(i) From May through September for children on school vacation;

(ii) At any time of the year, in the case of sponsors administering the Program under a continuous school calendar system; or

(iii) During the period from October through April, if it serves an area affected by an unanticipated school closure due to a natural disaster, major building repairs, court orders relating to school safety or other issues, labor-management disputes, or, when approved by the State agency, a similar cause.

* * * * *

4. In § 225.7:

a. Paragraph (a) is amended by adding a new sentence at the end;

b. Paragraph (d)(1)(i) is amended by removing the semicolon at the end of the paragraph, by adding a period in its place, and by adding a new sentence at the end of the paragraph;

c. Paragraph (d)(1)(iii) is revised;

d. Paragraph (d)(1)(iv) is removed; and

e. Paragraph (d)(2) is revised.

The additions and revisions read as follows:

§ 225.7 Program monitoring and assistance.

(a) * * * State agencies are not required to conduct this training for sponsors operating the Program during unanticipated school closures during the period from October through April (or at any time of the year in an area with a continuous school calendar).

* * * * *

(d) * * *

(1) * * *

(i) * * * In addition, pre-approval visits of sponsors proposing to operate the Program during unanticipated school closures during the period from October through April (or at any time of the year in an area with a continuous school calendar) may be conducted at the discretion of the State agency;

* * * * *

(iii) All sites which the State agency has determined need a pre-approval visit.

(2) *Sponsor and site reviews*—(i) *General.* The State agency must review sponsors and sites to ensure compliance with Program regulations, the Department's non-discrimination regulations (7 CFR part 15) and any other applicable instructions issued by the Department. In determining which sponsors and sites to review, the State agency must, at a minimum, consider the sponsors' and sites' previous participation in the Program, their current and previous Program performance, and the results of previous reviews of the sponsor and sites. When the same school food authority personnel administer this Program as well as the National School Lunch Program (7 CFR part 210), the State agency is not required to conduct a review of the Program in the same year in which the National School Lunch Program operations have been reviewed and determined to be satisfactory. Reviews shall be conducted as follows:

(ii) *Frequency and number of required reviews.* State agencies shall:

(A) Conduct a review of every new sponsor at least once during the first year of operation;

(B) Annually review a number of sponsors whose program reimbursements, in the aggregate, accounted for at least one-half of the total program meal reimbursements in the State in the prior year;

(C) Annually review every sponsor which experienced significant operational problems in the prior year;

(D) Review each sponsor at least once every three years; and

(E) As part of each sponsor review, conduct reviews of at least 10 percent of each sponsor's sites, or one site, whichever number is greater.

* * * * *

5. In § 225.14:

a. Paragraph (a) is amended by adding a new sentence at the end;

b. Paragraph (d)(1) is removed; and

c. Paragraphs (d)(2) through (d)(6) are redesignated as paragraphs (d)(1) through (d)(5), respectively.

The addition reads as follows:

§ 225.14 Requirements for sponsor participation.

(a) * * * Sponsors proposing to operate a site during an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar) may be exempt, at the discretion of the State agency, from submitting a new application if they have participated in the program at any time during the current year or in either of the prior two calendar years.

* * * * *

6. In § 225.15, paragraph (d)(1) is amended by adding a new sentence after the first sentence to read as follows:

§ 225.15 Management responsibilities of sponsors.

* * * * *

(d) * * *

(1) * * * The State agency may waive these training requirements for operation of the Program during unanticipated school closures during the period from October through April (or at any time of the year in an area with a continuous school calendar).

* * *

* * * * *

Dated: December 15, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–33504 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 250 and 251

RIN 0584–AC49

Food Distribution Programs: Implementation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends provisions of the Food Distribution Program regulations and the Emergency Food Assistance Program (TEFAP) regulations to implement certain provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, commonly known as Welfare Reform, while generally streamlining and clarifying these regulations. In accordance with the Welfare Reform legislation, the provisions contained in this rule address various changes required by the repeal of section 110 of the Hunger Prevention Act of 1988, which authorized the former Soup Kitchens/Food Banks Program, the former beneficiaries of which are now served by an expanded TEFAP. It amends the definitions relating to organizational eligibility in TEFAP to reflect the program consolidation, and to achieve consistency with the Emergency Food Assistance Act of 1983 as amended by Welfare Reform. Changes to these and other definitions also provide greater clarity to the regulations. As mandated by Welfare Reform, this rule also changes the required content and frequency of submission of the TEFAP State plan of operation, and encourages State agencies to create advisory boards comprised of public and private entities with an interest in the distribution of TEFAP commodities. In addition, this rule broadens the allowable uses of TEFAP administrative funds at the State and local levels, and provides greater flexibility for State agencies in meeting the TEFAP maintenance-of-effort

requirement. Finally, in order to reduce the paperwork burden and afford State agencies greater flexibility, this rule makes discretionary changes in TEFAP recordkeeping, monitoring, and reporting requirements.

EFFECTIVE DATE: This final rule is effective February 28, 2000.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 612, 4501 Ford Avenue, Alexandria, Virginia 22302, or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service (FNS) has certified that this action will not have a significant economic impact on a substantial number of small entities. The procedures in this rulemaking would primarily affect FNS regional offices, and the State distributing and recipient agencies that administer food distribution programs. Private enterprises that enter into agreements for the storage of donated food or meal service management would also be affected. While some of these entities constitute small entities, a substantial number will not be affected. Furthermore, any economic impact will not be significant.

Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995, Pub. L. 104–4, (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

These programs are listed in the Catalog of Federal Domestic Assistance under 10.550, 10.568 and 10.569 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of the preamble. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

The reporting and recordkeeping requirements included in 7 CFR parts 250 and 251 have been approved by the Office of Management and Budget under OMB No. 0584–0293.

Background

On July 8, 1999, the Department of Agriculture (hereinafter ''USDA'' or ''Department'') published a proposed rule in the **Federal Register** (64 FR 36978) to amend provisions of the Food Distribution Program regulations and the TEFAP regulations to reflect changes brought about in the administration of food distribution programs by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (hereinafter ''Welfare Reform''). The rule also proposed changes which would clarify existing regulatory requirements and reduce the burden associated with the administration of TEFAP. The specific changes made by this rule were discussed in detail in the preamble to the proposed rule, which provided a 60-day comment period.

