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PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

Sec.

- 251.1 General purpose and scope.
- 251.2 Administration.
- 251.3 Definitions.
- 251.4 Availability of commodities.
- 251.5 Eligibility determinations.
- 251.6 Distribution plan.
- 251.7 Formula adjustments.
- 251.8 Payment of funds for administrative costs.
- 251.9 Matching of funds.
- 251.10 Miscellaneous provisions.

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§251.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out certain provisions of the Temporary Emergency Food Assistance Act of 1983, (7 U.S.C. 612c *note*).

§251.2 Administration.

(a) Within the United States Department of Agriculture (the "Department"), the Food and Consumer Service (FCS) shall have responsibility for the distribution of food commodities and allocation of funds under the part.

(b) Within the States, distribution to emergency feeding organizations and receipt of payments for storage and distribution shall be the responsibility of the State agency which has: (1) Been designated for such responsibility by the Governor or other appropriate State executive authority; and (2) entered into an agreement with the Department for such distribution and re-

ceipt in accordance with paragraph (c) of this section.

(c) Each State agency that distributes donated foods to emergency feeding organizations or receives payments for storage and distribution costs in accordance with §251.8 shall perform those functions pursuant to an agreement entered into with the Department. This agreement shall be considered permanent, with amendments initiated by distributing agencies, or submitted by them at the Department's request, all of which shall be subject to approval by the Department. Such State agencies shall enter into a written agreement with eligible emergency feeding organizations. This agreement shall provide that emergency feeding organizations agree to operate the program in accordance with the requirements of this part, and, as applicable, part 250 of this chapter. The agreement shall be considered permanent, with amendments to be made as necessary. State agencies shall ensure that emergency feeding organizations provide, on a timely basis, by amendment to the agreement, any information on changes in program administration, including, but not limited to, any changes resulting from amendments to Federal regulations or policy.

[51 FR 12823, Apr. 16, 1986, as amended at 51 FR 17933, May 13, 1987; 59 FR 16974, Apr. 11, 1994; 62 FR 53731, Oct. 16, 1997]

§251.3 Definitions.

For the purposes of this part:

(a) The terms used in this part that are defined in part 250 of this chapter shall have the meanings ascribed to them therein.

(b) *Distribution site* means the location(s) where the emergency feeding organization actually distributes commodities to needy persons under this part.

(c) *Emergency feeding organization* means any public or nonprofit private organization which has entered into an agreement with the designated State agency to provide nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons, and which receives commodities under agreements

pursuant to §251.2(c). Emergency feeding organizations include charitable institutions, food banks, hunger centers, soup kitchens, and similar public or private nonprofit eligible recipient agencies.

(d) *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.

(e) *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).

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

[51 FR 12823, Apr. 16, 1986, as amended at 59 FR 16974, Apr. 11, 1994]

§251.4 Availability of commodities.

(a) *General.* The Department shall make commodities available for distribution and use in accordance with the provisions of this part and also in accordance with the terms and conditions of part 250 of this chapter to the extent that the part 250 terms and con-

ditions are not inconsistent with this part.

(b) *Displacement.* State agencies shall require that emergency feeding organizations receiving commodities under this part shall not diminish their normal expenditures for food because of receipt of commodities. Additionally, the Secretary shall withhold commodities from distribution if it is determined that the commodities would substitute for the same or a similar product that would otherwise be purchased in the market.

(c) *Allocations.* (1) Allocations of commodities shall be made to State agencies on the basis of the formula defined in §251.3(d).

(2) FCS shall promptly notify State agencies regarding their allocation of commodities to be made available under this part.

(3) State agencies shall notify the appropriate FCSRO of the amount of the commodities they will accept not later than 30 days prior to the beginning of the shipping period.

(d) *Quantities requested.* State agencies shall:

(1) Request commodities only in quantities which can be utilized without waste in providing food assistance to needy persons under this part;

(2) Ensure that no emergency feeding organization receives commodities in excess of anticipated use, based on inventory records and controls, or in excess of its ability to accept and store such commodities; and

(3) Establish distribution rates, based on household size, to be used by emergency feeding organizations which provide commodities to needy persons in households.

