

# Department of Agriculture and Markets

# Department of Health

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## Oversight of the Nourish New York Program

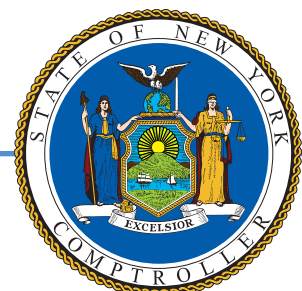
Report 2022-S-33 | September 2023

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

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Division of State Government Accountability



# Audit Highlights

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## Objective

To determine if the Department of Agriculture and Markets (Ag&Mkts) and the Department of Health (DOH) are ensuring the Nourish New York Program (Nourish NY) provides adequate access to the program for farmers and connects citizens across the State to surplus agricultural products. This audit covered Nourish NY spending from May 2020 through March 2022, and considered Ag&Mkts and DOH actions related to the program through May 2023.

## About the Program

The COVID-19 pandemic revealed weaknesses in the State's food supply system and caused serious economic hardships for farms and agribusinesses. Further, food insecurity remains a reality for many New York residents. Nourish NY was developed as a temporary program in May 2020 in response to disrupted food supply chains during the pandemic – the purpose of which was to expand the State's food supply network and markets for New York farm products while also providing greater access to local, nourishing food options in food-insecure areas. Nourish NY supplies surplus agricultural products (e.g., milk, apples, cheese, yogurt, cabbage, squash) to populations who need them through the State's network of food relief organizations (i.e., regional food banks, food pantries, soup kitchens, and community-based organizations that provide food for free to persons experiencing food insecurity).

Agricultural products purchased under Nourish NY must be grown, produced, or harvested in the State, and if further processed, the final product must contain at least 51%, by weight or volume, of agricultural products that are grown, produced, or harvested in the State. Products are made available for purchase from New York farmers, producers, and processors (hereafter, collectively referred to as vendors) to food relief organizations that then distribute the food to those in need. Nourish NY was made permanent in November 2021. Since Nourish NY's implementation in May 2020, through March 2023, a total of \$147 million has been dedicated to the program through six rounds of funding, with actual spending totaling \$142,096,533.

The program is jointly administered by Ag&Mkts and DOH. Each agency has specific responsibilities for administering and monitoring the program. Ag&Mkts is responsible for conducting outreach to vendors, assisting food relief organizations in searching for specific food products, maintaining a farm product list to assist food relief organizations in finding products, serving as a contact for vendors, and verifying that purchases made with Nourish NY funds are products sourced from New York vendors, as required. DOH is responsible for developing contracts with food relief organizations, reviewing and approving all claims for payment, communicating and addressing concerns related to contracts, and serving as a contact for food relief organizations while providing oversight of the program. In addition to the purchase of New York food products, DOH also allows regional food banks to spend up to 15% of Nourish NY funding on administrative costs (e.g., salaries, rent, utilities) associated with Nourish NY. Sub-awardees are also allowed 15% for administrative costs and are further allowed up to another 15% of the remaining funding to purchase non-New York food products.

## Key Findings

We found both agencies should strengthen controls to ensure only eligible products and expenses are funded by Nourish NY. Specifically:

- Ag&Mkts' and DOH's processes and documentation provided by food relief organizations make

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determining whether expenses are eligible for Nourish NY funding difficult – generally because they lack sufficient detail or because information used by DOH and Ag&Mkts is not being used effectively together to determine if products purchased with Nourish NY funds are eligible New York food products. Further, because expenses from certain organizations are submitted as a lump sum without any detail, DOH did not adequately review \$39.7 million in purchases.

- DOH provided little guidance to food relief organizations establishing what constitutes an allowable administrative cost, and conducted minimal review to determine if administrative expenses claimed were allowable and therefore used to support Nourish NY.
- We identified 571 purchases from 42 vendors, totaling \$7,160,507, that were required to have accompanying documentation to support the source of the food purchased. However, neither the regional food banks and sub-awardees nor Ag&Mkts could provide the documentation for 165 (29%) of the purchases from 20 vendors, totaling \$970,667.

As a result, there is a risk that funding from Nourish NY may not be going toward the purchase of eligible agricultural products to the benefit of the State’s vendors and support of its overall agribusiness needs.

Additionally, DOH has adopted requirements of its Hunger Prevention and Nutrition Assistance Program (HPNAP) and applied them to Nourish NY – specifically regarding which New York food products are eligible for purchase under the program – requiring Nourish NY purchases to follow HPNAP standards. Consequently, this limits the eligibility of certain agricultural products from the Nourish NY program – and possibly the participation of certain vendors. Further, Ag&Mkts should do more to promote participation by vendors. To aid in these efforts, improvements could be made to the information collected and used by Ag&Mkts, which could also assist in evaluating the statewide impact of Nourish NY on the State’s farmers and agribusinesses and, therefore, the effectiveness of the program.

## Key Recommendations

### To Ag&Mkts:

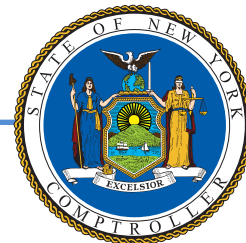
- Develop processes and procedures to improve data collection and reliability for information maintained on vendor participation and use the data to build the program’s effectiveness and promote enhanced participation.

### To DOH:

- Communicate guidance to food relief organizations on eligibility requirements for purchases made under Nourish NY.

### To Ag&Mkts and DOH:

- Improve monitoring of Nourish NY, which may include but not be limited to enhancing documentation requirements, and review processes to ensure purchases are from eligible sources.
- Collaborate to develop and document criteria for Nourish NY purchases that most effectively balance the needs of its various stakeholders and communicate the criteria to food relief organizations and vendors.