Analysis of Comments Received

The Department received a total of 14 comment letters. Comment letters were submitted by three State TEFAP agencies, one inter-church local food pantry, seven food banks on the city, regional, state and national levels, one national commodity distribution association, one State community action program association, and one local human resources council. The 14 commenters were generally enthusiastic in their support for the rule. Seven of them supported implementation of the proposed rule without change. Comments received are discussed in detail below. For a complete understanding of the provisions contained in this final rule, the reader should refer to the preamble of the proposed rule.

Definition of Eligible Recipient Agency

As discussed in the proposed rule, a definition of ''eligible recipient agency'' (ERA) as contained in section 251.3(d) of the proposed rule is not found in current regulations. This definition was included in the proposed rule to clarify the types of organizations eligible to receive TEFAP commodities and administrative funds, provided they meet all pertinent eligibility criteria. Three comments were received concerning the list of organizations identified in the definition of ERA under subparagraph (6).

One commenter expressed concern about the inclusion of ''disaster relief programs'' as a type of ERA. He said that if the new definition allows provision of food to such organizations on the same basis as other ERAs, *i.e.,* without USDA approval, then current regulations must be clarified. The definition of ERA contained in the Emergency Food Assistance Act of 1983 (EFAA) includes disaster relief programs as a type of ERA. Therefore, they were included in the proposed regulatory definition of ERA. However, as stated above, such organizations would be required to meet TEFAP eligibility criteria (i.e., if the organization provides commodities to households, it must administer a means test; if it uses TEFAP commodities to provide prepared meals, it must serve predominantly needy persons). This contrasts with the regulatory requirements governing the distribution of commodities to disaster organizations for use in providing assistance in Presidentially declared disasters and situations of distress as set forth in

section 250.43 and section 250.44 respectively. Under sections 250.43 and 250.44, State agencies must obtain approval from USDA prior to making commodities available for distribution to households in disaster or emergency situations. Once approval is obtained, commodities from TEFAP (and other food distribution programs) can be made available to disaster organizations and distributed to disaster victims without regard to TEFAP eligibility requirements.

Another commenter recommended that the definition be revised to make summer camps and child nutrition programs which receive assistance through other Federal nutrition assistance programs ineligible for TEFAP commodities and administrative funds. As discussed in the proposed rule, Welfare Reform defines ERA to include summer camps for children and child nutrition programs. Therefore, the Department does not have the authority to categorically exclude such organizations from participation in the program.

The same commenter requested that the definition be revised to eliminate reference to the Nutrition Program for the Elderly (NPE), and add ''other nutrition projects that serve on-site or home-delivered meals to needy elderly people'' since sites participating in NPE receive Federal support from other sources. As discussed above, the list of organizations contained in the definition of ERA in the proposed rule reflects the organizations listed in the definition of ERA in the EFAA. The Department lacks the authority to exclude a clearly eligible organizational type from participation in the program. In addition, revising the definition in the manner suggested would not make ineligible those NPE sites that meet the eligibility criteria.

Another commenter requested that community action programs be specifically mentioned as a type of EFO, and noted that they were mentioned in the preamble of the proposed rule, but not in the regulatory text. Specific reference to community action programs was included in the preamble of the proposed rule as an example of the types of organizations that could be considered an EFO. However, such reference does not appear in the regulatory text because it is not included in the definition set forth in the EFAA. Furthermore, it would be impossible to identify all the different types of organizations that could be considered an EFO. This in no way, however, affects their eligibility to participate in the program.

We appreciate the recommendations made by the commenters. However, for the reasons described above, this final rule retains the definition of ERA as originally proposed.

Eligible Recipient Agency Eligibility Criteria

Section 251.5(a)(2) of the proposed rule would limit the eligibility of organizations providing prepared meals to those which serve ''predominantly needy'' persons. Two commenters, although enthusiastic supporters of implementation of the proposed rule without change, expressed concern about the ''new'' standard. They believe that the new standard will require additional monitoring to ensure that it does not restrict access of the needy to TEFAP. The EFAA requires that TEFAP commodities be used to provide assistance to those in need. Prior to Welfare Reform, TEFAP regulations (7 CFR part 251) only addressed the distribution of TEFAP commodities to households through organizations which impose a means test. With the consolidation of the Soup Kitchen/Food Bank Program (SK/FB) into TEFAP, it became necessary to establish requirements relative to the distribution of commodities to organizations which provide prepared meals to ensure that such organizations are providing nutrition assistance to the needy. Upon reviewing the provisions relative to the distribution of SK/FB commodities contained in section 250.52, it was determined that limiting participation of organizations that provide prepared meals to those that serve ''predominantly'' needy persons would meet the requirements of the EFAA. In addition, this limitation is no more stringent than the limitations that were placed on State agencies in the distribution of SK/FB commodities. Therefore, the Department does not expect needy persons to be adversely affected as a result of establishing this criterion for these types of organizations. Thus, this provision is retained in section 251.5(a)(2) as proposed.

Another commenter was concerned about the provision contained in section 251.5(a)(3)(iii) of the proposed rule which states that organizations ''organized or operated exclusively for religious purposes'' are automatically tax exempt under Internal Revenue Service (IRS) rules. The commenter expressed concern that States and ERAs may be unfamiliar with IRS rules, and asked if organizations would be allowed to simply self-declare that they meet this definition, or if they would be required to provide documentation. Under IRS rules, such organizations effectively self-declare their status, i.e., once having claimed the tax exemption, they are deemed to possess it unless successfully challenged by the IRS. Therefore, the rule did not propose to require State agencies to obtain documentation.

Some of the comments have led the Department to believe that the language of the proposed rule regarding eligibility of organizations for TEFAP is in need of further clarification. Section 251.2(c)(2) states that ''[p]rior to making donated foods or administrative funds available, State agencies must enter into a written agreement with eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds. State agencies must ensure that eligible recipient agencies in turn enter into a written agreement with eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds before donated foods or administrative funds are transferred between any two eligible recipient agencies.'' However, section 251.5(a) of the proposed rule speaks only in terms of commodities and does not mention administrative funds, leading to possible confusion. Therefore, section 251.5(a) of the proposed rule is revised to specifically include administrative funds.

