Sunshine Act Meetings

Federal Register
Vol. 53, No. 107
Friday, June 3, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Tuesday, June 7, 1988, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. Methylene Chloride Petition

The staff will brief the Commission on petition HP 85-1 from the Consumer Federation of America requesting that the Commission commerce a proceeding under Section 2(q)(1)(B) of the Federal Hazardous Substances Act to ban products containing methylene chloride.

Closed to the Public

2. Enforcement Matter OS #3705

The Commission will consider issues related to enforcement matter OS #3705.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

May 31, 1988.

[FR Doc. 88-12637 Filed 6-1-88; 1:53 pm]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, June 7, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,213-NR
The First National Bank and Trust Company of Oklahoma City, Oklahoma City, Oklahoma

Memorandum and resolution regarding an extension of time for compliance with that portion of Part 346 of the Corporation's rules and regulations, entitled "Foreign Banks," which limits the exposure of insured domestic branches of foreign banks to borrowers in the country in which the foreign bank parent is chartered to 200 percent of the branch's required capital equivalency ledger account and 100 percent for all other countries.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Final amendment to the Corporation's rules and regulations in the form of new Part 324, entitled "Agricultural Loan Loss Amortization," which amendment implements Title VIII of the Competitive Equality Banking Act of 1987 which permits agricultural banks to amortize losses on qualified agricultural loans.

Discussion re: Imposition of penalties for failure to file timely Reports of Condition and Income.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: May 31, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-12549 Filed 5-31-88; 5:06 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, June 7, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
Central National Bank of New York, New York City (Manhattan), New York (5904) (Memo dated April 27, 1988)
Audit Report re:
Houston Consolidated Office, Cost Center—405 (Memo dated April 26, 1988)
Audit Report re:
LAMIS Audit Report (Memo dated May 11, 1988)

Discussion Agenda:

Application for Federal deposit insurance:

Entrust Bank, a proposed new bank to be located at 13810 Plank Road, Baker, Louisiana.

Memorandums regarding the Corporation's corporate activities.

Memorandum regarding proposed revisions to the Division of Liquidation's delegations of authority.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Memorandum regarding the Corporation's supervisory activities.

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: May 31, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-12550 Filed 5-31-88; 5:06 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 18654, May 24, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Tuesday, May 31, 1988.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Government in the Sunshine consideration of a personnel matter.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: May 31, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12554 Filed 5-31-88; 5:07 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on May 27, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, June 6, 1988.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Policy proposals regarding a drug testing program.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: May 31, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12555 Filed 5-31-88; 5:07 pm]

BILLING CODE 6210-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: June 14-15, 1988.

PLACE: Embassy Suites Hotel, Crystal Ballroom A, 1881 Curtis Street, Denver, Colorado 80202.

STATUS:

June 14, 1988, 9:00 a.m.-10:00 a.m.—Closed
Sec. 1703.202(2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703
June 14, 1988, 10:00 a.m.-6:15 p.m.—Open
June 15, 1988, 9:00 a.m.-3:30 p.m.—Open

MATTERS TO BE DISCUSSED:

Chairman's Report
Approval of April 21, 1988 Minutes
Executive Director's Report
—FY 88 Third Quarter Program Report
—Administrative Report
Vice Chairman's Report
National Advisory Committee Presentation on Support for Minimum Equipment
Chief Officers of State Library Agency Report, Wayne Johnson, Wyoming
State Library Reports—
Wyoming, Wayne Johnson
Colorado, Nancy Bolt
Oklahoma, Robert Clark
1990 NCLIS Programs—Report and Discussion
Film on School Library Guidelines Teleconference
NCLIS Committee Reports
—Budget and Finance
—International
—Legislative
—Public Affairs
—White House Conference
Privatization of NTIS
FOIA Related Activities
Library Statistics Collection Program
Information Age Issues
Special Population Literacy Programs
NCLIS 1989 Meeting Sites
Information for Governance Program Report

Special provisions will be made for handicapped individuals by calling Jane McDuffie (202) 254-3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Daniel Carter, NCLIS Acting Executive Director, 1111 18th Street, NW., Suite 310, Washington, DC 20036 (202) 254-3100.

Dated: May 31, 1988.

Jane McDuffie,

Staff Assistant.

[FR Doc. 88-12656 Filed 6-1-88; 2:41 pm]

BILLING CODE 7527-01-M

Corrections

Federal Register
Vol. 53, No. 107
Friday, June 3, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-08-4212-13;A-23254]

Realty Action; Exchange of Public Lands; Maricopa, Mohave, Pima and Santa Cruz Counties, AZ

Correction

In notice document 88-7478 beginning on page 11142 in the issue of Tuesday, April 5, 1988, make the following correction:

On page 11142, in the second column, the 13th line should read "Township 15 South, Range 14 East.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ASW-38]

Revision of Transition Area; Jacksonville, TX

Correction

In rule document 88-11199 beginning on page 17919 in the issue of Thursday, May 19, 1988, make the following correction:

§ 71.181 [Corrected]

On page 17920, in the first column, in § 71.181, under **Jacksonville, TX**, in the seventh line, the longitude should read "95°12′55″ W.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ASW-63]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, 205A-1, and 212 Helicopters

Correction

In proposed rule document 88-7697 beginning on page 11678 in the issue of Friday, April 8, 1988, make the following corrections:

§ 39.13 [Corrected]

1. On page 11679, in the first column, in § 39.13, under **Bell Helicopter Textron, Inc. (BHTI)**, in the third paragraph, in the second line, "P/N 204-011-105-450" should read "P/N 204-011-450"; in the third line, remove "P/N"; remove the entire fourth line; and remove "rotor trunnion," from the fifth line.

2. On the same page, in the same column, in paragraph (a), the third line should read "for the main rotor mast, P/N 204-011-450 (all dash numbers), and main rotor trunnion, P/N 204-011-105-001,".

3. On the same page, in the same column, in paragraph (b), in the second line, "14,000" should read "14,900".

BILLING CODE 1505-01-D

federal register

Friday
June 3, 1988

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdictions; Interim Rule With Request for Comments

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdictions

AGENCY: Food and Nutrition Services, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule will amend the Food Distribution Program regulations (7 CFR Part 250) by: (1) Strengthening provisions for inventory controls, use of program funds, audits, storage facilities and management evaluation reviews; (2) restructuring to provide for greater ease in the reading and understanding of the regulations; and (3) revising provisions for the renewal of agreements. Those provisions relative to the processing of donated food which appeared on July 1, 1986 (51 FR 23719–24130) and July 2, 1987 (52 FR 24937–24978) in the **Federal Register** are included to provide for a complete version of the Food Distribution Program regulations.

DATES: Interim rule effective July 5, 1988, comments must be received on or before November 30, 1988. Comments are not being solicited on §§ 250.11(a), 250.15(c), 250.15(f)(1), 250.16(a)(4) (last sentence), 250.17(c), 250.17(b), 250.18(b), 250.18(c), 250.19(b)(2) and 250.30 and the definitions of "contract value of the donated foods," "Federal acceptance service," "multi-State processor," "refund application," "substituted food" and "substitution" as contained in § 250.3.

ADDRESS: Susan E. Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, Park Office Center, Alexandria, Virginia 22302.

Comments in response to this interim rule may be inspected at the address above during normal business hours (8:30 a.m. to 5:00 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Susan E. Proden, Chief, Program Administration Branch (703) 756–3660.

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. This action will not have an annual effect on the economy of $100 million or more nor will it result in 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, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. 601–612). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The reporting and recordkeeping requirements contained in this rule have been approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The OMB approval numbers are noted at the relevant point of the regulations.

The Department is issuing this rule as an interim rule rather than a final rule. The Department has already solicited and considered public comments concerning this rulemaking effort. In a typical rulemaking, the Department would now issue a final rule. However, because this rulemaking involves extensive modifications to program operations, the Department has determined that additional public comments would be beneficial. Therefore, we are issuing this rule as an interim rule in order to provide distributing agencies and recipient agencies with the opportunity to comment based on actual operating experience with the new regulations.

Since the provisions that pertain to processing were published in final on July 1, 1986 (51 FR 23719–24130) the Department is not soliciting comments on §§ 250.17(b), 250.17(c), 250.18(b), 250.18(c), 250.19(b)(2) and 250.30 and the definitions of "contract value of the donated foods," "Federal acceptance service," "multi-State processor," and "refund application" as contained in Section 250.3 of this rule. Similarly, since comments have already been solicited on the provisions concerning the substitution of concentrated skim milk for nonfat dry milk under State processing contracts which were published as an interim rule on July 2, 1987 (52 FR 24973–24978), no additional comments are being solicited on the last sentence of § 250.16(a)(4) and the definitions of "substituted food" and "substitution" as contained in § 250.3 of this rule. In addition, § 250.15(c) (claims), § 250.15(f)(1) (use of funds accruing from claims) and § 250.21 (civil rights) were reserved in the proposed rule. The current regulatory provisions concerning claims and use of funds accruing from claims have been inserted into this rule at these sections to provide a complete version of Food Distribution Program regulations. However, any changes to these two provisions will be addressed in a separate rulemaking. Since these provisions reflect the current regulation, no comments are being solicited on them at this time.

The civil rights section has been amended to provide cross references to the Departmental regulations on civil rights. Comments on this section and all other provisions of this rule will be considered in the development of final regulations.

The Department also wishes to point out that this rule does not reflect any of the changes required by the recently enacted Commodity Distribution Reform Act of 1987 (Pub. L. 100–237). The Department will be issuing regulations concerning this Act in the near future.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.550 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 final rule related notice 48 FR 29114 (June 24, 1983)).

Background

The regulations governing the Food Distribution Program (7 CFR Part 250) outline the responsibilities of the Food and Nutrition Service (FNS) and distributing agencies concerning the distribution and use of federally donated foods. The current regulations provide for the distribution of donated foods to a variety of domestic outlets, including entities participating in the child nutrition programs and nutrition programs for the elderly, charitable institutions, nonprofit summer camps for children, and certain low-income households and disaster organizations.