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## Office of the New York State Comptroller Division of State Government Accountability

September 21, 2023

Richard A. Ball  
Commissioner  
Department of Agriculture and Markets  
10B Airline Drive  
Albany, NY 12235

James V. McDonald M.D., M.P.H.  
Commissioner  
Department of Health  
Corning Tower Building  
Empire State Plaza  
Albany, NY 12237

Dear Commissioner Ball and Dr. McDonald:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Oversight of the Nourish New York Program*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Division of State Government Accountability*

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# Glossary of Terms

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<b>Term</b>	<b>Description</b>	<b>Identifier</b>
Ag&Mkts	Department of Agriculture and Markets	<i>Auditee</i>
DOH	Department of Health	<i>Auditee</i>
BSROE	Budget Statement and Report of Expenditures	<i>Key Term</i>
HPNAP	Hunger Prevention and Nutrition Assistance Program	<i>Program</i>
Law	Article 27 of the Agriculture and Markets Law	<i>Law</i>
MOU	Memorandum of Understanding	<i>Key Term</i>
Nourish NY	Nourish New York Program	<i>Program</i>
Sub-awardees	Smaller food relief organizations (e.g., small food banks, soup kitchens)	<i>Key Term</i>
USDA	U.S. Department of Agriculture	<i>Federal Agency</i>
Vendors	New York farmers, producers, and processors	<i>Key Term</i>

# Background

The COVID-19 pandemic revealed weaknesses in the State’s food supply system and caused serious economic hardships for farms and agribusinesses. Further, food insecurity – an inability at times to acquire adequate food for one or more household members due to a lack of resources – remains a reality for many New York residents. For the period of 2019–2021, approximately 1 in 10 (or about 800,000) New York households experienced food insecurity.<sup>1</sup> The Nourish New York Program (Nourish NY) was developed as a temporary program in May 2020 in response to disrupted food supply chains during the pandemic – the purpose of which was to expand the State’s food supply network and markets for New York farm products while also providing greater access to local, nourishing food options in food-insecure areas.

Nourish NY supplies surplus agricultural products (e.g., milk, apples, cheese, yogurt, cabbage, squash) to populations who need them through the State’s network of food relief organizations (i.e., regional food banks, food pantries, soup kitchens, and community-based organizations that provide food for free to persons experiencing food insecurity [see Figure 1]). Agricultural products purchased under Nourish NY must be grown, produced, or harvested in the State, and if further processed, the final product must contain at least 51%, by weight or volume, of agricultural products that are grown, produced, or harvested in the State. Products are made available for purchase from New York farmers (see Figure 2), producers, and processors (hereafter, collectively referred to as vendors), at competitive wholesale prices, to food relief organizations that then distribute the food to those in need.

The Executive and Legislature made Nourish NY permanent in November 2021 under Article 27 of the Agriculture and Markets Law (Law). Nourish NY was established to address both agribusiness and food insecurity concerns and is jointly administered by the Department of Agriculture and Markets (Ag&Mkts) and the Department of Health (DOH). The Law and a subsequent amendment outline the requirements of each agency. However, Ag&Mkts and DOH entered into a Memorandum of Understanding (MOU) that further specifies the responsibilities of each agency related to Nourish NY.

The February 2022 amendment to the Law moved select responsibilities of Nourish NY from Ag&Mkts to DOH. Specifically, DOH is required to review and report annually (on or before December 1) to the Executive and Legislature on the unmet need for cold storage equipment among regional food banks, food pantries, and



**Figure 1** – Food pantry volunteers sorting food  
*Photo Source: iStock.com/Vladimir Vladimirov*



**Figure 2** – Dairy farm in upstate New York  
*Photo Source: iStock.com/Boogich 1*

<sup>1</sup> According to the State Comptroller’s report “New Yorkers in Need: Food Insecurity and Nutritional Assistance Programs” issued in March 2023.



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other emergency food organizations. Cold storage helps prevent food from spoiling, and a lack of it can limit the capabilities of non-profit organizations to provide fresh food products such as fruits and vegetables. The first report was due on December 1, 2022. Under the MOU, signed by both DOH and Ag&Mkts in January 2023, the responsibilities for each agency are as follows:

**Ag&Mkts:**

- Conduct outreach statewide to vendors;
- Assist food relief organizations in searching for specific food products;
- Maintain a farm product list to assist food relief organizations in finding products; and
- Verify that purchases made with Nourish NY funds meet the program’s requirements (i.e., that products are sourced from New York vendors, as required under the Law).

**DOH:**

- Develop contracts with food relief organizations;
- Develop contract allocations based on available funding;
- Review and approve all claims for payment;
- Communicate and address concerns related to contracts; and
- Serve as the primary contact for food relief organizations while providing oversight of the program.

Since Nourish NY’s implementation in May 2020, through March 2023, a total of \$147 million has been dedicated to the program through six rounds of funding, with actual spending totaling \$142,096,533. Awards for funding for the last six rounds have been made directly to 10 regional food banks that then make sub-awards to smaller food relief organizations, which are generally smaller food pantries or food banks (hereafter, collectively referred to as sub-awardees). For rounds 2 through 5 of funding,<sup>2</sup> the 10 regional food banks and 36 sub-awardees have purchased products from approximately 497 vendors statewide.

In order to ensure that products purchased under Nourish NY are New York sourced and eligible under the program, Ag&Mkts requires regional food banks and sub-awardees to submit Monthly Purchase Reports detailing information on the expected product volume and cost. Purchases may also be made from a distributor – an agent that supplies products from multiple vendors. When a distributor is used, the regional food banks and sub-awardees are required to submit a Distributor Form to Ag&Mkts that identifies the vendor and location the product was sourced from as well as the product type, quantity, and purchase price expected. While both documents report expected cost and volume of the regional food bank or sub-awardee, the actual price and quantity received may vary. DOH is responsible

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<sup>2</sup> We were unable to review information for award round 1 because Ag&Mkts lost data for that period.



for handling reimbursement for actual purchases made, but relies on Ag&Mkts to verify the products' eligibility when it receives a request for reimbursement.

Regional food banks enter into contracts with DOH, which require them to submit a Budget Statement and Report of Expenditures (BSROE) to DOH, which serves as the regional food bank's claim for reimbursement. The BSROE details the actual monthly food purchases made by regional food banks for each month by award round. Contracts between DOH and the regional food banks require the regional food bank to maintain documentation such as original invoices or receipts, canceled checks, bank statements, and payroll journals. However, DOH does not require regional food banks to submit the documentation for reimbursement. Also included on the BSROE is a lump sum roll-up of the purchases made by sub-awardees. Unlike the purchases from the regional food bank, no supporting documentation is required to be submitted for purchases made by sub-awardees.

