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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 250 and 251

Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction; Temporary Emergency Food Assistance Program for Fiscal Years 1986 and 1987

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rulemaking sets forth the regulations governing the Temporary Emergency Food Assistance Program (7 CFR Part 251). It incorporates a number of provisions identified in interim and proposed regulations published December, 1983 and July, 1984, respectively, and responds to comments received on both of these regulatory actions. In addition, this final rule incorporates a number of nondiscretionary provisions of the recently enacted Pub. L. 99-198. Two of these changes have been made to 7 CFR Part 250, Donation of Foods for Use in the United States, its Territories and Possessions and Areas under its Jurisdiction; the remainder are found in Part 251. This rulemaking is expected to strengthen the accountability and monitoring requirements found in Part 251.

EFFECTIVE DATES: The nondiscretionary provisions implementing Pub. L. 99-198 are effective on April 16, 1986. These provisions are found in §§ 250.4(a); 250.6(j); 251.3 (c), (f); 251.4 (g), (h); 251.7(b); and 251.8 (c), (d), (e). All other provisions are effective on June 16, 1986.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. Compliance with the provisions in this rule will not have an annual effect on the economy of more than \$100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This action has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. 601-612). Robert E. Leard, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities.

The provisions of this final rule which implement Pub. L. 99-198 are nondiscretionary. Because the nondiscretionary nature of those provisions makes notice and comment impracticable and unnecessary and because immediate implementation of the provisions is in the public's interest, Robert E. Leard has certified that good cause exists for making the provisions of this rule which implement Pub. L. 99-198 effective on publication and without public comment. Further, since the provisions of this rule which implement Pub. L. 99-198 constitute interpretive rules, notice and comment rulemaking and a 30 day period before making those provisions of the rule effective are not required.

The reporting and recordkeeping requirements included in this regulation have been approved by the Office of Management and Budget (OMB). The OMB approval numbers are noted in the text of the rule.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.568 and is subject to the

provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and 49 FR 22675, May 31, 1984).

Legislative Background

Title II of Pub. L. 98-8 was designated as the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c, note), hereafter referred to as the "Act". It required the distribution of surplus agricultural commodities acquired through the Commodity Credit Corporation to various outlets for Fiscal Year 1983. It also appropriated \$50 million for the cost of storage and distribution of commodities in that fiscal year. At least 20 percent of those funds was to be allocated by State agencies to emergency feeding organizations for costs incurred in providing commodities to relieve situations of emergency and distress to needy persons, including low-income and unemployed persons. The remaining funds could be used for States' storage and distribution costs relating to emergency feeding organizations.

Pub. L. 98-92 amended certain provisions of the Act and extended the Temporary Emergency Food Assistance Program (TEFAP) through September 30, 1985, including the authorization of appropriations for additional funds for storage and distribution costs.

On August 15, 1985, Congress enacted Pub. L. 99-88, which provided supplemental appropriations for several programs administered by the Department, including \$7 million for the expenses incurred by States and local agencies in distributing commodities under TEFAP. The funding was made available through March 31, 1986. Because Congress authorized additional funds for TEFAP through Pub. L. 99-88, the Department interpreted that action as extending TEFAP, subject to the terms and conditions of the Act until March 31, 1986.

Subsequently, on December 23, 1985, Congress enacted Pub. L. 99-198, the Food Security Act of 1985. Pub. L. 99-198 made a number of significant changes to the Act, foremost of which is the extension of the TEFAP through September 30, 1987.

Regulatory Background

Interim regulations governing the TEFAP were published on December 16,

1983, (48 FR 55988-55993). The Department published proposed amendments to the interim rule on July 2, 1984, (49 FR 27159-27160) which were designed to strengthen the accountability and monitoring requirements of Part 251. A 60-day comment period was provided for the interim as well as for the proposed rule.

The interim rule set forth the terms and conditions under which (1) surplus foods would be distributed to emergency feeding organizations and (2) Federal funds would be provided to assist in the payment of storage and distribution costs. Twenty-two comment letters were received from a variety of organizations including private industry, State and local governments, advocacy groups and distributing agencies. Additionally, 121 form letters were received from the general public concerning the provision of surplus commodities to the elderly.

The proposed rule, published on July 2, 1984, would have required that State agencies monitor program participation, submit reports and retain records to strengthen program accountability. Fifty comments were received from a U.S. Representative, a State Governor, State distributing agencies, local distribution sites, food banks, advocacy organizations, community action programs and private industry.

In order to more clearly differentiate between revisions made in response to the nondiscretionary provisions of Pub. L. 99-198 and those made in response to commenter concerns, the remainder of this preamble is divided by section of the final rule. Sections which remain unchanged and for which no substantive body of comment have been received are not discussed. Readers are advised that the discretionary provisions of Pub. L. 99-198 will be addressed in a separate proposed rulemaking.

Section 251.3 Definitions.

The term "emergency feeding organization" has been a source of concern to the Department since it was defined in § 251.3(b) of the interim regulations. The Department has become aware that different interpretations of the definition exist among States. To ensure consistency in program terminology as it affects reporting and monitoring requirements, as well as funds allocations, the Department solicited comments on the definition in the proposed rule.