Recipient Eligibility Criteria

One commenter recommended that the criteria for recipient eligibility under section 251.5(b) of the proposed rule be expanded to include ''needy persons in situations of emergency and distress due to disasters.'' As discussed in detail above, commodities are made available for distribution to households in disasters and situations of emergency and distress in accordance with the provisions contained in sections 250.43 and 250.44. These provisions permit TEFAP commodities to be distributed to households without regard to income only after proper authorization has been obtained.

Two commenters recommended that section 251.5(b)(2), which requires the use of income-based standards in determining a household's eligibility to receive TEFAP commodities, be removed and replaced with language that would permit the use of non-income-based eligibility criteria. The EFAA does not explicitly require income-based standards to be met by TEFAP recipients. However, TEFAP regulations have always required the use of such criteria. This requirement is necessary in order to ensure that only those households in need of assistance

receive commodities. In addition, it is consistent with eligibility requirements for other nutrition assistance programs, as well as other types of Federal assistance, such as the Temporary Assistance to Needy Families Program.

Reduction in Administrative Burden (State Agreements with Eligible Recipient Agencies and TEFAP State Distribution Plan)

Several commenters expressed interest in reductions in administrative burdens beyond those set forth in the proposed rule. The Department believes it has come close to the proper balance between reduced administrative burden and sufficient program accountability. However, in reviewing the provisions contained in the proposed rule, it has been determined that the administrative burden can be further reduced by making minor changes in the following requirements. Section 251.2(d)(1)(iii) of the proposed rule would require the agreement to include ''the name of the person responsible for administering the program in the receiving eligible recipient agency.'' With the move to permanent agreements, it is prudent to avoid requiring information that could change frequently. Therefore, the final rule is revised to remove subparagraph (iii) in section 251.2(d)(1) of the proposed rule.

Section 251.6(a)(1) of the proposed rule would require State agencies to include ''[a] designation of the State agency responsible for distributing commodities and administrative funds provided under this part, the address of such agency, and the name of the agency official entrusted with binding signature authority'' in their distribution plan. Under Welfare Reform, TEFAP State plans are to be submitted every four years instead of annually, which was the previous regulatory requirement. Thus, while TEFAP State plans do not have the potential to be permanent, as do State agreements with ERAs, the plans are now of sufficient duration to justify a re-evaluation of this provision. The Department has determined that the name of the agency official entrusted with binding signature authority also falls into the category of information that could change frequently. Therefore, the final rule is amended to remove this element of the requirement in section 251.6(a)(1) of the proposed rule.

Disbursement of Administrative Funds

Two commenters, although both generally supporting implementation of the proposed rule without change, expressed concern that the new requirements in section 251.8 for documenting the 40 percent pass-through of administrative funds may require additional monitoring. Section 251.8(d)(3) of the current regulations requires, as mandated by the EFAA, that State agencies pass through 40 percent of TEFAP administrative funds to emergency feeding organizations (EFOs). Current regulations also restrict the distribution of TEFAP administrative funds to EFOs. (The proposed rule would amend the definition of EFO in a way that does not materially affect the pass-through requirement.) While section 251.8 of the proposed rule retains the 40 percent pass-through requirement, the rule would permit the distribution of TEFAP administrative funds to non-EFOs. However, as discussed in the preamble to the proposed rule, State agencies which pass through 40 percent of such funds to ERAs that are EFOs, as defined in section 251.3, will be considered to have met the pass-through requirement. The Department will continue to monitor the distribution of TEFAP administrative funds by State agencies to ensure that they are in compliance with this requirement. Therefore, while TEFAP administrative funds may be distributed to non-EFOs under the provisions contained in the proposed rule, monitoring activities at the State or local level will not be affected.

Allowable Administrative Costs, Non-USDA Commodities

Upon further review of the proposed rule, the Department has identified a need to revise section 251.8 to clarify provisions relative to the distribution of TEFAP administrative funds to cover costs associated with the distribution of non-USDA commodities. Section 251.5(a) of the proposed rule requires that all organizations, including those that distribute only non-USDA commodities, must qualify as ERAs in all respects under section 251.3(d) in order to receive TEFAP administrative funds. Section 251.8(d) of the proposed rule refers to ''organizations which distribute only non-USDA commodities.'' For the sake of clarity, this rule revises section 251.8(d) to remove the term ''organizations'' and replaces it with ''ERA.''

Recordkeeping and Reporting Requirements

The proposed rule's reduction in the administrative burden for TEFAP drew the most praise from commenters. It was the factor most often noted by those who merely wrote to urge speedy implementation of the rule. However, one commenter expressed concern about the amendment to section 251.10(d)(2) which eliminates the requirement that State agencies report to FNS on a quarterly basis the total number of households served in TEFAP. While the commenter noted that this requirement has already been eliminated by TEFAP Policy Memorandum No. 12, dated December 23, 1997, the State agency has continued to collect and maintain such data. These data have been used to document the success of the program and for allocating resources at the local level. The Department is aware that such information is used by some ERAs and State agencies for various purposes. However, as discussed in the preamble to the proposed rule, the information is no longer useful to FNS. Therefore, while section 251.10(d)(2) of the proposed rule would no longer require that State agencies report such information to FNS, it does not prohibit State agencies from collecting household participation data from ERAs.

One commenter recommended that requirements associated with maintaining inventory records be kept to a minimum. While these requirements were not addressed in the proposed rule, TEFAP agencies have raised a number of questions and concerns about this issue. The Department is in the process of preparing guidance which will clarify what the Federal requirements are and explain the minimum requirements a State agency could choose to adopt in order to comply with the regulations.

Monitoring Requirements

Commenters were all in favor of the proposed rule's reduction in TEFAP monitoring requirements. However, one commenter recommended that sections 251.2(d)(2)(i) and 251.10(e) be revised to permit State agencies to delegate to ERAs with which States have agreements, the authority to conduct reviews of ERAs with which those ERAs in turn have agreements. Only in instances in which deficiencies are identified would the ERA be required to report to the State agency, which would assist in effecting corrective action. The Department is appreciative of the need to reduce the administrative burden as much as possible, but this goal must be balanced with the need for a certain level of accountability necessary to insure program integrity. The Department does not believe this balance can be achieved if State agencies are allowed to delegate authority for conducting reviews of ERAs to other ERAs. There must be a unified, independent and objective review authority. Therefore, the

Department cannot adopt this recommendation.