Analysis of Comments

On August 19, 1985, FNS published a proposed rule in the **Federal Register** (50 FR 33470) to amend the Food Distribution Regulations (7 CFR Part 250) by: (1) Strengthening provisions for inventory controls, use of program funds, audits, storage facilities and management evaluation reviews; (2) restructuring to provide for greater ease in the reading and understanding of the regulations; and (3) revising provisions for the renewal of agreements; and strengthening provisions for the processing of donated foods.

In an effort to assist FNS in revising Part 250, comments were solicited on the proposed changes. The proposed revision encompassed nearly all provisions contained in Part 250. Comments were not solicited on the regulations regarding the National Commodity Processing Program, which were subsequently moved to 7 CFR Part 252 and three provisions, claims (§ 250.15(c)), use of funds accruing from claims (§ 250.15(f)(1)), and civil rights (§ 250.21) were reserved for further consideration and development prior to proposal.

The general public was given 90 days for comment on the proposed revision. A total of 305 comment letters was received from various sources such as distributing agencies, recipient agencies, processors, distributors of processed end products, the American School Food Service Association, the National Association of State Agencies for Food Distribution and the American Institute of Certified Public Accountants.

Restructuring

In an effort to simplify the organization of Part 250, the proposed rule set forth the provisions under one part with separate subparts for: (1) General, (2) General Operating Provisions, (3) Processing and Labeling of Donated Foods, and (4) Eligible Recipient Agencies and Programs. The restructuring was intended to provide greater ease in reading and understanding of the regulations and to eliminate the need for a significant amount of repetition. The commenters overwhelmingly supported the restructuring of the regulations, as proposed. Thus, the interim rule is issued in the same format as the proposed rule.

The exerpts of legislative provisions were deleted in the proposed rule. However, summaries of section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended; sections 6 and 14 of the National School Lunch Act, as amended; section 32 of Pub. L. 74–320, as amended; section 311 of the Older Americans Act of 1965, as amended; section 416 of the Agricultural Act of 1949, as amended; and section 709 of the Food and Agriculture Act of 1965, as amended; were included under definitions. These are the primary legislative provisions authorizing the purchase and donation of food items. A few commenters were concerned about the elimination of the legislative quotations. It is the Department's opinion that a lengthy list of the full text of these provisions is unnecessary since a summary of the primary provisions relative to the purchase and donation of food for distribution to eligible recipient agencies is being retained under the definitions section. FNS will, however, make available a summary of all legislative authorities upon request.

Definitions

"Distributing agency"—Although the Department has always considered indian tribal organizations (ITOs) to be inherent in the definition of a "distributing agency," the Department is concerned that confusion may result from the lack of specific reference. In order to clarify this matter, the interim rule definition specifically refers to ITOs. "Nonresidential Child Care Centers"—In § 250.3 of the proposed rule the term "nonresidential child care centers" included reference to child care centers, day care homes and sponsoring organizations. In the interim rule, reference is made to "institution" instead. This term more accurately describes the entities which participate in the Child Care Food Program. The proposed definition unnecessarily included day care homes, which can only participate under the auspices of a sponsoring organization and failed to include outside-school-hours care centers.

"School"—is amended by revising the definition to reflect recent changes to the term in the National School Lunch Program. The changes consist of clarifying the eligibility of preprimary classes for the National School Lunch Program, and clarifying that school means an education unit of high school grade or under which is recognized as part of the education system in the State.

"Tuition"—As a result of the elimination of tuition limitation by Pub. L. 100–71, the tuition limitation in the definition of "school" and the definition of "tuition" have been deleted.

"School food authority"—is amended to reflect changes to the definition in the National School Lunch Program regulations which were necessary to recognize special accommodations between public schools and private schools or residential child care institutions, when approved by FNS.

"Substituted food" and "Substitution"—are new or expanded terms that appeared in the interim concentrated skim milk substitution rule which was published July 2, 1987 at 52 FR 24973. These terms are included in this rule to provide a complete text. No comments are being taken on these definitions in this rulemaking.

Eligibility Determinations for Recipient Agencies and Recipients

Section 250.11 of the proposed rule required that distributing agencies determine the eligibility of all applicants, enter into agreements with those which were determined to be eligible and make donated foods available.

A total of twenty comments was received on this requirement. Ten commenters were opposed to the provision. They maintained that requiring the distributing agency to determine the eligibility of and make donated foods available to all eligible organizations which apply for participation in the Temporary Emergency Food Assistance Program (TEFAP) was not feasible due to the limited amounts of donated foods which are currently being provided. The Department did not intend for this provision to apply to TEFAP. Agreements between distributing agencies and emergency feeding organizations are governed by § 251.2 of this subchapter, not § 250.11.

Commenters also recommended that they be allowed to impose minimum size requirements on recipient agencies. That is, commenters said they should have the authority to reject applications from very small organizations since the cost of administering the program to such organizations could be very high compared to the amount of commodities to be received. The Department does not believe that it is appropriate for a distributing agency to reject any recipient agency by establishing a minimum number of persons which a recipient agency must serve in order to receive donated foods. Rather, the Department considers the recipient agency's past performance practices to be the only justification for denying participation. Thus, this provision is retained in Section 250.11 of the interim rule with the clarification that in determining recipient agency eligibility that the agency's past performance be a factor in the determination.

The Department published a new § 250.11 regarding the verification of recipient agency eligibility on June 30, 1986 (51 FR 23518). However, the terms "State distributing agency" and "State agency" were inadvertently used in this section rather than "distributing agency." Since the Part 250 regulations use the term "distributing agency," we are replacing the words "State distributing agency" and "agency" with "distributing agency" to maintain consistency. The provisions of the June 30, 1986 rule and the proposed § 250.11

have been redesignated as § 250.11 (a) and (b), respectively.

Agreements

Agreements with Department—Section 250.12(a) of the proposed rule required distributing agencies to enter into an agreement with the Department prior to the beginning of a distribution program. The agreement was to be completed by September 30 of each year and be effective for no longer than one year. The same requirement applies to State Agencies on Aging which receive any cash in lieu of commodities in connection with nutrition programs for the elderly.

A total of eight comments was received from distributing agencies regarding this provision. Five commenters opposed the requirement on the basis that the provision generated more paperwork and that the completion date conflicted with most school calendars.

Since agreements are currently required annually, the only change in the proposal was that agreements be completed by September 30. As noted in the preamble of the proposed rule, the September 30 requirement was added to make the term of these agreements coincide with the fiscal year, facilitating compliance with reporting requirements which are generally on a fiscal year basis. Therefore, § 250.12(a) of this interim rule retains the provision as proposed.

Distributing Agency Agreement—Section 250.12(b) of the proposed regulations required that the agreements between distributing agencies, subdistributing agencies, recipient agencies, warehouses, carriers, etc. be in writing and be effective for no longer than one year.

Forty-three comments were received on this proposal. Thirty one commenters indicated that the requirement for an annual agreement would be time consuming, substantially increase workload and paperwork, tax an already insufficient staff, and detract from operational flexibility. Distributing agencies administering more than one program indicated that they need the flexibility of writing one agreement to cover a variety of programs.

In response to the commenters concerns, § 250.12(b) of the interim rule has been modified to permit the one year agreements to be extended at the option of both parties, for two additional one-year periods. As a part of each extension, the party contracting with the distributing agency must update all pertinent information and demonstrate that all donated foods received during the previous contract period have been accounted for. In order to ensure program integrity in light of the three-year contract cycle, contracts must include a termination clause whereby either party may terminate the agreement for cause with 30 days notice.

The provision regarding two one-year extensions of contracts does not apply to existing contracts. It applies only to contracts signed after the effective date of this rule. It is generally the policy of the Department not to apply a rule retroactively. In the case of agreements with subdistributing agencies and recipient agencies, the two extension options will reduce paperwork and workload. In the case of agreements for warehouses, etc., the option for two one-year extensions will mean that the distributing agency will need to engage in procurement procedures for that contract only once every three years. The Department believes that this three-year bidding cycle will reduce paperwork and provide added stability with respect to the contracted services, while maintaining adequate assurances that the procurement is conducted in a manner that provides open and free competition.

Also a new sentence has been added to § 250.12(b) to clearly specify the distributing agencies' ongoing responsibility for ensuring program integrity at the subdistributing agency level, and below.

Food Service Management Company Agreement—Section 250.12(c) of the proposed regulations required that recipient agencies enter into written agreements with food service management companies and that the agreements be effective no longer than one year.

Nine comments were received on this proposal. Commenters were concerned that this requirement to limit the agreement to one year was inconsistent with the National School Lunch Program (NSLP) regulations with respect to the duration of food service management company contracts.

The Department did not intend to create inconsistencies with existing regulations concerning food service management companies. Instead, the objective was to ensure accountability when food service management companies use donated foods in the preparation of meals under their contracts with recipient agencies. In the case of food service management company agreements with recipient agencies which participate in the Child Nutrition Programs, this provision was intended only to add some requirements concerning the use of commodities and not to create an inconsistency concerning the length of contracts. Therefore, this interim rule has been revised to limit the provision concerning contract length to those recipient agencies which do not participate in the Child Nutrition Programs: nonprofit summer camps for children, charitable institutions, and nutrition programs for the elderly. In addition, the interim rule has been modified to permit the one-year agreements to be extended at the option of both parties, for two additional one-year periods. As a part of each extension, the recipient agency and food service management company must update all pertinent information and demonstrate that the full value of all donated foods received during the previous contract period have been accounted for. In order to ensure program integrity in light of the potential three-year contract cycle for charitable institutions, nutrition programs for the elderly and nonprofit summer camps for children, agreements with these recipient agencies must include a termination clause whereby either party may terminate the agreement for cause with 30 days notice. The provision regarding two one-year extensions of contracts does not apply to existing contracts with food service management companies. It applies only to food service management company contracts signed after the effective date of this rule. It is generally the policy of the Department not to apply a rule retroactively. Finally, a cross-reference to the review requirements in § 250.19(b) has been added.