Eight comments were received. Five commenters recommended that the term "emergency feeding organization" be further defined as the umbrella organization that enters into an agreement with the State agency. Two commenters suggested "emergency

feeding organization" be defined as the local entity handling the actual distribution of commodities.

In the final rule, "emergency feeding organization" has been defined in § 251.3(c) to mean the organization which enters into an agreement with the State agency to distribute TEFAP commodities on a local basis. The emergency feeding organization, in effect, is the "umbrella" organization responsible for TEFAP distribution. A new term, "distribution site," has been added in § 251.3(b) to mean the site at which the commodities are actually distributed to persons for household use. The temporary nature of many distribution sites, as well as the use of volunteers to staff these centers, made it necessary to redefine "emergency feeding organization" as the local organization with overall responsibility for TEFAP distribution. The emergency feeding organization would, thus, be the entity responsible for receipt of payments as well as for meeting local reporting and monitoring requirements which would ensure program accountability. The distribution sites would handle the actual distribution of commodities and collect the necessary household participation records, but the largely volunteer staff at these sites would not be required to handle any additional accountability or reporting responsibilities. It is our understanding that, in a number of States, the program is currently structured in this manner.

Section 1563 of Pub. L. 99-198 incorporated into the Act the current regulatory definition of emergency feeding organization. In order to avoid confusion, the definition of "emergency feeding organization" will reference charitable institutions, food banks, hunger centers, soup kitchens, and similar public and private nonprofit eligible recipient agencies. The changes in this rule are intended as clarifications and do not represent a change in actual operating policy.

Definition (f) "Storage and distribution costs," has also been revised to accommodate clarifications made in section 1569(a) of Pub. L. 99-198. Specific examples of storage and distribution costs for emergency feeding organizations are provided.

Section 251.4 Availability of commodities.

Section 251.4 has been expanded in response to sections 1568 (a) and (b) of Pub. L. 99-198. A new paragraph (g) allows State agencies, at State agency discretion, to enter into interagency cooperative agreements to provide jointly or to transfer commodities to an

emergency feeding organization which serves needy persons in contiguous areas which cross State borders. The Department strongly encourages State agencies exercising this provision to take appropriate measures to assure program accountability. New paragraph (h) encourages State agencies to implement or expand commodity distribution activities to relieve situations of emergency and distress in rural areas of the State.

Section 251.5 Eligibility determinations.

Section 251.5(b) of the interim rule required in accordance with section 203B(c) of the Act, each State agency to establish eligibility criteria to ensure that only needy persons receive commodities. The criteria must include income-based standards and the methods to demonstrate eligibility under these standards.

Some commenters opposed the use of income standards as time-consuming, costly, and overly burdensome in a largely volunteer distribution system. Additionally, 121 comments from the general public opposed the use of income eligibility standards, recommending that all elderly persons be categorically eligible to participate in TEFAP. Other commenters recommended the establishment of national eligibility criteria with income standards to be issued in these final regulations. One commenter felt national standards would alleviate "border" problems where neighboring States have established different eligibility standards.

Since the interim rule was put into effect in December 1983, States have had the responsibility of developing their own eligibility standards. While there has been some diversity in State-established TEFAP eligibility standards, the system had been operating effectively. To ensure State flexibility in the management of the program, the determination of eligibility criteria for program participation is to be retained at the State level.

As both the amount of funding and commodities allocated to each State are based on that State's specific unemployment and poverty statistics, the Department views the "border" problem as an issue of real concern. To alleviate this problem, § 251.5(b) has been amended to permit a State to adopt a State residency requirement to be used to ensure that only eligible persons residing in that particular State qualify for program benefits. Length of residency may not, however, be used as an eligibility requirement. Since

§ 251.9(a) requires each distribution site to collect the address, as well as other pertinent information, for each participating household, reviewing the records for State residency is not expected to be an additional burden at the local level.

Finally, no change has been made with regard to the age of eligible recipients. Categorical eligibility for senior citizens, as requested by a large number of commenters, would not be consistent with the statutory requirement in section 203B(c) of the Act that commodities for individual household use be distributed to needy persons.

Section 251.6 Distribution plan.

Section 251.6 of the proposed rule would have required that the State agency submit a description of its monitoring system to the FNS Regional office along with the description of its eligibility criteria and household distribution rates, which are already required under the interim rule.

Five comments were received. One commenter questioned whether the plan needed to be approved by the Governor since other State plans require the Governor's signature. The other commenters addressed distribution rates and eligibility guidelines. Two commenters suggested establishment of national distribution rates while two others supported States' flexibility in developing eligibility criteria and distribution rates. One commenter recommended that States be required to consider emergency feeding organizations' and food banks' input prior to developing their eligibility guidelines.

The final regulations incorporate the requirement for including in the plan a description of the monitoring system and retain the requirement that eligibility criteria and distribution rates be established at the State level. Because these are subject to Regional Office approval, the Department ensures some degree of consistency in the operation of TEFAP. Although each State is responsible for determining eligibility criteria and distribution rates, it is clearly within their jurisdiction to survey and use food banks' input and expertise regarding these matters.