DOH reviews the BSROE to determine if contract terms are met. Upon their approval, DOH provides BSROE information to Ag&Mkts, which then reviews it in conjunction with the Monthly Purchase Reports and Distributor Forms and approves or denies the reimbursement. Both agencies must complete their review for purchases to be approved. The Exhibit on page 20 of our report details the flow of the approval process between Ag&Mkts and DOH.

DOH allows regional food banks to spend up to 15% of Nourish NY funding on administrative costs (i.e., salaries, rent, utilities) associated with Nourish NY. Such costs must be affiliated with the purchase, handling, and distribution of Nourish NY foods. Sub-awardees are also allowed up to 15% for administrative costs plus up to an additional 15% of the remaining funding to purchase non-New York food products. If the maximum allowable administrative costs are combined with this 15% allowance, it results in an additional 12.75% allowed for non-New York food.<sup>3</sup> Therefore, only 85% of funds awarded to regional food banks and 72.25% of funds provided to sub-awardees is required to go toward the purchase of New York-sourced food products.

This would allow up to \$5,067,987 of the \$39,748,919 awarded to be spent on non-New York foods, as shown in Table 1.

**Table 1 – Sub-Awardee Potential Non-NY Spending**

<b>Total Awards Rounds 1–5</b>	<b>\$39,748,919</b>
Allowable Administrative Expenses (15%)	(5,962,338)
Allowable Non-New York Product (12.75%)	(5,067,987)
<b>Total NY Food Spending</b>	<b>\$28,718,594</b>

<sup>3</sup> The 15% allowance for non-New York food purchases is allowable on the remaining 85% of the funds allocated for food purchases (after the 15% administrative allowance is considered) – that is,  $100 - (100 \times 15\%) = 85$ ;  $85 - (85 \times 15\%) = 72.25$ .

# Audit Findings and Recommendations

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We identified weaknesses in how Ag&Mkts and DOH monitor and administer Nourish NY. Both agencies need to strengthen controls to ensure that only eligible products and expenses are funded by Nourish NY and that vendor participation is maximized to the fullest extent possible.

The processes and documentation provided by food relief organizations to DOH and Ag&Mkts made it difficult for us to determine definitively whether expenses were eligible for Nourish NY funding – generally because they lacked sufficient detail. Further, because information from DOH’s BSROEs and Ag&Mkts’ Monthly Purchase Reports and Distributor Forms is not effectively used together, it is difficult to determine if products purchased with Nourish NY funds are for eligible New York food products. Also, DOH provided little guidance to food relief organizations establishing what constitutes an allowable administrative cost and conducted minimal review to determine if administrative expenses claimed were allowable and therefore used to support Nourish NY.

***Sub-awardees reported over \$22,693,761 in purchases over rounds 1–5 of the program; due to lack of detail in documentation, we cannot verify these purchases were for allowable costs under Nourish NY. Further, regional food banks may have charged up to \$8,938,541 in administrative costs to the program that cannot be verified as eligible based on the detail in the documentation.***

Additionally, our review highlighted weaknesses in Ag&Mkts’ procedures for verifying products purchased from distributors. We identified 571 purchases from 42 vendors, totaling \$7,160,507, that were required to have an accompanying Distributor Form. However, neither the regional food banks and sub-awardees nor Ag&Mkts could provide the Distributor Forms for 165 purchases totaling \$970,667.

DOH has also adopted requirements of its Hunger Prevention and Nutrition Assistance Program (HPNAP) and applied them to Nourish NY – specifically regarding which New York food products are eligible for purchase under the program. DOH requires Nourish NY purchases to follow HPNAP standards. However, HPNAP imposes certain restrictions on the types of foods that may be purchased under the program. For example, under HPNAP, whole or 2% fat milk, honey, and maple syrup are not allowed. However, this requirement was not communicated in policy or writing to food relief organizations, creating confusion among participants as to what products are eligible for purchase. As a result, this reduces the eligibility of certain agricultural products and possibly the participation of certain vendors in Nourish NY.

Regarding vendor participation in the program, we found improvements could be made to the information collected and used by Ag&Mkts, which could aid in evaluating the statewide impact of Nourish NY on the State’s farmers and agribusinesses and, therefore, the effectiveness of the program. Due to limitations of the data Ag&Mkts maintains, the full extent of vendor participation in Nourish NY may not be accurately captured, specifically in terms of the number of participating farms.

## Purchases of Eligible New York Food Products

For various reasons we could not determine for certain purchases (generally those made by sub-awardees, for administrative costs, and from distributors) whether they

were allowable under the program or if they were for eligible agricultural products benefiting the State’s vendors. Much of this stems from weak oversight by both DOH and Ag&Mkts – resulting in part from a lack of resources and a complicated multifaceted verification process (requiring information from multiple sources and both agencies) and lack of sufficient detail in the documentation and data each agency receives.

## Product Eligibility and Reimbursement

Information submitted on the BSROE is not sufficiently detailed to determine how sub-awardees are expending funds. Sub-awardees report their food purchases as a total line item on the BSROE with no supporting detail; therefore, DOH cannot reconcile which purchases are for eligible products or determine if sub-awardees are adhering to the established thresholds for non-New York foods. For example, we initially attempted to reconcile a sample of \$212,868 of \$456,458 in purchases, but were unable to identify whether the purchases were for eligible products or non-New York products. We requested clarification from DOH, but DOH staff were ultimately unable to reconcile the purchases.

We compared Monthly Purchase Reports received by the regional food banks to DOH’s BSROE forms to determine if the information Ag&Mkts is reviewing for program eligibility aligned with expenses reimbursed to regional food banks and sub-awardees. Our comparison found that the total amounts paid to the regional food banks and sub-awardees for rounds 2 through 5 (as stated on the BSROE forms) exceeded the costs reviewed and approved by Ag&Mkts in the Monthly Purchase Reports by more than \$10 million, as detailed in Table 2.