Transfer of Donated Foods

Section 250.13(a)(1) of the proposed rule required that recipient agencies receive authorization from the distributing agency and the appropriate FNSRO prior to transferring donated foods which have been provided as part of an approved food package or authorized program level of assistance and continued to require distributing agency approval of all other transfers. In addition, the proposed rule required all transfers to be documented on the FNS-155 or FNS-152.

Eighty-six comments were received on this proposed requirement. Some commenters felt the provision was overly burdensome and costly. Other commenters felt that the dual authorization requirement could result in food spoilage before the transfer could be made. Commenters recommended among other things that: (1) FNSRO approval be required only for those transfers made to recipient agencies not originally authorized to receive that particular donated food; (2) approval not be required for transfers made between like recipient agencies; (3) approval be based on the value of the donated food being transferred; and (4) documentation be made available during reviews in lieu of requiring advance approval.

Subsequent to the proposed rule, sections 1564(a) and 1561 of Pub. L. 99-198 (the Food Security Act of 1985) authorized the Secretary to use commodities made available under section 32 of Pub. L. 74-320 (7 U.S.C. 612c) in the Temporary Emergency Food Assistance Program and amended section 32 to permit the transfer of section 32 commodities among the agencies originally receiving those donated foods. On May 13, 1987 (52 FR 17928), the Department published a final rule amending both the Food Distribution and TEFAP regulations regarding the transfer of section 32 commodities. This rule permits the transfer of section 32 commodities from Part 250 recipient agencies to Part 251 emergency feeding organizations and vice versa. Such transfers must be approved by both the distributing agency and the State agency administering the TEFAP, and must be documented in a manner that provides an audit trail.

In light of the concerns raised by the commenters on this provision, the Department is revising § 250.13(a)(1) in this interim rule to allow for transfer of donated foods which have been provided as part of an approved food package or authorized program level of assistance between like recipient agencies (schools to schools) with prior approval by only the distributing agency. The Department believes that permitting transfers of this class of donated foods between like recipient agencies with only the distributing agency's approval will give the distributing agency flexibility in administering the program while ensuring that ineligible recipient agencies do not receive the donated foods. However, the transfer of donated foods which have been provided as part of an approved food package or authorized program level of assistance between unlike recipient agencies (schools to charitable institutions), must be approved by the appropriate FNSRO. This rule adopts the provision of the proposed rule that transfers of donated food which are provided *in addition* to the authorized program level of assistance may be transferred between recipient agencies with the prior authorization of the distributing agency alone.

The necessary authorization for the transfer of section 32 commodities will depend on whether the section 32 commodities have been provided as a part of the authorized program level of assistance. The transfer of section 32 commodities from recipient agencies to TEFAP emergency feeding organizations will continue to be governed by the requirements set forth in the May 31, 1987 rule and incorporated into this rule (prior authorization of the distributing agency and the TEFAP State agency and documentation sufficient to provide an audit trail).

It has also come to the Department's attention that there is some confusion regarding the conditions on the transfer of commodities by summer camps at the end of the camping session. While the Department anticipates that there would be no commodities remaining at the end of the camping session, it should be noted that should there be remaining commodities, these may be transferred to other recipient agencies with the approval of the distributing agency.

In an effort to reduce the paperwork burden which would result from the requirement of the proposed rule that all transfers be documented on FNS-155 or FNS-152, the interim regulation requires only that transfers be documented in any manner that provides an audit trail. Such documentation must be retained in accordance with the recordkeeping requirements of §§ 250.16 and 251.10(a).

In addition, section 1506 of Pub. L. 99-198 amended section 4(b) of the Food Stamp Act to eliminate the current ban on the distribution of Federally donated foods directly to households in jurisdictions that operate the Food Stamp Program. Accordingly, this prohibition has been deleted from § 250.13(a)(1) of this interim rule.

Storage Facilities

Standards—Section 250.14(a) of the proposed rule outlined general standards for storage facilities and required distributing agencies, subdistributing agencies and recipient agencies responsible for the contracting of storage facilities to ensure that warehouse facilities meet existing Federal, State or local health department standards, whichever were more stringent.

Fifty-seven comments were received on the proposed provision. Forty-six commenters opposed the provision on the basis that it would increase workload and cost. The majority of the commenters stated that it is not feasible to expect agencies to compare Federal, State and local health department standards to determine which particular standard is more stringent for every requirement associated with storage practices. Several commenters recommended that the Department develop minimum standards in lieu of referring to Federal, State or local standards.

It appears that these commenters have misinterpreted the Department's intent concerning this requirement. This requirement does not mean that the agency contracting for the storage must itself conduct inspections to insure compliance with applicable Federal, State or local health standards. Nor did the Department intend that the distributing, subdistributing, recipient agency or the Department develop their own standards regarding proper storage. The Department believes that existing Federal, State and local regulations of the health conditions of storage facilities should provide sufficient protection of the Department's donated foods. However, the Department wishes to ensure that these storage facilities have actually received any inspection and/or approvals required under existing laws and regulations. As a result, § 250.14(a) has been revised to emphasize that the responsibility of the agency contracting for the storage facility is to ensure that the storage facility has obtained all required inspections and/or approvals and that they are current. This can be accomplished by reviewing documentation provided to the storage facility by the Federal, State and/or local health departments or by contacting the regulatory agencies for confirmation.

Several commenters recommended that the requirement regarding the use of pallets be deleted. Since the size of some storage areas does in fact prevent the use of pallets, § 250.14(a) of this rule requires that donated foods be stored off the floor in a manner that provides for adequate ventilation.

Reviews—Section 250.14(b) of the proposed rule required that distributing agencies ensure that an on-site review of the storage facilities be conducted prior to entering into or renewing a contract for the storage, handling and distribution of foods.

Forty comments were received concerning this requirement. Thirty-five of the commenters recommended that the requirement be revised or deleted because commenters felt there were insufficient staff and/or funds to conduct the reviews. Several of the commenters recommended that the review be conducted during the contract period as part of the management evaluation review and that the Department clarify that subdistributing agencies and recipient agencies are responsible for reviews of their respective storage facilities.

The Department believes that the review of storage facilities is essential for accountability. Distributing agencies can prevent claims by ensuring that storage facilities adhere to program regulations. Furthermore, the Department believes that oversight review of storage facilities is important, because improper storage is the primary cause of food loss claims. Clearly, it is essential that commodities be stored in a safe environment. Consequently, § 250.14(b) of this interim rule requires that all distributing agency level storage facilities be reviewed annually. In addition, distributing agencies must ensure that subdistributing and recipient agencies conduct annual reviews of their respective storage facilities. Documentation that will reflect compliance as well as documentation of corrective action taken in cases of noncompliance must be maintained on file at the distributing agency or local level as appropriate.

Contracts—Section 250.14(c) of the proposed rule required that distributing agencies, subdistributing agencies and recipient agencies enter into annual written contracts for the leasing of storage facilities.

Eighty-four comments were received on this proposal. Seventy commenters recommended that the requirement be deleted or revised. Several of the commenters expressed concern about the adverse effects such a requirement would have. For example, commenters indicated that: (1) Substantial savings are realized when contracts are entered into for longer periods of time; (2) in instances when contracts are entered into through the competitive bidding process, States would not only be required to go through this process every year but the requirement could also necessitate annual transfers between storage facilities; (3) this would eliminate free storage and adversely affect temporary or short-term storage.

The Department believes that a written contract is essential to clearly establish the liability between the two parties involved. Without such a contract, establishing claims when losses occur can be problematic. Therefore, this interim rule provides for an annual contract. In recognition of the benefits of a longer contract cycle, the interim rule has been modified to permit the one-year agreements to be extended at the option of both parties, for two addtional one-year periods. As a part of each extension, the storage facility must update all pertinent information and demonstrate that all donated foods received during the previous contract period have been accounted for.

The provision regarding two one-year extensions of contracts does not apply to existing contracts with storage facilities. It applies only to storage facility contracts signed after the effective date of this rule. It is generally the policy of the Department not to apply a rule retroactively.

In addition, the Department is limiting to distributing agencies and subdistributing agencies the requirements in § 250.14(d) that storage facility contracts be in writing and be subject to a maximum three year bidding cycle. A corresponding change has been made to § 250.12(d). Recipient agencies have been exempted from this requirement because of the heavy paperwork burden involved in such a requirement, particularly in light of the typically small amount of commodities stored by recipient agencies. As pointed out by the commenters, these requirements could adversely affect the ability of recipient agencies to find temporary or short-term storage. The Department also agrees with the commenters' concern that the contract requirements might limit the availability of low-cost or free storage arrangements sometimes offered as a service to schools or other recipient agencies. For these reasons, the requirement for a written storage contract subject to a three-year bidding cycle has been limited to distributing agency and subdistributing agency storage contracts. However, there is nothing to prohibit the distributing agency from requiring recipient agencies to have a written contract.

With respect to the assurances the contract must contain, the interim rule requires (1) annual rather than semi-annual inventories as proposed (2) reconciliation of the annual physical inventory with the inventory records, and (3) termination of the contract for cause by either party upon 30 days notice, rather than for any reason and with 60 days notice as proposed. The changes involving the inventories are discussed in the next section. The Department believes that the changes in the time for notice prior to the termination and the reasons therefore is necessary in light of the potential three year periods which will be permitted between bidding for contracts.

Physical Inventory—Accountability and monitoring of donated foods are two areas that have been under close scrutiny as a result of nationwide audits conducted both by the Department's Office of Inspector General (OIG) and the General Accounting Office (GAO). OIG found that the system presently in use is inefficient for monitoring levels of donated foods.

To ensure stricter inventory controls and accountability of donated foods, § 250.14(d) of the proposed rule required distributing agencies, subdistributing agencies, and recipient agencies to conduct semi-annual physical inventories of all storage facilities being used for the handling, storage and distribution of donated foods by June 30 and December 30 of each year. The physical inventory information was to be submitted to the appropriate FNSRO as part of the monthly inventory report for the months of June and December.