Because the Regional office approval process enables the Department to better track State-operated programs, the plan will continue to be required annually. Review of the plan by the State Governor's Office is not required by the Department. However, the plan may be subject to the State's review process established in accordance with

the Department's regulations under 7 CFR Part 3015, Subpart V.

With the addition of the monitoring provisions, the plan referred to in the interim rules as the "Household Eligibility and Distribution Plan" has become more comprehensive. For this reason, the heading of section 251.6 has been changed to read simply "Distribution plan".

Section 251.7 Formula adjustments.

Section 251.7 of the interim rule provided for semi-annual adjustments of commodity allocations and annual adjustments of fund allocations based on updated unemployment statistics.

Several commenters expressed concern that Federal unemployment figures are not as responsive to the actual number of needy persons as State figures would be. Additionally, a commenter questioned the rationale for updating unemployment figures, but not poverty figures, in developing the formula. Three other commenters requested more frequent formula adjustments to ensure that each State receives both the appropriate funding and commodity amounts.

The adjustments are based on Federal unemployment figures rather than State figures to ensure formula consistency from State to State. The same formula tabulations and correction for errors are used nationally, whereas State formula and updates differ considerably. The Department uses the Federal unemployment figures because they are updated on a monthly basis, unlike poverty figures which are based on data collected at 10-year intervals with only major metropolitan area figures being adjusted periodically. Use of poverty figures would not serve TEFAP needs because rural areas are not included in the periodic adjustments.

Section 1569(a) of Pub. L. 99-198 requires the Department to allocate funds to the States for a fiscal year on an "advance basis, dividing such funds among the States in the same proportion as the commodities distributed under this title for such fiscal year are divided among the States." The Department considered changing the adjustment of funds from an annual to a semi-annual basis in order to meet commenter concerns.

This approach was rejected, however, because of the complication that would arise from the reallocation of funds also required under section 1569(a). The Department firmly believes that a semi-annual adjustment of funds in addition to the required reallocation of funds would adversely affect TEFAP since the resulting uncertainty in funding would

seriously hamper a State's ability to effectively budget for the year.

In order to meet the legislation intent that funds be provided in proportions that approximate commodity distribution, the Department intends to retain the annual adjustment of funding and reallocate any funds that States are unable to use among other States, based on considerations such as commodity distribution levels.

Section 251.8 Availability and allocation of funds.

In recognition of the provision of section 1569(a) of Pub. L. 99-198 which requires funds to be made available on an advance basis, paragraphs (c) and (d) have been revised to provide funding on an advance basis and to delete the corresponding limitation placed upon advance payments to emergency feeding organizations.

Section 251.8(d) of the interim regulations required each State agency to make available at least 20 percent of its allocation for local storage and distribution costs. Additionally, paragraph (d) stated that, in accordance with earlier legislation, payments to emergency feeding organizations shall not exceed 5 percent of the value of commodities distributed by such emergency feeding organizations.

One commenter supported this section in its entirety. Four others questioned the 20 percent minimum allocation of funds for local costs stating the minimum should be a higher percentage or a formula should be used to determine funds available for local use. Since section 1569(a) of Pub. L. 99-198 restates the requirement that each State agency make available to emergency feeding organizations at least 20 percent of the allocation, the final rule remains unchanged. If the State sees fit, and if the appropriate funding is available, the State agency can, of course, increase this allocation to the emergency feeding organizations.

One State agency wrote that it currently pays all warehousing costs for the storage and distribution of surplus foods until these foods are distributed to eligible households. The State pays these costs in lieu of billing more than 500 local organizations and considers it appropriate that these storage costs be included as part of the 20 percent to be used for local costs. Section 1569(a) of Pub. L. 99-198 clarifies that a State agency may not charge for commodities made available to emergency feeding organizations. However, section 1569(a) provides that if a State makes a payment using State funds to cover the direct expenses of an emergency feeding

organization, the amount of that payment may be counted toward the 20 percent requirement. Paragraph (d) has been revised accordingly.

A related change has been made in paragraph (j)(2) of 7 CFR Part 250.6 extending the effective date regarding the restriction on distribution charges through September 30, 1987. This date coincides with the extension of section 208 of the Act.

Paragraph (d) has been further revised to delete the restriction that emergency feeding organizations receive no more than 5 percent of the value of commodities distributed in any fiscal year by such organizations. A corresponding deletion has been made in § 251.9(a). This restriction was placed on previous fiscal year funding allocations by section 204(b) of the Temporary Emergency Food Assistance Act of 1983. In amending the Act with Pub. L. 99-198, Congress omitted the restriction. However, because the Department believes that it may be desirable to place a limit on the amount of funds an emergency feeding organization may receive in any fiscal year, this issue will be addressed in the proposed rulemaking which will include discretionary provisions of Pub. L. 99-198.