**Table 2 – Discrepancies in Cost of Food Purchased Monthly Purchasing Data and BSROE**

Rounds	Reported Cost Monthly Purchasing Data	Reported Cost BSROE	Difference in Total Cost
Round 1 May 1–Oct 31, 2020	N/A	N/A	N/A
Round 2 Nov 1–Dec 31, 2020	\$5,200,152	\$8,691,537	\$3,491,385
Round 3 Feb 1–Jul 31, 2021	21,886,361	22,052,863	166,502
Round 4 Aug 1–Dec 31, 2021	18,653,742	21,070,818	2,417,076
Round 5 Jan 1–Mar 31, 2022	6,193,185	10,663,123	4,469,938
<b>Total for Rounds 2–5</b>	<b>\$51,933,440</b>	<b>\$62,478,341</b>	<b>\$10,544,901</b>

Ultimately, we concluded sub-awardees’ Monthly Purchase Reports and BSROE data do not contain information that can be combined readily in a meaningful way to determine whether purchases meet eligibility criteria. Further, Ag&Mkts staff did not consistently document how they use Monthly Purchase Reports and BSROEs

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to verify that regional food banks' expected purchases match what was actually purchased to ensure Nourish NY requirements were met. Ag&Mkts staff generally attributed the discrepancies we identified to the type of information reported on the Monthly Purchase Reports and BSROEs. The Monthly Purchase Reports are estimated purchases that include future projections, while the BSROEs report actual spending for a period of time and, therefore, cannot be used to verify actual purchases' eligibility. Because DOH and Ag&Mkts receive multiple sources of information that need to be used together to verify purchases, it can be time consuming and absorb staff resources, especially if back-and-forth communication between DOH and Ag&Mkts is needed. Streamlining the sources of information (and enhancing the detail) could alleviate some of the administrative burden. Currently, Ag&Mkts has only one staff member dedicated full time to verifying purchases for the program.

Additionally, we found Ag&Mkts could improve its processes for verifying products purchased from distributors (see Figure 3). We identified 571 purchases from 42 vendors totaling \$7,160,507 that were required to have an accompanying Distributor Form. The regional food banks and sub-awardees could not provide Distributor Forms for 238 (42%) of the purchases from 32 vendors, totaling \$2,196,527. Of the 238 purchases, 67 were from New York State Grown and Certified vendors (a program operated by Ag&Mkts that assures consumers that the food they are buying is from New York State farms), for which Ag&Mkts officials stated they do not require Distributor Forms. Ag&Mkts was also unable to locate the Distributor Forms for most of the remaining purchases (staff were able to locate them for two, and we determined four were purchases from a farm incorrectly identified as a distributor). The remaining 165 purchases totaled \$970,667 and were associated with 20 vendors. According to officials, Distributor Forms for 68 of the purchases, which were made in round 1 of the program, were lost when Ag&Mkts upgraded its reporting system to a different database. For the remaining 97 purchases, officials indicated that they had difficulty connecting the invoices we provided with the related Distributor Forms. Additionally, officials cited time constraints and limited resources as reasons they did not provide the Distributor Forms. Ag&Mkts and DOH stated changes to controls will be applied to future rounds. For example, DOH staff stated that, in future rounds, the funding structure will change so that sub-awardees receive a Nourish NY award directly from DOH and not as a sub-allocation from the regional food banks, effectively doing away with sub-awardees altogether, after which all entities receiving Nourish NY funds will be subject to the more stringent reporting requirements. Also, Ag&Mkts staff said they will no longer use Monthly Purchase Reports, but will instead rely primarily on information submitted on the BSROEs when verifying purchases for eligibility.



**Figure 3** – Distributor warehouse storing various products

*Photo Source: iStock/dusanpetkovic*

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## Administrative Expenses

DOH is responsible for verifying that the administrative expenses reimbursed with Nourish NY funds are affiliated with the purchasing, handling, and distribution of Nourish NY foods. However, DOH provided little guidance to food relief organizations establishing what constitutes an allowable administrative cost, and conducted minimal review to determine if expenses claimed were allowable and therefore used to support the Nourish NY program. A fact sheet issued by DOH on the program stated that regional food banks and sub-awardees must have a basis for allocating administrative costs but contained no further guidance. However, the regional food banks did establish MOUs with their sub-awardees defining administrative expenses as operational costs, including any overhead, indirect, or other administrative costs. Of the total \$142,096,533 in funding reimbursed to food relief organizations for the first six rounds, up to \$21,314,480 could have been used for administrative expenses.

We reviewed 124 administrative expenses totaling \$141,841 for one regional food bank and four sub-awardees and found that two sub-awardees exceeded the 15% maximum allowed for administrative expenses by approximately \$10,000. Furthermore, we identified \$36,901 (26%) in questionable expenses at four sub-awardees. Specifically, it is unclear if the expenses claimed are related to the administration of Nourish NY. For example, we identified \$22,578 in rent and utility expenses claimed for reimbursement that do not appear to be allocated across any other program, despite both organizations providing a range of other services in addition to those funded by Nourish NY. Additionally, we found \$9,041 in payroll expenses claimed for reimbursement where staff could not provide supporting documentation to demonstrate that the amounts claimed were related to the administration of Nourish NY.

DOH needs to improve controls and guidance to food relief organizations on what constitutes allowable costs and how to allocate these costs (if applicable). Otherwise, monies may be improperly diverted from the purchase of New York food products to fund expenses not associated with Nourish NY.

## Nourish NY and HPNAP

HPNAP, which has been operated by DOH over the last 30 years, has a primary goal of helping citizens in need lead more healthy, productive, and self-sufficient lives and aims to promote the nutritional quality of food available at local food relief organizations. This is achieved in part by providing HPNAP funding to food relief organizations to purchase food that meets certain nutritional requirements established by DOH. Nourish NY, unlike HPNAP, has an added goal of addressing the economic hardships the State's farms and agribusinesses experience as well as the weaknesses in the State's food supply chain.

During our site visits to regional food banks and sub-awardees, officials expressed confusion regarding what products are eligible for purchase under Nourish NY –



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they said they believed (but were not sure) products had to meet the requirements established under HPNAP. There was especially confusion about purchases of honey, which officials at three of the 10 organizations we visited said were denied by DOH for purchase with Nourish NY funds. DOH officials confirmed that they do hold Nourish NY purchases to HPNAP standards (e.g., stating maple syrup is not a necessity and encouraging the purchase of lean meats only), although this was not communicated in policy or writing to food relief organizations. Contributing to further confusion and indicating a breakdown in communication between the two agencies, in their response to our preliminary findings, Ag&Mkts officials indicated that honey and maple syrup could be allowable under Nourish NY – contrary to DOH’s position.