(e) *Initial processing and packaging.* The Department will furnish commodities to be distributed to institutions and to needy persons in households in forms and units suitable for institutional and home use.

(f) *Bulk processing by States.* Commodities may be made available to a State agency or, at the direction of the State agency, directly to private companies for processing bulk commodities for use by emergency feeding organizations.

(1) The Department will reimburse the State agency at the current flat rate for such processing.

(2) Minimum yields and product specifications established by the Department shall be met by the processor.

(3) The State shall require the processor to meet State and local health standards.

(4) The external shipping containers of processed products shall be clearly labeled "Donated by the U.S. Department of Agriculture—Not to be Sold or Exchanged". Internal packaging shall be clearly marked "Donated by the U.S. Department of Agriculture—Processed Under Agreement with the State of ____." FCS may grant waivers to the internal label requirement if the enforcement of this requirement precludes a State's participation in the program, or in cases where other processors are not available who are able to meet the labeling requirement within the allowed reimbursement.

(5) Processors and State agencies shall also meet the basic minimum requirements of §250.15.

(g) *Availability and control of donated commodities.* Donated commodities shall be made available to State agencies only for distribution and use in accordance with this part. Except as otherwise provided in §251.4(f), donated commodities not so distributed or used for any reason shall 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 emergency feeding organizations, as defined in §251.3, or recipient agencies, as defined in §250.3, to any other emergency feeding organization 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 shall be effected only with prior authorization of the State agency and, as applicable, the distributing agency. Transfers of any donated commodities between emergency feeding organizations and recipient agencies shall be documented. Such documentation shall be maintained in accordance with §§251.10(a) and 250.6(r) by the distributing agency and the State agency re-

sponsible for administering TEFAP and made available for review upon request.

(h) *Distribution to emergency feeding organizations.* Emergency feeding organizations shall be eligible to receive commodities which are made available under sections 202 and 214 of the Emergency Food Assistance Act of 1983. State agencies may give priority in the distribution of these 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.

(i) *Distribution of non-USDA foods.* Emergency feeding organizations may incorporate the distribution of foods which have been donated by charitable organizations or other entities with the distribution of USDA-donated commodities or distribute them separately.

(j) *Interstate cooperation.* State agencies may enter into interagency cooperative agreements to provide jointly or to transfer commodities to an emergency feeding organization when such organization serves needy persons in a contiguous area which crosses States' borders.

(k) *Distribution in rural areas.* State agencies shall encourage emergency feeding organizations to implement or expand commodity distribution activities to relieve situations of emergency and distress through the provision of commodities to needy households in rural areas of the State.

(l) *Commodity losses.* (1) The State agency shall be responsible for the loss of commodities:

(i) When the loss arises from the State agency's improper distribution or use of any commodities or failure to provide proper storage, care, or handling; and

(ii) When the State agency fails to pursue claims arising in its favor, fails to provide for the rights to assert such claims, or fails to require its emergency feeding organizations to provide for such rights.

Except as provided in paragraph (l)(4) of this section, the State agency shall begin claims action immediately upon receipt of information concerning the

improper distribution, loss of or damage to commodities, and shall make a claim determination within 30 days of the receipt of information, as described in further detail in FCS Instruction 410-1, *Non-Audit Claims—Food Distribution*. The funds received from the collection of claims shall be returned to FCS. In instances in which it has been determined by the Department that the collection of funds will have a significant adverse effect on the operation of the program, the Department may permit in-kind replacement of the donated foods in lieu of payment to FCS. Replacement in kind will only be permitted under such terms and conditions as agreed to by the Secretary.

(2) If the State agency itself causes the loss of commodities and the value exceeds \$250, the State agency shall immediately transmit the claim determination to the FCS Regional Office, fully documented as to facts and findings. Except as provided in paragraph (1)(4) of this section, if the State agency itself causes the loss of commodities, and the value does not exceed \$250, the State agency shall immediately return funds equal to the claim amount to FCS.