New paragraph (e) has been added to implement the reallocation requirement of section 1569(a) of Pub. L. 99-198. Under section 1569(a), if a State agency is unable to use all of the funds allocated to it, the Secretary is required to reallocate the unused funds among other States. A corresponding revision has also been made to paragraph (c) to make the provision of advance funding contingent upon any amounts recovered or withheld for reallocation. The Department expects reallocation of funds to take place on or before July 1 of each fiscal year in accordance with procedures established by FNS. Paragraph § 251.7(b) *Funds adjustments*, and paragraph § 251.8(c) *Payment to States*, have been expanded to reflect the reallocation of funds required under this paragraph.

Section 251.9 Miscellaneous provisions.

Section 251.9(a) of the proposal would have required that each emergency feeding organization collect and retain household participation information, as well as the data and methods used to determine household eligibility. The rule proposed that all records be retained for 3 years.

Eighteen comments were received. One commenter requested elimination of § 251.9(a) in its entirety. Five commenters concurred with records

being kept on a household rather than a participant basis. Three commenters recommended elimination of all information collection requirements while another suggested that information be collected on a sample basis only.

Other commenters recommended that, because of space limitations at the local level, records either be retained for less than 3 years or stored at the State agency, or alternatively, that retention only of financial records (rather than household participation records) be required.

As stated in the proposed rule and consistent with the commenters' recommendations, information will continue to be collected on a household rather than a participant basis. This will ease the actual collection burden and also reduce the time needed to compile the information into participation reports. Consistent with the requirement of distribution rates based on household size, § 251.9(a) requires distribution sites to collect and record the number of persons in each household. The final rule has been modified in an effort to facilitate information storage at local distribution sites. The final rule states that all records will be retained for 3 years by the "emergency feeding organization"; this term excludes individual distribution sites if distribution is conducted from multiple locations. Both space constraints and the temporary nature of many distribution sites make this alternative more feasible.

Paragraph (e) *Relationship to the Food Stamp Program*, has been deleted since section 1506 of Pub. L. 99-198 deleted section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2011-2029) which prohibited Federal food distribution in areas where the Food Stamp Program operates. Subsequent paragraphs have been redesignated. A corresponding deletion has been made to § 250.4, to remove the prohibition on donated food distribution in areas where the Food Stamp Program is in effect.

Section 251.9(f)(1) of the proposal addressed the information collection and submission components of the Financial Status Report (SF-269). Six comments were received concerning this section. All of the commenters recommended further definition and clarification of State and local distribution costs.

The Department believes these regulations are not the appropriate place in which to provide a detailed explanation of these various costs; however, as mentioned above, the definition of "storage and distribution costs" in § 251.3(f) has been expanded to

cite examples of such costs. To provide technical assistance to State agencies and FNS Regional offices regarding costs, FNS will continue to issue policy memoranda as the need arises. In addition, FNS financial management units at both national and regional levels are available to address questions concerning allowable costs.

Further, Department-wide policies and standards, as well as the principles for determining allowable costs, are explained in 7 CFR Part 3015, Uniform Federal Assistance Regulations, Part 3015, which establishes rules implementing OMB Circulars A-87, A-102 and A-110, is cited in § 251.8(b) of the interim regulations. The citation is retained in the final rule.

Accordingly, § 251.9(f)(1), newly redesignated as § 251.9(e)(1), will be retained in its entirety.

Section 251.9(f)(2) of the proposal required each State agency to report the number of persons being served and the amount of each commodity being distributed within the State during each month. This report was required to be submitted within 30 days after the end of the month to which it pertains.

Twenty-eight comments were received. Nine commenters recommended that the number of households, not persons, be included on this report. Five commenters opposed this reporting requirement in its entirety. Other commenters recommended that the report be submitted quarterly, semi-annually or annually rather than on a monthly basis with a 60-day rather than a 30-day period required for report submission. Several other commenters suggested this monthly report be incorporated into form FNS-155 which is a form currently being required under § 250.6(s) to report the amount of commodities being distributed through TEFAP.

To facilitate submission of participation and commodity distribution information, several changes are being made from the proposed rule. To eliminate duplication of effort, the monthly report described in § 251.9(f)(2) of the proposed rule will be incorporated into form FNS-155. In addition, the frequency for reporting participation data will be changed to quarterly, as a result of comments received. Furthermore, since the requirement for participation records in § 251.9(a)(3) is on a household basis, participation figures will be collected on a household rather than an individual basis. The emergency feeding organizations will only be required to report these figures to the State on a quarterly basis. The emergency feeding

organization will have 30 days from the end of the reporting quarter in which to submit its participation figures to the State. For example, a report showing July, August and September household participation figures must be submitted to the State by October 30. The State agency will then incorporate the participation figures into a State report and submit it as a quarterly addendum to form FNS-155.

State Monitoring System

Section 251.9(g) of the proposal required each State agency to develop a monitoring plan for the annual review of all emergency feeding organizations within the State. This system was intended to ensure that the emergency feeding organizations operate TEFAP in compliance with program requirements. Additionally, the rule proposed that a report of the review findings must be submitted by the State to each emergency feeding organization.

