to pregnant and lactating women and infants under 4 who were at nutritional risk. In 1975, section 14 of the National School Lunch Act and Child Nutrition Act of 1966 Amendments of 1975 (P.L. 94-105, Stat. 518) removed the pilot status and revised the program’s authority.

**Food Distribution Program on
Indian Reservations**

The Agriculture and Consumer Protection Act of 1973, as amended by section 1 of Public Law 93-347, 88 Stat. 340 (1974) provides authority to purchase and distribute commodities to a number of entities, including Indian tribal organizations that request distribution of food pursuant to section 4(b) of the Food Stamp Act of 1977. The predecessor of the Food Distribution Program on Indian Reservations was the Needy Family Program.

Agricultural commodities are provided to needy households living on or near Indian reservations. Cash assistance is provided to distributing agencies to help meet operating and administrative expenses.

In the past, domestic feeding programs for families were operated with commodities acquired through section 32 surplus-removal and CCC price-support activities. During fiscal year 1974, section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c nt) provided authority to use funds from section 32 and CCC, without regard to surplus-removal or price-support conditions, to maintain traditional levels of program assistance. Section 1 of Public Law 93-347, 88 Stat. 340 (1974) extended the authorization through fiscal year 1975 and required the use of directly appropriated funds for such purposes for the next 2 fiscal years. Section 1304 of the Food and Agriculture Act of 1977 (7 U.S.C. 612c nt) extended the authority through fiscal year 1981 and directed the Secretary to improve the variety and quantity of commodities supplied to Indians. The authority to use direct appropriations has repeatedly been extended, most recently through fiscal year 1990 by section 1562(a) of the Food Security Act of 1985 (7 U.S.C. 612c nts).

In fiscal year 1988, total participation for this program averaged 137,100. The program was administered by 86 Indian tribal organizations and 6 states on 215 reservations. Federal costs for the Food Distribution Program on Indian Reservations totaled \$66.1 million. Food costs in fiscal year 1988 totaled \$51.2 million (\$40.7 million for entitlement commodities, and \$10.5 million for free and bonus commodities), while administrative costs totaled \$14.9 million.

**Nutrition Program for the
Elderly**

The donation of surplus commodities for the Nutrition Program for the Elderly was initially authorized by section 701 of the Older Americans Comprehensive Service Amendments of 1973 (42 U.S.C. 3045f . . . Rep). The program is currently authorized by section 311 of the Older Americans Act of 1965 (42 U.S.C. 3030a) and supplements Department of Health and Human Services' programs for the elderly with cash and

In March 1983, the initial program was replaced by TEFAP with the passage of the Temporary Emergency Food Assistance Act of 1983 (Title II of P.L. 98-8, 97 Stat. 35). The purpose of TEFAP is to reduce the inventories and storage costs of surplus commodities through distribution to needy households. Commodities are allocated to the states by means of a formula combining the number of persons below the poverty level and the number of persons unemployed in each state. Selection of organizations to distribute the commodities and determination of eligibility criteria to demonstrate economic need are state agency responsibilities.

The Congress has extended TEFAP since 1983. TEFAP was extended for fiscal year 1988 by the Stewart B. McKinney Homeless Assistance Act of July 22, 1987 (7 U.S.C. 612c nt). Most recently TEFAP was extended through fiscal year 1990 by the Hunger Prevention Act of 1988 (P.L. 100-435, 102 Stat. 1647). Provisions of this act require that \$120 million be spent by USDA in 1989 and 1990 to purchase, process, and distribute additional food for TEFAP.

In fiscal year 1988, TEFAP costs totaled \$587.9 million. The total includes \$50.0 million to assist state and local agencies in meeting storage and distribution costs. Commodities distributed included processed cheese, rice, flour, honey, nonfat dry milk, butter, and cornmeal.

Disaster Feeding Operations

Disaster feeding operations are authorized by sections 412 and 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179-80). Disaster victims may also receive section 32 and section 416 commodities, as well as commodities purchased under section 4(a) of the Agriculture and Consumer Protection Act of 1973.

USDA makes commodities available to victims of disasters who are in need of food. When a disaster forces people to evacuate their homes, stocks of USDA foods stored in school storerooms, local distribution depots, and county- or state-controlled warehouses may be used in meals served to people at central locations. FNS field staff are on hand at disaster sites to assist and advise state, local, and federal forces in carrying out emergency functions, such as transporting food. Disaster relief agencies, which include welfare agencies, military organizations, church groups, and charitable organizations, offer assistance by preparing meals with donated foods and serving these meals at central locations to the disaster victims. In some very severe situations, the Secretary of Agriculture may authorize food to be distributed directly to households.

**Appendix I
The Commodity Distribution Program**

Table I.1: Authorizing Legislation for Commodity Purchases and/or Donations During School Year and Fiscal Year 1988

	Sec. 32	6	13(h)	14	17(h)	416	709	311	4(a)	17	211/1114	412	413	4
Child Nutrition Programs														
Schools	X	X		X		X	X		X		X			
SBP	x			X		X	X		X		X			X
CCFP	X	X		X	X	X	X		X		X			
SFSP	X	X	X	X		X	X		X		X			
Supplemental Food Program														
CSFP	X					X	X		X		X			
WIC	X			X		X	X		X	X	X			
Food Distribution Programs														
FDPIR	X					X	X		X			X	X	
NPE	X			X		X	X	X	X		X			
CI	X					X	X		X		X			
TEFAP	X					X	X		X		X			
DF	X					X	X		X			X	X	
SC	X					X	X		X		X			

Outlets

Schools National School Lunch Program
 SBP School Breakfast Program
 CCFP Child Care Food Program
 SFSP Summer Food Service Program for Children
 CSFP Commodity Supplement Food Program
 WIC Special Supplemental Food Program for Women, Infants & Children
 FDPIR Food Distribution Program on Indian Reservations
 NPE Nutrition Programs for Elderly, Titles III & VI
 CI Charitable Institutions
 TEFAP Temporary Emergency Food Assistance Program
 DF Disaster Feeding Operations
 SC Summer Camps not participating in the SFSP

Legislation

Section 32 P.L. 74320 as implemented by P.L. 75165
 Section 6 1946 National School Lunch Act
 Section 13(h) 1946 National School Lunch Act
 Section 14 1946 National School Lunch Act
 Section 17(h) 1946 National School Lunch Act
 Section 416 Agricultural Act of 1949
 Section 709 Food and Agriculture Act of 1965
 Section 311 Older Americans Act of 1965
 Section 4(a) Agriculture and Consumer Protection Act of 1973
 Section 17 Child Nutrition Act of 1966
 Section 211 Agriculture Act of 1980
 Section 1114 Agriculture and Food Act of 1981
 Section 412 Robert T. Stafford Disaster Relief and Emergency Assistance Act
 Section 413 Robert T. Stafford Disaster Relief and Emergency Assistance Act
 Section 4 Child Nutrition Act of 1966

Source: Compiled by GAO on the basis of information provided by USDA's Food and Nutrition Service and Office of the General Counsel

Appendix II
Food Donated by USDA Through the
Commodity Distribution Program, School
Year and Fiscal Year 1988

Commodities^a	Pounds (thousands)	Value (thousands)
Beef, canned in natural juice	3,479	4,461
Beef, frozen boneless-process	2,772	3,014
Meat, luncheon canned	2,306	2,982
Pork, canned in natural juice	1,434	1,655
Pork, frozen ground	17,225	17,018
Pork, frozen ground coarse-process	713	694
Ham, frozen cooked boneless	4,466	6,691
Tuna, chunk light-water	8,530	11,730
Fish nuggets, frozen	5,738	7,224
Salmon, pink canned	46	68
Tomatoes, crushed	3,969	1,135
Tomato paste, canned	18,826	7,306
Tomatoes, canned	15,851	4,638
Tomato paste	1,577	720
Tomato sauce	418	130
Syrup, corn, bottled	1,507	400
Walnuts, English pieces	2,001	3,133
Apple juice, canned	8,984	2,059
Grape juice, canned	7,054	2,143
Grapefruit juice, canned	1,999	541
Orange juice, canned	20,828	6,414
Tomato juice, canned	2,873	635
Apples, fresh	7,715	1,383
Vegetables, mixed frozen	14,167	4,701
Applesauce, canned	34,359	8,496
Cherries, frozen red tart pitted	13,488	4,980
Apricots, canned	613	446
Fruit cocktail, canned	2,475	1,343
Peaches, cling canned	29,012	12,392
Peaches, freestone canned	3,072	1,335
Pears, canned	42,750	15,626
Pears, D'anjou fresh	3,040	695
Pears, Bosc fresh	162	34
Pineapple, canned	20,895	8,650
Pineapple juice, canned	5,635	1,230
Plums, canned purple	2,795	727
Plums, canned pitted	1,876	544
Prunes, dried	580	345
Prunes, dried pitted	72	95
Raisins	9,241	5,475
Mixed fruit	10,977	4,845

(continued)

Appendix II
Food Donated by USDA Through the
Commodity Distribution Program, School
Year and Fiscal Year 1988

Table II.3: Section 416 Commodities—
Group B

Commodities^a	Pounds (thousands)	Value (thousands)
Formula, infant powdered	4,354	\$4,561
Milk, evaporated	24,295	10,493
Farina	4,046	1,175
Cereal, infant rice	258	299
Bulgar	754	90
Cereal, dry	1,158	777
Cheese, mozzarella	4,349	5,051
Cornmeal	12,546	1,252
Flour	201,552	21,596
Grits, corn	1,901	211
Macaroni	22,016	5,436
Oats, rolled	13,024	2,499
Peanut butter	26,616	18,757
Peanut granules	2,281	1,827
Peanuts, roasted	11,025	10,143
Rice, brown	364	66
Wheat, rolled	1,815	230
Oil, vegetable	31,667	19,734
Oil, soybean	43,938	3,670
Shortening, liquid vegetable	3,863	1,399
Shortening, vegetable	39,885	15,484
Spaghetti, enriched	15,296	3,838
Total^b	467,003	\$128,588

^aFood types (grains, dairy products, oils, and peanut products) purchased by ASCS through price-support activities authorized by section 416 of the Agricultural Act of 1949, as amended.

^bTotals may not add because of rounding.

Commodity Distribution Program Reforms Under Section 3 of Public Law 100-237

Section of law	Brief description ^a	Implementation method ^b
90 days^c		
3(b)(5)	Replacement procedures	6/88 rule
3(e)(1)(D)	Delivery schedules	6/88 rule
120 days^c		
3(b)(3)	Provide specification summaries to RAs	7/88 rule
3(f)(2)	Semiannual information from RAs	7/88 rule
270 days^c		
3(b)(1)(A)	Options on package sizes and forms	4/88 notice
3(b)(1)(B)	Procedures to monitor state DAs	4/88 notice
3(d)(1)	States evaluate warehousing & distribution	10/88 rule(*)
3(d)(2)	Implement most cost-effective system	10/88 rule(*)
3(d)(3)	Use commercial facilities	10/88 rule(*)
3(d)(4)	Consider RA limitations when ordering	10/88 rule(*)
3(d)(5)(A)	States test before processing contract	7/88 rule(+)
3(d)(5)(B)	States monitor product acceptability	7/88 rule(+)
3(e)(1)(A)	Criteria for fees charged to RAs	10/88 rule(*)
3(e)(1)(B)	Minimum performance standards for state DAs	10/88 rule(*)
3(e)(1)(C)	Procedures for allocating among states	7/88 rule
3(f)(l)	Costs/benefits of providing commodities	4/88 notice(+)
Not time-specific^d		
3(a)(3)	Establish a National Advisory Council	4/88 notice
3(b)(2)	Technical assistance and recipes	4/88 notice
3(b)(4)	60-day advance distribution notice	4/88 notice
3(b)(6)	Monitor commodities stored by/for USDA	4/88 notice
3(b)(7)	Establish a value for donated commodities	7/88 rule
3(b)(8)	Establish 90-day delivery to States	4/88 notice
3(g)	Establish an ongoing field testing program	4/88 notice(+)
3(h)	Requires RAs to buy American products	7/88 rule
3(i)	Regional offices' uniform interpretation	4/88 notice
3(a)(l)(A)	Consult Advisory Council for specifications	4/88 notice
3(a)(l)(B)	Consider RA information and field tests	4/88 notice
3(a)(l)(C)	Consider Advisory Council recommendations	4/88 notice
3(c)(l)	Consider bids for smaller quantities	4/88 notice
3(c)(2)	Consider history of the bidding party	4/88 notice
3(j)	States offer schools per-meal value	7/88 rule

^aBrief indication of reform's purpose. (RA=recipient agency, DA=distributing agency)

^bIndicates USDA's method for implementing each reform. Of the 31 reforms, 15 involving USDA administrative actions were implemented through an April 19, 1988, Federal Register notice; 10 requiring regulatory change were implemented without prior notice through interim rules issued June 16, 1988, and July

Profile of Commodity Reforms Under Section 3, Public Law 100-237

Table IV.1: Selected Commodity Reforms Under Federal Register Notice Published April 19, 1988

Section of the law	Provision description	USDA response	Remarks
3(a)(1)(A) 3(a)(1)(B) 3(a)(1)(C)	Develop commodity specifications in consultation with the advisory council established under section 3(a)(3) below and in a manner that considers recipient agency information, the results of ongoing field testing under section 3(g) below, and is consistent with the Dietary Guidelines for Americans.	Initial Advisory Council recommendations expected after May 1989 meeting (see below). RAs information to be obtained from semiannual reporting under section 3(f)(2). FNS developing less fat products. USDA has made a number of changes to improve commodity specifications under its "special commodity initiatives" program, plans to expand field testing, and is committed to making other specification improvements as warranted.	The semiannual report process and commodity field test procedures were being formalized by FNS as of May 1989.
3(a)(3)	Establish an advisory council on commodity distribution.	National Advisory Council on Commodity Distribution established and first meeting held October 18-20, 1988. The Council is comprised of 15 members that represent state, recipient, and commercial entities. Its next meeting was scheduled for May 1989. Council to advise on specifications but may make recommendations on all commodity distribution operations. Council will report to the Secretary of Agriculture and three congressional committees after its May meeting.	Council members appointed for 2-year terms that end in April 1990. ASFSA representatives are seeking greater representation for school programs on the next council.
3(b)(1)(A)	Duties of the Secretary: Implement system to provide options on pack sizes and forms of commodities (within 270 days).	USDA provides many ordering options on pack sizes and forms. When new options are widely available, the varieties offered are increased. Regulations require states to make options available and offer the full range of commodities. USDA is testing a state-options contracts system for wafer steaks, sliced cheese, and butter patties in school year 1989. Commodity initiatives allow better targeting of product. Several changes in shipping policies and purchase system have allowed states to increase options available to RAs.	Associations representing school program and state distributing agencies said that improvements have occurred in commodity types, forms, and sizes under the reform initiatives and that USDA is now more responsive to their needs than in the recent past. FNS officials said wafer steaks and cheese would not be tested in school year 1989 because of adverse marketing conditions.
3(b)(1)(B)	Procedures to monitor state DAs (within 270 days).	In FY 1988, over 30 state reviews were conducted. Recognizing the limits of resources, USDA plans to target which states will be monitored.	GAO's review of FNS' files showed that 26 state reviews were conducted for FY 1988. Some associations, FNS officials, and others are concerned that FNS may not be able to provide the resources and coverage necessary to effectively monitor compliance by states and RAs. FNS plans to implement a new planning process for its compliance (continued)

**Appendix IV
Profile of Commodity Reforms Under Section
3, Public Law 100-237**

Section of the law	Provision description	USDA response	Remarks
3(c)(1)	Buy in truckload quantities.	Done school year 1988, orders for all commodities in truckload (vs rail) quantities.	
3(c)(2)	Consider vendor history regarding compliance.	Done historically.	
3(f)(1)	Establish procedures for systematic review of costs and benefits of providing commodities (within 270 days).	FNS reviews RA data regarding benefits and acceptability. AMS reviews purchase cost data. In quarterly purchase meetings (with FNS and AMS), assessment of costs and benefits as well as purchase decisions takes place. USDA intends to formalize procedures for the analysis of RA needs to determine the suitability of purchases and the benefits derived from these purchases.	An FNS official said the agency is in the process of formalizing the data elements used by FNS and AMS in their cost/benefit reviews but did not know when these actions would be completed. An association representing the frozen food industry told us that USDA's response in this regard is inconsistent with congressional intent. Associations representing school programs and state DA's told us that USDA should take the time needed to ensure that the reform is formalized in an effective manner.
3(g)	Establish an ongoing field testing program for present and anticipated purchases.	Field tested school year 1988: frozen whole eggs, fish nuggets, refried beans, and spiral macaroni. Plan to field test school year 1989: ground turkey, wafer steaks, and low-salt cheese. USDA intends to establish more formal field-testing procedures.	Some associations said the field testing program needs to be made more formal, with specific procedures. Also, the testing program needs effective communication and the cooperation of FNS, AMS, and ASCS. FNS is in the process of developing an instruction and an OMB-approved survey form to formalize the testing process, but agency officials did not know when these activities would be completed as of May 1989.
3(i)	Uniform regional interpretation and implementation.	Administrative procedures are in place to ensure uniformity such as (1) policy memoranda system, (2) state management review guidance, (3) regular program directors' meeting and monthly conference calls, (4) national training meeting held November 1987, (5) regional office staff training scheduled for this spring, (6) more detailed regulations, and (7) handbook and procedure manuals.	Some associations said there should be additional and consistent nationwide guidance and training provided by FNS to its regional staff and that handbooks and procedure manuals should be uniformly distributed and kept current.