(3) If the State agency determines that a claim exists against an emergency feeding organization, warehouseman, carrier or any other entity and the value of the lost commodities exceeds \$2500, the State agency shall immediately transmit the claim determination to the appropriate FCS Regional Office, fully documented as to facts and findings. If FCS determines from its review of the claim determination that a claim exists, the State agency shall make demand for restitution upon the entity liable immediately upon receipt of notice from the FCS Regional Office. Except as provided in paragraph (1)(4) of this section, if the State agency determines that a claim exists in favor of the State agency against an emergency feeding organization, warehouseman, carrier or any other entity and the value of the lost commodities does not exceed \$2500, the State agency shall immediately proceed to collect the claim.

(4) No claim determination shall be required where the value of the lost commodities is \$100 or less. However,

no such claim shall be disregarded where:

(i) There is evidence of fraud or a violation of Federal, State or local criminal law; or

(ii) Program operations would be adversely affected.

(5) The State agency shall maintain records and substantiating documents, on all claims actions and adjustments including documentation of those cases in which no claim was asserted because of the minimal amount involved.

(6) In making final claim determinations for commodity losses incurred by emergency feeding organizations when there is no evidence of fraud or negligence, State agencies and FCS Regional Offices, as applicable, shall consider the special needs and circumstances of the emergency feeding organizations, and adjust the claim and/or conditions for claim collection as appropriate. These special needs and circumstances include but are not limited to the emergency feeding organization's use of volunteers and limited financial resources and the effect of the claim on the organization's ability to meet the food needs of low-income populations.

(Approved by the Office of Management and Budget under control number 0584-0313 and 0584-0341)

[51 FR 12823, Apr. 16, 1986, as amended at 52 FR 17933, May 13, 1987; 52 FR 42634, Nov. 6, 1987; 59 FR 16974, Apr. 11, 1994]

§ 251.5 Eligibility determinations.

(a) *Eligible emergency feeding organizations.* Prior to making distribution to these agencies, the State agency shall determine that they are eligible as emergency feeding organizations under this part and shall enter into agreements in accordance with § 251.2(b) of this chapter when such agreements have not already been entered into.

(b) *Criteria for determining recipient eligibility.* Each State agency shall establish criteria for determining the eligibility of households to receive commodities provided under this part for household use. The criteria must enable the State to ensure that only households who are in need of food assistance because of inadequate household income receive commodities. The

criteria shall include income-based standards and the methods by which households may demonstrate eligibility under such standards and may include a requirement that the household reside in the State, provided that length of residency is not used as an eligibility criterion.

§ 251.6 Distribution plan.

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

(1) A description of the criteria established in accordance with § 251.5(b) for determining that applicant households are in need of food assistance under this part;

(2) The rates for distributing commodities to households in accordance with § 251.4(d)(3);

(3) A description of the program monitoring system including a detailed explanation of any factors which may contribute to the State requesting approval of exceptions to conducting the minimum number of reviews required by § 251.10(e);

(4) A description of the State's formula for allocating administrative funds among State agencies and emergency feeding organizations, including, if applicable, soup kitchens and food banks receiving administrative funds in connection with commodities which are made available under section 110 of the Hunger Prevention Act of 1988 in accordance with § 251.8(d)(1); and

(5) A description of the State's contribution toward the matching requirements as described under § 251.9(e).

(b) *Plan submission.* For Fiscal Year 1986, the distribution plan must be submitted no later than the effective date of this part, and for subsequent fiscal years the plan must be submitted no later than October 1 of each year.

[51 FR 12823, Apr. 16, 1986, as amended at 51 FR 17934, May 13, 1987; 59 FR 16974, Apr. 11, 1994]

§ 251.7 Formula adjustments.