The commenter also expressed concern about the burden associated with selecting ERAs for review based on the dollar value of TEFAP commodities distributed or deficiencies that have been identified through various means. As discussed in the preamble to the proposed rule, State agencies would be afforded flexibility to develop a system for selecting ERAs for review. No selection criteria are mandated. The criteria listed in the preamble are merely suggestions regarding how to select sites for review. The only requirement is that the system must ensure that deficiencies in program administration are detected and resolved in an effective and efficient manner.

In reviewing the provisions contained in section 251.10, the Department has determined the following changes are necessary for clarification purposes. First, section 251.10(e)(3) of the proposed rule is being revised to include civil rights in the list of areas to be covered during a review, given the fact the revised FNS Instruction 113–3 will specify that on-site civil rights reviews be conducted at the frequency established in section 251.10(e). Since these reviews must be conducted at the same frequency, State agencies will likely consolidate civil rights and program reviews into one effort. Second, section 251.2(d)(2)(i) of the proposed rule would prohibit State agencies from delegating the authority to establish eligibility criteria for organizations or recipients, or for conducting reviews of ERAs. The prohibitions on delegating authority to establish eligibility criteria are then repeated in section 251.5(c). For the sake of consistency, section 251.10(e)(1) of the proposed rule is being revised to include the prohibition on the delegation of authority to conduct reviews.

Maintenance of Effort

Two commenters, although both generally supporting implementation of the proposed rule without change, were concerned about the new requirements for documenting the State maintenance-of-effort requirement, in section 251.10(h). The commenters suggested ''additional monitoring'' would be needed to insure compliance. This requirement is applied to State agencies, and compliance is monitored by the Department. Therefore, it will have no impact on monitoring activities at the State or local level.

Alien Provisions

Two commenters requested that the rule make clear that organizations are not required to determine the citizenship status of any recipient pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208). As noted in the preamble to the proposed rule, the provisions of Welfare Reform affecting aliens do not require that States in any way restrict access of aliens to TEFAP. Welfare Reform gives States the option to provide, or not provide, program benefits to any individual who is not a citizen or a qualified alien. As discussed in the preamble to the proposed rule, the Department intends to publish a separate rulemaking to incorporate the provisions of Welfare Reform regarding eligibility of aliens for TEFAP and other food distribution programs.

Miscellaneous Comments

One commenter expressed concerns about the various problems involved in dealing with commodity losses and the procedures involved in establishing claims for those losses. The Department appreciates the comments provided and will consider them in developing proposals for a separate rulemaking aimed at addressing issues associated with commodity losses and claims.

Another commenter requested that an indemnification for product liability be granted by USDA to States and ERAs, referencing the Good Samaritan Act. Such language could also be included in all agreements between States and ERAs and between ERAs. As praiseworthy as this recommendation is, unfortunately the Good Samaritan Food Donation Act (Pub. L. 101–610) applies to donors of food only. Therefore, USDA lacks the authority to extend its protections to distributors of such food.

List of Subjects

7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Indians, Infants and children, Commodity loan programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 251

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Commodity loan programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR parts 250 and 251 are amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a–1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

§ 250.3 [Amended]

2. In § 250.3, the definitions of *Food bank* and *Soup kitchen* are removed.

§ 250.13 [Amended]

3. In § 250.13:

a. Paragraph (a)(1)(iv) is amended by removing the words ''emergency feeding organizations'' wherever they appear and adding the words ''eligible recipient agencies'' in their place.

b. The last sentence of paragraph (k)(2) is amended by removing the words '', including, for example, State Food Distribution Advisory Council Reports''.

§ 250.24 [Amended]

4. In § 250.24, paragraph (b)(4) is removed, and paragraphs (b)(5) and (b)(6) are redesignated as paragraphs (b)(4) and (b)(5), respectively.

§ 250.41 [Amended]

5. In § 250.41, the first sentence of paragraph (a)(1) is amended by removing the words ''With the exception of section 110 commodities, which are to be distributed in accordance with the provisions of § 250.52, the'' and adding in their place ''The''.

§ 250.52 [Removed]

6. Section 250.52 is removed.

PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

1. The authority citation for part 251 continues to read as follows:

Authority: 7 U.S.C. 7501–7516.

§ 251.1 [Amended]

2. In § 251.1, the word ''Temporary'' is removed.

3. In § 251.2:

a. Paragraph (a) is amended by adding the heading ''*Food and Nutrition Service.''*;

b. Paragraph (b) is amended by adding the heading ''*State Agencies.*'', by removing the words ''emergency feeding organizations'' and by adding the words ''eligible recipient agencies'' in their place;

c. Paragraph (c) is revised; and

d. Paragraph (d) is added.

The revision and addition read as follows:

§ 251.2 Administration.

* * * * *

(c) *Agreements.* (1) *Agreements between Department and States.* Each State agency that distributes donated foods to eligible recipient agencies or receives payments for storage and distribution costs in accordance with § 251.8 must perform those functions pursuant to an agreement entered into with the Department. This agreement will be considered permanent, with amendments initiated by State agencies, or submitted by them at the Department's request, all of which will be subject to approval by the Department.

(2) *Agreements between State agencies and eligible recipient agencies, and between eligible recipient agencies.* Prior to making donated foods or administrative funds available, State agencies must enter into a written agreement with eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds. State agencies must ensure that eligible recipient agencies in turn enter into a written agreement with any eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds before donated foods or administrative funds are transferred between any two eligible recipient agencies. All agreements entered into must contain the information specified in paragraph (d) of this section, and be considered permanent, with amendments to be made as necessary, except that agreements must specify that they may be terminated by either party upon 30 days' written notice. State agencies must ensure that eligible recipient agencies provide, on a timely basis, by amendment to the agreement, or other written documents incorporated into the agreement by reference if permitted under paragraph (d) of this section, any information on changes in program administration, including any changes resulting from amendments to Federal regulations or policy.

(d) *Contents of agreements between State agencies and eligible recipient agencies and between eligible recipient agencies.* (1) Agreements between State agencies and eligible recipient agencies and between eligible recipient agencies must provide:

(i) That eligible recipient agencies agree to operate the program in accordance with the requirements of this part, and, as applicable, part 250 of this chapter; and

(ii) The name and address of the eligible recipient agency receiving commodities and/or administrative funds under the agreement.