**Appendix IV
Profile of Commodity Reforms Under Section
3, Public Law 100-237**

Table IV.3: Commodity Reforms Under Interim Rules Published July 21, 1988

Section of the law	Provision description	USDA response	Remarks
3(b)(3)	Provide summaries of commodity specifications to recipient agencies (within 120 days).	Interim regulations issued July 21, 1988, to provide the required procedures to disseminate commodity specifications. USDA has summarized and printed technical purchase specifications for the 81 commodities. Comment period closed October 19, 1988. Final rule expected July 1989.	This was not a principal issue among respondents.
3(b)(7)	Establish commodity value for allocating or charging commodities against entitlements.	Interim regulations issued July 21, 1988, to provide the procedures for establishing value. Comment period closed October 19, 1988. Final rule expected July 1989.	Most public comments on this section opposed the estimated values provided by USDA. Others opposed using any estimate if the final evaluation was to be actual costs.
3(d)(5)	When state enters into processing contract for RAs, (A) test prior to and (B) develop system for monitoring.	Interim regulations issued July 21, 1988, solicited comments to develop specific procedures for testing and monitoring. Comment period closed October 19, 1988. Final rule expected July 1989.	Testing of processed end products viewed in public comments as the responsibility of RAs not the DAs. Participants were opposed to testing if product was already in use. USDA has not established specific, detailed procedures to use in testing and monitoring the acceptability of products.
3(e)(1)(C)	Procedures for allocating commodities among states (within 270 days).	Interim regulations issued July 21, 1988, to provide the required procedures for allocating commodities among the states. Comments closed October 19, 1988. Final rule expected July 1989.	This was not a principal issue among respondents.
3(f)(2)	Semiannual commodity acceptability information (within 120 days).	Interim regulations issued July 21, 1988, require state DAs to provide the required information to USDA by November 30 and April 30 of each year. The State Food Distribution Advisory Council report can serve as one of the required semiannual reports for school programs. Suggested forms for November reporting were provided to the states. Comment period closed October 19, 1988. Final rules expected July 1989. USDA recommends amending the legislation to make this an annual requirement.	The major concerns raised by public comments were that semiannual reporting was too costly and unnecessary for some RAs. FNS is in the process of developing a survey form to standardize the data gathering. Data provided to USDA under the November 30, 1988, deadline were largely incomplete, not uniform, and of limited utility.
3(h)	Buy American	Interim regulations issued July 21, 1988. USDA plans to amend the various food commodity programs to conform to the Buy American provision. Comment period closed October 19, 1988. Final rule expected July 1989.	The major concerns raised by public comments were that it was too costly to document purchases to prove donated commodities were domestic and that it was not clear what products were domestic and what products were foreign.
3(j)	Per-meal value of donated foods must be offered to schools.	Interim regulations issued July 21, 1988, established how states must determine the total value of	Some participants said it is impossible to have every RA fit the national average. One suggested not enforcing (continued)

**Appendix IV
Profile of Commodity Reforms Under Section
3, Public Law 100-237**

Table IV.4: Commodity Reforms Under Proposed Rules Published October 20, 1988

Section of the law	Provision description	USDA response	Remarks
3(d)	Duties of DAs (within 270 days) require states to	Proposed rules issued October 20, 1988. The comment period closed January 18, 1989. Final rules expected in July 1989.	Commercial firms and their associations in their comments were in favor of the evaluation of current state DA's warehousing and delivery systems and the use of the most cost-effective system. Most other participants were opposed to this section. The greatest concern was the annual reevaluation, considered burdensome. Most were against the annual evaluation itself while others believed the initial deadline, June 30, 1989, was unreasonable. Other comments were that studies were costly and that a better definition of costs was needed before participants could evaluate their systems.
	(1) evaluate warehousing and distribution,		
	(2) implement most cost-effective system for warehousing and distribution service to RAs,	Proposed rules issued October 20, 1988. The comment period closed January 18, 1989. Final rules expected in July 1989.	Commercial firms and their associations in their comments favor the evaluation of current state DA's warehousing and delivery systems and use of commercial facilities. Most other participants were opposed to this section. The greatest concern was USDA's definition of a commercial facility, requiring a commercial firm to both warehouse and distribute commodities. Another major concern was the USDA assumption that commercial systems were superior and that both the law and rules encouraged conversion to a commercial system. Others were concerned that RAs under a commercial system would pay for services not given by state DAs.
	(3) use commercial facilities unless other shown to be more cost-effective to the Secretary, and		
	(4) Consider RA limitations (preparation and storage capabilities) when ordering commodities.	Proposed rules issued October 20, 1988. The comment period closed January 18, 1989. Final rules expected in July 1989.	No public comments on this section.
3(e)(1)	Regulations (within 270 Days):	Proposed rules issued October 20, 1988. The comment period closed January 18, 1989. Final rules expected in July 1989.	The major concerns raised by public comments were the rule forbidding state DAs to charge fees based on a percent of the value of commodities received by a RA and the rule requiring submission of the methodology of charging fees to USDA by May 1 of each year.
	(A) Mandatory criteria for fees for storage and delivery and		
	(B) Minimum performance standards for state DAs.	Proposed rules issued October 20, 1988. The comment period closed January 18, 1989. Final rules expected in July 1989.	Comments emphasized objections to performance standards related to 3(d)(5) testing and monitoring of processed end products.

Notes: DA = distributing agency
FY = fiscal year
RA = recipient agency
SFA = school food authority

Donated Food Available Monthly

FNS' implementation of the requirements of the law to provide delivery schedules that are consistent with the needs of recipient agencies was published in a June 16 interim rule. This ruling's interpretation of the law required, among other things, that state distributing agencies make donated foods available at least monthly. The law itself did not specify a delivery period in this regard.

Approximately 60 percent of the respondents stated that monthly deliveries for all recipient agencies would be inefficient and costly. Some recipient agencies with ample storage space said they could reduce delivery costs by having less frequent deliveries. A commodity distribution specialist who helped write the rules said that the respondents had misinterpreted the rule. According to this specialist, "to make available" means to have the commodity available for pick-up in the state distributing agencies' warehouse, and the state agencies would not be required to make monthly deliveries. Some of the respondents, however, said that not all recipient agencies have available staff and depend upon state agencies to deliver the commodity.

Payment for Some Food Reinspections

FNS in the June 16 interim rules established procedures for the replacement of commodities received by recipient agencies that are stale, spoiled, out of condition, or not in compliance with specifications. FNS will replace donated foods received by state or recipient agencies provided that it is determined that the donated foods were not fit for use in the commodity distribution program at the time they were delivered by USDA. To determine if a commodity needs replacing, FNS can require that the donated foods be reinspected. In instances when it is determined that the donated foods were in good condition at the time USDA made delivery, the cost of the reinspection is borne by the state agencies.

Approximately 14 percent of those who commented on the June rules objected to this provision. Since it is normally the user, the recipient agency, who would discover and report the problem food, the state distributing agencies are concerned that they have no control over how many reinspections might be required by the various recipient agencies. Also, although not required by the 1987 act, some state agencies believed that if they passed the costs of reinspection on to the recipients, recipients would be reluctant to report bad foods.

records of how they implement this provision to demonstrate that U.S. products have been purchased. FNS defined a U.S. product as an unmanufactured food product produced in the United States or a food product manufactured in the United States. For example, tuna shipped from a foreign country but canned in the United States is a domestic product by the FNS definition.

Over 12 percent of those responding to the July rules commented that as recipients they would find it both difficult and costly to determine and document whether a product was considered to be made in America.

Regulations and Proposals Viewed as Needing Clarification

Many of the comments were a request for clarification of a FNS rule. Clarification was requested for sections involving the replacement of commodities under the June rules, the buy American provisions of the July rules, and the evaluation and use of commercial warehousing and distribution systems under the proposed rules.

Replacement of Commodities

FNS will replace donated food under certain conditions. One such condition is that it is clearly determined that the donated foods were not fit for use at the time they were delivered by USDA. The rule also says that separate shipments of replacement commodities will be made only if the amount of the replacement justifies a shipment.

Nineteen percent of those commenting desired clarification of this rule, wanting criteria as to what constitutes both “clearly determined” and “not fit for use.” Most were concerned that foods that were still edible, yet unacceptable because of poor condition, bad taste, or smell, would not fit the criterion “not fit for use.” Others were concerned that it is not always possible to determine whether a food is unfit at time of delivery.

Participants also were concerned that they had to wait until the amount of replacement justified a cost-effective shipment, believing that delivery under this circumstance was too indefinite. Respondents desired a criterion for what amount USDA would consider justifies a replacement shipment.

“Buy American” Rule

The buy American rule permits the recipient agencies to purchase foreign foods if competitive bids reveal the cost of a U.S. product is unreasonable compared to that of a foreign product. FNS, as an equivalent for

Some Reforms Viewed as Not Doable or Incompatible With Current System or State Laws

There were respondents commenting who viewed some of the provisions of the law and some FNS sections as not doable in the commodity system as it currently exists. A few viewed some mandated requirements and proposals as unreasonable or in conflict with some state laws.

Not Doable in States' and Local Agencies' Commodity Program Operations

Comparison of State and Commercial Systems

Some respondents described both provisions of the law itself and sections of the rules as not doable, such as the law's requiring state distributing agencies to evaluate and compare their warehousing and distribution systems with commercial facilities and to then implement the most cost-effective and efficient systems. This is viewed as not doable both by state agencies already using commercial facilities and by some state agencies operating complex commodity distribution systems. Likewise, some participants viewed as not doable the requirements to test and monitor all processed end products, collect commodity acceptability information semiannually from all types of recipient agencies, and offer a national average per-meal value to school food authorities. They viewed these requirements as a massive undertaking, if not impossible, based on the number of participants, types of products, and varying costs of the commodities.

State distributing agencies already using commercial facilities, such as the Louisiana Department of Agriculture and Forestry, commented that the law failed to exempt state agencies that had already converted to commercial systems. The effect of the law would be that converted state agencies would have to evaluate and compare their commercial facilities with other commercial facilities.

South Carolina Department of Education commented that identifying all agency expenses and comparing the expenses with the costs of a commercial facility is almost an impossible task. Approximately 8 percent commenting on the proposed rules believed a true comparison was not possible.

national average value of donated foods. Each such offer shall include the full range of such commodities and products available from the Secretary. This provision is intended to give school food authorities their fair share of commodities and prevent discriminatory distribution practices that may occur within a state.

The Department of Agriculture and Consumer Services, Commonwealth of Virginia, commented that by the very definition of "average," it is impossible to have the lowest offering of food allocations being equal to the average. An FNS commodity distribution specialist who was involved in writing the rules agreed that all cannot get the national average. The specialist said under current laws and rules, USDA could remedy recipient agency shortages by shipping commodities to state agencies whose eligible school program recipients received less than the national average per-meal value of donated foods. The specialist told us, however, that USDA has no mechanism for adjusting recipient agency overages since the recipients typically use their commodities in a fashion such that USDA cannot take back commodities from those agencies that have received more than the national average. The provision does not ensure all recipients their fair share nor stop discriminatory distribution, since USDA cannot adjust equitably. The specialist was surprised so few commented on the per-meal section in the rules.⁴ The specialist believed the per-meal value as written would not be doable by either FNS or the state agencies.

Evaluation of Existing Warehousing/Distribution Systems

The FNS-proposed rules on evaluation of existing warehousing and distribution systems required the initial system evaluations to be submitted to the appropriate FNS Regional Office by June 30, 1989, and updates submitted each June 30 thereafter.

Sixty-two percent commented on this section. Respondents, mostly state and recipient agencies, objected to the June 30, 1989, deadline, most claiming it was impossible to meet. Some commented that the rules had not been made final and FNS had not issued guidelines on how to do the evaluations. The required updates elicited the most responses to these proposed rules. Many respondents believed that warehousing and distribution systems change very little from year to year and that an annual evaluation was burdensome.

The state of Georgia expressed concern that the law and rules require a state to use commercial facilities unless the state can justify its system

⁴A significant number, 32 percent, did comment on per-meal value, but almost half commenting supported the section.

Comments From U.S. Department of Agriculture

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

AUG 21 1989

Mr. John W. Harman
Director, Food and Agriculture Issues
Resources, Commodity and Economic
Development Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Harman:

We appreciate the opportunity to comment on your draft report entitled: Food Assistance: USDA's Implementation of Legislated Commodity Distribution Reforms (GAO/RCED.89-179). Our written comments regarding specific sections of the report are enclosed.

Throughout the report, we found the positive actions USDA took to implement specific provisions of the Commodity Reform Act (the Act) were not adequately addressed. The report also does not properly credit USDA with the many program improvements that anticipated the legislation and took place prior to enactment. We have taken aggressive action to improve communication, to increase the variety and quality of foods provided, to offer more ordering options, and to improve State distributing agencies' performance and the commodity delivery system. The specific actions not included in the GAO report are listed on the first page of our comments. The actions taken were well received by the American School Food Service Association and generated an endorsement of the existing commodity distribution system from that group.

While only three of 31 statutory provisions remain to be implemented, the negative tone of the report and the manner in which GAO characterizes our actions could leave the incorrect impression that we did not implement the Act in good faith. For example, the report faults USDA for not following through on an internal planning document that is not required by the Act and does not have any official role in USDA's management processes. Further, dwelling on the status of a small number of provisions distorts the whole picture of our implementation of the Act.

Section 7 of the Act directed GAO to assess and report on USDA's implementation of the provisions of the Act. We believe the report covers areas not relevant to the Act. References to old audits with a tenuous relationship to the Act are used to draw a negative picture of the overall management of Food and Nutrition Service programs. Congress directed USDA to improve commodity program management and operations at all levels with a clear focus on service. Nevertheless, the report repeats concerns from earlier audits about perceived inefficiencies in program accountability, an important area, but one not covered by the Act; and does not focus on the increased service provided by USDA over the past two years.

Now GAO/RCED-90-12.

See page 41 and comment 1.

See comments 2, 6, and 7.

See comments 1 and 12.

Appendix VI
Comments From U.S. Department
of Agriculture

USDA COMMENTS ON GAO REPORT
"USDA'S IMPLEMENTATION OF LEGISLATED
COMMODITY DISTRIBUTION REFORMS"

GENERAL COMMENTS

The U.S. Department of Agriculture contends that this report does not present a balanced assessment of our implementation of the Commodity Reform Act. While the report briefly mentions that the Department took steps to improve the Food Distribution Program prior to enactment of the reform legislation, it does not recognize that USDA has been committed to making major improvements for several years. The report also ignores the positive actions USDA has taken to improve communication, to increase the variety and quality of foods provided, to offer more ordering options and to improve State distributing agencies' performance and the commodity delivery system. The following lists the actions not addressed in the report:

- o Secretary's Task Force, headed by the Deputy Secretary, was instrumental in carrying out program improvements in all areas mentioned above, going far beyond the requirements of the legislation.
- o In the past two years, USDA made 14 new commodities available, improved specifications for 6 products and provided better packaging for 9 products. Efforts in these areas are ongoing as new opportunities for improvement are identified.
- o Ten delivery system initiatives of major significance took place to increase the predictability of commodity shipments and to allow for more cost effective and equitable distributions of commodities.
- o The U.S. Department of Agriculture completed a major technical assistance and communication effort by developing and distributing 22,000 copies of commodity fact sheets, 40,000 copies of a booklet containing nutritive value information on commodities and 40,000 copies of commodity specification summaries. A regular newsletter containing valuable information about the commodity program is also distributed to about 20,000 school food authorities. In addition, 104,640 copies of recipes were distributed to school food authorities and a cookbook for the Food Distribution Program on Indian Reservations is in final stages of development.
- o The National Advisory Council was selected and held meetings in October 1988 and May 1989. While the legislation limits the Council's role to providing commodity specification guidance, USDA has solicited involvement and recommendations in all program areas.
- o In March 1987, USDA developed comprehensive performance standards that focused on problem areas identified by the American School Food Service Association (ASFS). States agreed to operate under these standards voluntarily for FY 1988 and a total of 55 management evaluations of States' performance under these standards will have been conducted in FY 1988 and 1989 by September 30 of this year.

and an initiative status report, which is routinely updated, by FNS, Agricultural Stabilization and Conservation Service (ASCS) and Agricultural Marketing Service (AMS) are our official documents regarding expectations for continuing reforms. Both documents were provided to GAO.

The inclusion of Table 2.1 with the January 1988 preliminary work plan dates serves no purpose except to show that, prior to enactment, USDA was optimistic when setting target dates to implement the Act.

Field Testing

GAO cites USDA for not having developed formalized field testing procedures.

We would like to remind GAO that the Act does not require USDA to develop formal field testing procedures. It does require us to field test commodities. While our initial plans did include development of a standard field test survey form, preliminary work revealed this was not feasible. We found that in order to be useful questions must be tailored to the commodity being tested. Therefore, contrary to the "plan", we will develop survey questions as new commodities become available for field testing. In addition, as evidenced by our recent efforts, USDA has recognized the need to expand field testing efforts. GAO judges that in the absence of formal procedures, tests can vary, implying this is bad. The Department believes that tests should vary in scope depending on the product involved. When spiral macaroni was introduced, only a few cases were tested in each region because it is a widely available, well known, standard commercial item. Conversely, a larger field test is in order and was conducted for products that may differ greatly, such as fish nuggets or ground turkey.

Consistent with the spirit of the law, USDA has, on occasion, conducted telephone surveys because of purchase timing. For unanticipated purchases, a quick turnaround may be necessary.

Cost/Benefit Review Complete-Per Congressional Record

GAO criticizes USDA for not having formalized procedures for a systematic review of the cost and benefits of providing commodities.

In the December 19, 1987, Congressional Record, S18570, Senator Leahy recognized that USDA is currently assessing the costs and benefits of commodity purchases. He states that the system will be improved by the addition of semiannual data from recipient agencies. Since we have satisfied this requirement, as directed by Congress, we fail to see what additional actions are required.

Moreover, we have effective tools available which are formalized to provide for a systematic review of the cost and benefits of providing commodities suitable to the needs of recipient agencies. We not only have semiannual recipient agency preference data evaluations; we have field testing, regular State and recipient agency meetings and quarterly complaint report analysis. The analysis of the spring recipient agency data was 40 pages

See comment 2.

See comment 3.

to comply with the voluntary performance standards established by USDA prior to enactment of the law and we have monitored their efforts through our management evaluation process.

See comment 6.