Eighty-five comments were received regarding this proposed requirement. Seventy-five of the commenters expressed concern that the requirement would increase costs and that there were insufficient staff to conduct such inventories. Commenters made the following recommendations: (1) Delete the semi-annual physical inventory requirement; (2) conduct physical inventories annually; (3) limit inventories to facilities owned or used by distributing agencies and recipient agencies; (4) limit inventories to distributing agency contracted facilities; or (5) review inventories during management evaluation reviews.

In recognition of the points raised by commenters while taking into consideration the concerns of the Office of the Inspector General (OIG) and recommendations of the General Accounting Office (GAO), § 250.14(d) of this interim rule requires that during the annual review required by § 250.14(b) a physical inventory be taken of the storage facility and reconciled with the storage facility's inventory records and that the reconciliation be kept on file by the agency which contracted with or maintained the storage facility. While a perpetual inventory is not specifically required by this rule, in the Department's view a daily accounting of the usage of each donated food is an essential part of good management practice. A perpetual inventory record should show: (1) Dates of all transactions; (2) quantities withdrawn; and (3) balance of food in storage. The physical inventory will then serve as a check on the accuracy of the inventory records. Any major differences in the two inventories, however, must be investigated thoroughly. Corrective action must be taken immediately and reported to the distributing agency. Since this rule requires that the physical inventory information be maintained on file, § 250.17(b) which required submission of this information to the

FNSRO, has been deleted in this interim rule.

Excessive inventories—Section 250.14(e) of the proposed rule limited the inventory level of distributing agencies, subdistributing agencies and recipient agencies to a six month supply, unless a justification for a higher level was approved.

A total of eighty comments was received on this provision. Seventy-four commenters recommended that the provision be deleted or revised for the following reasons: (1) Some products are offered only once a year; and (2) the Department's policy for shipping only truckload lots gives some States a year's allotment at one time. However, several commenters endorsed the requirement, as proposed.

The provision limiting the inventory level to a six-month supply, unless justification for a higher level is approved, is retained in § 250.14(e) of this interim rule. Audits by OIG and GAO have disclosed major problems associated with excessive inventory levels. The reports indicated that excessive inventories resulted in increased storage costs, greater potential for infestation and spoilage and difficulty in effectively using the product. In addition, in instances when a food item may be offered only once, the limited supply of a food item is sufficient justification for either the distributing agency or FNSRO to approve a higher inventory level. Also, the Department is trying to eliminate inconsistencies in the commodity program whenever possible. Retaining the six-month inventory level provision will make the Food Distribution Program consistent with the current inventory limitations on processors participating under the National Commodity Processing System and State processing contracts.

Financial Management

Section 813 of Pub. L. 100–77 extended the date for prohibiting the assessment of fees for the intrastate cost of storage and transportation under Part 251 of this chapter through September 30, 1988. Accordingly, this nondiscretionary requirement has been included in § 250.15(a)(2) of this interim rule.

Claims for Improper Distribution, Loss of, or Damage to Donated Foods and Use of Funds Accruing from Claims

Section 250.6(m) of the current regulations requires the distributing agencies to pursue claims arising in their favor immediately upon receipt of information regarding commodity loss, damage, or improper distribution. Certain exemptions from claims actions are provided for in instances of minimal inventory shortages or losses. Section 250.6(k) of the current regulations contains provisions concerning the use of funds accruing from claims, as well as the use of funds accruing from other aspects of program operations. At the time the overall revisions to Part 250 were proposed, a determination was made that further consideration should be given to the procedures for pursuing claims and the use of funds accrued as a result of such claims action. Thus, §§ 250.15(c) and (f)(1) were reserved in the proposed rule. Because a proposed rule soliciting comments on these procedures has not been published, the provisions specified in § 250.6(m) and (k) of the current rule have been incorporated into this interim rule. Since these provisions are merely being incorporated from the current regulations, no comments are being solicited at this time. The Department intends to publish a proposed rule addressing these provisions at a later date.

Use of Program Funds

Allowable Administrative Expenses—Section 250.15(f)(2) of the proposed rule listed some examples of unallowable expenses and also referenced the Office of Management and Budget (OMB) Circular A–87, which outlines in more detail the expenditures for which program funds cannot be used. Since this circular describes allowable expenses the Department did not believe it was necessary to repeat the entire listing in the proposed rule.

A total of nine comments was received on this provision. The majority of commenters were in favor of the provision. Some commenters recommended that OMB Circular A–122 also be included since distributing agencies have contracts with private nonprofit organizations.

Although the proposed rule referenced OMB Circular A–87, the Department recognizes that it is more appropriate to reference the portion of the Department's Uniform Federal Assistance regulations, 7 CFR Part 3015, Subpart T, which implements the OMB Circulars concerning Cost Principles, including A–87 and A–122. Therefore, this interim rule references 7 CFR Part 3015, Subpart T rather than the circulars. This provision has also been redrafted to make clear that the list of unallowable costs is not exhaustive.

Excess Funds—There are two ways which funds can accrue to distributing agencies as a result of program operations: (1) Through the collection of distribution charges; and (2) through the sale of containers, salvage of donated foods, insurance collection or recoveries from loss or damage claims. Currently the regulations specifically spell out the uses of these two categories of funds. Distributing agencies are required to review at least once each fiscal year the receipt and expenditure of funds to ensure that fund balances are not in excess of program needs. If funds are found to be excessive, the distributing agency is required to reduce such funds. If excess funds accumulate as a result of collection of distribution charges, such excess funds should be used to reduce such charges or be returned to the contributor. If excess funds accrue from the sale of containers, salvage of donated foods, insurance or other recoveries from loss or damage claims, such funds shall be used to reduce distribution charges, purchase additional foods or be paid to the Department.

Section 250.15(f)(3) of the proposed regulations provided precise guidelines for determining what constitutes "excess funds". Since distributing agencies use these funds for different purposes, no specific dollar limit was proposed. The term "excess funds" was defined as funds exceeding the previous three month's expenditures. The total expenditures for the previous three months is the "maximum" amount of funds which the distributing agency may have in its account. Funds which exceed this amount were considered in excess of program needs unless the distributing agencies provided justification of the need for such funds and the justification was approved by FNSRO. In some instances, the FNSRO may have considered funds equal to or less than the expenditures for the previous three months to be in excess of what was needed. In such instances the distributing agency was required to reduce such funds. Expenditures of a nonrecurring nature were not included in the determination of total expenditures for the previous three months.

A total of forty-four comments was received on the proposed definition. Three commenters were in favor of the definition of excess funds, while forty-one commenters were opposed. Generally, commenters contended that basing the definition on the previous three months' expenditures might be too restrictive. Commenters provided a wide range of timeframes on which to base this definition. The main concern was that distributing agencies must have enough funds to conduct normal business during the months of high expenditures and low revenues.

In order to provide distributing agencies with more flexibility,

§ 250.15(f)(3) of the interim rule defines excess funds differently depending on the source of the funds. As stated above, there are several ways distributing agencies can accrue funds; through the collection of distribution charges and through the sale of containers, salvage of donated foods, insurance collection or recoveries from loss or damage claims. Since the allowable uses of the funds depends on the source of the funds, in this interim rule distributing agencies are required to maintain separate accounts for the two types of funds: an operating account based on distribution charges and a salvage account based on the sale of containers, salvage and claims, etc. At a maximum, the operating account funds shall not exceed the sum of the previous year's highest three-month expenditures. Funds exceeding this maximum shall be considered in excess of program needs unless the distributing agency provides sufficient justification as to the need for such funds and receives approval from the FNSRO. The FNSRO may determine that funds equal to or less than the expenditures for the previous year's highest three months are in excess of what is needed. In such instances, the distributing agency shall also reduce such funds. As required in the proposed rule, if excess funds accumulate by reason of collection of distribution charges, such funds shall be used to reduce such changes or shall be returned to the contributor.

The salvage account fund will normally have irregular deposits and irregular expenses. Since nonrecurring unbudgeted expenditures will be made out of the salvage account, the interim rule sets no limit on this account. FNSRO must, however, give prior approval to each deposit or expenditure which is in excess of $2,500. Since the interim rule does not set a limit on the amount of funds which can accrue from the sale of containers, salvage of donated foods, insurance collection, or recoveries of claims for the loss or damage of donated foods, the portion of the proposed rule concerning the use of excess funds of this type has been deleted. The use of the salvage account funds is governed by paragraph (f)(1) and (f)(2).

Maintenance of records

The proposal in § 250.16(a)(4) required processors or other entities which contract with a distributing agency, subdistributing agency or recipient agency to keep records. While the Department considers food service management companies and warehouses to fall in the category of "other entities", to avoid confusion the interim rule has been amended to specifically name these two groups.

Distributing agency-sponsored audits. Section 250.18(b) of the proposed rule required each distributing agency to provide for audits of all food distribution program operations that include examination of records pertaining to donated food acquisition, storage, distribution, processing activities within the State (except for that of multi-State processors) and financial information.

Fifty-three comments were received on this requirement. Fifty-one commenters opposed the provision. The majority of the commenters were concerned that the cost outweighed the benefits and that the audits served no useful purpose since they were mainly fiscal in nature. Most commenters recommended that the requirement be deleted.

In response to the comments received, this interim rule eliminates the distributing agency-sponsored audit provision. The Department has determined that strengthening the review requirements (§ 250.19(b)), which focus on program operations, is a much more effective means of ensuring appropriate oversight of program administration. Fiscal matters will continue to be reviewed in audits conducted under the Single Audit Act.

Reviews

The current regulations contain minimal monitoring provisions applicable only to distributing agencies and State Agencies on Aging. Section 250.19 of the proposed rule strengthened the monitoring provisions to ensure increased accountability.

Section 250.19(b) of the proposal required to FNS to establish evaluation procedures to determine whether distributing agencies have carried out the provisions of this Part and FNS guidelines and instructions. Since this requirement involves internal departmental procedures, rather than the review requirements for distributing agencies, it has been removed from this interim rule. The Department will, however, be providing further assistance and guidance to distributing agencies to ensure that the procedures established for reviews will encompass all operations covered by this Part. As a result of the deletion of this requirement, proposed § 250.19(c) and (d) have been redesignated in the interim rule as § 250.19(b) and (c), respectively.

