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total quantities available for distribution to such institutions.

(e) *Contracts with food service management companies.* A charitable institution may use donated foods in a contract with a food service management company. The contract must ensure that all donated foods received for use by the charitable institution in a fiscal year are used in the charitable institution's food service. However, the charitable institution is not subject to the other requirements in subpart D of this part relating to the use of donated foods under such contracts.

[73 FR 46184, Aug. 8, 2008]

§ 250.68 Nutrition Services Incentive Program (NSIP).

(a) *Distribution of donated foods in NSIP.* The Department provides donated foods in NSIP to State Agencies on Aging and their selected elderly nutrition projects, for use in providing meals to elderly persons. NSIP is administered at the Federal level by DHHS' Administration on Aging (AoA), which provides an NSIP grant each year to State Agencies on Aging. The State agencies may choose to receive all, or part, of the grant as donated foods, on behalf of its elderly nutrition projects. The Department is responsible for the purchase of the donated foods and their delivery to State Agencies on Aging. AoA is responsible for transferring funds to the Department for the cost of donated food purchases and for expenses related to such purchases.

(b) *Types and quantities of donated foods distributed.* Each State Agency on Aging, and its elderly nutrition projects, may receive any types of donated foods available in food distribution or child nutrition programs, to the extent that such foods may be distributed cost-effectively. Each State Agency on Aging may receive donated foods with a value equal to its NSIP grant. Each State Agency on Aging and elderly nutrition projects may also receive donated foods under Section 32, Section 416, and Section 709, as available, and under Section 14 (42 U.S.C. 1762(a)).

(c) *Role of distributing agency.* The Department delivers NSIP donated foods to distributing agencies, which distribute them to elderly nutrition

projects selected by each State or Area Agency on Aging. The distributing agency may only distribute donated foods to elderly nutrition projects with which they have signed agreements. The agreements must contain provisions that describe the roles of each party in ensuring that the desired donated foods are ordered, stored, and distributed in an effective manner.

(d) *Donated food values used in crediting a State Agency on Aging's NSIP grant.* FNS uses the average price (cost per pound) for USDA purchases of a donated food made in a contract period in crediting a State Agency on Aging's NSIP grant.

(e) *Coordination between FNS and AoA.* FNS and AoA coordinate their respective roles in NSIP through the execution of annual agreements. The agreement ensures that AoA transfers funds to FNS sufficient to purchase the donated foods requested by State Agencies on Aging, and to meet expenses related to such purchases. The agreement also authorizes FNS to carry over any such funds that are not used in the current fiscal year to make purchases of donated foods for the appropriate State Agencies on Aging in the following fiscal year.

[73 FR 46184, Aug. 8, 2008]

§ 250.69 Disaster food assistance.

(a) *Organizational eligibility.* In instances in which the President has declared a disaster and FNS has determined that, as a result of the disaster, low-income households are unable to purchase adequate amounts of nutritious food, disaster organizations (including agencies of State and Federal government) may be eligible to receive donated foods for congregate meal service or household distribution to disaster victims. Applications submitted by disaster organizations to the distributing agency for the receipt and distribution of donated foods in accordance with paragraphs (b)(2) and (c)(2) of this section shall be initially submitted in writing if circumstances permit and, if not, confirmed in writing in a timely manner. Both the applications and the written approval for the use of USDA commodities shall be maintained in accordance with the record-keeping requirements of this part.

(b) *Congregate meal service*—(1) *Approval authority and duration.* Distributing agencies may review and approve applications submitted by disaster organizations for the donation of foods for use in preparing congregate meals for disaster victims. Distributing agencies also shall determine the length of such donations, taking into consideration the magnitude of the situation, and may extend the duration of such donations as developing circumstances dictate. Following approval of a request for donated foods, the distributing agency shall make appropriate donated foods available from any source within the State to the disaster organization(s) and within 24 hours of approving the application shall report the information listed in paragraph (b)(2) of this section to the appropriate FNSRO.

(2) *Applications.* (i) Disaster organizations wishing to receive donated foods for use in preparing meals for disaster victims shall submit applications to the distributing agency. Applications shall, to the extent possible, include the following information:

- (A) Description of disaster situation;
- (B) Number of people requiring meals;
- (C) Period of time for which commodities are requested; and
- (D) Quantity and types of food needed for congregate meal service.

(ii) In addition, organizations shall report to the distributing agency the number and location of sites providing congregate meal service as such sites are established.

(c) *Household distribution*—(1) *Approval authority and duration.* In instances in which the distributing agency has determined that the distribution of donated foods to households is appropriate, the distributing agency shall submit applications requesting approval for such distributions to the appropriate FNSRO for submission to FNS for prior approval. FNS will determine the length of time such donations will be made, taking into consideration the magnitude of the situation, and may extend the duration of such donations as developing circumstances dictate.