The distinction between Nourish NY and HPNAP is relevant when placing restrictions on New York foods eligible for purchase under Nourish NY – especially as it relates to the State’s farming and agribusiness. For example, under HPNAP, purchases of whole or 2% low-fat milk are not allowed – nor are natural sweeteners such as honey or maple syrup. Under the Law, Nourish NY does not restrict these types of purchases. It is notable, however, that according to Ag&Mkts’ Annual Summary of State Dairy Statistics in 2020, whole milk represented the largest total sales of packaged fluid milk products from New York plants – skim milk sales by comparison totaled just 20% of the whole milk sales.<sup>4</sup> Also, according to the U.S. Department of Agriculture (USDA), New York was the second largest producer of maple syrup in the country in 2022, producing more than 845,000 gallons – up 31% from 2021. Therefore, broadly applying HPNAP restrictions on Nourish NY products limits the eligibility of certain agricultural products in the Nourish NY program (e.g., whole and 2% low-fat milk) – and possibly the participation of certain vendors (as may be the case with New York’s maple syrup and honey producers [see Figure 4]) – reducing the potential benefit to the State’s farmers and agribusinesses.



**Figure 4** – New York honey  
*Photo Source: iStock/Boogich*

The blending of these two programs also contributed to, in part, DOH’s decision to allow 12.75% of the total allowable Nourish NY funds to be used for non-New York food by sub-awardees. DOH officials said this was allowed so that sub-awardees could supply a “full pantry package” of complete meals for their clients – a goal more aligned to HPNAP than Nourish NY. DOH officials further said that the State’s short growing season contributes to the need to allow non-New York products to be purchased under the program. However, while the State does have a short growing and harvesting period for most produce, dairy (the State’s largest agricultural sector) is generally a year-long industry. New York’s agricultural products can also be made shelf stable when further processed (e.g., applesauce, cheese, yogurt). Further, while the growing and harvesting period for produce is short, with the use of cold storage, fresh fruits and vegetables harvested from New York sources – such as

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<sup>4</sup> Sales of 2% and 1% milk fat products were combined and therefore could not be differentiated.

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apples, onions, potatoes, herbs, and cabbage – may be available for most or all of the year.

DOH officials also stated that, under the new contract, which began July 1, 2023, HPNAP and Nourish NY will be administered from a single contract but there will be separate work plans and budgets for HPNAP and Nourish NY. Also, in response to our preliminary findings, DOH officials indicated support for HPNAP restrictions remaining for Nourish NY and plan to provide additional guidance to Nourish NY awardees that will mirror current HPNAP policies and procedures. Additionally, for the new round of contracts, spending for non-New York food will be limited to 15% overall, which may be used for administrative expenses or non-New York foods (or a combination of the two).

While we recognize DOH's position, we recommend DOH collaborate with Ag&Mkts to develop, document, and communicate to vendors and food relief organizations criteria for Nourish NY purchases that best balance the needs of its various stakeholders.

## Vendor Participation

Regarding vendor participation in the program, we found improvements could be made to the information collected and used by Ag&Mkts, which could aid in evaluating the statewide impact of Nourish NY on the State's farmers and agribusinesses and, therefore, the effectiveness of the program.

Ag&Mkts currently does not have information on all the vendors who participate in the program. The Nourish NY program has evolved since its initial inception as a temporary program enacted during the pandemic. Arguably, one of the most significant changes was the transition from a temporary to a permanent program when it was codified in law. This permanency creates an expectation for Ag&Mkts to establish continual, structured processes to obtain information on the performance of the program holistically, which can be used to improve and enhance Nourish NY with each round of funding. Gathering or generating high-quality, relevant data generally supports the achievement of the objectives of any program.

Using the Regional Economic Development Council's categorization of the State's counties, we analyzed vendor participation in Nourish NY to determine which regions have the most vendor participants. For rounds 2 through 5, we determined there were approximately 497 entities participating in Nourish NY.<sup>5</sup> The Capital Region has the most Nourish NY participants (102), and the North Country has the fewest (16). Full regional participation is shown in Table 3.

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<sup>5</sup> We were unable to review information for award round 1 because Ag&Mkts lost data for that period. Also, we were unable to determine addresses for 48 vendors.



**Table 3 – Nourish NY Food Relief Organizations and Participating Vendors by Region**

Region	Number of Regional Food Banks	Number of Sub-awardees	Number of Nourish NY Vendors	% of Total Nourish NY Participating Vendors
Capital Region	1	7	102	20%
Mid-Hudson	1	2	97	19%
Finger Lakes	1	–	78	16%
Long Island	2	–	39	8%
Western NY	1	3	39	8%
Central New York	1	1	36	7%
New York City	2	21	33	7%
Mohawk Valley	–	–	29	6%
Southern Tier	1	2	28	6%
North Country	–	–	16	3%
<b>Totals</b>	<b>10</b>	<b>36</b>	<b>497</b>	<b>100%</b>

We further determined that 328 of the 497 vendors represent farms. The other 169 vendors include distributors, processors, and farm stands. However, due to limitations of the data, the full extent of vendor participation in Nourish NY may not be accurately captured, specifically in terms of the number of participating farms. The data Ag&Mkts maintains does not reflect farms that participate through a processor or distributor; therefore, the participation of farms in the program is likely greater than what is represented in Ag&Mkts’ data (additionally, regional distribution may vary from what the data presents). Regions with a higher number of farms than others that participate through a processor or distributor may be underrepresented in this data (e.g., the North Country, which has a large number of dairy farms). Given the complex nature of processing and distribution of agricultural products (especially in sectors such as dairy), sourcing of raw product from farms (e.g., raw milk) to end product (e.g., cheese, yogurt) that would be eligible for purchase under Nourish NY can be challenging. However, Ag&Mkts maintains information (within various divisions) that may be useful for providing a more accurate representation of the farms that participate in Nourish NY. Also, the Distributor Forms, if received with sufficient detail, may assist in providing information on participating farms.

Additionally, Ag&Mkts could internally develop data collection processes to obtain information on participation (or other programmatic information), some of which Ag&Mkts did early on while the program was still temporary. Before Nourish NY was permanent, Ag&Mkts developed a Business Impact List, which contained information on vendors that, at one point, participated in Nourish NY through sales of products or services. According to officials, the Business Impact List was used early on to gauge participation during the pandemic. We found the listing to be incomplete and inaccurate and, therefore, unreliable, which reduces its effectiveness in decision making or oversight of the program. However, if the quality of the information was improved (or a more reliable alternative developed), it could be a useful tool to enhance, track, and provide meaningful information about the program.