Section 250.19(c) of the proposed rule required annual reviews by the distributing agency of all distributing agency level storage facilities, all processors (other than multi-State processors), and most food service management companies; the proposed rule also required periodic reviews of recipient agencies that received donated food but were not subject to reviews under the other FNS program regulations. Thus, the distributing agency would review charitable institutions, nonprofit summer camps for children, and nutrition programs for the elderly. Because of variances within States, the proposed rule did not establish minimum review frequencies for these recipient agencies but specifically requested that commenters make recommendations about the frequency of reviews required for adequate coverage.

Forty-five comment letters were received on the requirement for a formal State monitoring system, and all but three expressed opposition to one or more provisions. The most frequent objection was that the added responsibilities for distributing agencies would increase costs for activities for which no Federal administrative funds are provided. Nevertheless, twenty-eight commenters saw the need for some degree of periodic monitoring of recipient agencies. However, none recommended that more than 50 percent of the outlets in any category be reviewed each year. Of the seventeen comment letters expressing views on the frequency of onsite visits to recipient agencies, nine recommended that charitable institutions, nutrition programs for the elderly and summer camps all be placed on a 4-year review cycle for the Food Distribution Program similar to that required for the Assessment Improvement and Monitoring System (AIMS) under the regulations for the National School Lunch Program (7 CFR Part 210). Alternate recommendations were that reviews of these recipient agencies be conducted every 2 years, 3 years or 5 years.

Based on the commenters' recommendations and the Department's experience with reviews for other programs, § 250.19(b) of the interim rule establishes a 4-year cycle for review of charitable institutions, nonprofit summer camps and nutrition programs for the elderly with annual on-site visits required for not less than 25 percent each year. The 25 percent of the recipient agencies chosen to be reviewed each year must result in all recipient agencies being reviewed once every four years. The interim rule also clarifies the scope of these reviews. Sections 250.19(b)(1)(i) and (iv) require reviews to include on-site reviews of storage facilities used by these recipient agencies and a review of all contracts between the recipient agency and food service management companies.

Several commenters were concerned about the emission from the proposed rule of a monitoring requirement for Child Nutrition Program outlets. These commenters pointed out that, while program regulations under Part 210, 225, and 226 require periodic reviews of schools and institutions receiving commodities, there is no requirement to review the commodity activities of those recipient agencies. Such a review should include an examination of ordering, storage, use and accountability procedures. The commenters recommended that these outlets be required to be reviewed periodically by distributing agencies.

The Department recognizes this concern and upon re-evaluation may decide to require that these Child Nutrition Programs be reviewed. However, since the proposed rule omitted such requirements, the Department will address this matter in a proposed rule or other means to ensure that these outlets are monitored.

The provision of § 250.19(c)(1) of the proposed rule required an annual review of all food service management companies except those contracting with schools. Because of commenters' concerns, the final rule requires a biennial review.

The interim rule retains the requirement for an annual review of all distributing agency level storage facilities as also reflected in § 250.14(b). The interim rule also clarifies that these reviews must be conducted on-site. As required by § 250.14(b), the distributing agency shall ensure that local-level storage facilities are reviewed by appropriate recipient agency personnel.

Section 250.19(b) also requires distributing agencies to conduct review of single State processors once every two years rather than annually as proposed. The Department determined that the frequency of once every two years will provide sufficient control based on reconsideration of the value of commodities going to the processors. If, in the performance of its review functions the distributing agency discovers deficiencies or potential problems, corrective action should be taken to eliminate the deficiency immediately.

Nondiscrimination—Section 250.21 of the proposed rule was reserved for the program's nondiscrimination provisions. The Department determined that further consideration be given to developing expanded provisions on prohibitions against discrimination on the grounds of age, sex, or handicap as required by Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

Upon reconsideration the Department has determined that there is no need to publish a separate Food Distribution Program rule covering these prohibitions since there are Department-wide regulations (7 CFR Parts 15, 15a and 15b) already in place that are binding on all programs. Therefore, § 250.21 of this interim rule states the applicable prohibitions against discrimination on the grounds of age, sex, handicap, race, color or national origin and provides reference to the Department's regulations and instructions concerning civil rights.

State Processing of Donated Foods

As discussed above in the Supplementary Information section, the Department published in the **Federal Register** two regulations concerning State processing of donated food. Since comments have already been taken on these rules, the Department is not accepting any further comments pursuant to this rulemaking. These provisions are only included to provide a complete version of the Food Distribution Program regulations for reference purposes.

Nonprofit Summer Camps for Children

Section 1562 of Pub. L. 99–198 amended section 4(b) of the Agriculture and Consumer Protection Act of 1973 to change the age limit of children from "under 18" to "18 years of age and under". Accordingly, this nondiscretionary requirement has been included in § 250.40(a)(2) of the interim rule. This change in law is also reflected in a change in the definition of adults from persons 18 years of age and over to persons 19 years of age and over.

Section 250.40(a)(1)(xi) of the proposed rule required that the agreement between the camp and distributing agency include an assurance that excess commodity inventory be returned to the distributing agency. A total of eight comments were received and all of the commenters opposed the provision. Commenters suggested that remaining inventories be redonated at the distributing agency to other recipient agencies at the end of the camping session. Commenters also suggested that foods be transferred per instructions of the distribution agency.

Section 250.40(a)(3) as proposed required distributing agencies to transfer all donated foods remaining in summer camps at the end of the camping session to other recipient agencies. The Department notes, however, that some confusion may have resulted from the use of the terms "transfer" and "redonate." Section 250.13 uses the term transfer when commodities are moved from one recipient agency to another within a State and redonate when a distributing agency is unable to use the commodities and requests the FNSRO to move them to another distributing agency. To be consistent with this usage, § 250.40(a)(1)(xi) has been revised to require summer camps, at the distributing agency's option, to transfer any remaining commodities in accordance with § 250.13(a) or to return them to the distributing agency for redonation. A parallel change has been made to § 250.40(a)(3), including cross references to the transfer and redonation provisions in § 250.13.

In addition, § 250.40(a)(1)(x) has been changed to require assurance that a reconciliation of the physical inventory will be conducted at the end of the camping session. This change is necessary to be consistent with the annual reconciliation requirement of § 250.14(d).

Charitable Institutions

Under section 416 of the Agricultural Act of 1949, as amended, charitable institutions are eligible to receive commodities to the extent that they serve needy persons.

Section 250.41 of the proposed rule established a uniform means of determining the needy population of charitable institutions. In order to eliminate the varying and often unreliable methods for determining the number of needy persons served by a charitable institution, the proposed regulations required the distributing agency to determine the number of needy persons by: (1) Determining the percentage of subsidized income by dividing the subsidized income by total subsidized and nonsubsidized income; and (2) multiplying that percentage by the average daily number of participants. For the purpose of this section "subsidized income" was defined as income from public tax funds which is provided on behalf of participants that have been determined to be in need of financial assistance through a means-tested program such as Medicaid or income received through private federally tax-exempt contributions which provide for the care of participants the institution has determined to be in need of financial assistance. "Nonsubsidized income" was defined as all other income.

including payments made by institutional participants for services received and payments made on behalf of participants by persons legally responsible for their support. At a minimum, any time the number of participants in an institution or the amount of income increased or decreased by ten percent, the institution was required to notify the distributing agency. The distributing agency was then to revise financial and participation data to reflect such changes.

A total of thirty-two comments were received on the minimum requirement for reporting changes in the population or income of an institution. A few commenters recommended that hospital and nursing home caseloads be determined by Medicaid patient count as an alternative to the percent of subsidized income method. Twenty-eight commenters opposed the provision on the basis that it was unrealistic, unmanageable, too time consuming and that it would increase cost, paperwork and workload.

In response to commenters' concerns, the Department has decided to permit an alternative method to determine the needy population of charitable institutions. This alternative method allows institutions to count the number of people receiving benefits under a means-tested program. For example, if an institution had 100 patients and 10 of those patients were receiving benefits under a means-tested program, i.e. Medicaid, then that number will be the basis for determining the amount of donated foods that institution will receive. Thus, the interim rule requires distributing agencies to determine the number of needy persons being served in a charitable institution by using the subsidized income formula or by counting the number of needy persons receiving benefits under another means-tested program.

The Department is also eliminating the requirement for reporting ten percent changes in the population or income. The income and average daily participation figures reflected in the agreement shall be used in determining the number of needy persons being served by the institution in accordance with the above formulas. These figures will be based on the institution's financial and participation data for the previous year.

Section 250.41 of the proposed rule also required that the agreement include assurance that the tax exempt status be maintained. Upon reconsideration the Department has decided to delete this provision since verification of tax exempt status is included in the updated information the distributing agency obtains from the charitable institution each year.

In addition, the definition of "charitable institution" in Section 250.3 of the proposed rule required that a charitable institution not only be nonprofit, but also operate a nonprofit meal service. A total of thirty-four comments was received. Four commenters agreed with the provision while thirty commenters objected for reasons such as the increased administrative burden associated with the review of an organization's financial records which would have to be done in order to determine if the meal service is nonprofit. Based on the commenters' concerns, the Department has re-evaluated its position on this provision and has deleted the nonprofit meal service language from the definition and deleted the definition of "nonprofit meal service".

Some commenters recommended that Veteran Administration (VA) hospitals and post-secondary schools be included in the definition of charitable institutions. Since donated foods are provided by the Commodity Credit Corporation directly to the VA hospitals, these hospitals are not included in the definition. The Department has no legislative authority to provide commodities to post-secondary schools.

Correctional Institutions—There is no specific legislative authority for USDA food donations to nonfederal, adult correctional institutions. However, the Department has determined that institutions which carry on programs of rehabilitation for their inmates may be classified as "charitable institutions" within the intent of section 416 of the Agricultural Act of 1949, as amended. In order to distinguish between eligible correctional institutions and ineligible penal institutions, Section 250.41(a)(2) of the proposed rule adopted the eligibility criteria for adult correctional institutions to receive food donations as contained in FNS Instruction 706–3. In order to receive donated foods, adult correctional facilities must conduct rehabilitation programs which are (1) available to a majority of inmates and (2) of sufficient scope to permit participation (for a minimum of 10 hours per week per inmate) by either a majority of the total inmate population or a majority of sentenced inmates.