Thirty-two comments were received. Two commenters concurred with the monitoring component. Several others opposed it, particularly in light of the fact that no additional administrative funds are provided specifically for this function. Seventeen commenters recommended that all emergency feeding organizations be reviewed annually with only a percentage or no distribution sites to be reviewed. Eight other commenters suggested reviewing both a percentage of emergency feeding organizations and distribution sites.

After reviewing the comments and analyzing the number of emergency feeding organizations and distribution sites in each State, the Department has reassessed the monitoring requirements in the proposed rule. As a result of the revised definition of emergency feeding organization, the requirements outlined in newly redesignated paragraph (f) of this rule are less stringent than originally proposed.

The State will still be required to monitor every emergency feeding organization on an annual basis. In a few States, however, the number of emergency feeding organizations is so large as to make annual reviews of all of them impractical. In these situations, and with adequate State justification, the FNS Regional office may permit the State to monitor less than 100 percent of the emergency feeding organizations. However, the monitoring component is one method the State and Department, in turn, have of assessing operational aspects of TEFAP. Additionally, reviews can provide valuable information about the need for technical assistance at both the State and local levels. Because of the importance of the monitoring

component, this requirement will be waived only in cases where there is a very high number of emergency feeding organizations. In order to reduce the monitoring burden, while still ensuring program accountability at the local level, the final regulations require that one-third or 50 distribution sites, whichever is fewer, must be monitored by the State agency annually.

In selecting the distribution sites for review, the State agency must rank all the sites in the States according to the number of households served by each site in the previous quarter, and then select for review the first 25 sites, or the first one-sixth of all sites, whichever is fewer, which served the greatest number of households. The selection of the remainder of the sites to be reviewed is left to the discretion of the State agency. In addition, all reviews are to be made during actual distribution and/or eligibility determinations at the site. The Department believes that these requirements are necessary to maximize the usefulness of the limited number of site reviews required under this section, while limiting the burden of such reviews on the State agency.

Commodity Distribution for Political Interests

Section 251.9(g) ensures that commodities will not be distributed to households through TEFAP as a means of furthering the political interest of any individual or party. While this provision is currently found in Part 250 and has been applicable to the distribution of commodities under Part 251 since the program was implemented, the Department has received several inquiries and complaints concerning alleged misuse of commodities in this respect. To ensure that all organizations and persons involved with the operation of TEFAP are made aware of this restriction, this provision, found in § 250.6(f)(7), is being added in its entirety to these final regulations.

List of Subjects

7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs—social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 251

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Grant

programs, Social programs, Indians, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Part 250 and 7 CFR Part 251 are amended as follows:

PART 250—DONATIONS OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 continues to read as follows:

Authority: Sec. 32, Pub. L. 74-320, 49 Stat. 744 (U.S.C. 612c); Pub. L. 75-165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79-396, (42 U.S.C. 1755, 1758); sec. 416 Pub. L. 81-439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 91-865, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84-540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 85-931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86-756, 74 Stat. 899 (7 U.S.C. 1431 nt); sec. 709, Pub. L. 89-321, 79 Stat. 1212 (7 U.S.C. 1446a-1); sec. 3, Pub. L. 90-302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93-288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93-326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16, Pub. L. 94-105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304(a), Pub. L. 95-113, 91 Stat. 980 (7 U.S.C. 613c nt); sec. 311, Pub. L. 95-478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); Pub. L. 90-8, as amended, (7 U.S.C. 612c note); (5 U.S.C. 301), unless otherwise noted.

§ 250.4 [Amended]

2. Section 250.4 is amended by removing the fourth sentence of paragraph (a), including (a) (1), (2) and (3).

§ 250.6 [Amended]

3. Section 250.6, paragraph (j)(2) is amended by removing the date "1985" from the first sentence and inserting "1987" in its place.

4. Part 251 is revised to read as follows:

PART 251—TEMPORARY EMERGENCY FOOD ASSISTANCE PROGRAM FOR FISCAL YEARS 1986 AND 1987

Sec.	
251.1	General purpose and scope.
251.2	Administration.
251.3	Definitions.
251.4	Availability of commodities.
251.5	Eligibility determinations.
251.6	Distribution plan.
251.7	Formula adjustments.
251.8	Payment of funds for storage and distribution costs.
251.9	Miscellaneous provisions.

Authority: Pub. L. 98-8, as amended; 7 U.S.C. 612c note.

§ 251.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out certain provisions of the Temporary Emergency Food Assistance Act of 1983, (7 U.S.C. 612c *note*).

§ 251.2 Administration.

(a) Within the United States Department of Agriculture (the "Department"), the Food and Nutrition Service (FNS) shall have responsibility for the distribution of food commodities and allocation of funds under the part.

(b) Within the States, distribution to emergency feeding organizations and receipt of payments for storage and distribution shall be the responsibility of the State agency which has: (1) Been designated for such responsibility by the Governor or other appropriate State executive authority; and (2) entered into an agreement with the Department for such distribution and receipt in accordance with paragraph (c) of this section.

(c) Each State agency which has been designated to make distributions of donated food to emergency feeding organizations and to receive payments for storage and distribution costs in accordance with § 251.8 of this part shall perform those functions pursuant to an agreement entered into with the Department.