CHAPTER 2--CONCLUSION

In view of the preceding comments, it is not surprising that we believe this part of the report does not accurately represent our implementation of section 3 of the Commodity Reform Act. GAO has not recognized the reforms USDA initiated to improve the shipment and delivery of commodities and commodity specifications and packaging and to increase the variety and ordering options available. Further, as previously stated, the Department takes exception to GAO's overstatement of what "remains to be done", particularly in view of the fact that what remains according to GAO goes well beyond the legislative requirements. Although GAO may prefer different vehicles to implement certain provisions, USDA maintains that our actions in the areas cited as incomplete meet the requirements of the law and should be represented in the report as implemented.

GAO's request for a formal agenda directed at bringing the implementation of the Act to a closure clearly can never be satisfied since there is a fundamental disagreement regarding what remains to be done. We believe the imminent issuance of final rules on three provisions: 1) warehousing and distribution, 2) assessment of fees and 3) State performance standards will bring USDA into compliance with legislative requirements. As in all other FNS programs, we will continue to refine and improve our policies and practices as new issues arise.

See comment 7.

CHAPTER 3 COMMENTS

In the report, GAO states that FNS has no effective system for managing work and for coordinating the management evaluation process.

The U.S. Department of Agriculture strongly objects to this assessment. We maintain that we do, indeed, have a management system which assesses the workload associated with the many demands which are placed on the Agency. While FNS would always like to do more, federal resources are constrained by budget realities and we recognize that priorities must be set to address those areas of highest need. In fact, this priority setting did occur when the management evaluation reviews for food distribution received the highest agency priority for fiscal years 1988 and 1989.

Furthermore, this legislation was passed as a zero cost bill. However, implementation and the ongoing efforts to comply with the law require a substantial investment in resources both at the Federal and State level. The U.S. Department of Agriculture has made service to recipient agencies a priority and absorbed the cost by diverting its shrinking resources from other activities to further the legislative goals. Yet the report makes no mention of the resources devoted to implementation of this Act.

See comment 8.

Workload Management Systems

The report inaccurately asserts that FNS "did not have effective processes in place for managing its workload or for planning its management evaluations". In fact, the new planning process that the report outlines, although refined and somewhat more tightly structured for use in 1989, was carried out initially in August, 1988. The process resulted in all of the work of the Agency being carefully scrutinized and placed into three priority levels. Food Distribution management evaluations were categorized as a Level I priority for fiscal year 1989. Level I functions are defined as "those which must be fully accomplished consistent with specific requirements and time frames to assure basic program integrity".

See comment 11.

Inventory Management

GAO cites the Department for the lack of proper inventory management controls.

The section on past inventory management deficiency reports really has no bearing on the agency's implementation of the legislation. Nevertheless, in response to each of the audits cited, FNS did take appropriate action to resolve these audits and correct the deficiencies noted. The 1981 and 1985 GAO reports prompted the development and implementation of regulatory amendments intended to strengthen provisions for inventory controls, use of program funds, audits, storage facilities and management evaluation reviews. The OIG audit identified a need for reconciliation of paperwork associated with commodity shipments, receipts, etc. We have submitted a work plan to OIG which is expected to be fully implemented by the end of the fiscal year.

See comment 12.

CHAPTER 3 - CONCLUSION

GAO concludes that commenters are concerned about the appropriateness and feasibility of USDA's actions under the mandated reforms. The report however, does not clearly distinguish between commenters' opposition to provisions contained in the law and those which USDA is implementing through its discretionary authority. For example, State and local agency comments opposed the semiannual collection of recipient agency data, State testing and monitoring of processed commodities and the required conversion to a commercial distribution and warehousing system. All three of these provisions are contained in the law.

GAO, again, critically focuses on the area of management review coverage and workload planning. GAO assumes that FNS should be able to monitor all aspects of all programs, for all States, every year and still administer the \$21 billion other programs for which we have responsibility. GAO disregards the need to set priorities when resources cannot be expanded. Further, it is naive to assume that any agency could do such extensive monitoring no matter what their planning process. This is yet another example of looking at an issue out of context.

See comment 13.

See comment 14.

2. During the course of our review, we identified two planning documents that provided a comprehensive perspective of USDA's expectations for the implementation of the 1987 act's commodity reform provisions that were enacted on January 8, 1988. These documents were (1) USDA's January 5, 1988, work plan for implementing the 1987 act that listed the specific reform provisions, their required implementation dates, the mechanisms (regulations or procedures) USDA intended to use to implement the provisions, and the dates by which the implementation actions were to be completed and (2) the April 19, 1988, Federal Register notice USDA used to publicly announce its plan for the 1987 act's implementation. We used these plan descriptions to monitor USDA's implementation efforts in response to the legislated reforms.

We recognize that neither the planning document nor the status reports referred to in USDA's comments were required by the 1987 act. We believe, however, that USDA's implementation plan together with the status reports (prepared weekly to track the Food Distribution Division's regulatory actions and quarterly to track the triagency task force's work on the "special commodity initiatives") were appropriate management tools to be used in combination to establish USDA's reform implementation goals and track USDA's progress toward achieving those goals. We further believe that there is a need to revise the outdated implementation plan to establish USDA goals for all yet-to-be-completed reform actions intended by USDA in response to the legislated reforms.

The incomplete reform actions that we identify in our report were the yet-to-be-implemented regulatory reforms under the proposed rules USDA issued on October 20, 1988; the intended formalization of USDA's field testing and cost/benefit review procedures noted by USDA in its April 19, 1988, Federal Register notice on planned reform actions; and the guidance USDA referred to in its July 21, 1988 interim rules implementing required state agency testing and monitoring of processed commodities. USDA's objections to our reporting these actions as incomplete are discussed in comments 3, 4, and 5.

3. The formalized field testing procedures we discuss in our report are those USDA referred to as intended actions in its April 19, 1988, Federal Register notice. Because the notice did not specify what USDA's formalization actions would consist of or set expectations for their completion, we discussed USDA's intent in this regard with Food Distribution Division officials. We report the results from our discussions to describe the informality of USDA's field testing process, USDA's intent to develop a standardized OMB-approved form and FNS instruction to formalize the

5. We report as yet-to-be-completed commodity reform actions USDA's stated intent in its July 21, 1988, interim rules to develop further guidance for state distributing agencies to use in conducting their required testing and monitoring of processed commodities. We also report USDA's subsequent decision not to provide this guidance because of a lack of public comments in this regard, which were solicited as a part of USDA's rule making. Although not specifically required by the 1987 act, we believe that USDA's initial decision to provide state agencies with the subject guidance is consistent with the Congress' intent that the 1987 act's reforms be applied uniformly and consistently at the federal, state, and local levels.

6. We determined that 31 distinct commodity reform provisions were required under section 3 of the 1987 act, which we listed under appendix III. Of these, we report that 16 had statutory deadlines that required their implementation within 90, 120, or 270 days of the 1987 act's January 8, 1988, enactment. We also report that 10 of the 16 time-specific reforms missed their statutory implementation deadlines, for the variety of reasons reported in chapter 2, and that 6 of these reforms remained to be implemented as of May 1989, the close of our audit work at USDA. The six yet-to-be-implemented reforms are covered by USDA's October 20, 1988, proposed rules. In issuing these rules, USDA said they contain "... the amendments necessary to implement the provisions in sections 3(b)(1)(B), 3(d)(1) - (4), and 3(e)(1)(A) - (B) of Pub. L. 100-237." Of these seven reform provisions that USDA says are covered by the proposed rules, we are reporting that six would not be implemented until USDA finalized the amendments under the proposed rules. The seventh provision (section 3(b)(1)(B) - state agency monitoring procedures) was implemented by USDA administratively and is related to but separate from the mandatory state agency performance standards yet to be implemented under section 3(e)(1)(B). In chapter 3 we report that state distributing agencies began using performance standards on a voluntary basis during school year 1988.

Whether the yet-to-be-implemented reforms are counted as six separate provisions or are consolidated into the three categories referred to in USDA's comments is not important. We believe what was important was for USDA to revise its plan to establish new goals for implementing these reforms once their statutory and planned October 1988 implementation targets were missed.

7. Our reporting of USDA's reform actions that remained to be completed as of May 1989 in response to the 1987 act's provisions fall into two

measure against which USDA's performance and achievements in response to the reforms could be more accurately demonstrated to the Congress and others assessing USDA's progress under the reforms. We believe this is especially important to those who are closely monitoring the adequacy of USDA's response and are balancing its actions against the possible need for alternatives to USDA's commodity distribution system.

8. We have modified our report to clarify the ongoing and transitional nature of USDA's efforts to improve the effectiveness of its work load management and management evaluation planning processes.

During the course of our review, we sought reasons why the implementation delays we identified and reported occurred, including the impact of resource constraints. The reasons that we identified and discussed with USDA officials and staff are those detailed in chapter 2. The issue of staffing or other resource constraints were not identified by program managers as reasons for USDA's implementation delays. Resource limitations were, however, identified as major concerns by FNS officials and staff responsible for planning and conducting the management evaluations that are used to monitor the commodity distribution program's operation at the state and local levels. Therefore, it is in this context in chapter 3 that we report the significance of resource limitations as a constraint.

9. The management evaluation guidance provided to us by FNS officials and staff for fiscal years 1988 and 1989 clearly states that management evaluations must be conducted in each state agency during each of these fiscal years. In addition, the December 15, 1987, transmittal of the final management evaluation guidance for fiscal year 1988 referred to in USDA's comments confirms the above goal and recognizes that resource constraints make the preferred level of coverage impractical for most regions. It is in this context that the "minimum on-site review requirement" referred to in USDA's comments was established.

During the course of our review, we examined FNS' fiscal year 1988 management evaluation file to determine the number of reports completed for that year. Information on the number of completed reports provided by the Food Distribution Division and FNS' Office of Regional Operations varied. Our reconciliation of the file contents showed that 26 state distributing agency evaluations were completed for fiscal year 1988. At our request, the Office of Regional Operations provided us a listing of the evaluations that were completed or planned for fiscal year 1989. The listing showed that as of February 1989, FNS expected to complete 30

management evaluations and recommend the timely completion of its ongoing improvement efforts.

12. We present previous GAO and OIG reports involving inventory management deficiencies at the state and recipient agency levels as related matters appropriate for discussion in the context of this report because of the important role that USDA's "standards of practice" reviews play in its monitoring of state and local agency inventory management practices. We recognize in the report the efforts made by USDA to strengthen provisions for inventory controls as part of the extensive reforms under 7 C.F.R. Part 250 published in the June 3, 1988, Federal Register. We also recognize, as a basis for continuing concern in this regard, the March 1988 OIG report that identified deficiencies in the information systems that USDA needs to reconcile information on donated-product inventories stored at the state and local level and to ensure the accuracy of product disposition information reported by state distributing agencies. We recognize that USDA has efforts underway to resolve the OIG-reported deficiencies and expected to have corrective measures in place by the end of fiscal year 1989. Given the apparent importance of this information to USDA's monitoring of inventory management practices covered under its "standards-of-practice" reviews, we are recommending that USDA's management evaluation planning process include steps that will ensure the availability of this information. Also, given the fact that the standards of practice appear to focus on school-related programs, we are recommending that the planning process consider its coverage of the nonschool programs profiled briefly in chapter 3 and detailed in appendix I.

13. We have changed, as appropriate, the overall reference to the public comments discussed in chapter 3 and appendix V to make clear that the comments focused on specific sections of the interim and proposed rules and highlighted several concerns pertaining to both the results of USDA's discretionary rule-making authority and the language of the law itself.

We report USDA's recognition of the resource constraints and other factors that prevented it from achieving the management evaluation coverage guidance it would like to have achieved for fiscal years 1988 and 1989. We also report the efforts USDA had underway at the time of our review to improve its work load management and management evaluation planning processes, including the proposal that FNS' Office of Regional Operations developed for improving the agency's management evaluation planning process that we were told was targeted for implementation by August 1989. Recognizing the importance of management

Major Contributors to This Report

Resources,
Community, and
Economic
Development Division,
Washington, D.C.

Gerald E. Killian, Assistant Director
Peter M. Bramble, Jr., Assignment Manager
J. Kenneth McDowell, Evaluator-in-Charge
Jack M. Pivowar, Evaluator
Jennifer W. Clayborne, Evaluator
M. Jane Hunt, Reports Analyst
Monica L. Nickens, Secretary

Office of the General
Counsel

Alan R. Kasdan, Assistant General Counsel

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evaluations for the effective monitoring of reforms required to be implemented by state and recipient agencies under the 1987 act, we are recommending that USDA take the steps necessary to ensure the timely implementation of the proposed planning process in a manner that effectively balances the administrative and resource constraints identified in our report.

Given the apparent disagreement raised in USDA's comments regarding the status of its implementation of the proposed evaluation planning process, we have modified our recommendation's language to recognize the transitional nature of the implementation process and the need to complete the process for use in fiscal year 1990's and future planning cycles.

14. USDA also provided some technical comments and legal citations. These have been incorporated, as appropriate, throughout the report.

reform evaluations for fiscal year 1989. These are the numbers included in the report. In each year the number completed and planned is substantially less than the 76 state distributing agencies identified in a March 1988 study of state warehousing and distribution systems done for USDA.

10. In the context of our reporting FNS regional office resource limitations, identified through our examination of agency records and discussions with FNS officials, we observed that association representatives we talked to emphasized the importance of FNS being able to direct adequate numbers of trained staff to its management evaluations. Given the significance of the evaluations to the commodity distribution program's reform and future operation and the resource constraints that are of concern to FNS officials in this regard, the adequacy of resources directed to FNS staff training appears to be a legitimate concern. We did not examine the resources FNS directs to staff training, information sharing, or providing technical assistance to states and recipient agencies. As a result, we do not express an opinion on the adequacy of resources USDA directs to these efforts.

11. Our discussions with FNS officials and examination of agency records identified serious concerns within the agency regarding the need to develop effective processes for managing its work load and planning its management evaluations. The records we reviewed included an August 1988 functional survey of FNS fiscal year 1988 work load needs. The survey noted it was conducted in response to the limited coverage and the lack of specificity in the data accumulated through FNS' work load reporting system, which gathered data on only certain regional office and field office staff. The survey also reported that FNS planned to contract for a study of its organizational structure and its work load management needs that should be completed in fiscal year 1989. Other records we reviewed included detailed written communications between headquarters and regional officials during October through December 1988 and January 1989, which raised serious concerns about the effectiveness of FNS' management evaluation process and the need to improve the planning and conduct of these evaluations. We also reviewed a position paper by FNS' Office of Regional Operations that detailed the need to improve the planning of FNS management evaluations and outlined a proposed planning process that we were told was to be implemented by August 1989. On the basis of the results from our discussions and review of agency records, we conclude that FNS needed more effective processes in place for managing its work load and/or for planning its

basic categories. The first are those required reform actions specified by the act and “not yet implemented” at the time of our review. These are the six reforms “being implemented” through the finalization of the October 20, 1988, proposed rules that USDA reports is now imminent.¹ The second category comprises actions USDA said it intended to take in the context of its public response to various reform provisions. These include the formalization actions cited by USDA with regard to its commodity field testing and cost/benefit review procedures covered in USDA’s April 19, 1988, Federal Register notice on its planned implementation of Public Law 100-237. These also include the guidance USDA said it would provide to state distributing agencies to assist them in implementing the processed commodity testing and monitoring required by the 1987 act and implemented through the interim rules issued July 21, 1988. USDA views these latter actions as refinements that were not specifically required by the 1987 act.

USDA accurately states our basic disagreement regarding the actions that remained to be completed at the time of our review to bring the act’s full implementation to closure. USDA views its finalization of the October 20, 1988, proposed rules as the remaining action that will bring USDA into compliance with legislative requirements. We also view USDA’s finalization of the required reforms under its proposed rules as essential to its compliance with legislative requirements but differ on the role of the other actions it intends regarding the 1987 act’s full implementation. Specifically, we view the act’s full implementation as going beyond USDA’s issuing final rules; it includes USDA’s ensuring that the reforms are implemented consistently by all organizations in a manner that provides for a uniform interpretation and application of the reforms at the federal, state, and local levels. We see the formalized procedures and guidance intended by USDA as important to achieving that result and as actions that are consistent with the intent of the 1987 act.

Because we view all of the above actions as important to the act’s full implementation, we are recommending that USDA develop a revised work plan that details how and when USDA intends to complete all remaining actions that involve the full implementation of the legislated commodity distribution program reforms. As stated earlier, we believe the agenda and goals established by a revised plan in combination with USDA’s status reports on its progress working toward those goals are important for focusing and monitoring the work of the USDA organizations involved in the act’s implementation. We also believe a revised plan would provide a

¹Subsequent to our review, USDA issued final rules on these reforms on October 17, 1989.

process, and the incomplete status of the formalization actions intended by USDA at the time of our review.

Our report states that the 1987 act required USDA to establish an ongoing field testing program for testing the acceptability of present and anticipated commodity and product purchases with recipients. We also report that USDA said in its response to this reform that it intends to establish more formal field testing procedures. We believe formalization of the testing procedures is consistent with the Congress' intent that the required reforms be implemented in a uniform and consistent manner. Although we recognize that test designs can vary depending on the products involved, the development of testing procedures should include criteria under which the degree of differences in testing can be determined. In the absence of formalized procedures for conducting USDA's field tests, there are no firm criteria to use in assessing the appropriateness of USDA's test designs, including their varying sizes.

4. Our report states that the 1987 act required USDA to establish procedures before October 4, 1988, to provide for a systematic review of the cost and benefits of providing the kind and quantity of commodities that are suitable to the needs of recipient agencies. We also report USDA's April 19, 1988, response to this reform provision that states, in part, "[a]s required by law, the Department [USDA] intends to formalize the procedures for the analysis of RA [recipient agency] needs to determine the suitability of [commodity] purchases and the benefits derived from these purchases."