A total of six comments was received on this requirement. Four commenters opposed the provision, suggesting that the ten hour per week rehabilitative program be eliminated.

As stated in the program rule, in the absence of express legislative authority for USDA food donations to nonfederal adult correctional institutions, the Department determined that such institutions which carry on programs of rehabilitation for their inmates may be classified as "charitable institutions". The Department believes that this is consistent with the requirements of section 416 of the Agriculture Act of 1949, as amended. Thus, § 250.41(a)(2) is retained as proposed.

Nutrition Program for the Elderly

The first sentence in § 250.42(a) of the proposed rule stated that distributing agencies shall enter into an agreement with the State Agency on Aging responsible for administering programs funded under Titles III or VI of the Older Americans Act of 1965 in accordance with § 250.12(b) unless the State Agency on Aging has elected to receive all cash in lieu of donated foods. As commenters pointed out, the election of cash in lieu does not prevent the State Agency on Aging from obtaining certain commodities in addition to the cash in lieu of the per meal rate of donated food. Therefore, this sentence has been deleted.

In addition, § 250.42 of the proposed regulations specified that no adjustments in commodity allocations would be made on the basis of meal reports or estimates received after the close of the third Federal fiscal quarter of the year to which they pertain. Only two comments were received on this provision; one in favor and one opposed. The Department is retaining the provision as proposed so as to avoid overallocation or underallocation of food.

Finally, § 250.42(b) has been amended to reflect the change to the authorized level of assistance made by section 122(c) of Pub. L. 100–175 (enacted on November 29, 1987).

Emergency Food Assistance

Disaster Assistance—Section 250.43 and 250.44 of the proposed rule clarified the responsibilities of the distributing agency and disaster organizations in the use of donated foods during a major disaster, emergency or other situations of distress.

Section 250.43 of the proposed rule described the procedures for obtaining donated foods in instances when the Secretary has determined that a major disaster or emergency exists. The section also revised the procedures set forth in FNS Instruction 708–2 regarding household distribution of commodities on Indian reservations in cases of a major disaster or emergency. Under the instruction, Indian tribal organizations could receive donated foods for household distribution in any instance of major disaster or emergency, without meeting some of the requirements for disaster assistance in other areas in which the Food Stamp Program is in operation. Under § 250.43(c) of the proposed rule, Indian tribal organizations would have to meet the same criteria as those set forth for other jurisdictions where the Food Stamp Program is in operation before receiving donated foods for household distribution.

A total of nine comments were received. The commenters opposed various provisions in the section regarding the distribution of commodities during disaster and emergency situations. Commenters felt that it was time consuming to fill out applications especially in an emergency and it was not efficient for States to wait for approval from the Secretary in order to meet specific needs. Commenters also felt that in an emergency all displaced persons should be considered in need regardless of income or social status.

Section 250.43 has been revised in the interim rule to make clear that it is the President who declares major disasters and emergencies pursuant to the Disaster Relief Act of 1974, but it is the Secretary who determines that, as a result of the major disaster or emergency, the type of assistance in the form of donated foods that is necessary. In addition, the interim rule provides that disaster assistance may continue as long as the Secretary deems necessary, rather than only for the duration of the major disaster or emergency. This change parallels the language of section 409 of the Disaster Relief Act.

Finally, the Department has decided to retain the limitation on the household distribution of donated foods in areas where the Food Stamp Program is in operation. The proposed rule permitted the distribution of donated foods to households in areas served by the Food Stamp Program only so long as the Secretary finds that the commercial channels of trade have been disrupted. This limitation originated from a former provision of section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)) which permitted the distribution of commodities to households in areas in which the Food Stamp Program was in operation only on a temporary basis under programs authorized by law to meet disaster relief need. This limitation, together with the provision of section 5(h) of the Food Stamp Act of 1977 (7 U.S.C. 2014(h)), which permits the distribution of food stamps to disaster victims only after the normal channels or trade have been disrupted and then resumed, gave rise to the policy contained in the proposed rule.

As noted earlier in the preamble, the general prohibition on household distribution of donated food has been deleted from section 4(b) of the Food Stamp Act of 1977. However, the Department believes that it is duplicative to permit the continuation of the household distribution of donated food once emergency food stamps become available. Therefore, the limitation on the distribution of commodities for household use to the period in which normal channels of trade are disrupted is being retained in § 250.43(a) of this interim rule.

With respect to the commenters' concern that delays would result from the need to obtain approval by the Secretary prior to commencing household distribution of commodities, the Department wishes to point out that § 250.43(c) required only the prior approval of the FNSRO. The Department believes that any delay would be insignificant and that the advance approval is necessary to ensure accountability.

Section 250.43(b)(2) of the interim rule has also been amended to clarify the authority of the distributing agency to use donated foods from any sources within the State in a disaster. The Department believes that it is imperative that distributing agencies have the right to use donated foods so that they can coordinate and direct all intrastate donation of food during a disaster.

Situations of Distress—Section 250.44 described the procedures for obtaining donated foods in situations of distress in which the need for food assistance cannot be met under other provisions of Part 250. Donations under this section may only be made for special group food assistance.

Section 250.44 of the proposed rule expanded the current regulations to clarify the responsibilities of the distributing agency in the use of donated foods during situations of distress. In addition, a limit was placed on the distribution period to no longer than 30 days and required that the donated foods is provided only to groups which are composed predominantly of needy persons.

Six comments were received on this provision. The majority of the commenters misunderstood the provision believing that if referred to disasters. One commenter recommended that the current language be retained.

The Department has reevaluated its position on this provision because in situations of distress, it is extremely difficult to determine who is needy and to determine how long the situation will last. In reviewing the proposed language on situations of distress, the Department determined that it was unclear what situations were "distress situations" and which would be considered "disasters." Revisions (as previously noted) have been made to the sections on disaster assistance to make those disaster provisions more explicit. In the case of situations of "distress", the Department feels that the language in the current rule more clearly depicts the difference between a disaster and situations of distress. Finally, the proposed rule limited the duration of food assistance in a distress situation to no more than 30 days. The Department, however, believes that such a restriction is unnecessary since the Secretary has the authority to determine the duration of the food assistance provided. Therefore, Section 250.44 is being revised to contain the provisions appearing in Section 250.10 of the current rule.

Food Distribution Program on Indian Reservations

The Department proposed in § 250.47(a) that distributing agencies which operate a food distribution program on an Indian reservation comply with § 250.30 regarding State processing of donated food. This section was inadvertently included in the proposal. Compliance with § 250.30 has been removed from this interim rule since distributing agencies for Indian reservations receive only approved food packages for distribution to households. Paragraph (a) has also been revised to clarify that if there is a conflict between the cited Part 250 section and Parts 253 and 254 that the Parts 253 and 254 will take precedence.

Paragraph (b) of this interim rule includes a reference to Part 254 Food Distribution Program for Indian Households in Oklahoma. Reference to Part 254 was inadvertently omitted in the proposal. However, since this part also sets the conditions for Food Distribution Program administration by eligible Oklahoma tribes, reference to Part 254 is included in this interim rule.

School Food Authorities

All references to schools in § 250.48 of the interim rule have been changed to school food authorities. This is being done to clarify the rule because school food authorities, not schools, are the ones that sign agreements with the distributing agency and which administer the program at the school level.

Proposed paragraph (b)(1) *Quantities* required the distributing agency to develop a system to update and review caseload information by June 30 and December 30. The provision has been changed to require that an estimate of the average daily number of meals be submitted as early as practicable each school year but not later than September 1. This change merely incorporates the requirement as provided in 7 CFR 210.19(b).

Offer and Acceptance System—Section 250.48(e)(2) of the proposed rule prohibited the refusal of donated foods in instances when an offer-and-acceptance system is being maintained. Use of the offer-and-acceptance system permits school food authorities to order only the amounts and varieties of donated foods they desire for the school lunch program on the basis of advance notification by the distributing agency. Thus, the refusal provision is not warranted in instances when an offer-and-acceptance system is being maintained.

A total of fifteen comments was received on this provision. Nine commenters opposed the requirement and indicated that a refusal clause is needed to help discourage waste. Other commenters expressed concern that the requirement would result in increased storage costs.

The interim rule retains this provision as proposed. The Department believes that if the offer-and-acceptance system is utilized correctly that schools will not need the 20 percent refusal provision.

Nonresidential Childcare Institutions

Section 250.49(b) of the proposed rule required the distributing agency to develop a system to update and review caseload information by June 30 and December 30 of each year. The provision has been revised in this interim rule to require that an estimate of the average daily number of meals be submitted by the State agency to the distributing agency by June 1 of each year. This change is necessary to maintain consistency with the requirement for reporting the average daily number of meals as contained in 7 CFR 226.6(g).

Service Institutions

Section 250.50(b) of the proposed rule required that service institutions submit the most recent written caseload information by April 30 of each year. This date has been changed in the interim rule to June 1 to incorporate the requirement as provided in 7 CFR 225.5(b).

Special Supplemental Food Program for Women, Infants and Children (WIC) Program

State agencies which administer the WIC program are eligible to receive donated foods from the Department. Section 250.51 of the proposed rule outlined the procedures by which State agencies may request the donated foods for distribution to WIC Program participants. Those donated foods which are included in the WIC food package must be paid for by the State agencies with funds allocated to the State for the WIC Program. Donated foods which are provided to participants in addition to the quantities authorized for the food package are made available to the State agency free of charge. Since no comments were received on this provision, § 250.51 is retained in this interim rule as proposed.