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Using available information from Ag&Mkts' list of New York State Grown and Certified vendors, we conducted a survey to obtain feedback on Nourish NY. The survey provided some useful information on vendor participation in and perception of the program, with 71 respondents stating that they were not aware of the program. Of those 71 respondents, 63 (89%) cited a lack of knowledge about the program as a potential reason they don't participate. Additional survey responses noted lack of transportation and distribution channels, especially in the more rural areas of the State, and Nourish NY restrictions for product types and size of farms as reasons for not participating. Further, nine farms that participate in Nourish NY stated they would like more assistance accessing food banks that participate in Nourish NY so they can market their surplus products.

While we recognized that the survey was an imperfect tool to measure vendor participation, we believe the information gathered was useful in demonstrating the need for further targeted outreach that may increase participation and, should Ag&Mkts develop and customize something similar, it may provide data from vendors regarding participation (or other programmatic feedback) to the benefit of Ag&Mkts' administration of Nourish NY.

Participation in the program can be significantly beneficial. For example, of the 158 vendors that responded to our survey (that, based on responses from the survey and Ag&Mkts' data, we believe sold products eligible under Nourish NY), 48 (30%) indicated that Nourish NY had strengthened their relationships with food banks and other food relief organizations, creating additional markets for imperfect produce that standard stores refuse to purchase and providing support for an economically sustainable harvest. One respondent stated that Nourish NY allowed for the creation of a specialized product – developed specifically for the program – that has become approximately 10% of its overall sales.

Although participation is not easily measured quantitatively or qualitatively, Ag&Mkts does have processes to increase participation in the program. Staff stated they encourage farmer participation in Nourish NY through press releases, its website, and mass communications sent to various farmer lists, but also noted that the primary focus of their efforts thus far was to verify that purchases made with Nourish NY funds were for eligible products. Ag&Mkts officials stated that they have increased their presence at trade shows to connect directly with farmers. These events took place in Albany, Long Island, Syracuse, and New York City between November 2022 and March 2023. Additionally, Ag&Mkts officials said they are in the process of creating a fact document to enhance participants' understanding of the program and are in the planning stages with the Office of Information Technology Services to improve the accessibility of Nourish NY information on its website.

## Cold Storage

Cold storage is essential to the successful delivery and distribution of fresh, high-quality foods among food-insecure populations because it allows food relief organizations to store food products that would generally spoil quickly (e.g., apples,

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squash, cherries, meats) for longer durations. DOH has developed a draft of its report on the unmet cold storage needs among regional food banks, food pantries, and other emergency food organizations. However, according to DOH, internal delays have prevented the cold storage report from being sent to the Executive and Legislature by December 1, 2022, as required. Therefore, the Executive and Legislature do not have information available to them to assess the cold storage needs of food relief organizations statewide. In response to our preliminary findings, DOH officials stated they have established a schedule of internal status checks to ensure that draft report approvals are obtained and that the report is provided to the Executive and Legislature.

## Recommendations

### To Ag&Mkts:

1. Develop processes and procedures to improve data collection and reliability for information maintained on vendor participation and use the data to build the program's effectiveness and promote enhanced participation.

### To DOH:

2. Communicate guidance to food relief organizations on eligibility requirements for purchases made under Nourish NY, including but not limited to administrative and non-New York food purchases.
3. Issue the overdue report on the unmet need for cold storage equipment to the Executive and Legislature and maintain a timely schedule hereafter.

### To Ag&Mkts and DOH:

4. Improve monitoring of Nourish NY, which may include but not be limited to enhancing documentation requirements, and review processes to ensure purchases are from eligible sources.
5. Collaborate to develop and document criteria for Nourish NY purchases that most effectively balance the needs of its various stakeholders and communicate the criteria to food relief organizations and vendors.

# Audit Scope, Objective, and Methodology

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The objective of our audit was to determine if Ag&Mkts and DOH are ensuring Nourish NY provides adequate access to the program for farmers and connects citizens across the State to surplus agricultural products. The audit covered Nourish NY spending from May 2020 through March 2022, and considered Ag&Mkts and DOH actions related to the program through May 2023.

To accomplish our objective and assess related internal controls, we reviewed applicable laws, policies, procedures, and documentation provided by both Ag&Mkts and DOH that related to their oversight of Nourish NY. We interviewed officials from both agencies to gain an understanding of their processes for documenting, reviewing, and approving Nourish NY vendors and purchases made by regional food banks and sub-awardees. We also met with officials from four regional food banks and six sub-awardees to gain an understanding of their uses of the program. Additionally, we analyzed data from the Monthly Purchase Reports and BSROEs for the audit period. While we reported on limitations of the Monthly Purchase Reports, we found the BSROE data sufficiently reliable for our purposes.

To assess whether regional food banks and sub-awardees were spending Nourish NY funds in alignment with the legislative intent of the program, we selected a judgmental sample of four regional food banks and six sub-awardees, out of the 10 regional food banks and 36 sub-awardees that received Nourish NY funding, based on geographic location, type of organization, and total award amount. For the four regional food banks, we selected a random sample of \$8,216,412 in food expenses claimed on the BSROEs, and for the six sub-awardees, we selected a judgmental sample of \$1,422,353 in food expenses claimed on the BSROEs based on expense type and amount. For one of the sampled regional food banks and four of the sampled sub-awardees, we also selected a judgmental sample of administrative expenses totaling \$141,841 based on the type and amount of the expenses. Both the food and administrative expense samples were pulled from the total \$96,178,616 in expenses claimed by all regional food banks and sub-awardees for the audit period. We were unable to determine the specific amounts spent on food and administrative costs separately because of the reporting method used by DOH. We reviewed supporting documentation, including applicable Distributor Forms, on site at the sampled entities to determine if the sampled food and administrative expenses were appropriate. We did not design these samples to project their results to the populations from which they arose, nor did we project any sample results to the related populations.

To determine if Ag&Mkts has effectively conducted outreach to potential Nourish NY vendors, we sent an online survey to 589 vendors registered with Ag&Mkts as part of its New York State Grown and Certified program. We received responses from 188 vendors and determined that 30 respondents would not be eligible for Nourish NY based on their business type (e.g., Christmas tree farm). Therefore, we analyzed the responses from 158 New York State Grown and Certified vendors.