As was the case involving the field testing reform above, USDA did not state what it would do to formalize the procedures for the required systematic cost/benefit review or when its intended formalization would be completed. As a result, we discussed USDA's intent in this regard with FNS and AMS officials responsible for USDA's actions in response to this reform. We report the results from those discussions to provide USDA's explanation that its April 1988 reference to formalizing recipient agency need analysis procedures did not mean formalizing the analysis process itself but rather the field tests, semiannual acceptability surveys, and complaint reports used as data sources for the analysis. On the basis of the discussions, we also report the incomplete status of formalization actions involving the field tests and semiannual surveys that were intended by USDA in this regard at the time of our review.

The following are GAO's comments on the U.S. Department of Agriculture's letter dated August 21, 1989.

GAO Comments

1. Consistent with our mandate, and subsequent agreements with the congressional committees we were directed to report to, our review focused on monitoring and assessing USDA's efforts to implement the 31 reforms stipulated under section 3 of the 1987 act (P.L. 100-237, Jan. 8, 1988). Throughout the body of the report and in appendix IV we have provided information on USDA's response to the 31 reforms including, as appropriate, reference to improvements under USDA's "special commodity initiatives" that we observed were begun prior to the 1987 act and were directed at improved commodity donations through the National School Lunch Program.

To provide a perspective on the legislated changes to the commodity distribution program, we described the evolution of the detailed reforms under the 1987 act that (1) went beyond the scope of USDA's "special commodity initiatives" and (2) were applied by the Congress to the broad range of recipient agencies under the school and nonschool food assistance programs we detailed in appendix I. In this context we observe the important role the joint commodity reform resolution by the American School Food Service Association (ASFSFA) and the National Frozen Food Association (NFFA) played in bringing about the reforms. We also recognize the assistance ASFSFA and the National Association of State Agencies for Food Distribution (NASAFD) provided USDA in designing the "standards of practice" directed at improving state distributing agency operations on a voluntary basis starting in school year 1988.

To assess the reaction of program participants to USDA's implementation efforts, we invited comments from ASFSFA, NFFA, NASAFD, and other associations representing recipient, commercial, and state agency interests in the commodity distribution program. The response in chapter 3 regarding state and recipient agency reactions to USDA's reform initiatives reflects information provided by ASFSFA and NASAFD. In this context we are reporting that the recipient and state agencies they represent believe USDA is more aware of their commodity distribution problems; more receptive to making program improvements; and has significantly improved the form, packaging, and labeling of donated commodities. Given the transitional nature of the reform initiatives, they also noted program areas needing further improvement. We believe the report provides a balanced assessment of program participants' reactions to USDA's reform actions.

In Two Years FNS Reviews 55 State Agencies

GAO criticizes the Department for completing only 26 of the 76 State distribution agency evaluations for 1988.

Neither the evaluation coverage nor USDA's goal are accurately stated. It was our intention to review all State agencies responsible for commodity distributions to schools within a two-year period. Our guidance, dated December 15, 1987, states, in part, ". . . the minimum on-site review requirement is 50 per cent of the States within a region or a minimum of four, whichever is greater. . . The three mandatory areas are assessment of compliance with State Standards of Practice, processing contract reviews and Civil Rights compliance. . . ."

In Fiscal Year 1988, we conducted 28 State reviews and in Fiscal Year 1989, thus far we have conducted 18 reviews with 9 more planned (copies of all the 1988 reports and some of the 1989 reports are available in the FNS headquarters office). Therefore, in spite of resource constraints, we will have not only met but exceeded our goal. This fact is not reflected in the report. FNS spent 21.6 staff years in FY 1988 reviewing States' performance to determine efficiencies in operation consistent with the goals of the legislation. As far back as the fall of 1987, USDA held a national training meeting with States to set the groundwork for implementing standards of practice.

GAO also cites USDA for not directing adequate resources to training.

This statement indicates that GAO is of the opinion that resources were available to transfer when, in fact, the agency has had a 24 percent reduction in staff and a significant reduction in funds. Nevertheless, FNS did conduct two workshops to develop comprehensive review guidance and procedures. These materials allow for thorough and consistent evaluations of all States reviewed. In addition, USDA sought assistance and advice from a private contractor who had conducted a study to obtain information on State warehousing and delivery systems and assessment fees, prior to the passage of the law. Upon recognizing the need for further guidance material, USDA also contracted for three separate efforts under which technical assistance materials are being developed to assist States and USDA. The contracts cover the evaluation of the cost of States' distribution systems, comparison with a commercial alternative and guidance for use by FNS to determine the validity of requests for waivers.

While the report acknowledges the increased workload because of new programs, program expansion and programs becoming more complex, it fails to acknowledge the increased workload the Act imposed on the Agency. Each provision in some way has involved either a major project, special analysis, report, travel, meeting, policy and regulation development and/or data collection.

See comment 9.

See comment 10.

Appendix VI
Comments From U.S. Department
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long. The cumulative effect of these tools is a systematic review of user needs. Quarterly purchase meetings, AMS and ACSC commodity market monitoring and research, and regular triagency initiative meetings and reports allow for a systematic review of the cost of providing commodities. While some State distributing agencies and recipient agencies feel the systematic collection and reporting of all this data is "overkill", apparently GAO believes something is lacking.

See comment 4.

Testing and Monitoring Processed Commodities

GAO cites USDA for not completing implementation of the statutory provision requiring the State testing and monitoring of processed commodities, on the basis that the Department has not developed guidance material for use by State agencies.

The U.S. Department of Agriculture maintains that detailed guidance is not required by the Act. The Act requires that only those States which enter into processing contracts test and monitor the acceptability of the end products. The regulations issued also require this and go a step further by requiring that all States assure that field tests are done even if products are purchased locally. The U.S. Department of Agriculture requested comments relative to the need for the development of guidance material though an interim rule and comments received did not indicate such a need. Based on the commenters' concerns, the fact that there are only two States which enter into processing contracts on behalf of recipient agencies, and that there is no empirical data to indicate that States do not have the ability to develop testing and monitoring systems, we decided that guidance in this area would be an unnecessary Federal directive.

See comment 5.

Delays in Implementation

The GAO report cites the reasons USDA provided for delaying implementation of a few provisions, citing regulatory clearance procedures.

The three (not six) provisions remaining to be implemented relate to 1) warehousing and distribution, 2) assessment fees and 3) State performance standards. These provisions are, by far, the most complex and will have the most far-reaching impacts on many States. Although we regret our inability to complete this particular rulemaking within the legislated timeframe, we believe the efforts we have expended in exploring these difficult issues, which included discussions with State and local agencies throughout the country and numerous consultations with officials from the National Association of State Agencies for Food Distribution, will ultimately result in sounder, more equitable Federal regulations. The comment period on our proposal closed December 19, 1988. However, based on comments from States indicating more time was needed to formulate positions on several complex issues, the comment period was extended to January 18, 1989, further delaying implementation of these provisions. Issuance of final rules is imminent.

Moreover, the provision regarding performance standards for all practical purposes is implemented. States have been striving for the past two years

Appendix VI
Comments From U.S. Department
of Agriculture

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o USDA reviewed the fat, salt and sugar content of all donated commodities and took steps to limit the levels where possible consistent with the Dietary Guideline recommendations. Again, work in this area is ongoing.

o USDA implemented the State Option Contract system to increase the forms and variety of commodities available to recipient agencies. The State Option Contract system allows USDA to purchase more processed commodities and to receive reimbursement for the cost of processing, thus stretching commodity dollars and providing more options to recipient agencies.

o State Food Distribution Advisory Council Reports containing food preference data have been, and continue to be, reviewed annually for recommendations on commodity acceptability, new types and forms of commodities and packaging changes. Also, we analyze recipient agency data twice a year to determine commodity acceptability.

Negative Tone of the Report

The failure to mention the positive actions described above and the use of negative language throughout the report makes it appear that GAO is presenting USDA's implementation in the worst possible light. The failure to include ASFSA's positive endorsement of the commodity program confirms this. ASFSA, the largest group of commodity users, applauded the actions USDA has taken thus far. We believe a balanced assessment should include this fact.

See comment 1.

CHAPTER 2 COMMENTS

According to the report (page 21), Chapter 2 was intended to discuss USDA's response to the reforms required by Section 3 of the Act. Rather than focusing on USDA's efforts in these areas, this chapter dwells on areas not required by the Act, such as guidance to State distributing agencies and "formal" procedures. Our specific concerns follow:

The FNS Work Plan

The GAO report states that FNS had not updated its January 1988 work plan to provide revised timelines. As a result, GAO believes USDA's timeframe for full implementation of the reforms was uncertain.

The FNS work plan is treated by GAO as if the Act required such a document. The Act contains no such requirement. The plan was simply a tentative, in-house outline of the basic steps needed to begin implementing the Act, set priorities and establish target dates. It was shared with GAO to provide a full picture of the scope of changes required by the Act. Nevertheless, GAO continuously refers to a "failure to update the plan" as if it were required.

While GAO may believe a work plan would ensure progress, the absence of one does not infer that USDA has no intention of taking additional actions to more fully implement the Act. A regulation status report, which is provided to the Assistant Secretary for Food and Consumer Services on a weekly basis,

Appendix VI
Comments From U.S. Department
of Agriculture

Mr. John W. Harman

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In light of the above, the comments submitted are intended to clarify aspects of the report that may be misleading and to present identified problem areas in the proper perspective.

Sincerely,

Ann Chadwick

Ann Chadwick
Acting Assistant Secretary for
Food and Consumer Services

Enclosure

is better and that even if the state does demonstrate that its system is better, FNS requires that the state submit yearly evaluation updates. The state of Georgia believes that if FNS accepts a state's justification that the state's system is more cost-effective than commercial distribution, then it does not follow that the state should have to evaluate the following year or implement a commercial distribution system that FNS has already recognized as being equivalent to or less cost-effective than the state system.

Incompatible With State Laws

Both the act itself and the June rules had a section described by some respondents as being in conflict with some state laws. The section of the act requiring state distributing agencies to use commercial facilities for delivery and the FNS June rule that sanctions the replacement of out-of-condition commodities by cash payments to recipient agencies were viewed as incompatible with some state laws.

The National Association of State Agencies for Food Distribution and the state distributing agencies in Georgia and Washington said that some state laws prohibit commercial distributors from transporting products that they do not own. As an example, under Washington state law a carrier may be classified in only one category, either (1) a common carrier that can haul goods to which it does not hold title, (2) a private carrier that can haul goods that it owns, or (3) a contract carrier that can haul goods under a specific contract. Commercial distributors are classified as private carriers and can deliver only goods that they own. Should commercial distributors prove to be more cost-effective, state distributing agencies in those states would not be allowed to use them.

The June rule on the replacement of commodities allows, in rare instances and only with USDA's approval, that vendor replacement will be made with a cash payment to the recipient or distributing agency. The American School Food Service Association and the state of South Carolina commented that some agencies do not have spending authority for cash payments, and in South Carolina state agencies are prohibited by law from disbursing funds to nonprofit private schools, federal schools, and public or nonprofit private residential child care institutions.

State distributing agencies in Utah, Nebraska, and Iowa said that a comparison of state facilities with commercial systems would require bids from the commercial sector. According to the state agencies, requiring a commercial firm to bid with no intent by the state agency to reward the contract is unconscionable, unethical, or unfair, if not illegal.

Testing of Processed End
Products

The law requires each state distribution agency to test processed end products² with recipient agencies before entering into a contract for such processing and to develop a system for monitoring product acceptability.

Almost all commenting on this section were against the testing and monitoring of processed end products. Seventy-one percent of those commenting on the July rules, and 50 percent on the proposed rules, commented on this section. Eight percent addressed the magnitude of testing, believing testing of all products would be a massive undertaking. For example, the Office of General Services, Executive Department, State of New York said it had 60 approved processors with over 600 end products. A commercial processor requested USDA to recognize all that the research manufacturers do before putting a processed commodity on the market. The processor also commented that the market place is the best monitor for acceptability. The State of Maine Department of Educational and Cultural Services commented that the ultimate test of a processed product is the acceptability of the product. Some comments support an exemption for processed end products already in use.

Semiannual Information on Most
Useful Commodities

Another section of the law requires the Secretary to establish procedures to ensure that information is received from recipient agencies at least semiannually with respect to the types and forms of commodities that are most useful to persons participating in programs operated by recipient agencies. The Department of Education, State of Michigan, questioned the value of the requirement for semiannual reporting for agencies such as summer camps that operate only a partial year.

Per-Meal Value at or Above
National Value

Another section of the law requires each state agency to offer to each school food authority the per-meal value³ that is not less than the

²Processed end products are foods manufactured out of donated commodities. As an example, flour, cheese and tomato products can be processed into pizzas.

³Per-meal value is the value in cents of commodities supplied to eligible school food authorities. USDA establishes this national average value of donated foods, or cash payments, on the basis of changes in the Price Index for Food Used in Schools and Institutions. The per-meal value multiplied by the number of meals served in the current school year determines the amount of assistance USDA is to provide states for use by schools participating in the National School Lunch Program.

“unreasonable,” also uses the term “significantly higher” in comparing American products to foreign products.

Twenty percent of the respondents requested clarification. Some wanted a criterion or definition of what would be considered a “significantly higher” price than that of a foreign food. Others wanted a definition of what would be considered foreign goods.

Evaluation and Use of Commercial Warehousing and Distribution Systems

FNS, in its proposed rules, itemized the information needed to be included in a state distributing agency’s evaluation of its current warehousing and distribution system. This evaluation is to be compared with the cost of comparable services under a commercial system. The comparison must be made between the cost of providing a minimum level of service under its current system with the cost of obtaining this minimum level from commercial facilities. FNS defines “minimum level of service” as the transportation, storage, and handling of donated food from the time USDA delivers the commodities to the state agency to the time that the commodities are delivered to the recipient agency’s centralized storage facility or individual preparation sites. FNS defined “commercial facilities” as commercial enterprises that provide for commercial warehousing and delivery.

Forty-three percent of those commenting requested clarification of this section. Many respondents were concerned that the definition of a “commercial facility” groups together both warehousing and delivery and would require state agencies to use only one firm. They commented that some state agencies use multiple commercial firms, separating the operations of warehousing and delivery. One state agency contracts with privately owned warehouses, and the recipient agencies are responsible for procuring their own transportation.

Many wanted a more detailed description and better definition of what costs to include in an evaluation. Others wanted FNS to define more specifically what would be considered a minimum level of service.

Use of Commercial System

The law requires each state distributing agency to (1) evaluate its warehousing and distribution systems for donated commodities, (2) implement the most cost-effective and efficient system for providing warehousing and distribution services to recipient agencies, and (3) use commercial facilities unless the state can convince the Secretary that other facilities are more cost-effective and efficient. FNS' proposed procedures for implementing this section of the law are the most complex and controversial. Most commenting on this section expressed concerns about the appropriateness of having to evaluate their storage and delivery systems annually and generally believed the regulations should focus more on recipient agencies' needs and less on commercialization of storage and delivery systems. However, cost was also an important concern as indicated by the following.

Nineteen percent of the respondents commented that evaluation studies were costly. In comparing the state system with commercial facilities, 12 percent commented that under current warehousing and distribution systems, some state distributing agencies absorb some of the costs. Under a commercial system, even if the total warehousing and delivery system is less costly than a state-run system, recipient agencies' costs may increase. A total of 21 percent commented that recipient agencies' costs would be lower using a state system. Fourteen percent commented that changing systems is very costly; one state distributing agency, the North Carolina Department of Agriculture, mentioned that its investments in capital assets such as buildings and equipment would not be used in a commercial system.

Recipient Agencies to
Report Semiannually

The law requires the Secretary to establish procedures to ensure that information is received from recipient agencies at least semiannually with respect to the types and forms of commodities that are most useful to persons participating in programs operated by recipient agencies. In the July rule, FNS elaborated on this section, making the state agencies responsible for the collection of this information.

Fourteen percent of the respondents commented that the semiannual reporting would be too costly. Some recommended that the report be submitted annually.

“Buy American”
Documentation

The law requires the Secretary to require that recipient agencies purchase, whenever possible, only food products that are produced in the United States. FNS, in its July rules, required that recipient agencies keep

Public Comments in Response to Regulatory Changes

FNS invited comments for its interim rules published June 16, 1988, and July 21, 1988, and its proposed rules published October 20, 1988. FNS received comments from 228 respondents,¹ representing state and recipient agencies, associations, commercial enterprises, advocacy/advisory groups, and government agencies. The respondents, while commenting on specific sections of the rules, highlighted several concerns pertaining to both the language in the law itself and to USDA's interpretations under its discretionary rule-making authority. Overall, respondents commenting were generally concerned with

- the cost to implement the law and corresponding rules,
- the sections of the rules viewed as needing clarification before they could be implemented, and
- some federal requirements and proposals that were viewed as not doable or incompatible with the commodity system as it currently exists or with state laws.

Regulations and Proposals Viewed as Costly

The cost of implementing the regulatory and proposed changes was a major concern of the respondents. Most respondents were concerned with the additional cost of warehousing and distribution and record keeping required by the act. State distributing agencies and recipient agencies especially commented on

(1) the regulations and proposals that require the state distributing agencies to

- make donated foods available to recipient agencies at least monthly,
- pay for some reinspections of foods required under USDA's replacement procedures,
- evaluate their existing warehousing and distribution systems and compare them with commercial facilities, and
- implement the most cost-effective and efficient systems for providing warehousing and distribution services and

(2) the regulations that require the recipient agencies to

- semiannually report the types and forms of commodities most useful to the program and
- keep records of how they implement the "buy American" provision.

¹The June rules had 57 responses; the July rules had 56; and the October rules had 115.