List of Subjects in 7 CFR Part 250

Aged, Agricultured 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 Chapter II is amended by revising Part 250 to read as follows:

SUBCHAPTER B—GENERAL REGULATIONS AND POLICIES—FOOD DISTRIBUTION

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

Authority: Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, Pub. L. 79–396, 60 Stat. 231, 233 (42 U.S.C. 1755, 1758); Sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); Sec. 402, Pub. L. 81–665, 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 note); 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. 612c note); 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); Sec. 1114(a), Pub. L. 97–98, 95 Stat. 1269 (7 U.S.C. 1431e); Title II, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301), unless otherwise noted.

Subpart A—General

§ 250.1 General purpose and scope.

This part prescribes the terms and conditions under which donated foods may be obtained from the Department by Federal, State and private agencies for use in any State in child nutrition programs, nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, the Commodity Supplemental Food Program, the Special Supplemental Food Program for Women, Infants, and Children, the Food Distribution Programs on Indian Reservations and the assistance of needy persons.

§ 250.2 Administration.

(a) *Delegation to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of the program. FNS will provide assistance to distributing agencies and evaluate all levels of program operations to assure that the goals of the program are achieved in the most effective and efficient manner possible.

(b) *Delegation to distributing agency.* The distributing agency is responsible for effective and efficient administration of program operations within its jurisdiction and shall administer the program in accordance with the requirements of this Part and FNS guidelines and instructions. Distributing agencies may impose additional requirements for participation that are not inconsistent with the provisions of this Part, except that this provision shall not apply to distribution to households on all or part of an Indian reservation which is participating in the Food Distribution Program under Part 253 and Part 254 of this chapter. The distributing agency shall provide guidance to subdistributing agencies and recipient agencies on all aspects of program operations.

(c) *Personnel.* Each distributing agency shall provide adequate personnel, to administer the program in accordance with this part.

§ 250.3 Definitions.

"Charitable institutions" means:

(a) A nonpenal, noneducational public (Federal, State or local) institution,

(b) A nonprofit, tax exempt, private hospital, or

(c) Any other nonprofit, noneducational, tax exempt private institution organized to provide charitable or public welfare services in the same place without marked changes and, at the Department's option, approved by a public welfare agency as meeting a definite need in the community by administering to needy persons, and provides a meal service on a regular basis. Charitable institutions include any institution defined as "service institution"; "nonresidential child care institution"; or "school" which is not a commodity school or does not participate in a child nutrition program. For purposes of this paragraph, tax exempt shall mean exempt from income tax under the Internal Revenue Code, as amended, and a charitable institution shall be considered "noneducational" even though educational courses are given, where such courses are incidental to the primary purpose of the charitable institution.

"Child nutrition program" means the National School Lunch Program, the School Breakfast Program, the Summer Food Service Program for Children, or the Child Care Food Program (Parts 210, 220, 225, and 226 respectively of this chapter).

"Commodities" means foods donated, or available for donation, by the Department under any of the legislation referred to in this part (see "Donated Foods").

"Commodity school" means a school that does not participate in the National School Lunch Program under Part 210 of this chapter but which operates a nonprofit school food service under agreement with the State educational agency or FNSRO as provided for under Part 210 of this Chapter and receives donated foods, or donated foods and cash or services of a value of up to 5 cents per lunch in lieu of donated foods under Part 240 of this Chapter for processing and handling of the donated foods.

"Contract value of the donated foods" means the price assigned by the Department to a donated food which shall reflect the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

"Contracting agency" means the distributing agency, subdistributing agency, or recipient agency which enters into a processing contract.

"Department" means the United States Department of Agriculture or the Commodity Credit Corporation, whichever is the donor under the pertinent legislation.

"Disaster organizations" means organizations authorized by appropriate Federal or State officials to assist disaster victims.

"Disaster victims" means persons who, because of acts of God or manmade disasters, are in need of food assistance, whether or not they are victims of a major disaster or an emergency as defined in this section.

"Discount system" means a system whereby a recipient agency purchases end products directly from a processor at an established wholesale price minus the contract value of the donated foods contained in the end products.

"Distributing agency" means a State, Federal or private agency, or Indian Tribal Organization (ITO) which enters into an agreement with the Department for the distribution of donated foods to eligible recipient agencies and recipients and the Food and Nutrition Services of the Department when it accepts title to commodities from the Commodity Credit Corporation (CCC) for distribution to eligible recipient agencies pursuant to the National Commodity Processing System. A distributing agency may also be a recipient agency.

"Distributor" means a commercial food purveyor or handler who is independent of a processor and both sells and bills for the end products delivered to recipient agencies.

"Donated foods" means foods donated, or available for donation, by the Department under any of the legislation referred to in this part (see "Commodities").

"Emergency" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, health, and safety or to avert or lessen the threat of a disaster.

"End product" means a product containing any amount of donated foods which have been processed.

"Federal acceptance service" means the acceptance service provided by:

(a) The applicable grading branches of the Department's Agricultural Marketing Service (AMS),

(b) The Department's Federal Grain Inspection Service, and

(c) The National Marine Fisheries Service of the U.S. Department of Commerce.

"Fiscal year" means the period of 12 months beginning October 1 of any calendar year and ending September 30 of the following year.

"FNS" means the Food and Nutrition Service of the Department of Agriculture.

"FNSRO" means the appropriate Food and Nutrition Service Regional Office of the Food and Nutrition Service of the Department of Agriculture.

"Food service management company" means a commercial enterprise or a nonprofit organization which is or may be contracted with by a recipient agency to manage any aspect of its food service in accordance with § 250.12(c) of this part or in accordance with Parts 210, 220, 225, or 226 of this chapter.

"Household" means a group of related or non-related individuals, exclusive of boarders, who are not residents of an institution, but who are living as one economic unit and for whom food is customarily purchased and prepared in common. It also means a single individual living alone.

"In-kind replacement" means replacement of lost donated foods with a quantity of the same foods of U.S. origin that are of equal or better quality than the lost foods and that are of at least equal monetary value to the Department's cost of replacing the lost foods.

"Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Disaster Relief Act of 1974 (42 U.S.C. 5121), above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. (This definition is taken from the Disaster Relief Act of 1974.)

"Multi-State processor" means:

(a) A processor which has entered into a processing contract with contracting agencies in more than one State, or

(b) A processor which has entered into a processing contract with one or more contracting agencies located in a State other than the one in which either the processor's plant or business office is located.

"Needy persons" means:

(a) Persons provided service by charitable institutions, who, because of their economic status, are in need of food assistance,

(b) All the members of a household who are certified as in need of food assistance, and

(c) Disaster victims.

"Nonprofit school food service" means all food service operations conducted by the school food authority principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food services.

"Nonprofit summer camps for children" means nonprofit camps which do not participate in the Summer Food Service Program for Children authorized under section 13 of the National School Lunch Act, as amended (42 U.S.C. 1761), and in which, during the months of May through September, meal services are conducted for children of high school grade and under.

"Nonresidential child care institution" means any institution (as defined in Part 226 of this chapter) which participates in the Child Care Food Program authorized under section 17 of the National School Lunch Act, as amended (42 U.S.C. 1766).

"Nutrition program for the elderly" means a project conducted by a recipient of a grant or contract under Title III or Title VI of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a).

"Offer-and-acceptance system" means a procedure whereby a school food authority is given the opportunity to order only the amounts and varieties of donated foods it desires for its school lunch program on the basis of advance notification by the distributing agency.

"Performance supply and surety bond" means a written instrument issued by a surety company which guarantees performance and supply of end products by a processor under the terms of a processing contract.

"Processing" means:

(a) The conversion of a donated food or donated foods into a different end product or

(b) The repackaging of a donated food or donated foods.

"Processing fee" means the amount charged to a contracting agency for a processor's services.

"Processor" means a commercial facility, other than a food service management company, which processes donated foods.

"Program" means the Food Distribution Program.

"Recipient agencies" means nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, disaster organizations, school food authorities, schools, nonresidential child care institutions, service institutions, and welfare agencies receiving foods for their own use or for distribution to eligible recipients.

"Recipients" means the needy persons receiving commodities for household consumption.

"Refund application" means an application by a recipient agency in any form acceptable to the processor which certifies purchase of end products and requests a refund of the contract value of the donated foods contained in the end products purchased.

"Refund system" means a system whereby a recipient agency purchases a processor's end products and receives from the processor a payment equivalent to the contract value of the donated foods contained in the end products.

"School" means:

(a) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when recognized as part of the education system of the States;

(b) Any public or nonprofit private classes of preprimary grade when they are conducted in those schools defined in paragraph (a) of this definition having classes of primary or of higher grade:

(c) Any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes. The term "residential child care institutions" includes, but is not limited to: homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more; or

(d) With respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

"School food authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a nonprofit school food service therein or otherwise approved by FNS to operate the NSLP.

"School year" means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.

"Secretary" means the Secretary of Agriculture.

"Section 4(a)" means section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note). Section 4(a) authorizes the purchase of foods for distribution to maintain the traditional level of assistance for food assistance programs as are authorized by law, including institutions, supplemental feeding programs, disaster areas, summer camps for children, the Trust Territory of the Pacific Islands, and Indians whenever a tribal organization requests distribution of federally-donated foods under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)).

"Section 6" means section 6 of the National School Lunch Act, as amended

(42 U.S.C. 1755). Section 6 authorizes the purchase of foods for distribution to schools and institutions participating in child nutrition programs under the National School Lunch Act and specifies the level of assistance which is to be provided.

"Section 14" means section 14 of the National School Lunch Act, as amended (42 U.S.C. 1762a). Section 14 authorizes the purchase of foods for distribution to maintain the annually programmed level of assistance for programs carried on under the National School Lunch Act, the Child Nutrition Act of 1966, and Title III of the Older Americans Act of 1965.

"Section 32" means section 32 of Public Law 74–320, as amended (7 U.S.C. 612c). Section 32 authorizes the Department to purchase nonbasic perishable foods available under surplus-removal operations, for the purpose of encouraging the domestic consumption of such foods by diverting them from the normal channels of trade or commerce.

"Section 311" means section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a). Section 311 authorizes the purchase of commodities for nutrition programs for the elderly.

