

designated by the Governor of the State, or by the State legislature, and approved by the Secretary are eligible to become distributing agencies.

(b) *Private agencies.* Where distributing agencies are not permitted by law to make distribution to private recipient agencies, or to any class of private recipient agency, private agencies which agree to make distribution of donated food on a State-wide basis and which apply directly to FCS, and are approved by the Secretary are eligible to become distributing agencies.

(c) *Subdistributing agencies.* If distributing agencies use subdistributing agencies to distribute donated foods, the distributing agencies' responsibilities to the Department for overall management and control of the distribution program shall not be delegated to such subdistributing agencies.

§ 250.11 Eligibility determination for recipient agencies and recipients.

(a) *Verification of recipient agency eligibility.* Distributing agencies at the request of FCS shall:

(1) Verify that recipient agencies registered to participate in the National Commodity Processing (NCP) Program have a current agreement with the distributing agency to receive donated food in accordance with § 252.1(c) and

(2) Report the results of such verification to FCS within timeframes determined by FCS.

(b) *Eligibility of recipient agencies and recipients.* Distributing agencies shall determine the eligibility of any agency which submits an application for participation in the program. Distributing agencies shall consider the past performance of recipient agencies when approving applications for participation. Once a recipient agency has been determined to be eligible for participation in the program, the distributing agency shall enter into an agreement with the agency in accordance with § 250.12(b) and make donated food available. Distributing agencies shall impose upon welfare agencies the responsibility for determining that recipients to whom welfare agencies distribute donated foods are eligible: *Provided, however:* That the State agency or FCSRO administering the applicable program shall determine the eligibility

under this part of school food authorities participating under part 210 or part 220, or sponsors participating in the Summer Food Service Program for Children under part 225, of this chapter, and of nonresidential child care institutions participating in the Child Care Food Program under part 226 of this chapter.

§ 250.12 Agreements and contracts.

(a) *Agreements with Department.* Prior to the beginning of a distribution program, distributing agencies shall enter into written agreements with the Department which shall incorporate the terms and conditions set forth in this part. When requested by the Department an eligible agency shall present evidence of its authority to enter into such agreements. The agreements shall be effective for no longer than one year and must be completed by September 30 of each year. In addition, agreements between the Department and State Agencies on Aging which elect to receive cash in lieu of commodities shall also be effective for no longer than one year and must be completed by September 30 of each year.

(b) *Distributing agency agreements.* Distributing agencies shall enter into written agreements with all subdistributing agencies, recipient agencies, warehouses, carriers, or other entities to which distributing agencies deliver donated foods under their distribution program. Distributing agencies shall be responsible for ensuring that program integrity is maintained by all entities with whom agreements are entered into. All agreements shall contain such terms and conditions as the distributing agency deems necessary to ensure that:

(1) The distribution and use of donated foods is in accordance with this part,

(2) Subdistributing agencies, recipient agencies, warehouses, carriers, or other persons to whom donated foods are delivered by the distributing agency are responsible to the distributing agency for any improper distribution or use of donated foods or for any loss of, or damage to, donated foods caused by their fault or negligence,

(3) Subdistributing agencies and recipient agencies have and preserve a

right to assert claims against other persons to whom donated foods are delivered for care, handling or distribution, and

(4) Subdistributing agencies and recipient agencies will take action to obtain restitution in connection with claims for improper distribution, use or loss of, or damage to, donated foods.

To the extent that bills of lading and warehouse receipts satisfy the above-stated criteria, the distributing agency may consider such documents as appropriate agreements. The agreement shall be in effect for not longer than one year and shall provide that it may be extended at the option of both parties for two additional one year periods. Agreements may be terminated for cause by either party upon 30 days notice. At the time the agreement is extended, the party contracting with the distributing agency must update all pertinent information and must demonstrate that all donated food received during the prior contract period has been accounted for.

(c) *Food service management company agreements.* Food service management companies may be employed to conduct the food service operations of nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, schools, nonresidential child care institutions, and service institutions. In instances when a food service management company is employed to provide such services, the recipient agency shall enter into a written contract with the food service management company which shall expressly provide that:

(1) Any donated foods received by the recipient agency and made available to the food service management company shall be utilized solely for the purpose of providing benefits for the employing agency's food service operation and it is the responsibility of the recipient agency to demonstrate that the full value of all donated foods is used solely for the benefit of the recipient agency; and

(2) The books and records of the food service management company pertaining to the food service operation of the agency shall be available for a period of three years from the close of the fiscal year to which they pertain.

All food service management contracts shall be subject to review by the distributing agency for compliance with requirements of this section in accordance with §250.19(b)(1). In the case of nonprofit summer camps for children, charitable institutions and nutrition programs for the elderly, the contract shall be in effect for no longer than one year and shall provide that it may be extended at the option of both parties for two additional one-year periods. Contracts may be terminated for cause by either party upon 30 days notice. At the time the contract is extended, the nonprofit summer camp for children, charitable institution or nutrition program for the elderly must update all pertinent information and must demonstrate that all donated food received during the previous contract period has been accounted for.

(d) *Storage facility contracts.* When contracting for storage facilities, distributing agencies and subdistributing agencies shall enter into a written contract for the lease of storage facilities in accordance with §250.14(c).

(e) *Processing contracts.* When contracting for the processing of donated foods, contracting agencies shall enter into agreements with processors in accordance with §250.30(c).

§250.13 Distribution and control of donated foods.

(a) *Availability and use of donated foods—(1) General.* (i) Donated foods shall be available only for distribution and use in accordance with the provisions of this part and, with respect to distribution to households on all or part of an Indian reservation, of parts 253 and 254 of this chapter.

(ii) Donated foods shall not be sold, exchanged or otherwise disposed of without the approval of the Department.

(iii) Donated foods which are provided as part of an approved food package or authorized level of assistance may be transferred between like recipient agencies only with prior authorization of the distributing agency. Donated foods which are provided in addition to the State's authorized level of assistance may be transferred between recipient agencies which are eligible to