# Statutory Requirements

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## Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of Ag&Mkts' and DOH's oversight and administration of Nourish NY.

## Reporting Requirements

A draft copy of the report was provided to Ag&Mkts and DOH officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of it. In their response, Ag&Mkts and DOH officials generally agreed with our recommendations and indicated actions they would take to implement them.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Agriculture and Markets and the Commissioner of the Department of Health shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

# Exhibit



## Nourish New York Program Outline

### Department of Agriculture and Markets (Ag&Mkts)

### Department of Health (DOH)

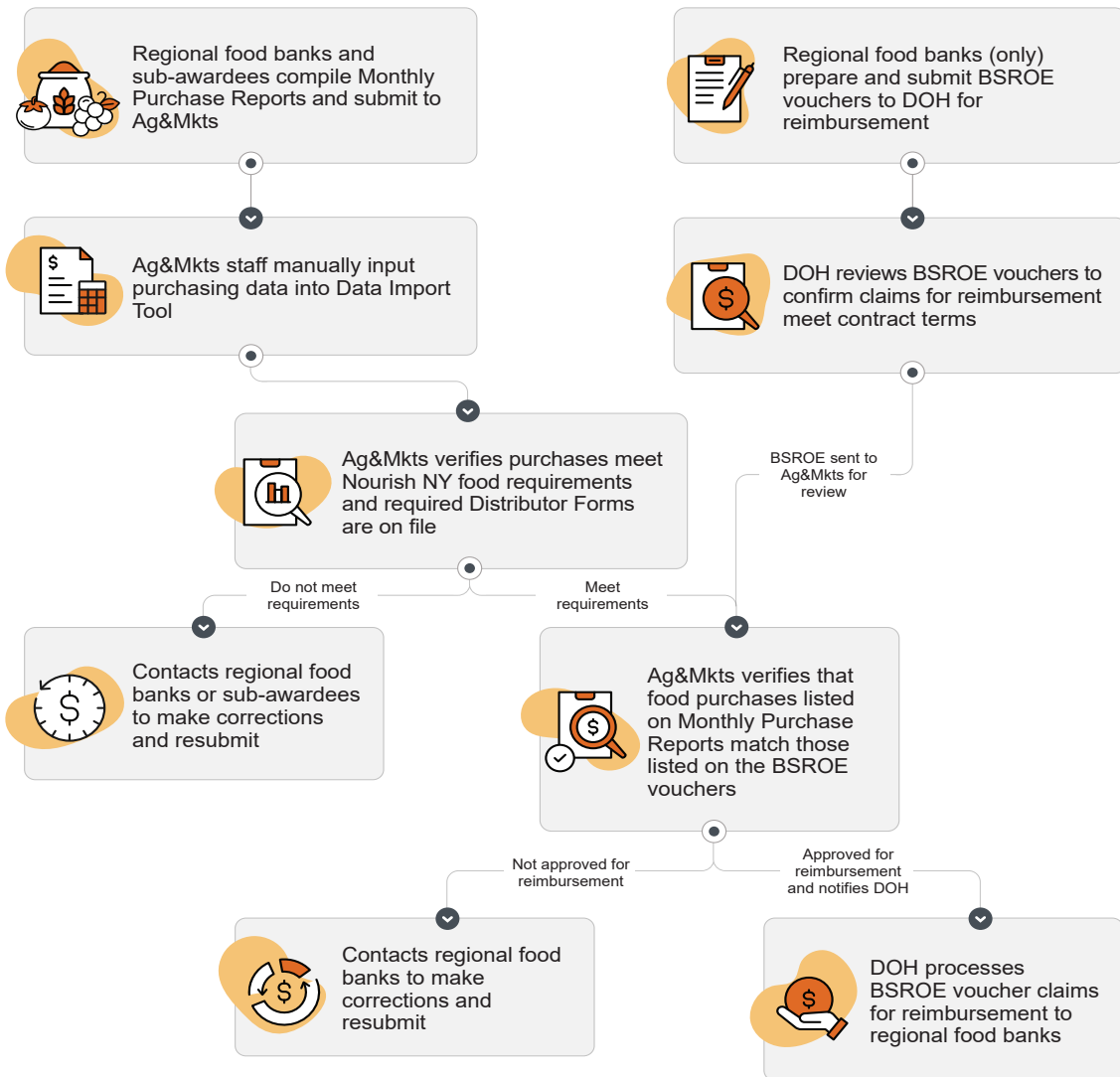


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# Agency Comments - Ag&Mkts

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KATHY HOCHUL  
Governor

**Agriculture  
and Markets**

RICHARD A. BALL  
Commissioner

August 21, 2023

Heather Pratt  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street - 11<sup>th</sup> Floor  
Albany, NY 12236-0001

Dear Ms. Pratt,

Thank you for the opportunity to comment on the draft audit report 2022-S-33, "Oversight of the Nourish New York Program." Nourish New York has been a resounding success since its start during the early days of the COVID-19 pandemic, when it aided farmers who couldn't get their products to market while boosting feeding programs that witnessed soaring demand and helping New York families in need to put food on the table. As the pandemic has subsided, we are proud that the program continues to support New York farmers and feeding partners in their mission to feed New Yorkers who can least afford fresh, local, high-quality foods. As of this writing, the program has helped food banks and other emergency food providers to purchase more than 94 million pounds of New York products, or nearly 79 million meals, for our communities. This, in turn, has supported 4,333 farms and agribusinesses across the state.

The Department of Agriculture and Markets (Department) is committed to continued collaboration with the Department of Health (DOH), the agricultural community, and the Nourish New York contractors to ensure the ongoing success of the program, as well as compliance with the legislative intent of the program.

The Department's response to the Office of the Comptroller's (OSC) recommendations are as follows:

OSC Recommendation 1 – Develop processes and procedures to improve data collection and reliability for information maintained on vendor participation and use the data to build the program's effectiveness and promote enhanced participation.