(a) *Commodity adjustments.* The Department will make adjustments to the commodity allocation formula for each State, based on updated unemployment statistics, as follows:

(1) *Surplus commodities.* Adjustments will be made semi-annually effective on January 1 and July 1 of each fiscal year; and

(2) *Purchased commodities.* Adjustments will be made annually and 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 adjustments will be effective for the entire fiscal year unless recovered, withheld, or reallocated in accordance with § 251.8(e).

[51 FR 12823, Apr. 16, 1986, as amended at 59 FR 16974, Apr. 11, 1994]

§ 251.8 Payment of funds for administrative costs.

(a) *Availability and allocation of funds.* Funds made available to the Department for State and local costs associated with the distribution of commodities under this part shall, in any fiscal year, be distributed to each State agency on the basis of the funding formula defined in § 251.3(d).

(b) *Uniform Federal Assistance Regulations.* Funds provided under this section shall be subject to the Department's regulations issued under 7 CFR part 3015.

(c) *Payment to States.* (1) Funds under this section shall be made available by means of U.S. Treasury Department checks or letters of credit in favor of the State agency. The State agency shall use any funds received without delay in accordance with paragraph (d) of this section.

(2) Upon notification by the FCS Regional Office that an agreement has been entered into in accordance with § 251.2(c) of this part, FCS shall issue a grant award pursuant to FCS Instruction 407-3 (Grant Award Process), and promptly make funds available to each State agency within the State's allocation either through issuance of a letter of credit or a U.S. Treasury check pursuant to submission of the SF-270, Request for Advance or Reimbursement. State agencies shall receive funds through a letter of credit if program payments are more than \$120,000 for the year. To the extent funds are available

and subject to the provisions of § 251.8(e), funds will be made available to State agencies on an advance basis.

(3) Each State agency shall return to FCS any funds made available under this section either through the original allocation or through subsequent reallocations which are unobligated as of the end of the fiscal year for which they were made available. Such return shall be made as soon as practicable but in no event later than 30 days following demand made by FCS.

(d) *Use of funds*—(1) *Allowable administrative costs.* Funds made available under this part shall be used by State agencies or emergency feeding organizations only for the following administrative costs:

(i) *USDA commodities.* Funds may be used for the direct costs associated with the intrastate distribution of commodities donated under this part and under section 110 of the Hunger Prevention Act of 1988 by emergency feeding organizations. In addition, emergency feeding organizations that also receive commodities under part 250 of this chapter may use the funds provided under this part for direct costs associated with the distribution of such commodities. These costs include the costs paid by an emergency feeding organization or paid by a State agency on behalf of an emergency feeding organization for:

(A) Transporting, storing, handling, repackaging, processing, and distributing commodities incurred after they are received by the organization;

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

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

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

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

(ii) *Non-USDA commodities.* Funds may also be used by emergency feeding organizations for the direct costs associated with the intrastate distribution of commodities donated by persons or entities other than USDA, provided,

however, that these costs shall be limited to the costs of storing, handling and distributing such commodities. State-level costs shall be allowable only to the extent that the commodities are ultimately distributed by emergency feeding organizations which have entered into agreements with the State agency in accordance with paragraph (d)(2) of this section.

(2) *Agreements.* (i) In order to be eligible for funds under paragraph (d)(1) of this section, emergency feeding organizations shall have entered into an agreement pursuant to § 251.2(c) for the receipt of donated foods under this part or an agreement pursuant to paragraph (d)(2)(ii) of this section for the receipt of funds in connection with section 110 commodities.

(ii) In instances in which administrative funds are made available in connection with section 110 commodities and the State agency responsible for the distribution of TEFAP commodities and funds is not also responsible for the distribution of section 110 commodities, the State agency responsible for the administration of TEFAP shall enter into an agreement with the soup kitchens/food banks (as described in § 250.52(c) of this chapter) requesting the funds, or with the State agency responsible for the distribution of section 110 commodities, which will then enter into agreements with those soup kitchens and food banks. The agreement with the soup kitchen or food bank shall require compliance with the provisions of this section and § 251.10(a) and (e).

