

Food and Nutrition Service, USDA

§ 250.12

§ 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 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.

(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 agen-

cies, or submitted by them at the Department's request, all of which 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 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

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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.

[53 FR 20426, June 3, 1988, as amended at 62 FR 53729, Oct. 16, 1997; 73 FR 46184, Aug. 8, 2008]

§ 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 part of an Indian reservation, of parts 253 and 254 of this chapter.

(ii) Donated foods shall not be sold, exchanged or otherwise disposed of without the approval of the Department.

(iii) Donated foods which are provided as part of an approved food package or authorized level of assistance may be transferred between like recipient agencies only with prior authorization of the distributing agency. Donated foods which are provided in addition to the State's authorized level of assistance may be transferred between recipient agencies which are eligible to receive such foods with the prior authorization of the distributing agency. However, the transfer of donated foods between unlike recipient agencies (e.g., from schools to charitable institutions), which have been provided as part of an approved food package or authorized level of assistance, must be approved by the appropriate FNSRO.

(iv) Food donated under section 32 of Public Law 74-320 (7 U.S.C. 612c) may also be transferred by recipient agencies to eligible recipient agencies which are distributing donated foods

under part 251 of this chapter. A transfer between recipient agencies and eligible recipient agencies may be made only with the prior approval of the distributing agency and the State agency responsible for administering TEFAP.

(v) All transfers of donated foods shall be documented. Such documentation shall be maintained in accordance with the recordkeeping requirements in §§ 250.16 and 251.10(a) of this chapter.

(2) *Quantities.* (i) The quantity of donated foods to be made available for donation under this part shall be determined in accordance with the pertinent legislation and the program obligations of the Department, and shall be such as can be effectively distributed to further the objectives of the pertinent legislation.

(ii) Donated foods shall be requested and distributed only in quantities which can be consumed without waste in providing food assistance for persons eligible under this part. Distributing agencies shall impose similar restrictions on recipient agencies.

(3) *Minimum donations.* Foods shall be donated only in such quantities as will protect the lower truck load freight rate, except as the Department determines to be in the best interest of the program.

(4) *Allocations.* As foods become available for donation, FNS shall notify distributing agencies regarding the donated foods, the class or classes of recipient agencies or recipients eligible to receive them, and any special terms and conditions of donation and distribution which attach to a particular donated food, in addition to the general terms and conditions set forth herein.

When a commodity is available in limited quantities, the Department shall allocate such commodities among the States using allocation percentages which are based on appropriate participation data for the program designated to receive the commodity.

(5) *Commodity value.* Distributing agencies shall establish a value for each commodity for school food authorities and nonresidential child and adult care institutions for purposes of offering and crediting each recipient agency with the correct amount of commodities to fulfill planned commodity assistance levels (i.e., volume