**Appendix IV
Profile of Commodity Reforms Under Section
3, Public Law 100-237**

Section of the law	Provision description	USDA response	Remarks
		<p>commodities they must offer to school food authorities. Comments closed October 19, 1988. Final rule expected July 1989.</p> <p>USDA recommends a legislative change that would base program meal reimbursements on previous-year participation rates rather than the number of meals served in the current school year.</p>	<p>such an average where foods donated to RAs were equitable.</p>

**Appendix IV
Profile of Commodity Reforms Under Section
3, Public Law 100-237**

Table IV.2: Commodity Reforms Under Interim Rules Published June 16, 1988

Section of the law	Provision description	USDA response	Remarks
3(b)(5)	Procedures for the replacement of commodities received by RAs that are stale, spoiled, out-of-condition, or not in compliance with specifications (within 90 days)	Interim regulations issued June 16, 1988, to provide the required replacement procedures. Comment period closed September 14, 1988. Final rule expected July 1989.	The greatest concern raised by public comments was the portion of the rule that required clear determination that donated foods were not fit for use at the time they were delivered by USDA. Most participants were concerned that foods could be unacceptable yet not harmful, not fitting the criteria "not fit for use." Both DAs and RAs objected to DAs having to pay for reinspection. Also, participants were concerned that replacements did not include handling, storage, and distribution costs.
3(e)(1)	(D) Delivery schedules consistent with RA needs and USDA's responsibilities for the removal of surplus and price-supported agricultural commodities. (within 90 days)	Interim regulations issued June 16, 1988, to provide the required delivery requirements. Interim regulations issued July 21, 1988, repeated the requirements, keeping the comment period open until October 19, 1988. Final rule expected July 1989.	The greatest concern was the rule to make donated foods "available at least monthly." Most favored their current delivery schedule. DAs objected to notifying RAs of anticipated USDA purchases and estimated shipping periods. They believed it would create an impossible work load and be confusing to RAs.

**Appendix IV
Profile of Commodity Reforms Under Section
3, Public Law 100-237**

Section of the law	Provision description	USDA response	Remarks
			reviews in time for the FY 1990 review cycle.
3(b)(2)	Technical assistance and recipes.	Recipes mailed September 1988 to SFAs. Fact sheets and Nutritive Value Booklet reprinted for school year 1989. Slide show on commodity programs to be available. Developing recipe booklet for FDPIR.	Associations representing school programs and state DAs emphasized the need for FNS and its regional offices to provide effective technical assistance and training on a continual and predictable basis at the state and local levels.
3(b)(4)	Implement a system for 60-day advance distribution notice (except for emergency and fresh purchases).	States receive general notice on types and quantities available not less than 60 days in advance. Many states have systems in place to provide 60-day notice. October 20 proposed rule includes notification of commodity availability as a performance standard for states.	Some associations told GAO the distribution system cannot work effectively without the cooperation of FNS, AMS, and ASCS and emphasized the importance of their future coordination in this regard.
3(b)(6)	Monitor condition of commodities stored by USDA.	Strict inspection procedures for USDA-stored products exist, routinely inspect in accordance with schedules.	Past GAO work found monitoring procedures for USDA-stored dairy products appeared adequate; however, GAO and USDA's OIG have identified serious deficiencies in FNS' monitoring of commodity inventories at state and local levels. The OIG recently recommended changes to improve FNS' ability to reconcile inventories at state and local levels. FNS plans to complete needed improvements by October 1989.
3(b)(8)	Establish 90-day delivery to states.	Department is working to minimize problem. Exploring "variable shipping period" concept. AMS continues to purchase several commodities on a delivery period basis with a 15-day window. ASCS discontinued "delivery period" purchasing tested as a pilot program in school year 1988.	Some associations recognized that USDA is working to solve delivery problems but that the uncertainty of commodity deliveries by USDA and state agencies continues to be a serious concern of recipient agencies, commercial processors, and others.

(continued)

Appendix III
Commodity Distribution Program Reforms
Under Section 3 of Public Law 100-237

21, 1988; and 6 requiring regulatory change were published for public comment as proposed rules on October 20, 1988 (shown by the (*) symbol) and were not yet implemented through final rules as of May 1989. Of the 25 reforms implemented through the notice and interim rules, 4 are awaiting additional USDA actions (shown by the (+) symbol) that were incomplete at the time of GAO's review.

^cIndicates number of days within which reform was to be implemented. Of the 31 reform provisions, 16 were required to be implemented within 90, 120, or 270 days of the law's January 8, 1988, enactment.

^dReforms with no implementation deadlines specified by the law were generally effective with the law's enactment.

Appendix II
Food Donated by USDA Through the
Commodity Distribution Program, School
Year and Fiscal Year 1988

**Table II.4: Section 416 Commodities—
Group B Bonus**

Commodities	Pounds (thousands)	Value (thousands)
Butter	183,972	\$259,366
Butter oil	488	829
Cheese, process	356,430	448,601
Cheese, cheddar	46,721	56,480
Cheese, mozzarella	33,530	40,441
Milk, nonfat dry	132,490	115,983
Cornmeal	48,645	5,391
Flour	263,040	30,369
Honey	58,952	45,631
Rice, milled long grain	184	35
Rice, milled	118,417	22,295
Wheat, hard amber durum	930	38
Total^a	1,243,799	\$1,025,459

Note: The domestic food assistance programs that received the donated foods listed above were the National School Lunch Program, Nutrition Program for the Elderly, Food Distribution Program on Indian Reservations, Commodity Supplemental Food Program, Child Care, Summer Food Service, Temporary Emergency Food Assistance, summer camps, disaster feeding, and charitable institutions. October-September is the year for all programs except schools, which is July-June.

^aTotals may not add because of rounding.

Appendix II
Food Donated by USDA Through the
Commodity Distribution Program, School
Year and Fiscal Year 1988

Commodities^a	Pounds (thousands)	Value (thousands)
Total^b	819,644	\$462,229

^aSurplus commodities (fruits, vegetables, meat, fish, and poultry) purchased by AMS as authorized by section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as amended, and section 6 of the National School Lunch Act (42 U.S.C. 1755), as amended.

^bNumbers do not add because of approximately 13,000 pounds of disaster donations not listed above but included in the total for group A.

**Table II.2: Section 32 Commodities—
Group A Bonus**

Commodities	Pounds (thousands)	Value (thousands)
Walnuts, English pieces	2,281	\$3,450
Apple slices, canned	5,916	2,248
Applesauce, canned-bonus	20,904	5,301
Cherries, frozen red tart pitted	8,815	3,249
Blackberries, frozen	1,248	819
Pears, D'anjou fresh	4,091	1,311
Pears, Bosc fresh	486	157
Date pieces	2,805	2,300
Figs, dried	2,009	1,952
Syrups, corn, bottled	3	1
Prunes, dried	288	158
Prunes, dried pitted-bonus	5,078	3,067
Chicken, nuggets, fry-bonus	355	477
Eggs, whole frozen	61,929	26,642
Egg mix	1,166	1,467
Beef, fry ground-bonus	20,987	21,905
Beef, frozen ground	136	155
Pork, frozen ground	55	54
Beef, canned in natural juice	324	440
Pork, canned in natural juice	296	338
Meat, luncheon canned	3	3
Total^a	139,174	\$75,494

^aTotals may not add because of rounding.

Food Donated by USDA Through the Commodity Distribution Program, School Year and Fiscal Year 1988

**Table II.1: Section 6-32 Commodities—
Group A**

Commodities^a	Pounds (thousands)	Value (thousands)
Beans, dry	11,874	\$3,141
Beans, dry canned	12,250	2,499
Beans, green canned	20,078	4,472
Beans, green frozen	2,333	585
Beans, vegetarian	20,511	3,944
Beans, refried canned	5,378	1,445
Carrots, canned	1,345	399
Corn, canned	14,456	3,903
Corn, canned cream style	1,054	316
Corn, canned whole kernel	1,399	402
Corn, frozen	3,549	1,531
Peas, green canned	12,413	2,993
Peas, green frozen	4,866	1,238
Pumpkin, canned	36	13
Spinach, canned	897	319
Potatoes, whole	972	305
Potato rounds, frozen	35,230	9,881
Potatoes, dehydrated	1,554	667
Potatoes, oven fry	32,284	8,767
Potatoes, deep fry	3,282	903
Sweet potatoes, syrups	9,115	2,878
Sweet potatoes, mashed	910	225
Chicken, frozen, cut up	70,140	39,217
Chicken, chilled, bulk	9,432	4,363
Chicken, frozen, breaded	6,685	6,772
Chicken, frozen, quarters	320	226
Chicken, nuggets, frozen	2,356	2,935
Turkey, frozen, whole	34,547	19,505
Turkey, chilled, bulk	7,272	3,543
Turkey, roasts, frozen	31,380	36,014
Poultry, canned, boned	1	1
Chicken, canned, boned	3,419	5,762
Egg mix	2,549	3,343
Beef, frozen ground with vegetable protein product	60	44
Beef, frozen ground	83,407	93,798
Beef, frozen ground course-process	5,712	\$6,433
Beef, meatball stew	1,971	1,216
Beef, patties, frozen with vegetable protein product	19,512	18,659
Beef, patties, frozen	9,578	11,438

(continued)

Appendix I
The Commodity Distribution Program

In fiscal year 1988, federal costs for commodities donated to disaster feeding operations totaled \$964,000.

commodities for meals. Food is served in senior citizen centers and similar settings where social and rehabilitative services are also available; meals may also be delivered to the home-bound through meals-on-wheels programs. A specified level of commodity assistance is mandated for each meal served; section 122(c) of the Older Americans Act Amendments of 1987 (P.L. 100-175, 101 Stat. 933) set the rate at 56.76 cents per meal through fiscal year 1991. State agencies may elect to take part or all of their subsidies in cash rather than commodities.

In fiscal year 1988, a total of 237.2 million meals were served at 14,100 sites. Program costs totaled \$146.9 million. Entitlement commodities accounted for \$8.0 million, bonus commodities for \$9.3 million, and cash in lieu of commodities for \$129.6 million.

Charitable Institutions

Commodities acquired under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c) for surplus removal activities and under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) for price-support operations are distributed to nonprofit charitable institutions that serve meals to needy persons on a regular basis. These include homes for the elderly, hospitals, soup kitchens, food banks, meals-on-wheels programs, and orphanages that do not participate in any child nutrition program.

In fiscal year 1988, food valued at approximately \$156 million was distributed to charitable institutions. Year-round institutions accounted for about \$150 million and summer camps for almost \$6 million.

Summer Camps

This program was initiated by section 1 of Public Law 85-483, 72 Stat. 286 (1958), which amended the Agricultural Act of 1949 (7 U.S.C. 1431) to authorize donation of price-support commodities to nonprofit summer camps for children. The program serves summer camps not included in the Summer Food Service Program for Children. Camps sponsored by nonprofit organizations are eligible. Donated foods, however, are not available for use by summer camps for adults or for weekend or overnight trips. This outlet receives the same foods as institutions.

In fiscal year 1988, federal costs for commodities donated to summer camps totaled almost \$6 million.

Temporary Emergency Food Assistance Program

TEFAP began as the Special Dairy Distribution Program initiated by presidential directive in December 1981 to distribute surplus agricultural commodities to people in need. That program was authorized under section 416 of the Agricultural Act of 1949, section 211 of the Agriculture Act of 1980, and section 1114 of the Agriculture and Food Act of 1981.

Currently, WIC is authorized by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786). Its goal is to improve the health of pregnant, breast-feeding, and post-partum women; infants; and children (up to 5 years old) by providing supplemental foods, nutrition education, and access to health services. Eligibility is limited to low-income households (maximum income is 185 percent of the poverty level) residing in an approved project area who are determined to be at nutritional risk by health professionals.

Some states provide WIC participants with vouchers that are redeemable for specified foods at retail food stores, and some states use alternate methods including direct delivery of supplemental food packages. WIC food packages are designed to provide foods that nutritional research indicates are lacking in the diets of the WIC target population. These foods include iron-fortified infant formula, infant cereal, milk, eggs, cheese, fruit or vegetable juice, dry beans and peas, and peanut butter. The WIC Program makes funds available through participating state departments of health or comparable state agencies.

Upon request, USDA will purchase supplemental foods for a state's WIC agencies using WIC funds allocated to that state. According to an FNS official, states have an option to purchase infant formula, for example, through USDA or to purchase infant formula commercially, whichever the states deem more convenient for them. In fiscal years 1987 and 1988, USDA purchased no supplemental foods for WIC state agencies under the WIC Program.

In fiscal year 1988, 87 state and Indian agencies participated in the program and served an average of about 3.6 million persons each month. The average monthly benefit per person was about \$41.64, which, together with administrative and other expenses, amounted to a total dollar expenditure of about \$1.8 billion for fiscal year 1988. Of this amount, about \$1.4 billion represented food costs.

Food Distribution Programs

The food distribution programs have dual objectives: to provide food assistance to needy persons and to stabilize commodity prices by providing outlets for surplus foods. These outlets include the Food Distribution Program on Indian Reservations, the Nutrition Program for the Elderly, charitable institutions, summer camps, the Temporary Emergency Food Assistance Program, and disaster feeding operations.

and \$45.6 million for administrative costs of organizations that sponsored family day care homes.

Summer Food Service Program for Children

The Summer Food Service Program for Children is authorized by section 13 of the National School Lunch Act (42 U.S.C. 1761). The original program was initiated under the name "Special Food Service Program for Children" in 1969 on a pilot basis by an amendment to the National School Lunch Act (section 3 of P.L. 90-302, 82 stat. 117). The original program was a year-round program and the precursor to both the School Food Service and the Child Care Food Programs, which were split in 1975.

The Summer Food Service Program for Children was designed to provide food service to children in needy areas during summer vacation. Under current legislation, a needy area is one in which at least half of the children are from families whose income is at or below 185 percent of the poverty level. Sponsorship is limited to public and private non-profit school food authorities, public and private nonprofit residential camps, units of state and local governments, and public or private non-profit higher education institutions participating in the National Youth Sports Program. Meal service is limited to lunch and either breakfast or a snack (except in summer camps and migrant programs, where needy children may receive up to three meals and a snack). Camps may charge for meals served to children who do not meet the free or reduced price meal eligibility standards.

In fiscal year 1988, peak (July) participation was 1.6 million, and total meals served were 84.1 million. Total federal costs totaled \$137.3 million, which included \$132.1 million in cash reimbursements for meal service and sponsor administrative costs, \$1.0 million for commodities distributed (entitlement and bonus), and \$4.2 million for state administrative expenses and health inspection costs.

Supplemental Food Programs

The supplemental food programs—the Commodity Supplemental Food Program and the Special Supplemental Food Program for Women, Infants, and Children—have similar objectives. They are designed to safeguard the health of pregnant, post-partum, and breast-feeding women and infants and children who are at nutritional risk because of inadequate nutrition and inadequate income. The Commodity Supplemental Food Program also serves some low-income elderly persons.

Commodity Distribution Program Recipients

Programs receiving commodities include, but are not limited to, the following.

Child Nutrition Programs

The purpose of the Child Nutrition Programs is to assist state and local governments in providing food services for children in schools, child care institutions, and summer recreation programs and also to help maintain the health and proper physical development of American children. USDA's Food and Nutrition Service administers the following child feeding programs: National School Lunch, School Breakfast, Child Care Food, and Summer Food Service.

Funds are provided by direct appropriations and through transfer of section 32 funds. In fiscal year 1988 for the child nutrition programs, USDA provided about \$4.4 billion in cash and commodities.

National School Lunch Program

The National School Lunch Program is the largest child nutrition program; and since fiscal year 1986, it has received about 50 percent of the commodities USDA provided to all eligible recipients. First authorized under section 2 of the National School Lunch Act (42 U.S.C. 1751 et seq.), the program provides cash and commodity assistance to nonprofit food services in elementary and secondary schools and in residential child care centers.

Cash payments are made to state agencies on the basis of the number of meals served and on per-meal payment rates. A base rate is paid as general assistance for all meals served; in addition, substantially higher rates are paid as special assistance for meals served free or at reduced-price to children from low-income families. Maximum income eligibility is 130 percent of the poverty level for free meals and 185 percent for reduced-price meals.

Commodity assistance is based on per-meal commodity rate (entitlement commodities) and on the availability of foods purchased by USDA through surplus removal programs and price-support activities (bonus commodities). Commodity and cash rates are updated annually on the basis of changes in the Consumer Price Index, and eligibility levels for free and reduced-price meals are revised annually on the basis of updated federal poverty guidelines.

According to USDA, all purchases are coordinated with FNS to ensure that the quantity, quality, and variety of commodities purchased can be used in domestic feeding programs.

Procurement Procedures

AMS in Washington, D.C., and ASCS in Kansas City, Missouri, are responsible for purchasing all commodities for the commodity distribution program. AMS purchases fruits, vegetables, meats, fish, poultry, and egg products. ASCS purchases price-supported items, including grain and dairy products. Each agency's procurement procedures are summarized briefly as follows.

AMS commodity procurement branches are responsible under the general supervision of their respective division directors for recommending, managing, and supervising purchase and diversion programs for domestic feeding programs under section 6 and section 32. Commodities are also purchased under legislation authorized for feeding special groups, including needy families (Indians), children in summer camps, lactating mothers, and the elderly. The branches recommend, through the division directors and the Administrator of AMS to the Assistant Secretaries for Marketing and Inspection Services and Food and Consumer Services, action to be taken regarding section 32 purchases.

AMS and FNS jointly determine the anticipated types and quantities of sections 6 and 32 commodities to be purchased under the program. This determination is made using information obtained on commodity availability, market price, and availability of funds. To determine a commodity's availability, AMS among other things reviews trade and market reports and talks to industry officials.

Following this, FNS determines through surveys the quantities of commodities the states desire. The matching of school preferences with parity and surplus removal considerations is taken into account in developing final purchase plans. Following approval of such plans, AMS issues a Food Purchase Report announcing the forthcoming purchases and also mails announcement/invitations and other applicable documents to all prospective bidders, trade groups, magazines, associations, and other interested parties on agency mailing lists.

Bids are requested on a free on board-origin or -destination basis depending on the type of commodity being procured. To meet distribution needs and avoid prolonged storage, frozen meat and poultry items are generally procured on a weekly or biweekly basis from late summer

Only commodities determined by the Congress or the Secretary of Agriculture as eligible for price support may be donated under this section. These items must be in surplus, and it must be shown that such dispositions are necessary to prevent waste. Section 416 commodities include dairy products, such as cheese, butter, and milk, and other foods, such as fats and oils, rice, wheat, and other grains.