§ 251.3 Definitions.

For the purposes of this part:

(a) The terms used in this part that are defined in Part 250 of this chapter shall have the meanings ascribed to them therein.

(b) "Distribution site" means the location(s) where the emergency feeding organization actually distributes commodities to needy persons under this part.

(c) "Emergency feeding organization" means any public or nonprofit private organization which has entered into an agreement with the designated State agency to provide nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons, and which receives commodities under agreements pursuant to § 251.2(c). Emergency feeding organizations include charitable institutions, food banks, hunger centers, soup kitchens, and similar public or private nonprofit eligible recipient agencies.

(d) "Formula" means the formula on the basis of which commodities and funding available under this part will be allocated among States. The amount of such commodities or funds to be provided to each State will be based 60

percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State.

(e) "State agency" means the State government unit designated by the Governor or other appropriate State executive authority which has entered into an agreement with the United States Department of Agriculture under § 251.2(c).

(f) "Storage and distribution costs" means direct costs for the operation of the program that are incurred by an emergency feeding organization or by a State for intrastate storage and distribution of commodities donated under this part. Storage and distribution costs include the costs paid by an emergency feeding organization or paid by a State on behalf of an emergency feeding organization of (1) transporting, storing, handling, and distributing commodities incurred after they are received by the organization; (2) costs associated with determination of eligibility, verification and documentation; (3) costs involved in publishing announcements of times and locations of distribution; and (4) costs of recordkeeping, auditing, and other administrative procedures required for program participation.

(g) "Value of commodities distributed" means the Department's cost of acquiring commodities for distribution under this part.

§ 251.4 Availability of commodities.

(a) *General.* The Department shall make commodities available for distribution and use in accordance with the provisions of this part and also in accordance with the terms and conditions of Part 250 of this chapter to the extent that the Part 250 terms and conditions are not inconsistent with this part.

(b) *Displacement.* State agencies shall require that emergency feeding organizations receiving commodities under this part shall not diminish their normal expenditures for food because of receipt of commodities. Additionally, the Secretary shall withhold commodities from distribution if it is determined that the commodities would substitute for the same or a similar product that would otherwise be purchased in the market.

(c) *Allocations.* (1) Allocations of commodities shall be made to State agencies on the basis of the formula defined in Sec. 251.3(d). (2) FNS shall promptly notify State agencies regarding their allocation of commodities to be made available under this part.

(d) *Quantities requested.* State agencies shall: (1) Request commodities

only in quantities which can be utilized without waste in providing food assistance to needy persons under this part; (2) ensure that no emergency feeding organization receives commodities in excess of anticipated use, based on inventory records and controls, or in excess of its ability to accept and store such commodities; and (3) establish distribution rates, based on household size, to be used by emergency feeding organizations which provide commodities to needy persons in households.

(e) *Initial processing and packaging.* The Department will furnish commodities to be distributed to institutions and to needy persons in households in forms and units suitable for institutional and home use.

(f) *Bulk processing by States.* Commodities may be made available to a State agency or, at the direction of the State agency, directly to private companies for processing bulk commodities for use by emergency feeding organizations. (1) The Department will reimburse the State agency at the current flat rate for such processing. (2) Minimum yields and product specifications established by the Department shall be met by the processor. (3) The State shall require the processor to meet State and local health standards. (4) The external shipping containers of processed products shall be clearly labeled "Donated by the U.S. Department of Agriculture—Not to be Sold or Exchanged". Internal packaging shall be clearly marked "Donated by the U.S. Department of Agriculture—Processed Under Agreement with the State of ———." FNS may grant waivers to the internal label requirement if the enforcement of this requirement precludes a State's participation in the program, or in cases where other processors are not available who are able to meet the labeling requirement within the allowed reimbursement. (5) Processors and State agencies shall also meet the basic minimum requirements of § 250.15.

(g) *Interstate cooperation.* State agencies may enter into interagency cooperative agreements to provide jointly or to transfer commodities to an emergency feeding organization when such organization serves needy persons in a contiguous area which crosses States' borders.

(h) *Distribution in rural areas.* State agencies shall encourage emergency feeding organizations to implement or expand commodity distribution activities to relieve situations of emergency and distress through the

provision of commodities to needy households in rural areas of the State.

§ 251.5 Eligibility determinations.

(a) *Eligible emergency feeding organizations.* Prior to making distribution to these agencies, the State agency shall determine that they are eligible as emergency feeding organizations under this part and shall enter into agreements in accordance with § 251.2(b) of this chapter when such agreements have not already been entered into.

(b) *Criteria for determining recipient eligibility.* Each State agency shall establish criteria for determining the eligibility of households to receive commodities provided under this part for household use. The criteria must enable the State to ensure that only households who are in need of food assistance because of inadequate household income receive commodities. The criteria shall include income-based standards and the methods by which households may demonstrate eligibility under such standards and may include a requirement that the household reside in the State, provided that length of residency is not used as an eligibility criterion.

§ 251.6 Distribution plan.