(2) The following information must also be identified, either in the agreement or other written documents incorporated by reference in the agreement:

(i) If the State agency delegates the responsibility for any aspect of the program to an eligible recipient agency, each function for which the eligible recipient agency will be held responsible; except that in no case may State agencies delegate responsibility for establishing eligibility criteria for organizations in accordance with § 251.5(a), establishing eligibility criteria for recipients in accordance with § 251.5(b), or conducting reviews of eligible recipient agencies in accordance with § 251.10(e);

(ii) If the receiving eligible recipient agency is to be allowed to further distribute TEFAP commodities and/or administrative funds to other eligible recipient agencies, the specific terms and conditions for doing so, including, if applicable, a list of specific organizations or types of organizations eligible to receive commodities or administrative funds;

(iii) If the use of administrative funds is restricted to certain types of expenses pursuant to § 251.8(e)(2), the specific types of administrative expenses eligible recipient agencies are permitted to incur;

(iv) Any other conditions set forth by the State agency.

4. Section 251.3 is revised to read as follows:

§ 251.3 Definitions.

(a) The terms used in this part that are defined in part 250 of this chapter have the meanings ascribed to them therein, unless a different meaning for such a term is defined herein.

(b) *Charitable institution* (which is defined differently in this part than in part 250 of this chapter) means an organization which—

(1) Is public, or

(2) Is private, possessing tax exempt status pursuant to § 251.5(a)(3); and

(3) Is not a penal institution (this exclusion also applies to correctional institutions which conduct rehabilitation programs); and

(4) Provides food assistance to needy persons.

(c) *Distribution site* means a location where the eligible recipient agency actually distributes commodities to needy persons for household consumption or serves prepared meals to needy persons under this part.

(d) *Eligible recipient agency* means an organization which—

(1) Is public, or

(2) Is private, possessing tax exempt status pursuant to § 251.5(a)(3); and

(3) Is not a penal institution; and

(4) Provides food assistance—

(i) Exclusively to needy persons for household consumption, pursuant to a means test established pursuant to § 251.5 (b), or

(ii) Predominantly to needy persons in the form of prepared meals pursuant to § 251.5(a)(2); and

(5) Has entered into an agreement with the designated State agency pursuant to § 251.2(c) for the receipt of commodities or administrative funds, or receives commodities or administrative funds under an agreement with another eligible recipient agency which has signed such an agreement with the State agency or another eligible recipient agency within the State pursuant to § 251.2(c); and

(6) Falls into one of the following categories:

(i) Emergency feeding organizations (including food banks, food pantries and soup kitchens);

(ii) Charitable institutions (including hospitals and retirement homes);

(iii) Summer camps for children, or child nutrition programs providing food service;

(iv) Nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly), including projects that operate congregate Nutrition sites and projects that provide home-delivered meals; and

(v) Disaster relief programs.

(e) *Emergency feeding organization* means an eligible recipient agency which provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons. Emergency feeding organizations have priority over other eligible recipient agencies in the distribution of TEFAP commodities pursuant to § 251.4(h).

(f) *Food bank* means a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products of food or edible commodities, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an

integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.

(g) *Food pantry* means a public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and distress.

(h) *Formula* means the formula used by the Department to allocate among States the commodities and funding available under this part. The amount of such commodities and funds to be provided to each State will be based on each State's population of low-income and unemployed persons, as compared to national statistics. Each State's share of commodities and funds shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State. The surplus commodities will be allocated to States on the basis of their weight (pounds), and the commodities purchased under section 214 of the Emergency Food Assistance Act of 1983 will be allocated on the basis of their value (dollars). In instances in which a State determines that it will not accept the full amount of its allocation of commodities purchased under section 214 of the Emergency Food Assistance Act of 1983, the Department will reallocate the commodities to other States on the basis of the same formula used for the initial allocation.

(i) *State agency* means the State government unit designated by the Governor or other appropriate State executive authority which has entered into an agreement with the United States Department of Agriculture under § 251.2(c).

(j) *Soup kitchen* means a public or charitable institution that, as an integral part of the normal activities of the institution, maintains an established feeding operation to provide food to needy homeless persons on a regular basis.

(k) *Value of commodities distributed* means the Department's cost of acquiring commodities for distribution under this part.

5. In § 251.4:

a. The words ''emergency feeding organization'', ''emergency feeding organizations'' and ''emergency feeding organization's'' are removed wherever they appear in the section, and the words ''eligible recipient agency'', ''eligible recipient agencies'' and ''eligible recipient agency's'' respectively are added in their place;

b. Paragraph (c)(1) is amended by removing the reference to ''§ 251.3(d)'' and adding a reference to ''§ 251.3(h)'' in its place;

c. Paragraph (d)(3) is removed;

d. Paragraph (f)(5) is amended by removing the reference ''§ 250.15'' and adding in its place the reference ''§ 250.30'';

e. Paragraphs (g) and (h) are revised;

f. Paragraph (j) is amended by adding the words ''that has signed an agreement with the respective State agencies'' after the words ''eligible recipient agency'';

The revisions read as follows:

§ 251.4 Availability of commodities.

* * * * *

(g) *Availability and control of donated commodities.* Donated commodities will be made available to State agencies only for distribution and use in accordance with this part. Except as otherwise provided in paragraph (f) of this section, donated commodities not so distributed or used for any reason may not be sold, exchanged, or otherwise disposed of without the approval of the Department. However, donated commodities made available under section 32 of Pub. L. 74–320 (7 U.S.C. 612c) may be transferred by eligible recipient agencies receiving commodities under this part, or recipient agencies, as defined in § 250.3 of this chapter, to any other eligible recipient agency or recipient agency which agrees to use such donated foods to provide without cost or waste, nutrition assistance to individuals in low-income groups. Such transfers will be effected only with prior authorization by the appropriate State agency and must be documented. Such documentation shall be maintained in accordance with § 251.10(a) of this part and § 250.16 of this chapter by the distributing agency and the State agency responsible for administering TEFAP and made available for review upon request.