Section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a-1) authorizes the Secretary of Agriculture to purchase with CCC funds dairy products for schools (other than fluid milk), domestic relief, community actions, and other authorized programs when CCC dairy stocks are insufficient.

In 1978, FNS began offering “bonus”² section 416 commodities to states for their child nutrition programs. This meant that once a state had used all of its original entitlement³ (or mandated level of commodity assistance, or “cash-in-lieu,” provided to domestic outlets) of one or more of the section 416 commodities, it could order additional commodities—all the state could use without waste.

Usually ASCS donates some commodities as a bonus under section 416. AMS will also donate foods requiring market assistance to various outlets as a bonus under section 32, when necessary.

Section 6

Section 6 of the National School Lunch Act directs the use of appropriated funds for USDA expenditure on agricultural commodities and other foods that are distributed to schools and service institutions participating in food service programs. In the event that full commodity assistance cannot be provided, section 6 requires USDA to make up any shortfall in commodity with cash in lieu of commodities. However, legislation requires that at least 75 percent of this assistance must be provided in commodities.

Emphasis is focused on high-protein foods, meat, and meat alternatives, which are preferred by schools but are usually not available under the surplus-removal activities. FNS’ policy has been to use section 6 funds to

²A “bonus” commodity is a food item that is not charged against a program’s appropriated funds, or entitlement.

³A state’s entitlement is based on the number of meals served during the year for school and child care food programs and the most recent 4 quarters of reported meals for the Nutrition Programs for the Elderly, times the rate of assistance.

The Commodity Distribution Program

This appendix is provided to broaden the reader's understanding of the various complex programs contained within the commodity distribution program. It provides background information on the legislative authority for the program, federal responsibility for operating the program, and major recipients of the program.

Legislative Basis for the Program

The commodity distribution program is centered on five major pieces of legislation: section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), section 6 of the National School Lunch Act (42 U.S.C. 1755), section 311 of the Older Americans Act of 1965 (42 U.S.C. 3030a), section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c nt), and section 14 of the National School Lunch Act (42 U.S.C. 1762a).

Section 32

Purchases under this section are intended to remove temporary market surpluses of perishable foods and to help stabilize farm prices. Section 32-designated commodities are purchased by AMS.

Section 32 is financed by a continuing appropriation of 30 percent of the import duties imposed on all commodities (both agricultural and nonagricultural) imported into the United States, as well as unused balances from the previous year of up to \$300 million. An additional \$500 million can also be appropriated to section 205 of the Agricultural Act of 1956 (7 U.S.C. 1855).

According to USDA, funds appropriated under section 32 must be used principally for purchasing surplus perishable, nonbasic (any agricultural commodity other than corn, cotton, peanuts, rice, tobacco, and wheat) agricultural commodities. "Surplus" has been defined by USDA as either physical (supplies exceeding requirements) or economic (prices below desired levels). In the case of an economic surplus, any nonbasic perishable commodity that has a market price of less than 100 percent of parity¹ can be purchased under section 32 authority.

Section 32 funds have been used to buy ground beef, applesauce, canned corn, canned tomatoes, whole frozen turkeys, and several other items. The Secretary determines which commodities will receive assistance and

¹According to Webster's Ninth New Collegiate Dictionary, 1986 ed., "parity" is an equivalence between farmers' current purchasing power and their purchasing power at a selected base period maintained by government support of agricultural commodity prices.

Agency Comments

In a draft of this report, we proposed that the Secretary of Agriculture direct the Administrator, FNS, to take the actions necessary to (1) complete the agency's ongoing implementation of its management evaluation planning process improvements for use in fiscal year 1990's and future planning cycles and (2) include in the process steps that will ensure that

- FNS' regional offices receive necessary guidance for their compliance reviews of commodity distribution program operations in time to effectively plan each fiscal year's management evaluations,
- the evaluations are conducted in a manner that best utilizes the reduced staff and travel resources available to conduct compliance reviews of state and local operations involving school and nonschool programs, and
- information necessary to effectively plan and conduct the evaluations is readily available including information to account for the donated-commodity inventories stored by distributing and recipient agencies.

In commenting on this report, USDA clarified the status of its efforts to provide more effective work load management and management evaluation planning processes. In this regard, USDA stated that it initially began using the new management evaluation planning process outlined in this chapter in August 1988 and that it was refined and somewhat more tightly structured for use in 1989. Accordingly, we modified the report to recognize (1) the transitional nature of the improvement actions that USDA was taking and (2) the need to complete its new planning process for use in fiscal year 1990's and future planning cycles in a manner that incorporated the improvement steps we outlined.

It was clear, on the basis of our review of headquarters and regional communications on the planning and conduct of FNS' management evaluations for fiscal year 1989, that serious concerns remained to be addressed under the new planning process. As discussed in this chapter, these concerns, raised by FNS headquarters and regional officials, regarded the need to improve the effectiveness of the management evaluation process. The concerns were raised during the period October 1988 through January 1989 in the context of planning fiscal year 1989 and future management evaluations. The points raised included the need to establish a timetable to complete the planning and issuance of final guidance in advance of each fiscal year's evaluation cycle and in a manner that recognized regional office resource limitations and maximized their use when planning the scope and coverage of each year's evaluations. On the basis of information subsequently provided by USDA officials in October 1989, the new management evaluation planning process was completed and used in fiscal year 1990's planning cycle; and

reported finding many of the same trends of noncompliance that were in the 1987 analysis. For example, six states in four regions were found to have problems with perpetual inventory logs and warehouses not reporting losses to distributing agencies.

Evaluations' Focus Appears Limited

The focus of the previously noted standards of practice that were included in the guidance FNS' regional offices will use to carry out their fiscal year 1989 management evaluations appears to limit the degree to which the adequacy of inventory management practices will be assessed against those performance standards. The standards were voluntarily implemented by state distributing agencies in 1988 to (1) improve program operations at the state level and (2) establish a uniform level of service provided by all states to their recipient agencies. With regard to inventory management, the standards require the periodic review of inventory records and the procedures for receiving, storing, and handling donated foods but are applied principally to school-related food distribution programs. It is not clear from FNS' fiscal year 1989 management evaluation guidance how the agency will assess the adequacy of inventory management practices as they apply to USDA foods donated to nonschool programs.

Conclusions

None of the comments in response to USDA's actions under the mandated reforms to the commodity distribution program specifically addressed the occurrence or potential of adverse impacts from USDA's not having met most of the legislated deadlines for completing specific program reforms. However, many comments did raise a broad range of concerns regarding their appropriateness and feasibility. These included continued concerns about the reliability of shipment and delivery schedules as well as concern about FNS' ability to effectively evaluate state and recipient agencies' implementation of the reforms.

Several of the associations believe USDA's effective and continual monitoring of the reforms' implementation is critical to their success and to the commodity distribution program's continued improvement. The 1987 act also recognizes the importance of effective oversight by requiring USDA to monitor state distributing agencies' performance in this regard. During the course of our work, however, we found that FNS (1) was doing significantly fewer management evaluations of the commodity distribution program than the program managers requested for fiscal year 1989 due, in part, to limited staff and travel resources; (2) needed a more effective system for planning the timing, content, and scope of its management evaluations; (3) did not issue final guidance needed for its

FNS' Ability to Evaluate Inventory Management Practices Is a Continuing Concern

A related and continuing concern of ours and USDA's OIG is FNS' ability to effectively monitor and account for donated-commodity inventories stored at the state and local level. Our past work has shown that FNS needed to improve its evaluation and monitoring of state distributing agencies' inventory management practices and of the state agencies' required review of inventory controls at the recipient agencies they service. As previously noted, a serious and continuing problem is the need for FNS to better plan the use of resources directed to the management evaluations that, in part, are used to monitor state and local inventory management practices. We continue to support increased use of management evaluations for this purpose. Another related problem recently reported by its OIG is USDA's need to develop a system and information to reconcile donated-commodity inventories stored at the state and local levels.

FNS has begun work to correct reported deficiencies and to improve its ability to assess state and local agency compliance with the requirements for storing, handling, using, and accounting for USDA-donated commodities. The agency planned to resolve these concerns by the end of fiscal year 1989. Given the significance of the previously reported need for FNS to strengthen its monitoring and evaluation of state and local inventory management practices, we believe that it is important that FNS' planned corrective actions be completed in a timely manner that avoids the lengthy implementation delays that FNS has experienced with some of the commodity reforms under the 1987 act and in issuing guidance for its past management evaluations.

At the time of our review, the extent of inventory management deficiencies at the state and local levels were not known, and the results of FNS' management evaluations will be important in this regard. It is not clear, however, from FNS guidance for its fiscal year 1989 evaluations whether its inventory management assessments will include nonschool programs.

Need for More Effective Work
Load Management and
Evaluation Planning Processes

- the agency needs 227 additional staff years to complete its required work, with the needs divided about evenly between headquarters and regional offices;
- management evaluation is an area that needs about 25 percent additional staff years overall; and
- about 27 percent of the total additional staff years needed in the regional offices are for management evaluations.

At the time of our review, FNS needed more effective processes for managing its work load or for planning its management evaluations. Our discussions with agency officials and the information they provided show an increased awareness within the agency that it needs improved methods of determining work load needs and management evaluation priorities across its programs so that scarce resources can be used to their best advantage. The agency, according to FNS' Administrator, recently contracted for developing a work load management system. In addition, according to agency officials, ongoing actions to improve FNS' management evaluation planning process were scheduled to be fully implemented in August 1989.

The agency's need to improve its management evaluation planning process was frequently noted in correspondence between headquarters and regional officials involved in planning the fiscal year 1989 evaluations. An example of that concern was an October 1988 memo from the Deputy Administrator of Special Nutrition Programs to FNS' regional administrators. In part, the memo questioned the value of the overall management evaluation process that the Deputy Administrator believed had become weak and ineffective as a management tool from efforts to reduce the evaluation's coverage because of the demands the process puts on regional office resources. Several of the regional administrators offered suggestions to improve the process. These included

- establishing a planning timetable that allows regional input in early summer and the receipt of final guidance no later than the beginning of the fiscal year (final guidance for commodity distribution program evaluations for fiscal years 1988 and 1989 was not issued by FNS headquarters until December 1987 and January 1989, respectively) and
- requesting that FNS' Office of Regional Operations (1) conduct its own regular management evaluations of regional office operations; (2) require more consistency between regions in conducting program management evaluations, including standardization of the format; and (3) provide annual feedback to the regional offices on the results from each fiscal year's program evaluations.

services that state agencies provide to recipient agencies were to be assessed as part of those evaluations.⁵ The adequacy of information on how well recipient agencies' needs are being met by state distributing agencies and the degree of state and recipient agency compliance with USDA rules and regulations will be determined in large part by how well FNS meets its management evaluation responsibility.

**FNS' Evaluation Coverage
Guidance Unachieved
Because of Constraints**

According to FNS officials, because of various resource and administrative constraints, the agency's regional offices completed evaluations for 26 of the 76 state distributing agencies for fiscal year 1988 and expect to complete 30 commodity distribution reform evaluations in fiscal year 1989.⁶ Our discussions with FNS officials and examination of the agency's files identified several reasons why FNS has not achieved its management evaluation coverage guidance for fiscal years 1988 and 1989. The principal reasons appear to be

- reduced FNS staffing levels over the past 6 years,
- limited travel resources and reduced numbers of experienced staff at the regional office level,
- the growing number and complexity of the programs FNS administers and a resultant increase in the agency's work load, and
- the need for more effective systems to manage FNS' work load and to coordinate the planning of the agency's management evaluation process.

Staffing Level

According to the FNS Administrator, FNS staffing shortages have resulted in some FNS activities' not being done as well as they could be. For example, according to the Administrator, management evaluations of state operations are not conducted as frequently as she would like because of insufficient staff. FNS officials told us that since fiscal year 1982, when the coverage goal for comprehensive commodity distribution program

⁵These are 39 standards that address state distributing agencies' responsibilities under the commodity distribution program. They cover communication and administration, ordering and allocations, distribution and delivery, and improving the quality and variety of food. They were developed jointly in March 1987 by USDA, the National Association of State Agencies for Food Distribution, and the American School Food Service Association. They were implemented on a voluntary basis during school year 1988 to help eliminate inconsistencies in the program's operation at the state and local levels. The standards emphasize performance improvements in school programs receiving USDA-donated commodities.

⁶Subsequent to our review, an FNS official told us in October 1989 that the agency completed 23 commodity reform evaluations covering standards of practice for commodity distribution program operations for fiscal year 1989. We did not independently verify the number of completed evaluations.

Significance of Adequate Program Monitoring

FNS' overall responsibility for administering the commodity distribution program includes evaluating state distributing agencies' and recipient agencies' performance and compliance with program agreements² and regulations. FNS uses management evaluations for this purpose. The evaluations are conducted annually by FNS' seven regional offices according to guidance provided by FNS headquarters.³ The 1987 act directs USDA to monitor the manner in which state distributing agencies carry out their responsibilities under the reforms. FNS' guidance to its regional offices on the fiscal year 1989 management evaluations emphasizes state distributing agencies' and recipient agencies' performance under the 1987 act.

The 1987 act recognizes the key role that state distributing agencies play in the overall system of commodity distribution and requires these agencies to undertake a number of activities designed to improve the degree to which their operations meet the needs of recipient agencies. A March 1988 USDA study⁴ noted that regardless of which state agency has responsibility for a specific food assistance program eligible to receive USDA-donated commodities, most of the 76 state distributing agencies perform a common set of functions. The study said that the most important of these are

- notifying USDA of the commodity preferences of recipient agencies, placing orders for commodities, and allocating donated foods among recipients;
- providing and/or arranging for the storage and transportation of commodities;
- submitting accountability records, utilization reports, and a verifiable list of eligible recipient agencies; and

²These are FNS' written agreements with state distributing agencies and the agencies' written agreements with recipient agencies and others, which provide that the distribution of foods donated by USDA will be done in accordance with (1) commodity distribution program regulations and (2) any instructions and procedures issued to identify the responsibilities of program participants.

³In January 1982, FNS published revised management evaluation guidance to provide the agency and distributing agencies with a tool to identify program strengths and weaknesses and evaluate the effectiveness of the distribution system. The guidance states that each fiscal year's management evaluations should include all distributing agencies, warehouses, processors, and food service management companies and a sample of recipient agencies selected at the discretion of the regional offices. The recommended sample size comprised 10 percent each of charitable institutions; nonprofit summer camps for children; elderly feeding programs under Title III of the Older Americans Act of 1965, as amended, (42 U.S.C. 3021-3030jj); commodity-only schools (now called commodity schools); and Indian tribal organizations.

⁴A Study of the State Commodity Distribution Systems, U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis and Evaluation, Mar. 1988.

the October 1988 proposed rules whose implementation is complex and controversial.

They also stressed the importance of USDA's continuing the improved dialogue that has taken place within USDA and between USDA and program participants, especially since the triagency task force was established to coordinate the implementation of program improvements. They said effective communication and coordination is essential to the successful implementation of the remaining reforms and to the efforts to improve the program, which should be continuous.

Response From Commercial Interests

The response from the commercial interests was mixed. Two associations representing elements of the seafood industry took the opportunity to reiterate their concerns that the "buy American" provisions implemented through the July 21, 1988, interim rule needed clarification. They provided specific comments to USDA in response to the July rule and did not believe it was proper to comment on other aspects of USDA's implementation efforts since they did not directly affect their industry. An association representing the public refrigerated warehouse industry stated that a continuing good relationship exists between the state distributing agencies and their industry under the commodity reforms. The association also reported that it found no instance, as of mid-February 1989, to indicate that USDA's commodity reform regulations, or their implementation, presented any problems.

An association representing segments of the frozen food industry told us that recipient agencies were in the best position to determine if any adverse impacts had occurred as the result of USDA's implementation delays. The association did, however, express its concern with some of the actions announced by USDA in the April notice. Specific areas of concern included USDA's efforts to implement the commodity field testing and the recipient agency cost/benefit needs assessments required under the reforms. According to the association representatives, USDA's position that it is now doing the required testing and assessments informally and will later formalize these processes (see ch. 2) is not acceptable and fell short of what the Congress intended. The association noted that the Congress knew what the agency was doing at the time it mandated the reforms; and therefore, a continuation of the prereform activity is not what the Congress intended. In addition, according to the association, some of its members' recent experiences indicate that the shipping and delivery problems that spawned some of the reforms still continue at the federal and state levels. The association is taking a wait-and-see attitude

management evaluation process. Related work by GAO and USDA's Office of Inspector General has identified, as continuing concerns, deficiencies in FNS' ability to conduct its management evaluations in a manner that effectively monitors and accounts for donated-commodity inventories stored at the state and local level for use in school and nonschool programs. At the time of our review, FNS had actions in process directed at improving its management evaluation planning process and at resolving related inventory management deficiencies.

Public Comments in Response to Interim and Proposed Rules

USDA invited comments for its interim rules published by FNS on June 16, 1988, and July 21, 1988, and its proposed rules published October 20, 1988. FNS received comments from 228 respondents, representing state and recipient agencies, associations, commercial enterprises, advocacy/advisory groups, and government agencies. The respondents did not cite any adverse impacts that might have been the result of USDA's delay in implementing any of the reforms. Instead their comments focused on specific sections of the rules and highlighted several concerns pertaining to both the results of USDA's discretionary rule-making authority and the language of the law itself. For example, some respondents believe that the cost of implementing some reforms outweighs their need and cited required procedural changes that involve commodity replacement inspections and records of domestic purchases that were stipulated by the rules. Others objected to the frequency of needs-assessment reporting by state agencies and the value of state agency warehouse and distribution system evaluations that are specified by the law. Other respondents viewed some regulations and proposals as needing clarification, such as the "buy American" rules, which some respondents wanted clarified to specify what would be considered foreign purchases under the rules.

