

§ 250.50

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provided contribute to required nutritional standards for reimbursement under the applicable regulations for such program (7 CFR parts 210, 225, and 226) or are otherwise suitable for use in such program;

(2) Consulting with the agency with regard to the labeling requirements for the end products; and

(3) Otherwise requesting technical assistance as needed from that agency.

(q) *FNSRO review of contracts and inventory reports.* The FNSRO shall:

(1) Review all processing contracts and provide guidance, including written recommendations for termination, where necessary, to distributing agencies concerning any contracts which do not meet the requirements of this section;

(2) Allow distributing agencies 30 days to respond to any recommendation concerning contracts not meeting the requirements of this section;

(3) Review and analyze the processing inventory reports required by paragraph (o) of this section to ensure that no additional donated foods shall be distributed to processors with excess inventories until such inventories have been reduced;

(4) Assist distributing agencies in reducing such inventories; and

(5) Review annual reconciliation reports required by paragraph (n) of this section and ensure that payments for commodities have been made.

(r) *Availability of copies of processing contracts.* Contracts entered into in accordance with this Section are public records and FNS will provide copies of such contracts to any person upon request. The FNSRO will retain copies of processing contracts submitted by distributing agencies for a period of three years from the close of the Federal fiscal year to which they pertain.

(s) *Processing activity guidance.* Distributing agencies shall develop and provide a processing manual or similar procedural material for guidance to contracting agencies, recipient agencies, and processors. Distributing agencies must revise these materials as necessary to reflect policy and regulatory changes. This guidance material shall be provided to contracting agencies, recipient agencies and processors at the time of the approval of the initial

agreement by the distributing agency, when there have been regulatory or policy changes which necessitate changes in the guidance materials, and upon request. The manual shall include, at a minimum, statements of the distributing agency's policies and procedures on (1) contract approval, (2) monitoring and review of processing activities, (3) recordkeeping and reporting requirements, (4) inventory controls, and (5) refund applications.

(t) *Waiver authority.* The Food and Nutrition Service may waive any of the requirements contained in this part for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods.

(Approved by the Office of Management and Budget under control number 0584-0007)

[53 FR 20226, June 3, 1988, as amended at 53 FR 20598, June 6, 1988; 53 FR 27476, July 21, 1988; 53 FR 46080, Nov. 16, 1988; 54 FR 7525, Feb. 22, 1989; 54 FR 25564, June 16, 1989; 58 FR 39122, July 22, 1993; 59 FR 62984, Dec. 7, 1994; 61 FR 5272, Feb. 12, 1996; 67 FR 65015, Oct. 23, 2002]

Subpart D—Donated Foods in Contracts with Food Service Management Companies

SOURCE: 73 FR 46185, Aug. 8, 2008, unless otherwise noted.

§ 250.50 Contract requirements and procurement.

(a) *Contract requirements.* Prior to donated foods being made available to a food service management company, the recipient agency must enter into a contract with the food service management company. The contract must ensure that all donated foods received for use by the recipient agency for a period specified as either the school year or fiscal year are used in the recipient agency's food service. Contracts between recipient agencies in child nutrition programs and food service management companies must also ensure compliance with other requirements in this subpart relating to donated foods, as well as other Federal requirements in 7 CFR parts 210, 220, 225, or 226, as applicable. Contracts between other recipient agencies—i.e., charitable institutions and recipient agencies utilizing

TEFAP foods—and food service management companies are not subject to the other requirements in this subpart.

(b) *Types of contracts.* Recipient agencies may enter into a fixed-price or a cost-reimbursable contract with a food service management company, except that recipient agencies in CACFP are prohibited from entering into cost-reimbursable contracts, in accordance with 7 CFR part 226. Under a fixed-price contract, the recipient agency pays a fixed cost per meal provided or a fixed cost for a certain time period. Under a cost-reimbursable contract, the food service management company charges the recipient agency for food service operating costs, and also charges fixed fees for management or services.

(c) *Procurement requirements.* The recipient agency must meet Departmental procurement requirements in 7 CFR parts 3016 or 3019, as applicable, in obtaining the services of a food service management company, as well as applicable requirements in 7 CFR parts 210, 220, 225, or 226. The recipient agency must ensure that procurement documents, as well as contract provisions, include any donated food activities that a food service management company is to perform, such as those activities listed in paragraph (d) of this section. The procurement and contract must also specify the method used to determine the donated food values to be used in crediting, or the actual values assigned, in accordance with § 250.51. The method used to determine the donated food values may not be established through a post-award negotiation, or by any other method that may directly or indirectly alter the terms and conditions of the procurement or contract.

(d) *Activities relating to donated foods.* A food service management company may perform specific activities relating to donated foods, such as those listed in this paragraph (d), in accordance with procurement documents and its contract with the recipient agency. Such activities may also include the procurement of processed end products on behalf of the recipient agency. Such procurement must ensure compliance with the requirements in subpart C of this part and with the provisions of the

distributing or recipient agency's processing agreements, and must ensure crediting of the recipient agency for the value of donated foods contained in such end products at the processing agreement value. Although the food service management company may procure processed end products on behalf of the recipient agency, it may not itself enter into the processing agreement with the processor required in subpart C of this part. Other donated food activities that the food service management company may perform include:

- (1) Preparing and serving meals;
- (2) Ordering or selection of donated foods, in coordination with the recipient agency, and in accordance with § 250.58(a);
- (3) Storage and inventory management of donated foods, in accordance with § 250.52; and
- (4) Payment of processing fees or submittal of refund requests to a processor on behalf of the recipient agency, or remittance of refunds for the value of donated foods in processed end products to the recipient agency, in accordance with the requirements in subpart C of this part.

§ 250.51 Crediting for, and use of, donated foods.

(a) *Crediting for donated foods.* In both fixed-price and cost-reimbursable contracts, the food service management company must credit the recipient agency for the value of all donated foods received for use in the recipient agency's meal service in a school year or fiscal year (including both entitlement and bonus foods). Such requirement includes crediting for the value of donated foods contained in processed end products if the food service management company's contract requires it to:

- (1) Procure processed end products on behalf of the recipient agency; or
- (2) Act as an intermediary in passing the donated food value in processed end products on to the recipient agency.

(b) *Method and frequency of crediting.* The recipient agency may permit crediting for the value of donated foods through invoice reductions, refunds, discounts, or other means. However, all forms of crediting must provide clear