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designated by the Governor of the State, or by the State legislature, and approved by the Secretary are eligible to become distributing agencies.

(b) *Private agencies.* Where distributing agencies are not permitted by law to make distribution to private recipient agencies, or to any class of private recipient agency, private agencies which agree to make distribution of donated food on a State-wide basis and which apply directly to FNS, and are approved by the Secretary are eligible to become distributing agencies.

(c) *Subdistributing agencies.* If distributing agencies use subdistributing agencies to distribute donated foods, the distributing agencies' responsibilities to the Department for overall management and control of the distribution program shall not be delegated to such subdistributing agencies.

§ 250.11 Eligibility determination for recipient agencies and recipients.

(a) *Verification of recipient agency eligibility.* Distributing agencies at the request of FNS shall:

(1) Verify that recipient agencies registered to participate in the National Commodity Processing (NCP) Program have a current agreement with the distributing agency to receive donated food in accordance with § 252.1(c) and

(2) Report the results of such verification to FNS within timeframes determined by FNS.

(b) *Eligibility of recipient agencies and recipients.* Distributing agencies shall determine the eligibility of any agency which submits an application for participation in the program. Distributing agencies shall consider the past performance of recipient agencies when approving applications for participation. Once a recipient agency has been determined to be eligible for participation in the program, the distributing agency shall enter into an agreement with the agency in accordance with § 250.12(b) and make donated food available. Distributing agencies shall impose upon welfare agencies the responsibility for determining that recipients to whom welfare agencies distribute donated foods are eligible: *Provided, however:* That the State agency or FNSRO administering the applicable program shall determine the eligibility

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under this part of school food authorities participating under part 210 or part 220, or sponsors participating in the Summer Food Service Program for Children under part 225, of this chapter, and of nonresidential child care institutions participating in the Child Care Food Program under part 226 of this chapter.

§ 250.12 Agreements and contracts.

(a) *Agreements with Department.* Prior to the beginning of a distribution program, distributing agencies shall enter into written agreements with the Department which shall incorporate the terms and conditions set forth in this part. When requested by the Department an eligible agency shall present evidence of its authority to enter into such agreements. The agreements 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. In addition, agreements between the Department and State Agencies on Aging that elect to receive cash in lieu of commodities shall also be considered permanent, with amendments initiated by these agencies, or submitted by them at the Department's request, all of which amendments shall be subject to approval by the Department.

(b) *Distributing agency agreements.* Distributing agencies shall enter into written agreements with all subdistributing agencies, recipient agencies, warehouses, carriers, or other entities to which distributing agencies deliver donated foods under their distribution program. Distributing agencies shall be responsible for ensuring that program integrity is maintained by all entities with whom agreements are entered into. All agreements shall contain such terms and conditions as the distributing agency deems necessary to ensure that:

(1) The distribution and use of donated foods is in accordance with this part,

(2) Subdistributing agencies, recipient agencies, warehouses, carriers, or other persons to whom donated foods are delivered by the distributing agency are responsible to the distributing agency for any improper distribution

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or use of donated foods or for any loss of, or damage to, donated foods caused by their fault or negligence,

(3) Subdistributing agencies and recipient agencies have and preserve a right to assert claims against other persons to whom donated foods are delivered for care, handling or distribution, and

(4) Subdistributing agencies and recipient agencies will take action to obtain restitution in connection with claims for improper distribution, use or loss of, or damage to, donated foods.

(c) *Duration of distributing agency agreements.*—(1) Recipient agencies. Distributing agency agreements with recipient agencies shall be considered permanent, with amendments to be made as necessary. Distributing agencies shall ensure that recipient agencies provide, on a timely basis, by amendment to the agreement, any changed information, including, but not limited to, any changes resulting from amendments to Federal regulatory requirements and policy and changes in site locations, and number of meals or needy persons to be served.

(2) *Subdistributing agencies, carriers, and other entities.* Distributing agency agreements with subdistributing agencies (as defined in §250.3) that are not recipient agencies, carriers, and other entities shall be in effect for not longer than one year, and shall provide that they may be extended at the option of both parties for two additional one-year periods. The party contracting with the distributing agency shall update all pertinent information and demonstrate that all donated food received during the period of the previous agreement has been accounted for, before an agreement is extended.

(3) *Termination of agreements.* Agreements may be terminated for cause by either party upon 30 days notice.

(d) *Food service management company contracts.* Food service management companies may be employed to conduct the food service operations of nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, schools, nonresidential child care institutions, and service institutions. When a food service management company is employed to provide such services, the recipient

agency shall enter into a written contract with the food service management company. The contract shall expressly provide that any donated foods received by the recipient agency and made available to the food service management company shall be utilized solely for the purpose of providing benefits for the employing agency's food service operation, and it shall be the responsibility of the recipient agency to demonstrate that the full value of all donated foods is used solely for the benefit of the recipient agency. All food service management companies shall be subject to review by the distributing agency for compliance with contractual requirements, in accordance with §250.19(b)(1). In the case of nonprofit summer camps for children, charitable institutions, and nutrition programs for the elderly, the contract shall be in effect for no longer than one year, and may provide that it be extended at the option of both parties for not more than four additional one-year periods. Contracts shall provide that they may be terminated for cause by either party upon 30 days notice. Prior to extension of the contract, the nonprofit summer camp for children, charitable institution, or nutrition program for the elderly shall update all pertinent information and demonstrate that all donated food received during the previous contract period has been accounted for.

(e) *Storage facility contracts.* When contracting for storage facilities, distributing agencies and subdistributing agencies shall enter into a written contract, in accordance with §250.14(d).

(f) *Processing contracts.* When contracting for the processing of donated foods, contracting agencies shall enter into agreements with processors in accordance with §250.30(c).

[53 FR 20426, June 3, 1988, as amended at 62 FR 53729, Oct. 16, 1997]

§ 250.13 Distribution and control of donated foods.

(a) *Availability and use of donated foods*—(1) *General.* (i) Donated foods shall be available only for distribution and use in accordance with the provisions of this part and, with respect to distribution to households on all or