A few respondents viewed some reforms as not doable, such as the mandated semiannual collection of commodity acceptability information from the broad range of recipient agencies receiving donated commodities. In addition, a few respondents viewed some regulations and proposals as incompatible with some state laws. As an example, under Washington state law, private carriers, such as commercial distributors, can deliver only goods that they own and would not be allowed to deliver donated commodities that belong to state distributing agencies. This has relevance for the 1987 act's requirement that state distributing agencies consider commercial alternatives when evaluating and implementing the most cost-effective and efficient systems for providing warehousing and distribution services to recipient agencies.

legislative requirements. As a result, the agency saw no need for the revised work plan we are recommending, which USDA said also goes beyond the act's requirements.

We revised the report to more clearly present the positive actions that USDA has taken to implement the reforms. We believe that the report does not imply that USDA did not act in good faith. We recognize throughout this chapter the various factors that limited USDA's ability to promulgate regulations within the time frames set forth in the act. However, we have a basic disagreement with USDA on what remains to be done in response to the act's reforms. Although USDA has worked through many of the constraints identified in our report, additional actions are necessary to complete the implementation process.

We view the act's full implementation as going beyond USDA's issuing final rules. It should include USDA's ensuring that the reforms are implemented consistently by all organizations in a manner that provides for a uniform interpretation and application of the reforms at the federal, state, and local levels. We see the formalized procedures and guidance intended by USDA as part of its implementation efforts as important to achieving that result and as actions that are consistent with the 1987 act's intent. Our recommendation is directed at providing greater assurance that the act's consistent application is accomplished.

USDA's comments and GAO's response are detailed in appendix VI.

rule making and could likely result in inconsistent testing and monitoring procedures by state agencies. With regard to FNS' formalization of the field testing and the recipient agency needs-analysis procedures discussed in the April 1988 notice, they said that no expectations had been set by FNS, at the time of our review, for completing these actions.

Conclusions

As discussed in chapter 1, the legislative history of the 1987 act and the language of the act itself are specific regarding the timing and purpose of the commodity distribution program reforms USDA was required to implement. The legislative history is also specific on the importance of USDA's implementing the reforms in an acceptable manner that provides for a uniform interpretation and application of the reforms at the federal, state, and local levels. In our view, consistent and complete implementation of all the reforms is essential if they are to have the effect anticipated by the Congress when it passed the act. In addition, the act's full "implementation" goes beyond issuing rules and includes USDA's ensuring that the reforms are in fact implemented consistently by all organizations and that appropriate monitoring and coordinating mechanisms are in place. Otherwise, the program may encounter many of the same problems that led to the reforms in the first place.

USDA officials recognize the difficulties involved in making the required changes and their importance to the commodity distribution program's future operation, but as of May 1989, USDA had not revised its outdated January 1988 work plan to guide the reforms' completion. Although FNS is responsible overall for implementing the remaining reform actions for 10 of the 1987 act's reforms, some of which involve AMS and ASCS activities, it had not updated the January 1988 work plan to provide revised time lines or the tasks required for the reforms' completion.

Not having an updated work plan to (1) complete the remaining commodity reform actions and (2) coordinate the activities of FNS, AMS, and ASCS in this regard could contribute to further delay. It could also adversely affect the timely, successful implementation of the reforms by all parties involved, in a manner that ensures uniform and consistent implementation of these reforms at the federal, state, and local levels.

In our view, USDA's implementation efforts will not fully meet the Congress' expectations unless they include steps to ensure that all reforms under the 1987 act will be completed without further delay and be applied uniformly and consistently throughout the commodity distribution program. This requires USDA's timely completion of the proposed

uniformly and consistently at the state and local levels, as intended under the legislation. Also, such guidance would provide a basis for monitoring state distributing agency performance under section 3(b)(1)(B).

As of May 1989, USDA had not yet developed guidance for the required testing and monitoring. According to FDD officials, they intended to develop guidance on the basis of the comments received, but none of the comments provided information in this regard. At the time of our review, the FDD Director told us that, as a result of the lack of comments, FNS would not provide the intended guidance. According to the Director, the state agencies required to conduct the subject testing and monitoring will be told of FNS' decision in a final rule planned for July 1989. It appears that in the absence of uniform guidance from FNS in this regard, the various distributing agencies involved will be required to develop their own procedures, which could likely vary considerably from agency to agency. If so, this could cause operational inconsistencies that the 1987 act is supposed to avoid.

USDA's Plan for Implementing Public Law 100-237 Is Outdated and Its Expectations for Completing Some Reforms Are Not Clear

Despite the 6 yet-to-be implemented and 4 still incomplete reforms, FNS' work plan for the implementation of the 1987 act had not been updated since January 1988 to provide revised time lines or tasks for completing these 10 reforms. FNS' January 5, 1988, implementation work plan, which called for USDA's implementation of the reforms under section 3 to be completed by October 1988, had not been updated as of May 1989 to (1) provide new implementation dates for the 6 reforms under the October 20, 1988, proposed rules or (2) specify pending actions for completing the formalized USDA procedures or state agency guidance involving 4 of the 25 reforms that USDA implemented through the April 19, 1988, Federal Register notice and the interim rules issued June 16, 1988, and July 21, 1988.

The FDD Director told us that FNS does not intend to update the work plan. According to the FDD Director, FNS does not see a need to revise its implementation work plan because except for the proposed regulations that were not implemented at the time of our review, FNS considered all other reforms to have been implemented in a manner that complied with the 1987 act. The Director told us that FNS viewed all the other actions in the April 1988 notice and subsequent rules that were incomplete at the time of our review to be refinements that were not required under the act. The FDD Director told us that the refinements include USDA's efforts to formalize the recipient agency needs-analysis procedures previously

formalizing of the procedures that were intended under USDA's response in the April 1988 notice. In the absence of the required procedures, AMS officials provided us with an explanation of the analysis and planning activities the April notice referred to, which it uses to match its commodity purchases with the needs of recipients serviced under the various food assistance programs. They said their analysis involves those recipients who are eligible to receive the food items purchased by AMS under the section 32 and section 6 authorities described in appendix I. According to the AMS officials, they interact extensively with FNS in conducting the analysis under terms of a November 1984 memorandum of understanding. We determined that the memorandum of understanding briefly defined their responsibilities and functions in this regard and had not been updated since 1984. It also described the responsibilities and functions assigned to ASCS under the commodity distribution program prior to the 1987 act's reforms.

We also asked the FNS official responsible for coordinating its implementation of the 1987 act's reforms for an explanation of the April notice's reference to formalized procedures under USDA's response to section 3(f)(1). The FDD Director told us that the language in the April notice, which states "[a]s required by law, the Department [USDA] intends to formalize procedures for the analysis of RA [recipient agency] needs...", means only that FNS intends to formalize the product tests and some other sources of information used by FNS and AMS in their coordinated needs analysis process briefly described in the notice. FNS' and AMS' current needs analysis activities, according to the FDD Director, provide for a systematic review of recipient agency needs; and FNS has no plans to provide AMS with any guidance for the formalization of the recipient agency needs analysis process itself. The Director said that the only information that FNS intends to furnish AMS in this regard will be the results from FNS' commodity field testing under section 3(g), complaint reports on donated commodities, and the semiannual collection of commodity acceptability information required under section 3(f)(2).¹²

As noted previously, USDA's field testing procedures are in the process of being formalized. Also, FDD officials and staff told us that the initial submission of the semiannual commodity acceptability information to USDA was incomplete, inconsistent in the form submitted, and of limited use. They said that corrective measures, including developing a standardized

¹²Distributing agencies were directed by the July 21, 1988, interim rule to gather commodity acceptability information from recipient agencies semiannually and report it to USDA by November 30 and April 30 of each year.

purchases done prior to offering large quantities through distributing agencies and (2) intends to establish more formal field testing procedures.

On the basis of our discussions with FDD officials and staff and our examination of their files, the current informal process that USDA uses to field test the acceptability of new commodity types and forms with recipient agencies relies heavily on oral communication, involves minimal documentation of test arrangements or the results, and limits the tests to school programs because (1) they are the largest single users of donated commodities and (2) the tests are, for the most part, charged against the entitlements of the school food programs that agree to participate in these tests. In the absence of written procedures or formal criteria that are required to be followed in conducting these tests, they can vary considerably in size of operation. In school year 1988, for example, test quantities for the four new products that FNS officials say were tested⁹ ranged from a few cases of spiral macaroni distributed to a couple of regions close to FNS headquarters to 35 truckloads of fish nuggets allocated to each of FNS' seven regional offices. Also, the methods for communicating test results vary from the use of telephone, which an FDD official told us was most typical, to written summaries of responses when suggested survey questions are used.

For school year 1989, USDA reported in March 1989 that it intended to test three new products—ground turkey, wafer steaks, and low-salt cheese.¹⁰ The first of these was the only test scheduled at the time of our review and involved a total of 50 truckloads of ground turkey that FNS officials told us they began testing in each state in February 1989.

At the time of our review, no written procedures or criteria existed for administering the informal field tests or for reporting test results; nor had USDA estimated when it intended to establish more formal field testing procedures. According to the FDD Director, the April notice's reference to formal procedures means that USDA intends to (1) develop a test survey form that will be cleared through OMB and (2) issue an FNS

⁹FNS officials told us that in school year 1988, USDA field tested frozen whole eggs, fish nuggets, refried beans, and spiral macaroni. We did not independently verify the arrangements for these tests or their results because FNS does not maintain test files for these products and the information we requested for three of the tests was not readily available.

¹⁰USDA's March 3, 1989, report to the Congress under section 3(k) of P.L. 100-237. An FDD official subsequently told us that the wafer steak and low-salt cheese products noted in USDA's March report would not be tested in school year 1989 because of adverse marketing conditions involving the processing of wafer steaks and the limited supply of cheese.

of the 1987 act requiring twice-a-year collection of commodity acceptability information from all recipient agencies, especially those that operate for only a few months of the year. USDA recommended a legislative change in this regard, which is discussed later in this chapter.

Regulatory Consistency

USDA's consideration of separate regulatory and legislative actions that were related to the 1987 act's commodity reforms also contributed to the implementation delays. USDA officials told us that a number of other regulatory changes and legislative reform proposals involving the commodity distribution program were in process at the same time the required reforms under the 1987 act were being developed and cleared by USDA and by OMB. USDA's reform actions under the 1987 act had to be made consistent with those separate but related regulatory changes and legislative proposals.

The regulations being processed concurrently included extensive revision of the regulations covering the distribution of donated foods under 7 CFR Part 250 that

- strengthened provisions for inventory controls, use of program funds, audits, contracting of storage facilities, and management evaluation reviews;
- restructured the regulations to simplify their organization;
- revised provisions for agreements between distributing and recipient agencies; and
- stipulated provisions for the processing of donated foods.

An interim rule implementing these related changes was published in the June 3, 1988, Federal Register but did not reflect any of the changes required by the 1987 act. Thus, the rules implementing or proposing regulatory changes for the required commodity reforms had to be made consistent with the June 3, 1988, regulations or incorporate, as part of the rules, whatever compatibility changes were necessary. This coordination took place as a part of the regulatory clearance process.

In addition to the regulations, according to FDD's Director, FNS recommended that several legislative proposals to amend the commodity reforms be included in USDA's fiscal year 1990 budget submission. The Director told us these proposals helped to shape USDA's required report to the Congress under the 1987 act (section 3(k)) on the implementation and operation of the reforms. The Director said this report, due January 1, 1989, was not issued until March 3, 1989, due in part to the time

Appendix I describes the operations of the food assistance programs that receive USDA-donated commodities and the broad range of legal authorities that govern how USDA acquires and donates the foods involved. Appendix II shows the broad range of processed and unprocessed food items donated by USDA under its various authorities, which may or may not apply to a specific category of recipients.

Food Types and Forms

The 1987 act requires that semiannual food preference information on the full range of USDA-donated commodities be obtained from all recipient agencies (section 3(f)(2)). Also, the act requires that options on pack sizes and forms be provided to these agencies (section 3(b)(1)(A)). However, under some of the food assistance programs, the types and forms of donated foods available to eligible recipients are limited by the programs' operating procedures or the authorizing legislation. Examples are the Temporary Emergency Food Assistance Program (TEFAP) and the Commodity Supplemental Food Program. Both of these programs have systemic or statutory constraints that limit the types and forms of donated commodities they are able to distribute. Under TEFAP, recipients are limited to specific types of donated food items⁸ that are packaged in forms suitable for home storage and consumption. Under the Commodity Supplemental Food Program, food packages are designed to provide specific foods that are tailored to the nutritional requirements of the women, infants, children, and elderly persons targeted to receive them. The food needs and food options available to these programs differ significantly from other programs that are eligible to receive the entire range of foods USDA makes available in forms more suitable to the institutional needs of schools and other organizations. Food Distribution Division (FDD) officials and staff told us they were concerned that the act's applying its food preference data-gathering and testing provisions to all recipient agencies could create false expectations for some recipients that are limited in the food types and forms they are eligible to receive.

Delivery and Storage Systems

Other factors that had to be considered by USDA in its design of some required reforms, such as those that involve statutory warehousing and distribution system evaluations or the criteria for service fees, were the many delivery and storage systems that vary considerably from program to program in terms of their size and complexity. For example, the

⁸In fiscal year 1988, TEFAP participants received butter, process cheese, nonfat dry milk, cornmeal, flour, honey, milled rice, and durum wheat. For fiscal year 1989, under terms of the Hunger Prevention Act of 1988 (P.L. 100-435), USDA purchased, as additional TEFAP commodities, peanut butter, dried egg mix, canned beans, canned pork, and raisins. These commodities are packaged in household sizes specifically for TEFAP distribution.

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Table 2.5: Key Issues and Concerns That USDA Examined to Determine Its Response to Reforms Viewed as Complex

Reform/issue(s) or concern(s) status	Implementation status
<p>Section 3(j), the per-meal-value of donated commodities offered to school food authorities.</p> <p>Difficult for some distributing agencies to obtain consistent data upon which to base commodity offerings because of the variety of factors the agencies used to offer and allocate foods prior to the reform.</p>	<p>Implemented through the interim rules issued on 07/21/88 and made retroactively effective to 01/08/88.</p>
<p>Section 3(d), the evaluation and use of the most cost-effective and efficient warehousing and distribution systems</p> <p>Need to define what is meant by a cost-effective and efficient system for providing warehousing and distribution services to recipient agencies.</p> <p>Variety of warehousing and delivery systems being used by distributing agencies and the uniqueness of systems that serve nonschool programs.</p> <p>Costs, technical expertise, and extensive data needed to conduct required financial and cost/benefit analyses.</p>	<p>Covered under the proposed rules published on 10/20/88 but not yet implemented through final rules as of May 1989.</p>
<p>Section 3(e)(1)(A), the development of mandatory criteria for the service fees assessed by distributing agencies.</p> <p>Relationship of this provision to the warehousing and distribution systems required under section 3(d).</p> <p>Need to identify a base level of warehousing and distribution services for all states.</p> <p>Determine data required from states to justify assessment rates.</p> <p>Need for methods of analyzing costs to ensure the costs are not excessive.</p>	<p>Covered under the proposed rules published on 10/20/88 but not yet implemented through final rules as of May 1989.</p>
<p>Section 3(h), the required purchase of food products that are produced in the United States, unless exempt.</p> <p>Need to define food products produced in the United States</p> <p>Identification of circumstances under which the requirement should be waived (i.e., circumstances in addition to the ethnic preferences in the law) and the appropriate level for waiver approval.</p>	<p>Implemented through the interim rules issued on 07/21/88 and made retroactively effective to 01/08/88.</p>

(continued)

- good cause existed for publishing the rules without such notice and comment and for making the rules' provisions effective retroactive to the implementation dates established in the law.

The Administrator's decision was made under provisions of the Administrative Procedure Act (APA) requiring an executive agency to provide public notice and an opportunity for interested parties to comment before issuing final substantive regulations or rules (5 U.S.C. 553(b) and (c)). The notice and comment requirements are not necessary when the agency, for good cause, finds that they are impractical, unnecessary, or contrary to the public interest. The agency must provide a brief statement of its reasons for using this exception. The act also provides that a final substantive regulation becomes effective 30 days after publication, unless the agency, for good cause, determines that an earlier effective date is required (5 U.S.C. 553(d)).

Comments on the 10 reforms under the interim rules were requested from interested parties as a part of their implementation through USDA's June and July 1988 rule making (see ch. 3). The comments were to be evaluated and final rules would subsequently be issued. At the time of our review, FNS officials told us they expected to issue the final rules in July 1989.⁴

We met with USDA officials to determine the legal basis for the good-cause provisions they employed to implement the reforms under the interim rules without the notification, public comment, and effectiveness constraints otherwise required under the APA. According to USDA officials, the statutory deadlines justified use of the APA good-cause provisions. Federal courts, according to these officials, recognize statutory deadlines as a sufficient basis for dispensing with the APA notice and comment requirements. However, these officials acknowledged that the courts are divided on whether such a factor standing alone is an adequate justification.

With regard to retroactivity, a 1988 Supreme Court decision⁵ stated that when a law grants rule-making authority to an agency, it does not include the power to promulgate regulations retroactively, unless

⁴Subsequent to our review, FNS staff informed us in October 1989 that final rules incorporating interim rule comments were in process.

⁵*Georgetown University Hospital v. Bowen*, (1988)(57 LW4057).

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Table 2.3: Calendar Days Taken to Complete the Notice and Rules Covering the Reforms Under Public Law 100-237

Phase	Notice—	Interim rules		Proposed rules—
	04/19/88	06/16/88	07/21/88	10/20/88
1. Development through OGC clearance	62	95	121	185
2. OMB clearance ^a	^b	39	44	46
3. FNS Administrator's approval and Federal Register publication	9	7	7	3
Total	71	141	172	234

Note: The start of the first phase for the notice was February 9, 1988; and for each of the rules, it was January 28, 1988, February 1, 1988, and March 1, 1988, respectively. This was determined on the basis of our discussions with FNS staff and a subsequent examination of FNS regulatory files.

^aIncludes time taken by USDA to incorporate OMB-suggested changes—25 days for changes to the July 21, 1988, interim rules and 1 day for the proposed rules. The April 19, 1988, notice did not require OMB clearance, and no additional time was required to incorporate OMB's comments on the June 16, 1988, interim rules.