(2) *Applications.* (i) Disaster organizations wishing to receive and distribute

donated foods to households shall submit applications to the distributing agency. Applications shall, to the extent possible, include the following information:

- (A) Description of disaster situation;
- (B) Identification of the specific area(s) included in the request;
- (C) Number of households affected;
- (D) Explanation as to why the distribution of commodities to households is warranted;
- (E) Anticipated distribution period;
- (F) Method(s) of distribution available;
- (G) Quantity and types of food needed for distribution;
- (H) Statement of assurance that simultaneous disaster food stamp benefits and commodity assistance will not be provided to individual households; and
- (I) Description of the system that will be implemented to prevent dual participation.

(ii) In addition, information on the number and location of sites where commodities are to be distributed shall be provided to the distributing agency as such sites are established.

(3) *Collection of household information.* In instances in which the issuance of disaster food stamp benefits has been approved, any entity (i.e., Federal, State, or local) distributing donated foods to households shall, at a minimum, collect the information listed below in a format prescribed by the distributing agency. Such information shall be forwarded to the distributing agency and maintained by the distributing agency in accordance with the recordkeeping requirements contained in this part, except that such information may, at the discretion of the distributing agency, be maintained by the organization distributing commodities if such organization is an agency of the State government.

- (i) Name of household member applying for assistance;
- (ii) Address;
- (iii) Number of household members; and
- (iv) Statement signed by the household certifying that the household:
 - (A) Is in need of food assistance;
 - (B) Understands that misrepresentation of need, and the sale or exchange

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of the donated food, are prohibited and could result in a fine, imprisonment, or both;

(C) Is not residing in a shelter which provides food assistance; and

(D) Is not receiving disaster food stamp benefits.

(d) *Quantities and value of donated foods.* The distributing agency shall make donated foods available to approved disaster organizations based on the caseload factor information provided by the disaster organizations.

(e) *Types of donated foods authorized for donation.* Disaster organizations providing food assistance under this Section are eligible to receive donated foods under section 416, section 32, section 709, section 4(a), and sections 412 and 413 of the Stafford Act.

(f) *Summary report.* Within 45 days following termination of the disaster assistance, the distributing agency shall provide a summary report to the appropriate FNSRO using Form FNS-292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

(g) *Replacement.* Distributing agencies which decide to seek replacement of foods used from State and/or local inventories for disaster assistance shall file their request in writing to the FNSRO within 30 days following termination of the assistance. FNS will replace such foods in instances when a request for replacement is submitted within the required 30 days or sufficient justification exists to waive the 30-day requirement.

[62 FR 8365, Feb. 25, 1997. Redesignated at 73 FR 46185, Aug. 8, 2008]

§ 250.70 Food assistance in situations of distress.

(a) *Organizational eligibility.* In situations of distress in which needs for food assistance cannot be met under other provisions of this part, organizations (including agencies of State and Federal government) may be eligible to receive donated foods for congregate meal service or household distribution to victims of the situation of distress. Applications submitted to the distributing agency for the receipt and distribution of donated foods in accordance with paragraphs (b)(2) and (c)(2) of this section shall be initially sub-

mitted in writing if circumstances permit and, if not, confirmed in writing in a timely manner. Both the applications and the written approval for the use of USDA commodities shall be maintained in accordance with the record-keeping requirements of this part.

(b) *Congregate meal service—(1) Approval authority and duration.* Distributing agencies may review and approve applications for the donation of foods for use in preparing congregate meals for a period not to exceed 30 days for victims of situations of distress in instances in which the need for such assistance meets the conditions of paragraph (a) of the definition of *situation of distress* in § 250.3. Following approval of a request, distributing agencies shall report the information listed in paragraph (b)(2) of this section to the appropriate FNSRO within 24 hours. In instances when the distributing agency extends the originally approved distribution period from less than 30 days to the 30-day limit, it shall notify the FNSRO of such extensions. Distributing agencies shall request approval from FNS, via the appropriate FNSRO, for donations to exceed 30 days. Upon determining that there is a need for the donation of foods for congregate meals in instances other than those that meet the criteria in paragraph (a) of the definition of *situation of distress* in § 250.3, the distributing agency shall forward applications to the appropriate FNSRO for submission to FNS for prior approval. FNS will determine the duration of such donations, taking into consideration the magnitude of the situation. Determinations as to the length of donations may be revised as developing circumstances dictate.

(2) *Applications.* (i) Organizations wishing to receive donated foods for use in preparing meals shall submit applications to the distributing agency. Applications shall, to the extent possible, include the following information:

(A) Description of the situation of distress;

(B) Number of people requiring meals and congregate meal service period; and

(C) Quantity and types of food needed.