(3) *Local support.* (i) Not less than 40 percent of the Federal Emergency Food Assistance Program administrative funds allocated to the State in accordance with paragraph (a) of this section shall be:

(A) Provided by the State agency to emergency feeding organizations as either reimbursement or advance payment for administrative costs incurred by emergency feeding organizations in accordance with paragraph (d)(1) of this section, except that 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 (d)(1) of this section.

(ii) State agencies shall not charge for commodities made available under this part to emergency feeding organizations.

(e) *Recovery and reallocation.* If, during the course of the fiscal year, the Department determines that a State agency is unable to use all of the funds allocated to it during the fiscal year, the Department shall recover or withhold and reallocate such unused funds among other States.

[51 FR 12823, Apr. 16, 1986, as amended at 59 FR 16974, Apr. 11, 1994]

§251.9 Matching of funds.

(a) *State matching requirement.* The State shall provide a cash or in-kind contribution equal to the amount of the Federal Emergency Food Assistance Program administrative funds received under §251.8 and retained by the State agency for State-level costs. Any portion of the Federal grant passed through for administrative costs incurred at the local level or directly expended by the State agency for such local-level costs (in accordance with §251.8(d)(3)) shall be exempt from the State match requirement.

(b) *Exceptions.* In accordance with the provisions of 48 U.S.C. 1469a, American Samoa, Guam, the Virgin Islands and the Northern Mariana Islands shall be exempt from the matching requirements of paragraph (a) of this section if their respective matching requirements are under \$200,000.

(c) *Applicable contributions.* States shall meet the requirements of paragraph (a) of this section through cash or in-kind contributions from sources other than Federal funds which are prohibited by law from being used to meet a Federally mandated State matching requirement. Such contributions shall meet the requirements set forth in 7 CFR 3016.24. In accordance with 7 CFR 3016.24(b)(1), the matching requirement shall not be met by contributions for costs supported by another Federal grant, except as provided by Federal statute. Allowable contributions are only those contributions for costs which would otherwise be allow-

able as State or local-level administrative costs.

(1) *Cash.* An allowable cash contribution is any cash outlay of the State agency for a specifically identifiable allowable State- or local-level administrative cost, including the outlay of money contributed to the State agency by other public agencies and institutions, and private organizations and individuals. Examples of cash contributions include, but are not limited to, expenditures for office supplies, storage space, transportation, loading facilities and equipment, employees' salaries, and other goods and services specifically identifiable as State- or local-level administrative costs for which there has been a cash outlay by the State agency.

(2) *In-kind.* (i) Allowable in-kind contributions are any contributions, which are non-cash outlays, of real property and non-expendable personal property and the value of goods and services specifically identifiable with allowable State administrative costs or, when contributed by the State agency to an emergency feeding organization, allowable local-level administrative costs. Examples of in-kind contributions include, but are not limited to, the donation of office supplies, storage space, vehicles to transport the commodities, loading facilities and equipment such as pallets and forklifts, and other non-cash goods or services specifically identifiable with allowable State-level administrative costs or, when contributed by the State agency to an emergency feeding organization, allowable local-level administrative costs. In-kind contributions shall be valued in accordance with 7 CFR 3016.24(c) through 3016.24(f).

(ii) In order for a third-party in-kind contribution to qualify as a State-level administrative cost for purposes of meeting the match, all of the following criteria shall be met:

(A) In its administration of food assistance programs, the State has performed this type of function over a sustained period of time in the past;

(B) The function was not previously performed by the State on behalf of emergency feeding organizations; and

(C) The State would normally perform the function as part of its responsibility in administering TEFAP or related food assistance programs if it were not provided as an in-kind contribution.

(d) *Assessment fees.* States shall not assess any fees for the distribution of donated foods to emergency feeding organizations.

(e) *Plan requirements.* As a part of the State's Distribution Plan required under §251.6, State agencies shall submit for FCS Regional office approval, the State's plan for meeting the match required under paragraph (a) of this section. Such plan shall identify the estimated amount of Federal funds to be retained at the State level for State level activities, the estimated dollar value of the State's contribution, and, if applicable, a description and valuation of in-kind contributions to be applied to the State's required match. This plan may be amended at any time during the fiscal year.