(h) *Distribution to eligible recipient agencies—priority system and advisory boards.* (1) State agencies must distribute commodities made available under this part to eligible recipient agencies in accordance with the following priorities:

(i) *First priority.* When a State agency cannot meet all eligible recipient agencies' requests for TEFAP commodities, the State agency must give priority in the distribution of such commodities to emergency feeding organizations as defined under § 251.3(e). A State agency may, at its discretion, concentrate commodity resources upon a certain type or types of such organizations, to the exclusion of others.

(ii) *Second priority.* After a State agency has distributed TEFAP commodities sufficient to meet the needs of all emergency feeding organizations, the State agency must distribute any remaining program commodities to other eligible recipient agencies which serve needy people, but do not relieve situations of emergency and distress. A State agency may, at its discretion, concentrate commodity resources upon a certain type or types of such organizations, to the exclusion of others.

(2) *Delegation.* When a State agency has delegated to an eligible recipient agency the authority to select other eligible recipient agencies, the eligible recipient agency exercising this authority must ensure that any TEFAP commodities are distributed in accordance with the priority system set forth in paragraphs (h)(1)(i) and (h)(1)(ii) of this section. State agencies and eligible recipient agencies will be deemed to be in compliance with the priority system when eligible recipient agencies distribute TEFAP commodities to meet the needs of all emergency feeding organizations under their jurisdiction prior to making commodities available to eligible recipient agencies which are not emergency feeding organizations.

(3) *Existing networks.* Subject to the constraints of paragraphs (h)(1)(i) and (h)(1)(ii) of this section, State agencies may give priority in the distribution of TEFAP commodities to existing food bank networks and other organizations whose ongoing primary function is to facilitate the distribution of food to low-income households, including food from sources other than the Department.

(4) *State advisory boards.* Each State agency receiving TEFAP commodities is encouraged to establish a State advisory board representing all types of entities in the State, both public and private, interested in the distribution of such commodities. Such advisory boards can provide valuable advice on how resources should be allocated among various eligible outlet types, what areas have the greatest need for food assistance, and other important issues that will help States to use their program resources in the most efficient and effective manner possible. A State agency may expend TEFAP administrative funds to support the activities of an advisory board in accordance with § 251.8 of this part.

* * * * *

6. Section 251.5 is revised to read as follows:

§ 251.5 Eligibility determinations.

(a) *Criteria for determining eligibility of organizations.* Prior to making commodities or administrative funds available, State agencies, or eligible recipient agencies to which the State agency has delegated responsibility for the distribution of TEFAP commodities or administrative funds, must ensure that an organization applying for participation in the program meets the definition of an ''eligible recipient agency'' under § 251.3(d). In addition, applicant organizations must meet the following criteria:

(1) *Agencies distributing to households.* Organizations distributing commodities to households for home consumption must limit the distribution of commodities provided under this part to those households which meet the eligibility criteria established by the State agency in accordance with paragraph (b) of this section.

(2) *Agencies providing prepared meals.* Organizations providing prepared meals must demonstrate, to the satisfaction of the State agency, or eligible recipient agency to which they have applied for the receipt of commodities or administrative funds, that they serve predominantly needy persons. State agencies may establish a higher standard than ''predominantly'' and may determine whether organizations meet the applicable standard by considering socioeconomic data of the area in which the organization is located, or from which it draws its clientele. State agencies may not, however, require organizations to employ a means test to determine that recipients are needy, or to keep records solely for the purpose of demonstrating that its recipients are needy.

(3) *Tax-exempt status.* Private organizations must—

(i) Be currently operating another Federal program requiring tax-exempt status under the Internal Revenue Code (IRC), or

(ii) Possess documentation from the Internal Revenue Service (IRS) recognizing tax-exempt status under the IRC, or

(iii) If not in possession of such documentation, be automatically tax exempt as ''organized or operated exclusively for religious purposes'' under the IRC, or

(iv) If not in possession of such documentation, but required to file an application under the IRC to obtain tax-exempt status, have made application for recognition of such status and be moving toward compliance with the requirements for recognition of tax-exempt status. If the IRS denies a participating organization's application for recognition of tax-exempt status, the organization must immediately notify the State agency or the eligible recipient agency, whichever is appropriate, of such denial, and that agency will terminate the organization's agreement and participation immediately upon receipt of such notification. If documentation of IRS recognition of tax-exempt status has not been obtained and forwarded to the appropriate agency within 180 days of the effective date of the organization's approval for participation in TEFAP, the State agency or eligible recipient agency must terminate the organization's participation until such time as recognition of tax-exempt status is actually obtained, except that the State agency or eligible recipient agency may grant a single extension not to exceed 90 days if the organization can demonstrate, to the State agency's or eligible recipient agency's satisfaction, that its inability to obtain tax-exempt status within the 180 day period is due to circumstances beyond its control. It is the responsibility of the organization to document that it has complied with all IRS requirements and has provided all information requested by IRS in a timely manner.

(b) *Criteria for determining recipient eligibility.* Each State agency must establish uniform Statewide criteria for determining the eligibility of households to receive commodities provided under this part for home consumption. The criteria must:

(1) Enable the State agency to ensure that only households which are in need of food assistance because of inadequate household income receive TEFAP commodities;

(2) Include income-based standards and the methods by which households may demonstrate eligibility under such standards; and

(3) Include a requirement that the household reside in the geographic location served by the State agency at the time of applying for assistance, but length of residency shall not be used as an eligibility criterion.

(c) *Delegation of authority.* A State agency may delegate to one or more eligible recipient agencies with which the State agency enters into an agreement the responsibility for the distribution of commodities and administrative funds made available under this part. State agencies may also delegate the authority for selecting eligible recipient agencies and for determining the eligibility of such organizations to receive commodities and administrative funds. However, responsibility for establishing eligibility criteria for organizations in accordance with paragraph (a) of this section, and for establishing recipient eligibility criteria in accordance with paragraph (b) of this section, may not be delegated. In instances in which State agencies delegate authority to eligible recipient agencies to determine the eligibility of organizations to receive commodities and administrative funds, eligibility must be determined in accordance with the provisions contained in this part and the State plan. State agencies will remain responsible for ensuring that commodities and administrative funds are distributed in accordance with the provisions contained in this part.

7. Section 251.6 is revised to read as follows:

§ 251.6 Distribution plan.