Response to Recommendation 1 – The Department generally agrees with this recommendation. As Nourish New York evolved from an emergency response program during the pandemic to a permanent program, the methods to collect data on vendor participation have changed as well. The Department will explore ways to update the processes and procedures used to monitor and enhance participation in the program. As the report noted, the Department has been increasing efforts to provide outreach and education on the program. In June 2023, the Department held an informational meeting with Cornell Cooperative Extension staff members who work directly



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with farms and/or institutional buying programs across New York State. Attendees were provided with an overview of requirements and resources for farmers, processors and food hubs that may have an interest in participating in the program.

OSC Recommendation 4 – Improve monitoring of Nourish New York, which may include, but is not limited to, enhancing documentation requirements and review processes to ensure purchases are from eligible sources.

Response to Recommendation 4 – The Department generally agrees with this recommendation. The Department is committed to working with our partners at DOH to enhance monitoring of the Nourish New York program. As the audit noted, the current round of funding for the program, which began July 1, 2023, includes changes to the funding structure and reporting on New York purchases that will streamline the process for review of eligible products.

OSC Recommendation 5 – Collaborate to develop and document criteria for Nourish New York purchases that most effectively balance the needs of its various stakeholders and communicate the criteria to food relief organizations and vendors.

Response to Recommendation 5 – The Department generally agrees with this recommendation. The Department and DOH will continue to work together to enhance the program and meet the needs of the stakeholders. In July 2023, the Department and DOH held a joint meeting with Nourish New York awardees. The meeting provided attendees with guidance the reporting and claims process as well as information on sourcing of qualified products.

Thank you for the opportunity to comment on the draft report. If you need anything further, please feel free to reach out to Shelly Taleporos, Director of Internal Audit.

Sincerely,



Richard A. Ball  
Commissioner

# Agency Comments - DOH

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**KATHY HOCHUL**  
Governor

**Department  
of Health**

**JAMES V. McDONALD, M.D., M.P.H.**  
Commissioner

**JOHANNE E. MORNE, M.S.**  
Acting Executive Deputy Commissioner

August 22, 2023

Heather Pratt, Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street – 11<sup>th</sup> Floor  
Albany, New York 12236-0001

Dear Heather Pratt:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Draft Audit Report 2022-S-33 entitled, "Oversight of the Nourish New York Program."

Thank you for the opportunity to comment.

Sincerely,

Johanne E. Morne, M.S.  
Acting Executive Deputy Commissioner

Enclosure

cc: Melissa Fiore  
Michael Atwood

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**Department of Health  
Comments on the  
Office of the State Comptroller’s  
Draft Audit Report 2022-S-33 entitled,  
“Oversight of the Nourish New York Program”**

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The following are the Department of Health’s (DOH) comments in response to the Office of the State Comptroller’s (OSC) Draft Audit Report 2022-S-33 entitled, “Oversight of the Nourish New York Program.”

**DOH General Comments:**

DOH is committed to working with Ag&Mkts, OSC and our Nourish NY contractor awardees to provide the training, technical assistance, oversight and monitoring to ensure compliance with legislative intent and successful outcomes for Nourish NY. DOH proactively began improvement efforts in these areas as part of the process of transitioning Nourish NY from a Governor’s Executive Order emergency COVID response to a permanent program now established in state law. The below responses highlight some of these proactive steps DOH has taken.

The following are responses to the audit recommendations.

**To DOH:**

**Recommendation #2**

Communicate guidance to food relief organizations on eligibility requirements for purchases made under Nourish NY, including but not limited to administrative and non-New York food purchases.

**Response #2**

The DOH has updated the HPNAP Policies and Procedures Manual to include guidance for eligible purchases and costs using Nourish NY funding. Working with Ag&Mkts, the guidance details the eligibility requirements for NYS sourced food purchases and administrative costs, including non-NYS sourced food purchases. DOH joined Ag&Mkts on July 26, 2023 for a Nourish NY contractor training that reviewed this information, and assisted with the creation of a Q & A document that is expected to be sent to all Nourish NY grantees by August 7, 2023.

**Recommendation #3**

Issue the overdue report on the unmet need for cold storage equipment to the Executive and Legislature and maintain a timely schedule hereafter.

**Response #3**

The Executive and Legislative report will be issued shortly by DOH. DOH has initiated activities to complete the 2023 report and expects to maintain a timely schedule going forward.

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**To Ag&Mkts and DOH:**

**Recommendation #4**

Improve monitoring of Nourish NY, which may include but not be limited to enhancing documentation requirements, and review processes to ensure purchases are from eligible sources.

**Response #4**

The DOH and Ag&Mkts have implemented strategies to improve documentation procedures for food purchases. This includes the discontinuation of subawards under the food banks' Nourish NY contracts. All Nourish NY contractors will submit a separate voucher for Nourish NY monthly claims, including invoices and/or distributor forms, identifying the products purchased and their NYS source. As necessary, product content forms will be required to determine if the product complies with Nourish NY's NYS sourcing requirements. Nourish NY purchasing and voucher documentation requirements were reviewed with all Nourish NY grantees during the July 26, 2023 training and are outlined in the HPNAP Policies and Procedures Manual. DOH's contract managers and fiscal staff will ensure that this documentation is included with each voucher prior to processing for payment.

**Recommendation #5**

Collaborate to develop and document criteria for Nourish NY purchases that most effectively balance the needs of its various stakeholders and communicate the criteria to food relief organizations and vendors.

**Response #5**

As discussed in Response #3, the DOH has updated the HPNAP Policies and Procedures Manual to include guidance for eligible purchases and costs using Nourish NY funding. Working with Ag&Mkts, the guidance details the eligibility requirements for NYS sourced food purchases and administrative costs, including non-NYS sourced food purchases. DOH joined Ag&Mkts on July 26, 2023, for a Nourish NY contractor training that reviewed this information and assisted with the creation and distribution of a Q & A document that will be sent to all Nourish NY grantees.

The DOH will continue to work with Ag&Mkts to balance the needs of the farmers, food assistance contractors, service providers, and emergency food recipients. The DOH has a responsibility to ensure that food products meet nutritional guidelines to improve health equity and health outcomes, while Ag&Mkt's must balance the participation of the farm community. The DOH will continue to advocate for grantees to follow sound nutrition policies when purchasing any food products for distribution in the emergency food network. All New Yorkers should be able to achieve nutrition security through

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consistent and equitable access to healthy, safe, affordable foods essential to optimal health and well-being.

# Contributors to Report

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