^bNot applicable.

Unrealistic Implementation Time Frames

Prior to the enactment of the 1987 act, USDA officials objected to the congressionally mandated deadlines for implementing specific reforms within 90 and 120 days of the law's enactment date. They believed that the deadlines were unrealistic and could not be met because the time allowed to design and issue required regulations would limit public input and cause confusion. These deadlines applied to the four commodity distribution program reforms described in table 2.4. The table also shows the mandated dates for their completion, the dates of the interim rules USDA used to implement them, and the additional time USDA used for their implementation.

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10 reforms (4 under the interim rules and 6 under the proposed rules) missed their mandated implementation deadlines. Appendix IV shows the implementation status of each reform under the notice and the interim and proposed rules as of May 1989.

Table 2.1: Comparison of Planned/Actual Dates for the Notice and Rules Covering the Reforms Under Public Law 100-237, as of May 1989

Action	Publication date(s)	
	Planned	Actual
Federal Register notice announcing USDA's plan for implementing the 1987 act and describing USDA's actions in response to 15 reform provisions that were directed at USDA operations and were being implemented through the notice. ^a	02/88	04/19/88
Interim rules amending regulations under 7 CFR Parts 250 and 210 to implement 10 reform provisions affecting states' responsibilities regarding commodity purchases, allocation, replacement, delivery, testing, and value; also for information gathering and dissemination. ^b	04/88	06/16/88 & 07/21/88
Proposed rules to obtain comments on proposed regulations under 7 CFR Part 250 before implementing 6 reform provisions regarding distributing agencies' warehousing and distribution systems, service fees, and minimum performance standards. ^c	04/88	10/20/88
Final rules incorporating public comments on the interim and proposed rules.	10/88	Pending as of May 1989

^aThe notice included three reforms that were to be completed within 270 days of enactment.

^bThe interim rules included two reforms that were to be completed within 90 days of enactment, two that were to be completed within 120 days, and three that were to be completed within 270 days.

^cAll six reforms under the proposed rules were to be completed within 270 days of enactment.

Some Commodity Reforms Were Delayed and Some Are Incomplete

Section 3 of the 1987 act set specific time frames within which implementation of 16 of the 31 reforms was to be completed. Six of the 16 reforms were implemented prior to the expiration of their legislated deadlines. The remaining 10 reforms missed their mandated implementation dates for a variety of reasons that involved USDA's administrative procedures and the complexity of the law itself.

As of May 1989, USDA had implemented 25 of the 31 reforms required by the act, and 6 remained to be implemented.¹ Four of the 25 that had been implemented were awaiting actions, which USDA stated it would take, to formalize procedures or provide guidance on their consistent and uniform operations at the federal, state, or local level. Also, FNS had not updated its January 1988 work plan covering the implementation of the 1987 act to provide revised time lines or a statement of the tasks required for completing these 10 reforms. As a result, USDA's time frame for full implementation of the reforms was uncertain.

Reasons Why Legislated Reform Deadlines Were Missed

It is apparent that the 1987 act intended that specific commodity reforms were to be implemented by the Secretary of Agriculture in a timely fashion. The act directed the Secretary to implement 16 of the required reforms within 90, 120, or 270 days of enactment. However, USDA was unable, for the most part, to meet the act's implementation target dates for 10 of the 16 reforms. USDA officials told us that the principal reasons for the delays were

- USDA's comprehensive and time-consuming regulatory clearance process,
- the unrealistic 90- and 120-day implementation time frames covering several of the reforms,
- the complexity of some reforms,
- the difficulty of matching some recipient agency program operations with reform requirements, and
- the need to ensure the consistency of the various commodity reforms with separate but related regulatory changes being administered concurrently by FNS.

Regulatory Clearance Procedures

USDA officials told us that USDA's procedures for determining the types of action (regulatory and nonregulatory) that USDA would use to implement the 31 commodity reforms required reviews and approvals that were

¹Subsequent to our review, these six reforms were implemented through final rules issued by USDA on October 17, 1989.

To identify actions taken by USDA to implement the reforms, we monitored actions and activities described in USDA's implementation plan published in the April 19, 1988, notice and compared actions taken and planned by USDA with those stipulated by the act. We interviewed USDA officials and staff at the headquarters of the FNS, ASCS, and AMS and reviewed these agencies' files to (1) determine the status of USDA's efforts to implement the required reforms and (2) document the timing and sequencing of USDA's implementation actions and the results of those actions.

In addition, we examined the legal requirements that the act and related federal statutes, such as the Administrative Procedure Act, imposed on USDA and determined the legal basis for USDA's actions to meet those requirements.

To determine the reasons for cases where USDA did not meet the required timing of the reforms, we examined agency files and discussed these matters with USDA officials and staff, including officials in USDA's Office of General Counsel. We also interviewed members of USDA's triagency task force that coordinated and monitored USDA's implementation of the commodity distribution program reforms under section 3 of the act.

To determine whether USDA's implementation actions or its not meeting some of the deadline requirements under section 3 has had any adverse impact on the distribution of commodities to state and recipient agencies, we relied on comments provided by respondents to USDA's public announcements regarding its reform actions under the act. For actions where USDA did not invite public comments as part of the reforms' implementation (for example, administrative or procedural changes not requiring public notification), we obtained comments from national associations to determine the reactions of the state, recipient, and commercial interests they represent that participate in the commodity distribution program (see ch. 3). In this regard, we contacted national associations that either commented on USDA's regulatory actions under section 3 or participated in the congressional hearings that helped shape the reforms. These associations included some that are closely monitoring USDA's implementation efforts.

We performed our work primarily from June 1988 through April 1989. Except for our review of the regulations USDA used to implement some reforms and the general process USDA will use to conduct its evaluations of the 1987 act's implementation, we did not include the examination of USDA's internal controls in our work. Otherwise, we performed our

donated commodities. Also, the Secretary is required to monitor state distributing agencies' operations and to require these agencies to test and to develop a system to monitor recipient agencies' acceptability of processed products made with USDA-donated commodities.

USDA's Efforts to Implement the Reforms

USDA officials recognize the reforms' importance to the commodity distribution program's future operation and have taken steps to implement the reform initiatives jointly proposed by ASFSA and NFFA as well as those required by the act. More than a year before the January 1988 enactment of the reform legislation, the Secretary of Agriculture

- ordered a comprehensive review of the commodity distribution program;
- established a program of "special commodity initiatives" to improve the donation of commodities through the National School Lunch Program; and
- appointed a departmental task force to coordinate the activities of FNS, ASCS, and AMS in implementing the reforms proposed by ASFSA and NFFA.⁵

According to USDA officials, work on some of the 1987 act's reforms had been started, prior to the 1987 act's enactment, under the special commodity initiatives task force's responsibilities. These responsibilities were subsequently expanded to include coordinating USDA's triagency efforts to implement the reforms mandated under the 1987 act. The task force, headed by the Deputy Secretary, included the Administrators of FNS, AMS, and ASCS and periodically reported the status of the reform initiatives to the Secretary and to association representatives.

On January 5, 1988, FNS developed a work plan for implementing each of the reforms mandated under section 3. The plan described tasks for implementing the various reforms within the time frames specified by the 1987 act⁶ and established time lines for using a Federal Register notice and a combination of interim, proposed, and final rules and administrative actions to implement all of the reforms by October 1988. On April 19, 1988, USDA's implementation plan was published in the Federal Register. The plan showed that

⁵The task force became inactive with the change in administration but was reactivated by the new Secretary in April 1989.

⁶Of the 31 reform provisions required under section 3, 16 have specified completion dates. The provisions that were not time-specific were generally effective on January 8, 1988, the date Public Law 100-237 was signed into law.

recommended improvements, the associations promised to support future legislation to offer a commodity letter-of-credit option to all states.⁴

Legislated Changes

In response to these studies, and the 1986 resolution, USDA began addressing these long-standing concerns but believed that it needed additional statutory authority in this regard. The Congress responded to the need for commodity distribution program reforms by mandating the broad range of changes required under the Commodity Distribution Reform Act and WIC Amendments of 1987 (P.L. 100-237), signed on January 8, 1988. The purpose of the 1987 act was to improve

- the manner in which agricultural commodities acquired by USDA are distributed to recipient agencies,
- the quality of the commodities that are distributed, and
- the degree to which such distribution responds to the needs of the recipient agencies.

Section 3 of the act directs the Secretary of Agriculture to implement 31 commodity distribution program reforms to achieve the act's purpose. These reforms were designed to recognize the need to effectively balance removing agricultural surpluses from the market while providing nutritious high quality foods to recipient agencies in a uniform and consistent manner. The act's language and its legislative history are specific regarding time requirements for USDA's implementing the reforms. The legislative history is also specific on the importance of USDA's implementing the reforms in an acceptable manner that provides for a uniform interpretation and application of the reforms at the federal, state, and local levels and avoids past inconsistencies that the reforms are designed to resolve.

The Congress legislated the reforms to provide USDA for the first time the statutory base USDA believed it needed to improve the program. The act directs the Secretary to use the agency's new statutory authority in a timely manner to implement many of the recommendations made by recipient agencies and others interested in the commodity distribution program's reform. Many of the changes required under section 3 had to

⁴A commodity letter-of-credit system provides schools with letters of credit equivalent to the USDA-assigned value of the donated commodities to which they are entitled. The letters of credit must be spent on the same domestically produced commodities that are donated by the USDA under the commodity distribution program. The commodities can be purchased locally in a form best suited to the school's needs.

Table 1.1: Amount and Value of Commodities Donated to Domestic Food Programs by USDA During School/Fiscal Year 1988

Program ^a	Volume of orders		Value of orders	
	Pounds in thousands	Percent of total	Dollars in thousands	Percent of total
Child Nutrition Programs				
National School Lunch Program ^b	1,445,098	54.1	\$862,276	50.9
Child Care	14,337	0.5	14,342	0.8
Summer Food Service	1,825	0.1	1,061	0.1
Supplemental Food Program				
Commodity Supplemental Food Program	94,810	3.6	54,302	3.2
Food Distribution Programs				
Food Distribution on Indian Reservations	101,261	3.8	48,996	2.9
Nutrition Program for the Elderly ^c	25,939	1.0	16,759	1.0
Charitable Institutions	281,243	10.5	150,241	8.9
Temporary Emergency Food Assistance	694,059	26.0	537,912	31.8
Disaster Feeding	3,124	0.1	964	0.1
Summer Camps	8,114	0.3	5,881	0.3
Total	2,669,810	100.0	\$1,692,734	100.0

Notes: Totals might not add because of rounding.

October-September years for all programs except schools, which are July-June.

^aIn addition to these programs, USDA also had authority to purchase commodities or direct surplus and price-supported items for donation to the Special Supplemental Food Program for Women, Infants, and Children (WIC) in fiscal year 1988. However, none were provided by USDA for the WIC program in fiscal year 1988.

^bIncludes commodities distributed under the School Breakfast Program.

^cIncludes commodities distributed under the Area Assistance for the Aging Program.

Source: FNS, Commodity Orders

Reasons for the Reforms

Over the last decade, an intense debate has occurred among farmers, food processors and distributors, distributing agencies, program recipients, and others about the effectiveness of the commodity distribution program. In recent years the goals of removing surpluses and providing a variety of nutritious foods to assist the broad range of donated-commodity recipients have been in frequent conflict. Schools, programs to feed the elderly and the needy, and other recipients often received quantities and kinds of food in a manner that increased recipient agency storage and handling costs and hindered the effective use of donated commodities. Specific concerns included the need to

Introduction

Through the commodity distribution program, the U.S. Department of Agriculture (USDA) donates food to various eligible domestic program outlets, called recipient agencies. These agencies participate in the child nutrition programs (e.g., school lunch and breakfast programs); the commodity and special supplemental food programs; and the food distribution programs servicing needy families on Indian reservations, charitable institutions, the elderly, and households eligible for emergency food assistance. The commodities to be donated are those purchased with direct appropriations to meet statutorily required assistance levels and those purchased under USDA's price-support and surplus-removal authorities. The authorizations are included under a broad range of agricultural and food assistance laws that date back to 1935. Appendix I provides additional information on program legislation and operations.

The commodity distribution program has multiple goals. These include (1) providing needy persons with access to a more nutritious diet, (2) improving the eating habits of the nation's children, and (3) stabilizing farm prices by removing surplus commodities from the market and purchasing commodities covered under price-support programs. Since the early 1950s, the commodity distribution program has expanded and undergone a number of alterations as the mandate to feed the needy was extended and as conditions in the agricultural economy changed.

USDA purchases a wide variety of foods to help meet the needs of recipient agencies. In addition, USDA arranges and pays for the initial processing and packaging of the food and for transporting it to designated points within each state. State agencies are then responsible for storing the food, transporting it throughout the state, and distributing it at the local level to eligible recipient organizations. The substantial variation in operational procedures among the states, the diverse needs of eligible recipients, and changes in the agricultural markets from year to year add to the complexity of the program's administration at the federal, state, and local levels.

USDA's Food and Nutrition Service (FNS) administers the program aided by two other USDA agencies, the Agricultural Marketing Service (AMS) and the Agricultural Stabilization and Conservation Service (ASCS).

- FNS has overall responsibility for administering the commodity distribution program. This includes determining who are eligible to receive the donated food and what their needs are. Working jointly with AMS and ASCS, FNS is responsible for coordinating recipient agency preferences

Abbreviations

AMS	Agricultural Marketing Service
APA	Administrative Procedures Act
ASCS	Agricultural Stabilization and Conservation Service
ASFSA	American School Food Service Association
CCC	Commodity Credit Corporation
FDD	Food Distribution Division (USDA)
FNS	Food and Nutrition Service
GAO	U.S. General Accounting Office
NASAFD	National Association of State Agencies for Food Distribution
NFFA	National Frozen Food Association
OIG	Office of Inspector General
OMB	Office of Management and Budget
TEFAP	Temporary Emergency Food Assistance Program
USDA	U.S. Department of Agriculture
WIC	Special Supplemental Food Program for Women, Infants, and Children

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lished on October 20, 1988. Four of these six—described by agency officials as complex and controversial—involve mandated evaluations of state distributing agencies' warehousing and distribution systems; a fifth would establish criteria for state agency storage/delivery service fees charged recipient agencies; and the sixth reform would establish minimum performance standards for state distributing agencies. As of May 1989, FNS officials estimated that final rules implementing these reforms would be issued in July 1989. Subsequent to GAO's review, USDA issued final rules on these reforms on October 17, 1989.

USDA needs to formalize procedures and finalize guidance for the required testing and monitoring activities of state agencies to complete four implemented reforms. As of May 1989, FNS officials did not know when the formalized procedures would be completed. They planned to issue a final rule on the guidance in July 1989.

Although FNS is responsible for implementing the 1987 act's reforms—some involving other services' activities—as of May 1989 it had no current plan for their completion. Its January 1988 work plan was not updated with revised time lines or the tasks required for the reforms' completion. GAO believes an up-to-date plan is needed to help avoid further delays and ensure the reforms' consistent and uniform operation.

Reasons for Unmet Time Frames

Of the 31 reforms, the 1987 act set implementation time frames for 16. USDA implemented 6 of these reforms before the legislated deadlines; 10 missed their mandated dates for a variety of reasons. According to USDA officials, the delays were caused principally by (1) the sometimes lengthy USDA regulatory clearance process, (2) some unrealistic implementation time frames, (3) the complexity of some reforms, (4) the difficulty of applying the reforms to agencies with differing program requirements, and (5) the need to ensure the consistency of some reforms with other regulatory changes.

No Indication of Adverse Impact, but Other Concerns Raised

Public comments on USDA's published regulatory changes (rules) made in response to the reform act, as well as comments to GAO by affected national associations, did not cite specific adverse impacts from USDA's implementation delays. Many did take issue with the appropriateness and feasibility of specific reform requirements or proposals and raised some concerns resulting from USDA's discretionary rule making; others involved changes that were specified by the law. Both commenters and FNS officials identified concerns about staffing, resources and delays in

Executive Summary

Purpose

Following a decade of concern about problems with the Department of Agriculture's (USDA) program to distribute agricultural commodities, the Commodity Distribution Reform Act and WIC Amendments of 1987, Public Law 100-237, required the Secretary of Agriculture to implement a broad range of reforms. These reforms were to improve (1) the manner in which donated agricultural commodities are distributed to recipient agencies, (2) commodity quality, and (3) the response of the commodity distribution program to recipient agencies' needs.

The act also required GAO to monitor and assess the reform implementation efforts. GAO's review focused on determining (1) the status of the implementation efforts, including USDA's meeting the act's deadline requirements; (2) the reasons for any unmet deadlines; and (3) if possible, any adverse impacts resulting from USDA's implementation actions or unmet deadlines.

Background

Public Law 100-237 was enacted on January 8, 1988, in part, to provide USDA a statutory base to improve the overall commodity distribution program. In recent years one program goal—removing agricultural surpluses from the marketplace—had not always complemented the goal of providing nutritious, high-quality foods to needy individuals through recipient agencies. Often, the quantities and kinds of food that the agencies received increased their storage and handling costs and hindered the donated commodities' effective use. Section 3 of the act directed the Secretary to implement 31 specific reforms to ensure effective, consistent program operation at the federal, state, and local levels. Sixteen had 90, 120, or 270 days to be implemented from the law's enactment date. USDA's January 1988 work plan called for complete implementation within the statutory deadlines (by October 1988), by means of interim, proposed, and final rules and administrative actions.

GAO monitored and assessed USDA implementation efforts primarily at the three USDA agencies involved in the program's management—the Food and Nutrition Service (FNS), Agricultural Marketing Service, and Agricultural Stabilization and Conservation Service; determined the reasons when reform actions and the act's requirements differed, through discussions with USDA and agency officials and an examination of agency files; reviewed public comments on USDA rules used to implement or propose regulatory changes for specific reforms; and obtained comments from national associations representing program participants' views on some reform actions.