(a) *Contents of the plan.* The State agency shall submit for approval by the appropriate FNS Regional Office a plan which contains: (1) A description of the criteria established in accordance with § 251.5(b) for determining that applicant households are in need of food assistance under this part; (2) the rates for distributing commodities to households in accordance with § 251.4(d)(3); and (3) a description of the program monitoring system including a detailed explanation of any factors which may contribute to the State's requesting approval of exceptions to conducting the minimum number of reviews required by § 251.9(f).

(b) *Plan submission.* For Fiscal Year 1986, the distribution plan must be submitted no later than the effective date of this part, and for subsequent fiscal years the plan must be submitted no later than October 1 of each year.

§ 251.7 Formula adjustments.

(a) *Commodity adjustments.* The Department will make semi-annual adjustments of the commodity allocation for each State based on updated unemployment statistics. These adjustments will be effective for the 6-month periods beginning January 1 and July 1 of each fiscal year.

(b) *Funds adjustments.* The Department will make annual

adjustments of the funds allocation for each State based on updated unemployment statistics. These adjustments will be effective for the entire fiscal year unless recovered, withheld, or reallocated in accordance with § 251.8(e).

§ 251.8 Payment of funds for storage and distribution costs.

(a) *Availability and allocation of funds.* Funds made available to the Department for State and local costs associated with the distribution of commodities under this part shall, in any fiscal year, be distributed to each State agency on the basis of the funding formula defined in § 251.3(d).

(b) *Uniform Federal Assistance Regulations.* Funds provided under this section shall be subject to the Department's regulations issued under 7 CFR Part 3015.

(c) *Payment to States.* (1) Funds under this section shall be made available by means of U.S. Treasury Department checks or letters of credit in favor of the State agency. The State agency shall use any funds received without delay in accordance with paragraph (d) of this section.

(2) Upon notification by the FNS Regional Office that an agreement has been entered into in accordance with § 251.2(c) of this part, FNS shall issue a grant award pursuant to FNS Instruction 407-3 (Grant Award Process), and promptly make funds available to each State agency within the State's allocation either through issuance of a letter of credit or a U.S. Treasury check pursuant to submission of the SF-270, Request for Advance or Reimbursement. State agencies shall receive funds through a letter of credit if program payments are more than \$120,000 for the year. To the extent funds are available and subject to the provisions of § 251.8(e), funds will be made available to State agencies on an advance basis.

(3) Each State agency shall return to FNS any funds made available under this section either through the original allocation or through subsequent reallocations which are unobligated as of the end of the fiscal year for which they were made available. Such return shall be made as soon as practicable but in no event later than 30 days following demand made by FNS.

(d) *Use of Funds.* (1) Funds made available under this part shall be used by State agencies or emergency feeding organizations only for those costs incurred in the storage and distribution of commodities under this part.

(2)(i) Each State agency shall make available to emergency feeding organizations not less than 20 percent of

the funds allocated in accordance with paragraph (a) of this section to pay for or provide advance payments to cover storage and distribution costs incurred by emergency feeding organizations. State agencies shall not charge for commodities made available to emergency feeding organizations, except that, State funds expended to cover the storage and distribution costs of emergency feeding organizations may be counted toward meeting the 20 percent requirement. (ii) The remaining amount of the allocation may be used for State storage and distribution costs related to emergency feeding organizations.

(e) *Recovery and reallocation.* If, during the course of the fiscal year, the Department determines that a State agency is unable to use all of the funds allocated to it during the fiscal year, the Department shall recover or withhold and reallocate such unused funds among other States.

§ 251.9 Miscellaneous provisions.

(a) *Records.* (1) State agencies and emergency feeding organizations shall maintain records to document the receipt, disposal, and inventory of commodities received under this part in accordance with requirements of § 250.6(r) of this chapter.

(2) In addition to maintaining financial records in accordance with 7 CFR Part 3015, State agencies which receive funds under this part shall maintain records to document the amount of funds paid to emergency feeding organizations for the actual storage and distribution costs incurred by any emergency feeding organization. State agencies shall ensure that emergency feeding organizations maintain records as required by this paragraph.

(3) Each distribution site shall keep accurate and complete records showing the data and method used to determine the number of eligible households served at that site.

(4) Each distribution site shall collect for each household participating in the program the name of the household member receiving commodities, the address of the household (to the extent practicable), the number of persons in the household, and the basis for determining that the household is eligible to receive commodities.

(5) All records required by this section shall be retained by the emergency feeding organization for a period of 3 years from the close of the Federal Fiscal Year to which they pertain.

(b) *Commodities not income.* In accordance with section 206 of Pub. L. 98-8, as amended, and notwithstanding any other provision of law, commodities

distributed under this part shall not be considered income or resources for any purposes under any Federal, State, or local law.

(c) *Nondiscrimination.* There shall be no discrimination in the distribution of foods donated under this part because of race, color, national origin, sex, age, or handicap.

(d) *Prohibition on sale or other disposal in commercial channels.* In accordance with section 205(b) of Pub. L. 98-8, as amended, except as otherwise provided in § 251.4(f) of this part, none of the commodities distributed under this part shall be sold or otherwise disposed of in commercial channels in any form.

