

(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.

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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.

*Distributing agencies* means State, Federal or private agencies which enter into agreements with the Department for the distribution of donated food to eligible recipient agencies and recipients; and FCS when it accepts title to commodities from the Commodity Credit Corporation (CCC) for distribution to eligible recipient agencies under the National Commodity Processing Program. A recipient agency may also be a distributing agency.

*Donated food value return system* means a system used by a processor or distributor to reduce the price of the end product by the agreement value of the donated commodity.

*NCP Program* means a program under which 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.

*Recipient agency* means disaster organizations, charitable institutions, non-profit summer camps for children, school food service authorities, schools, service institutions, welfare agencies, nutrition programs for the elderly, nonresidential child care institutions and emergency feeding organizations.

*Refund* means (1) a credit or check issued to a distributor in an amount equal to the NCP contract value of donated foods contained in an end product sold by the distributor to a recipient agency at a discounted price or (2) a check issued to a recipient agency in an amount equal to the NCP contract value of donated foods contained in an end product sold to the recipient agency under a refund system.

*Substitution* means (1) the replacement of donated food with like quantities of domestically produced commercial food of the same generic identity and of equal or better quality (i.e., cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.); or (2) in the case of donated nonfat dry milk, substitution as defined under (1) of this paragraph or replacement with an equivalent amount, based on milk solids content, of domestically produced concentrated skim milk.

[51 FR 23518, June 30, 1986, as amended at 52 FR 24977, July 2, 1987; 53 FR 34014, Sept. 2, 1988]

### § 252.3 Administration.

(a) *Role of FCS.* The Secretary will designate those commodities which will be available under the NCP Program. Only commodities made available without charge or credit under any nutrition program administered by USDA will be available under NCP. FCS will act as the distributing agency and the contracting agency under the NCP Program. The Department will pay costs for delivering donated commodities to participating NCP Program processors.

(b) *Food orders.* When NCP Program processors request donated food, FCS will determine whether the quantities ordered are consistent with the processor's ability to sell end products and/or the processor's past demonstrated performance under the Program. If the quantities are appropriate, FCS will request from CCC the donated food for transfer of title to FCS and delivery to a mutually agreed upon location for use by the NCP Program processor. The title to these commodities transfers to FCS upon their acceptance by the processor. FCS retains title to such commodities until:

- (1) They are distributed to eligible recipient agencies in processed form, at which time the recipient agency takes title;
- (2) They are disposed of because they are damaged or out-of-condition; or
- (3) Title is transferred to the NCP Program processor upon termination of the agreement.

(c) *Substituted food.* When the processor substitutes commercial food for donated food in accordance with § 252.4(c)(7) of this part, title to the substituted food shall transfer to FCS upon the initiation of the processing of the end product containing the substituted food. Title to the equivalent amount of donated food shall transfer to the processor at the same time (except when the substitution is necessary to meet the 100 percent yield requirement or to otherwise replace missing or out-of-condition donated food). Once title has transferred, the processor shall use the substituted food in accordance with the terms and conditions of this part.

(d) *Inventory levels.* FCS will monitor the inventory of each food processor to