

Food and Nutrition Service, USDA

§ 252.2

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 FNS, reviews of emergency feeding organizations or distribution sites which have been conducted by FNS Regional Office personnel may be incorporated into the minimum 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.

* * * * *

(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.

PART 252—NATIONAL COM-MODITY 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 Nutrition Service (FNS) 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 FNS, 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 FNS 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 FNS 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 FNS 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 FNS.* 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. FNS 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, FNS 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, FNS will request from CCC the donated food for transfer of title to FNS and delivery to a mutually agreed upon location for use by the NCP Program processor. The title to these commodities transfers to FNS upon their acceptance by the processor. FNS 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 FNS 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.* FNS will monitor the inventory of each food processor to ensure that the quantity of donated food for which a processor is accountable is at the lowest cost-efficient