(f) *Reporting requirements.* State agencies shall identify their matching contribution on the SF-269, Financial Status Report, in accordance with §251.10(d).

(g) *Failure to match.* If, during the course of the fiscal year, the quarterly SF-269 indicates that the State is or will be unable to meet the matching requirements in whole or in part, the Department shall suspend or disallow the unmatched portion of Federal funds subject to the provisions of paragraph (a) of this section. If, upon submission of the final SF-269 for the fiscal year, the Department determines that the State has not met the requirements of paragraph (a) of this section in whole or in part, the unmatched portion of Federal funds subject to the requirements of paragraph (a) of this section shall be subject to disallowance by FCS.

[52 FR 17934, May 13, 1987, as amended at 59 FR 16975, Apr. 11, 1994]

§251.10 Miscellaneous provisions.

(a) *Records.* (1) State agencies and emergency feeding organizations shall maintain records to document the receipt, disposal, and inventory of commodities received under this part in ac-

cordance with requirements of §250.16 of this chapter.

(2) In addition to maintaining financial records in accordance with 7 CFR part 3016, State agencies which receive funds under this part shall maintain records to document the amount of funds paid to emergency feeding organizations for the actual storage and distribution costs incurred by any emergency feeding organization. State agencies shall ensure that emergency feeding organizations maintain records as required by this paragraph.

(3) Each distribution site shall keep accurate and complete records showing the data and method used to determine the number of eligible households served at that site.

(4) Each distribution site shall collect for each household participating in the program 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.

(5) All records required by this section shall be retained by the emergency feeding organization for a period of 3 years from the close of the Federal Fiscal Year to which they pertain.

(b) *Commodities not income.* In accordance with section 206 of Pub. L. 98-8, as amended, and notwithstanding any other provision of law, commodities distributed under this part shall not be considered income or resources for any purposes under any Federal, State, or local law.

(c) *Nondiscrimination.* There shall be no discrimination in the distribution of foods donated under this part because of race, color, national origin, sex, age, or handicap.

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

which it pertains. The final report shall be submitted no later than 90 calendar days after the end of the fiscal year to which it pertains.

(2) Each State agency shall complete and submit to the FCSRO reports to ensure that excessive inventories of donated foods are not maintained, in accordance with the requirements of § 250.17(a) of this chapter. Such reports shall also include the total number of households served in the State since the previous report submittal, based upon current information received from emergency feeding organizations.

(e) *State monitoring system.* (1) Each State agency shall monitor the operation of the program. To comply with this requirement the State agency shall develop and submit, as part of the distribution plan required by § 251.6, a description of its monitoring system.

(2) Unless specific exceptions are approved in writing by the FCS Regional Office, the State monitoring system shall include:

(i) An annual review of at least 25 percent of all emergency feeding organizations and a review of all such organizations not less frequently than once every four years; and

(ii) An annual review of one-third or 50, whichever is fewer, of all distribution sites within the State, to be conducted, to the maximum extent feasible, simultaneously with actual distribution and/or eligibility determinations.

(3) In selecting distribution sites for review, the State shall rank all the sites according to the number of participating households during the previous Federal fiscal quarter and select for review the first 25 sites, or first one-sixth of all sites, whichever is fewer, which served the greatest number of households.

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

(5) Upon concurrence by FCS, reviews of emergency feeding organizations or distribution sites which have been conducted by FCS Regional Office personnel may be incorporated into the mini-

mum coverage required by paragraph (e)(2) of this section.

(6) The State agency shall submit a report of review findings to each emergency feeding organization. The report shall include: (i) A description of each deficiency found and factors contributing to each; (ii) requirements for corrective actions; and (iii) timetable for completion of corrective action. The State agency shall monitor each emergency feeding organization's implementation of corrective action identified in the report.

