

(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.

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

[51 FR 12823, Apr. 16, 1986. Redesignated and amended at 51 FR 17934, May 13, 1987; 53 FR 15357, Apr. 29, 1988; 59 FR 16975, Apr. 11, 1994; 62 FR 53731, Oct. 16, 1997]

## 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.

AUTHORITY: Sec. 416, Agricultural Act of 1949 (7 U.S.C. 1431).

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.