(a) *Contents of the plan.* The State agency must submit for approval by the appropriate FNS Regional Office a plan which contains:

(1) A designation of the State agency responsible for distributing commodities and administrative funds provided under this part, and the address of such agency;

(2) A plan of operation and administration to expeditiously distribute commodities received under this part;

(3) A description of the standards of eligibility for recipient agencies, including any subpriorities within the two-tier priority system; and

(4) A description of the criteria established in accordance with § 251.5(b) which must be used by eligible recipient agencies in determining the eligibility of households to receive TEFAP commodities for home consumption.

(b) *Plan submission.* A complete plan will be required for Fiscal Year 2001, to be submitted no later than August 15, 2000. Thereafter, a complete plan must be submitted every 4 years, due no later than August 15 of the fiscal year prior to the end of the 4 year cycle.

(c) *Amendments.* State agencies must submit amendments to the distribution plan to the extent that such amendments are necessary to reflect any changes in program operations or administration as described in the plan, or at the request of FNS, to the appropriate FNS Regional Office.

8. Section 251.7 is revised to read as follows:

§ 251.7 Formula adjustments.

(a) *Commodity adjustments.* The Department will make annual adjustments to the commodity allocation for each State, based on updated unemployment statistics. These adjusted allocations will be effective for

the entire fiscal year, subject to reallocation or transfer in accordance with this part.

(b) *Funds adjustments.* The Department will make annual adjustments of the funds allocation for each State based on updated unemployment statistics. These adjusted allocations will be effective for the entire fiscal year unless funds are recovered, withheld, or reallocated by FNS in accordance with § 251.8(f).

9. In § 251.8:

a. Paragraph (a) is amended by removing the reference ''§ 251.3(d)'' and adding in its place the reference ''§ 251.3(h)'';

b. Paragraph (b) is amended by removing the reference ''part 3015'' and adding in its place the reference ''part 3016 or part 3019, as applicable.'';

c. Paragraph (c)(1) is amended by removing the words ''U.S. Treasury Department checks or'';

d. Paragraph (c)(2) is amended by:

1. removing the words ''FNS Instruction 407–3 (Grant Award Process)'' and adding in their place the words ''procedures established by FNS'';

2. removing from the first sentence the words ''either'' and ''or a U.S. Treasury check pursuant to submission of the SF–270, Request for Advance or Reimbursement'';

3. removing the second sentence; and

4. removing reference to ''§ 251.8(e)'' and in its place adding reference to ''paragraph (f) of this section'';

e. Paragraphs (d) and (e) are redesignated as paragraphs (e) and (f), and new paragraph (d) is added; and

f. Newly redesignated paragraph (e) is revised.

The addition and revision read as follows:

§ 251.8 Payment of funds for administrative costs.

* * * * *

(d) *Priority for eligible recipient agencies distributing USDA commodities.* State agencies and eligible recipient agencies distributing administrative funds must ensure that the administrative funding needs of eligible recipient agencies which receive USDA commodities are met, relative to both USDA commodities and any non-USDA commodities they may receive, before such funding is made available to eligible recipient agencies which distribute only non-USDA commodities.

(e) *Use of funds.* (1) *Allowable administrative costs.* State agencies and eligible recipient agencies may use funds made available under this part to pay the direct expenses associated with the distribution of USDA commodities and commodities secured from other sources to the extent that the commodities are ultimately distributed by eligible recipient agencies which have entered into agreements in accordance with § 251.2. Direct expenses include the following, regardless of whether they are charged to TEFAP as direct or indirect costs:

(i) The intrastate and interstate transport, storing, handling, repackaging, processing, and distribution of commodities; except that for interstate expenditures to be allowable, the commodities must have been specifically earmarked for the particular State or eligible recipient agency which incurs the cost;

(ii) Costs associated with determinations of eligibility, verification, and documentation;

(iii) Costs of providing information to persons receiving USDA commodities concerning the appropriate storage and preparation of such commodities;

(iv) Costs involved in publishing announcements of times and locations of distribution; and

(v) Costs of recordkeeping, auditing, and other administrative procedures required for program participation.

(2) *State restriction of administrative costs.* A State agency may restrict the use of TEFAP administrative funds by eligible recipient agencies by disallowing one or more types of expenses expressly allowed in paragraph (e)(1) of this section. If a State agency so restricts the use of administrative funds, the specific types of expenses the State will allow eligible recipient agencies to incur must be identified in the State agency's agreements with its eligible recipient agencies, or set forth by other written notification, incorporated into such agreements by reference.

(3) *Agreements.* In order to be eligible for funds under paragraph (e)(1) of this section, eligible recipient agencies must have entered into an agreement with the State agency or another eligible recipient agency pursuant to § 251.2(c).

(4) *Pass-through requirement-local support to emergency feeding organizations.* (i) Not less than 40 percent of the Federal Emergency Food Assistance Program administrative funds allocated to the State agency in accordance with paragraph (a) of this section must be:

(A) Provided by the State agency to emergency feeding organizations that have signed an agreement with the State agency as either reimbursement or advance payment for administrative costs incurred by emergency feeding organizations in accordance with paragraph (e)(1) of this section, except that such emergency feeding organizations may retain advance payments only to the extent that they actually incur such costs; or

(B) Directly expended by the State agency to cover administrative costs incurred by, or on behalf of, emergency feeding organizations in accordance with paragraph (e)(1) of this section.

(ii) Any funds allocated to or expended by the State agency to cover costs incurred by eligible recipient agencies which are not emergency feeding organizations shall not count toward meeting the pass-through requirement.

(iii) State agencies must not charge for commodities made available under this part to eligible recipient agencies.

* * * * *

10. In § 251.9:

a. The words ''emergency feeding organization'' and ''emergency feeding organizations'' are removed wherever they appear in the section, and added in their place are the words ''eligible recipient agency'' and ''eligible recipient agencies'' respectively;

b. Paragraph (a) is revised;

c. Paragraph (c) introductory text and paragraph (c)(2)(i) are amended by removing the references ''3016.24(b)(1)'' and ''3016.24(c) through 3016.24(f)'' and adding the reference ''part 3016 or 3019, as applicable'' in their place;

d. Paragraph (e) is removed, and paragraphs (f) and (g) are redesignated as paragraphs (e) and (f), respectively;

e. Newly redesignated paragraph (e) is amended by removing the words ''SF–269, Financial Status Report'' and adding the words ''FNS–667, Report of TEFAP Administrative Costs'' in their place.

f. Newly redesignated paragraph (f) is amended by removing the reference ''SF–269'' wherever it appears and adding the reference ''FNS–667'' in its place.

