

## Food and Nutrition Service, USDA

## § 250.24

are disclosed shall be corrected immediately. Serious irregularities shall be promptly reported to the Department. Distributing agencies shall maintain or file evidence of such investigations and actions. The Department also reserves the right to make investigations and shall have the final determination as to when a complaint has been properly handled. Complaints alleged on the basis of race, color, national origin, age, sex or handicap shall be handled in accordance with § 250.21.

### § 250.23 Buy American.

(a) *Purchase requirements.* When purchasing food products with Federal funds, whenever possible, recipient agencies shall purchase only food products that are produced in the United States (U.S.). Food products produced in the U.S. means:

- (1) An unmanufactured food product produced in the U.S.; or
- (2) A food product that is manufactured in the U.S.

(b) *Exceptions.* The purchase requirements described in paragraph (a) of this section shall not apply in instances when the recipient agency determines: (1) Recipients have unusual or ethnic food preferences which can only be met through purchases of products not produced in the U.S.; (2) the product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; (3) the cost of U.S. produced food products is significantly higher than foreign products, or (4) the recipient agency is located in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands.

[53 FR 27476, July 21, 1988, as amended at 58 FR 39122, July 22, 1993]

### § 250.24 Distributing agency performance standards.

This section establishes basic performance standards which must be followed by distributing agencies responsible for intrastate distribution of donated commodities and products. The seven standards address the level of service that shall be provided to recipient agencies. The basic standards include the following:

(a) *Program management and evaluation.* Distributing agencies shall conduct reviews in accordance with § 250.19. Distributing agencies shall also assess the adequacy of the service provided to recipient agencies.

(b) *Information dissemination.* Distributing agencies shall provide recipient agencies with all information needed for informed participation in the program. Distributing agencies shall provide program information relative to:

- (1) Current program regulations,
- (2) Summaries of commodity specifications upon request (§ 250.13(j)) and commodity fact sheets,
- (3) Results of any test evaluations and surveys,
- (4) Recipes, and
- (5) Written procedures for ordering commodities, handling commodities which are stale, spoiled, out-of-condition or not in compliance with specifications (including procedures for replacement by the Department under § 250.13(g)), submitting complaints and other written policy which affects program operations.

(c) *Fiscal responsibility.* Distributing agencies shall maintain a financial management system which ensures fiscal integrity and accountability for all funds and includes a recordkeeping system which conforms to generally accepted accounting practices. Distributing agencies shall submit information relative to distribution charges to FNS in accordance with § 250.15(a).

(d) *Ordering and allocation.* Distributing agencies shall ensure that donated food is provided on an equitable basis and, to the extent practicable, in the types and forms most usable by recipient agencies. Distributing agencies shall be responsible for:

- (1) Obtaining and utilizing commodity acceptability information in accordance with § 250.13(k);
- (2) Providing recipient agencies with information regarding commodity availability;
- (3) Providing recipient agencies with information regarding commodity assistance levels;
- (4) Ordering and allocating donated food based on participation data for those programs which serve meals;
- (5) Ensuring the availability of commodities, to the extent possible, in

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quantities requested and at times specified by recipient agencies;

(6) Permitting recipient agencies to refuse all or a portion of a commodity prior to delivery to the distributing agency if time permits;

(7) Permitting recipient agencies to change orders for Group B (grain, dairy, peanut and oil products) and unlimited bonus commodities prior to submission of an order to the Department;

(8) Providing recipient agencies with ordering options and commodity values (§ 250.13(a)(5));

(9) Offering schools participating in the National School Lunch Program the per meal value of donated food in accordance with § 250.48(c); and

(10) Consider the preparation and storage capabilities of recipient agencies when ordering donated food, including capabilities of such agencies to handle commodity product forms, quantity, packaging and quantities.

(e) *Warehousing and distribution.* Distributing agencies shall use a warehousing and distribution system that is efficient, cost effective and responsive to needs of recipient agencies in accordance with § 250.14(a). In addition, distributing agencies shall:

(1) Work with recipient agencies capable of receiving direct shipments to order donated food directly into their warehouses;

(2) Solicit information and recommendations regarding the individual delivery needs of recipient agencies;

(3) Maintain distribution schedules which are equitable and reliable, recognize hours of operation, holidays and vacations and other special needs of recipient agencies;

(4) And make donated food available at least monthly to all recipient agencies except those that have agreed to less frequent deliveries (§ 250.13(a)(6)); however, the distributing agency shall not be held liable for delays in deliveries of donated food when such delays are due to late deliveries of donated food to the distributing agency by the Department.

(f) *Disposition of damaged or out-of-condition commodities.* Distributing agencies shall establish a system for handling recipient agency complaints, notifying the Department of any com-

modity losses in accordance with § 250.13(f) and arranging for the replacement of lost commodities in accordance with § 250.13(g).

(g) *Processing.* Distributing agencies shall administer an acceptable processing program in accordance with § 250.30. In addition, distributing agencies shall inform recipient agencies annually of processing options available to them in facilitating participation in State or National processing contracts. Prior to entering into a processing contract, distributing agencies shall test end products. The end product testing may be delegated to the purchasing recipient agency provided that test results are reviewed by the distributing agency. Distributing agencies shall monitor the acceptability of processed end products as required in § 250.30(b)(1).

[54 FR 42477, Oct. 17, 1989, as amended at 62 FR 53731, Oct. 16, 1997; 64 FR 72902, Dec. 29, 1999]

### Subpart C—Processing and Labeling of Donated Foods

#### § 250.30 State processing of donated foods.

(a) *General.* This section sets forth the terms and conditions under which distributing agencies, subdistributing agencies, or recipient agencies may enter into contracts for the processing of donated foods and prescribes the minimum requirements to be included in such contracts.

(b) *Permissible contractual arrangements.* (1) A distributing agency, subdistributing agency, or recipient agency may contract for processing, pay the processing fee, and deliver the end products to eligible recipient agencies through its own distribution system. Distributing agencies shall assure that the acceptability of processed end products is tested with recipient agencies eligible to receive them prior to entering into a processing contract and shall develop a system for monitoring product acceptability. Distributing agencies may exempt end products from testing if they have been used previously, have been determined by the distributing agency to be acceptable by recipient agencies, and have had no changes in specifications.