(7) State agencies shall ensure that emergency feeding organizations which receive administrative funds in connection with commodities made available under section 110 of the Hunger Prevention Act of 1988 are reviewed at the frequency stipulated in paragraph (e)(2)(i) of this section to ensure compliance with the provisions contained in § 251.8.

(f) *Limitation on unrelated activities.* (1) Activities unrelated to the distribution of TEFAP foods may be conducted at distribution sites as long as:

(i) The person(s) conducting the activity makes clear that the activity is not part of TEFAP and is not endorsed by the Department (impermissible activities include information not related to TEFAP placed in or printed on bags, boxes, or other containers in which commodities are distributed). Recipes or information about commodities, dates of future distributions, hours of operations, or other Federal, State, or local government programs or services for the needy may be distributed without a clarification that the information is not endorsed by the Department;

(ii) The person(s) conducting the activity makes clear that cooperation is not a condition of the receipt of TEFAP commodities (cooperation includes contributing money, signing petitions, or conversing with the person(s)); and

(iii) The activity is not conducted in a manner that disrupts the distribution of TEFAP commodities.

(2) Emergency feeding organizations and distribution sites shall ensure that activities unrelated to the distribution of TEFAP foods are conducted in a manner consistent with paragraph (f)(1) of this section.

(3) *Termination for violation.* Except as provided in paragraph (f)(4) of this section, State agencies shall immediately terminate from further participation in TEFAP operations any emergency feeding organization or distribution site that distributes or permits distribution of materials in a manner inconsistent with the provisions of paragraph (f)(1) of this section.

(4) *Termination exception.* The State agency may withhold termination of an emergency feeding organization's or distribution site's TEFAP participation if the State agency cannot find another emergency feeding organization or distribution site to operate the distribution in the area served by the violating organization. In such circumstances, the State agency shall monitor the distribution of commodities by the violating organization to ensure that no further violations occur.

(g) *Use of volunteer workers and non-USDA commodities.* In the operation of the Emergency Food Assistance Program, State agencies and emergency feeding organizations shall, to the maximum extent practicable, use volunteer workers and foods which have been donated by charitable and other types of organizations.

(h) *Maintenance of effort.* If the State uses its own funds to provide commodities or services to organizations receiving funds or services under section 214 of the Emergency Food Assistance Act of 1983, the State shall not diminish the level of support it provides to such organizations or reduce the amount of funds available for other nutrition programs in the State in each fiscal year.

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PART 252—NATIONAL COMMODITY PROCESSING PROGRAM

Sec.

- 252.1 Purpose and scope.
- 252.2 Definitions.
- 252.3 Administration.

252.4 Application to participate and agreement.

252.5 Recipient agency responsibilities.

252.6 Miscellaneous provisions.

252.7 OMB control number.

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SOURCE: 51 FR 23518, June 30, 1986, unless otherwise noted.

§252.1 Purpose and scope.

(a) *Purpose.* This part provides a program whereby the Food and Consumer Service (FCS) and private processors of food may enter into agreements under which the processor will process and distribute designated donated food to eligible recipient agencies. The intent of the program is to encourage private industry, acting in cooperation with the States and FCS, to develop new markets in which donated food may be utilized. It is expected that the processors will use their marketing abilities to encourage eligible recipient agencies to participate in the program. Additionally, recipient agencies will benefit by being able to purchase processed end products at a substantially reduced price.

(b) *Scope.* The terms and conditions set forth in this part are those under which processors may enter into agreements with FCS for the processing of commodities designated by the Secretary of Agriculture and the minimum requirements which NCP processors must meet. Also prescribed are distributing agency and recipient agency responsibilities.

(c) *Eligible recipient agencies.* Recipient agencies shall be eligible to participate in the NCP Program to the extent of their eligibility to receive the food involved in the NCP Program, pursuant to §250.8 and part 251.

§252.2 Definitions.

The terms used in this part that are defined in §§250.3 and 251.3 shall have the meanings ascribed to them therein, except as set forth in this section.

Agreement value of the donated commodity means the price assigned by the Department to a donated food which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.