The revision reads as follows:

§ 251.9 Matching of funds.

(a) *State matching requirement.* The State must provide a cash or in-kind contribution equal to the amount of TEFAP administrative funds received under § 251.8 and retained by the State agency for State-level costs or made available by the State agency directly to eligible recipient agencies that are not emergency feeding organizations as defined in § 251.3(e). The State agency will not be required to match any portion of the Federal grant passed through for administrative costs incurred by emergency feeding organizations or directly expended by the State agency for such costs in

accordance with § 251.8(e)(4) of this part.

* * * * *

11. In § 251.10:

a. Paragraph (a) is revised;

b. Paragraph (b) is amended by adding the words ''commodities distributed for home consumption and meals prepared from'' after the word ''law,'';

c. Paragraph (c) is amended by adding the words ''for home consumption or availability of meals prepared from commodities'' after the word ''foods''.

d. Paragraphs (d) and (e) are revised;

e. Paragraph (f) is amended by:

1. removing the words ''emergency feeding organizations and distribution sites'', ''emergency feeding organization or distribution site'' and ''emergency feeding organization's or distribution site's'' wherever they appear, and adding in their place the words ''eligible recipient agencies'', ''eligible recipient agency'' and ''eligible recipient agency's'' respectively;

2. adding the words ''or meal service'' after the word ''foods'' in paragraph (f)(1) introductory text;

3. adding the words ''for home consumption or prepared meals containing TEFAP commodities'' after the word ''commodities'' in paragraph (f)(1)(ii);

4. adding the words ''or meal service'' at the end of paragraph (f)(1)(iii);

5. adding the words ''or meal service'' after the word ''foods'' in paragraph (f)(2); and

6. removing the words ''the distribution of commodities by'' in paragraph (f)(4);

f. Paragraph (g) is amended by removing the words ''emergency feeding organizations'' and adding in their place ''eligible recipient agencies'';

g. Paragraph (h) is revised.

The revisions read as follows:

§ 251.10 Miscellaneous provisions.

(a) *Records.* (1) *Commodities.* State agencies, subdistributing agencies (as defined in § 250.3 of this chapter), and eligible recipient agencies must maintain records to document the receipt, disposal, and inventory of commodities received under this part that they, in turn, distribute to eligible recipient agencies. Such records must be maintained in accordance with the requirements set forth in § 250.16 of this chapter. Eligible recipient agencies must sign a receipt for program commodities which they receive under this part for distribution to households or for use in preparing meals, and records of all such receipts must be maintained.

(2) *Administrative funds.* In addition to maintaining financial records in accordance with 7 CFR part 3016, State agencies must maintain records to document the amount of funds received under this part and paid to eligible recipient agencies for allowable administrative costs incurred by such eligible recipient agencies. State agencies must also ensure that eligible recipient agencies maintain such records.

(3) *Household information.* Each distribution site must collect and maintain on record for each household receiving TEFAP commodities for home consumption, the name of the household member receiving commodities, the address of the household (to the extent practicable), the number of persons in the household, and the basis for determining that the household is eligible to receive commodities for home consumption.

(4) *Record retention.* All records required by this section must be retained for a period of 3 years from the close of the Federal Fiscal Year to which they pertain, or longer if related to an audit or investigation in progress. State agencies may take physical possession of such records on behalf of their eligible recipient agencies. However, such records must be reasonably accessible at all times for use during management evaluation reviews, audits or investigations.

* * * * *

(d) *Reports.* (1) *Submission of Form FNS–667.* Designated State agencies must identify funds obligated and disbursed to cover the costs associated with the program at the State and local level. State and local costs must be identified separately. The data must be identified on Form FNS–667, Report of Administrative Costs (TEFAP) and submitted to the appropriate FNS Regional Office on a quarterly basis. The quarterly report must be submitted no later than 30 calendar days after the end of the quarter to which it pertains. The final report must be submitted no later than 90 calendar days after the end of the fiscal year to which it pertains.

(2) *Reports of excessive inventory.* Each State agency must complete and submit to the FNS Regional Office reports to ensure that excessive inventories of donated foods are not maintained, in accordance with the requirements of § 250.17(a) of this chapter.

(e) *State monitoring system.* (1) Each State agency must monitor the operation of the program to ensure that it is being administered in accordance with Federal and State requirements. State agencies may not delegate this responsibility.

(2) Unless specific exceptions are approved in writing by FNS, the State agency monitoring system must include:

(i) An annual review of at least 25 percent of all eligible recipient agencies which have signed an agreement with the State agency pursuant to § 251.2(c), provided that each such agency must be reviewed no less frequently than once every four years; and

(ii) An annual review of one-tenth or 20, whichever is fewer, of all eligible recipient agencies which receive TEFAP commodities and/or administrative funds pursuant to an agreement with another eligible recipient agency. Reviews must be conducted, to the maximum extent feasible, simultaneously with actual distribution of commodities and/or meal service, and eligibility determinations, if applicable. State agencies must develop a system for selecting eligible recipient agencies for review that ensures deficiencies in program administration are detected and resolved in an effective and efficient manner.

(3) Each review must encompass, as applicable, eligibility determinations, food ordering procedures, storage and warehousing practices, inventory controls, approval of distribution sites, reporting and recordkeeping requirements, and civil rights.

(4) Upon concurrence by FNS, reviews of eligible recipient agencies which have been conducted by FNS Regional Office personnel may be incorporated into the minimum coverage required by paragraph (e)(2) of this section.

(5) If deficiencies are disclosed through the review of an eligible recipient agency, the State agency must submit a report of the review findings to the eligible recipient agency and ensure that corrective action is taken to eliminate the deficiencies identified.

* * * * *

(h) *Maintenance of effort.* The State may not reduce the expenditure of its own funds to provide commodities or services to organizations receiving funds or services under the Emergency Food Assistance Act of 1983 below the level of such expenditure existing in the fiscal year when the State first began administering TEFAP, or Fiscal Year 1988, which is the fiscal year in which the maintenance-of-effort requirement became effective, whichever is later.

Dated: December 21, 1999.

Samuel Chambers, Jr.,

Administrator.

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