(e) *Reports.* (1) Designated State agencies shall identify funds obligated and disbursed to cover the costs associated with the program at the State and local level. State and local costs shall be identified separately. The data shall be identified on the Financial Status Report (SF-269), which is submitted by State agencies to FNS Regional Offices on a quarterly basis. The quarterly report shall be submitted no later than 30 calendar days after the end of the quarter to which it pertains. The final report shall be submitted no later than 90 calendar days after the end of the fiscal year to which it pertains.

(2) Each State agency shall report, on a monthly basis, the amounts of commodities distributed under this part using form FNS-155.

(3)(i) Emergency feeding organizations shall report to the State agency no later than 30 days following the end of the quarter to which such data pertain, household participation figures which have been collected in accordance with paragraph (a) of this section.

(ii) Each State agency shall report to FNS the total number of households served within the State, based on the latest available reports received from emergency feeding organizations, as a quarterly addendum to the form FNS-155.

(f) *State Monitoring System.* (1) Each State agency shall monitor the operation of the program. To comply with this requirement the State agency shall develop and submit, as part of the distribution plan required by Sec. 251.6, a description of its monitoring system.

(2) Unless specific exceptions are approved in writing by the FNS Regional Office, the State monitoring system shall include (i) an annual review of all emergency feeding organizations within the State; and (ii) an annual review, to be conducted simultaneously with actual distribution and/or eligibility determinations, of one-third or 50,

whichever is fewer, of all distribution sites within the State.

(3) In selecting distribution sites for review, the State shall rank all the sites according to the number of participating households during the previous Federal fiscal quarter and select for review the first 25 sites, or first one-sixth of all sites, whichever is fewer, which served the greatest number of households.

(4) Each review must encompass eligibility determinations, food ordering procedures, storage and warehousing practices, inventory controls, approval of distribution sites, and reporting and recordkeeping requirements.

(5) Upon concurrence by FNS, reviews of emergency feeding organizations or distribution sites which have been conducted by FNS Regional Office personnel may be incorporated into the minimum coverage required by paragraph (f)(2) of this section.

(6) The State agency shall submit a report of review findings to each emergency feeding organization. The report shall include: (i) A description of each deficiency found and factors contributing to each; (ii) requirements for corrective actions; and (iii) timetable for completion of corrective action. The State agency shall monitor each emergency feeding organization's implementation of corrective action identified in the report.

(g) *Commodity distribution for political interest.* The distribution of commodities under this part shall not be used as a means for furthering the political interest of any individual or party.

(Approved by the Office of Management and Budget under control number 0584-0313) (Catalog of Federal Domestic Assistance No. 10.568)

Dated: April 9, 1986.
Robert E. Leard,
Administrator.
[FR Doc. 86-8420 Filed 4-15-86; 8:45 am]
BILLING CODE 3410-30-M

Soil Conservation Service

7 CFR Part 614

Conservation Operations; Reconsideration and Appeal Procedures

AGENCY: Soil Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: This rulemaking establishes interim procedures for the reconsideration or appeal of certain decisions made regarding a conservation reserve program and

relating to highly erodible land conservation and wetland conservation.

Section 1243 (a), 99 stat. 1515 of the Food Security Act of 1985, directs the Secretary of Agriculture to establish, by regulation, appeal procedures under which a person who is adversely affected by any determination under subtitles A through E of the Act may seek review of such determination.

DATES: These regulations are effective on April 16, 1986. Comments must be received on or before May 16, 1986 to be assured of consideration.

ADDRESS: Written comments on the interim regulations are to be submitted to Galen S. Bridge, Deputy Chief for Programs, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, or telephone (202) 447-4630.

FOR FURTHER INFORMATION CONTACT: Gary A. Margheim, Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, or telephone (202) 382-1870.

SUPPLEMENTARY INFORMATION:

Background

The Food Security Act of 1985 (the Act), Pub. L. 99-198, 99 stat. 1354 *et seq.*, which became effective on December 23, 1985, contains specific provisions to encourage the conservation and wise use of the Nation's soil and water resources. These provisions are set forth in three subtitles of Title XII: (1) Highly erodible land conservation (subtitle B, 99 stat. 1506-1507); (2) wetland conservation (subtitle C, 99 stat. 1507-1508); and (3) a conservation reserve program (CRP) (subtitle D, 99 stat. 1509-1514).

During the implementation and enforcement of those provisions, various determinations must be made by officials responsible for their administration. These determinations include whether a particular parcel of land meets the definitions of "highly erodible land," "wetland," or "converted wetland" under the Act, sections 1201 (a), (7), (16), (4), respectively, 99 stat. 1504-1505; and whether a conservation system or conservation plan meets the technical standards of the Soil Conservation Service relating to the production of an agricultural commodity on highly erodible land (sections 1212 (a) (2) and (b) (3), 99 stat. 1506-1507 or relating to the conversion of highly erodible cropland from agricultural commodity production to a less intensive use (section 1232 (a) (1), 99 stat. 1509).

Section 1243(a), 99 stat. 1515, directs the Secretary of Agriculture to establish,