"Section 416" means section 416 of the Agricultural Act of 1949, as amended (7 U.S.C. 1431). Section 416 authorizes the Department to donate basic nonperishable foods acquired through Federal price-support operations for use by needy persons, for use in nonprofit school lunch programs and nonprofit summer camps for children, and for use in charitable institutions to the extent that needy persons are served.

"Section 709" means section 709 of the Food and Agricultural Act of 1965, as amended (7 U.S.C. 1446a–1). Section 709 authorizes the purchase of adequate supplies of dairy products to meet the requirements of schools, domestic relief distribution, and other programs authorized by law when the stocks of the Commodity Credit Corporation are insufficient to meet those requirements.

"Service institutions" means camps or sponsors (as those terms are defined in Part 225 of this Chapter) which participate in the Summer Food Service program authorized under section 13 of the National School Lunch Act, as amended (42 U.S.C. 1761).

"Similar replacement" means replacement of lost donated foods with a quantity of similiar foods of U.S. origin of the same types as those normally donated by the Department and of at least equal monetary value to the Department's cost of replacing the lost foods. Such replacement shall be subject to the approval of the FNSRO.

"State" and "United States" means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"State Agency on Aging" means:

(a) the State agency that has been designated by the Governor and approved by the United States Department of Health and Human Services (DHHS) to administer nutrition programs for the elderly under Title III of the Older Americans Act of 1965, as amended or

(b) The Indian tribal organization which has been approved by DHHS to administer nutrition programs for the elderly under Title VI of such act.

"Students in home economics" means students in regular classes wherein they are taught general home economics including food preparation, cooking, serving, nutrition, food purchasing, child care and health.

"Subdistributing agency" means an agency performing one or more distribution functions for a distributing agency other than, or in addition to, functions normally performed by common carriers or warehousemen. A subdistributing agency may also be a recipient agency.

"Substituted food" means domestically produced food that is purchased or manufactured by a processor and is substituted for donated food.

"Substitution" means:

(a) The replacement of donated foods with like quantities of domestically produced commercial foods of the same generic identity and of equal or better quality (i.e. cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.); or

(b) In the case of donated nonfat dry milk, substitution as defined under (a) of this definition or replacement with an equivalent amount, based on milk solids content, of domestically produced concentrated skim milk.

"Welfare agency" means a public (Federal, State or local) or private agency offering assistance on a charitable or welfare basis to needy persons, who are not residents of an institution, and to Tribal councils designated by the Bureau of Indian Affairs.

Subpart B—General Operating Provisions

§ 250.10 Eligible distributing and subdistributing agencies.

(a) *State and Federal agencies.* Federal agencies and such State agencies as are 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 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 effective for no longer than one year and must be completed by September 30 of each year. In addition, agreements between the Department and State Agencies on Aging which elect to receive cash in lieu of commodities shall also be effective for no longer than one year and must be completed by September 30 of each year.

(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.

To the extent that bills of lading and warehouse receipts satisfy the above-stated criteria, the distributing agency may consider such documents as appropriate agreements. The agreement shall be in effect for not longer than one year and shall provide that it may be extended at the option of both parties for two additional one year periods. Agreements may be terminated for cause by either party upon 30 days notice. At the time the agreement is extended, the party contracting with the distributing agency must update all pertinent information and must demonstrate that all donated food received during the prior contract period has been accounted for.

(c) *Food service management company agreements.* 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. In instances 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 which shall expressly provide that:

(1) 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 is 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; and

(2) The books and records of the food service management company pertaining to the food service operation of the agency shall be available for a period of three years from the close of the fiscal year to which they pertain.

All food service management contracts shall be subject to review by the distributing agency for compliance with requirements of this section 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 shall provide that it may be extended at the option of both parties for two additional one-year periods. Contracts may be terminated for cause by either party upon 30 days notice. At the time the contract is extended, the nonprofit summer camp for children, charitable institution or nutrition program for the elderly must update all pertinent information and must demonstrate that all donated food received during the previous contract period has been accounted for.

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

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

§ 250.13 Distribution and control of donated foods.

(a) *Availability and use of donated foods.* (1) *Availability and use.* 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 Part 253 and 254 of this chapter. Donated foods not so distributed or used (for any reason) shall not be sold, exchanged or otherwise disposed of without the approval of the Department. Donated foods which are provided as part of an approved food package or authorized program level of assistance may be transferred between like recipient agencies with only prior authorization of the distributing agency Donated foods which are provided in addition to the State's authorized program 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 (schools to charitable institutions), which have been provided as part of an approved food package or authorized program level of assistance, must be approved by the appropriate FNSRO. Food donation under section 32 of Pub. L. 74–320 (7 U.S.C. 612c) may also be transferred by recipient agencies to emergency feeding organizations which are distributing donated foods under 7 CFR Part 251. A transfer between recipient agencies and emergency feeding organizations may be made only with the prior approval of the distributing agency and the State agency responsible for administering TEFAP. 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).

(2) *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.

Every attempt shall be made to deliver the donated foods in accordance with requested schedules. However, the Department shall not be responsible for delay in delivery or for nondelivery of donated foods due to any cause.

(3) *Minimum donations.* Foods shall be donated only in such quantities as will protect the lower carload freight rate, except as deemed in the best interest of the program as determined by the Department.

(4) *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.

(5) *Demonstrations and tests.* Notwithstanding any other provision of this Part, a quantity of any food donated for use by any recipient agency or recipient may be transferred by the distributing agency or by the recipient agency to bona fide experimental or testing agencies, or for use in workshops, or for demonostrations or tests relating to the utilization of such donated food by the recipient agency or recipient. No such transfer by any recipient agency shall be made without the approval of the appropriate distributing agency.

(b) *Processing and other costs.* The Department shall pay such processing, reprocessing, transporting, handling and other charges accruing up to the time of transfer of title to distributing agencies as is deemed in the best interest of the Department.

(c) *Transfer of title.* Title to donated foods shall pass to distributing agencies upon their acceptance of donated foods at time and place of delivery, limited, however, by the obligation of the distributing agency to use such donated foods for the purposes and upon the terms and conditions set forth in this part.

(d) *Distribution of donated foods to recipient agencies or recipients*—(1) *Distribution.* Donated foods shall be distribute only to recipient agencies an recipients eligible to receive them under this part (see Subpart D). Distributing agencies shall require that welfare agencies and disaster organizations distributed donated foods only to recipients eligible to receive them under this part. It shall not be deemed a failure to comply with the provisions of this part if recipient agencies serve meals containing donated foods to persons other than those who are eligible under this part, when such persons share common preparation, serving or dining facilities with eligible persons (needy persons, children, participants in nutrition programs for the elderly) and at least one of the following is true:

(i) Such other persons are common beneficiaries with the eligible persons of the program of the recipient agency, or

(ii) Such other persons are few in number compared to the eligible persons and receive their meals as an incident of their service to the eligible persons.

Such other persons include, but are not limited to teachers, disaster relief workers, and staff members. Nothing in this paragraph shall be construed as authorizing allocation or issuance of donated foods to recipient agencies in greater quantity than that authorized for the assistance of persons eligible under this part.

(2) *Normal food expenditures.* Section 416 donated foods shall not be distributed to any recipient agencies or recipients whose normal food expenditures are reduced because of the receipt of donated foods.

(e) *Improper distribution, loss of or damage to donated foods.* (1) If a distributing agency improperly distributes or uses any donated foods or causes loss of or damage to a donated food through its failure to provide proper storage, care or handling, the provisions set forth in § 250.15(c) shall apply.

(2) In instances when it is determined by a distributing agency that a claim exists against a subdistributing agency, recipient agency, warehouse, carrier, processor or other person, the distributing agency shall pursue claims in accordance with § 250.15(c).

(f) *Disposition of damaged or out-of-condition foods.* Donated foods which are found to be damaged or out-of-condition and are declared unfit for human consumption by Federal, State or local health officials, or by other inspection services or persons deemed competent by the Department, shall be disposed of in accordance with instructions of the Department. Such instructions may direct that unfit donated food be:

(1) Sold in a manner prescribed by the Department with the net proceeds thereof remitted to the Department;

(2) Sold in a manner prescribed by the Department with the proceeds thereof retained for use in accordance with the provisions of § 250.15(f);

(3) Used in such manner as will serve a useful purpose as determined by the Department; or

(4) Destroyed in accordance with applicable sanitation laws and regulations.

Upon a finding by the Department that donated food are unfit for human consumption at the time of delivery to the distributing agency and when the Department or appropriate health officials require that such donated foods be destroyed, the Department may pay to the distributing agency any expenses incurred in connection with such donated foods as determined by the Department. The Department may, in any event, repossess damaged or out-of-condition donated foods.

(g) *Redonations.* Whenever a distributing agency has any donated food on hand which it cannot efficiently utilize, it shall immediately make a request to the appropriate FNSRO, in writing, for instructions as to the disposition of such donated food. Distributing agencies requesting authority from the Department to make redonation of any donated foods shall, upon the Department's request, have such donated foods federally inspected. Expenditures incurred by the distributing agency as a result of redonation shall be handled in accordance with § 250.15(e).

(h) *Embezzlement, misuse, theft, or obtainment by fraud of donated foods and donated food-related funds, assets, or property.* Notwithstanding paragraph (c) of this section concerning transfer of title to donated foods, whoever embezzles, willfully misapplies, steals, or obtains by fraud, donated foods or any funds, assets, or property deriving from donated foods or whoever receives, conceals, or retains such donated foods, funds, assets, or property for his/her own use or gain, knowing such donated foods, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall be subject to Federal criminal prosecution under section 12(g) of the National School Lunch Act, as amended (42 U.S.C. 1760(g)) or section 4(c) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note). For the purpose of this paragraph "funds, assets, or property" include, but are not limited to funds accruing from the sources identified in § 250.15(f) (1) and (2), donated foods which have been processed into different end products as provided for under Subpart C of this part, and the containers in which donated foods have been received from the Department. Distributing agencies shall immediately notify FNSRO of any suspected violation of section 12(g) or section 4(c) to allow the Department, in conjunction with the U.S. Department of Justice, to determine whether Federal criminal prosecution under section 12(g) or section 4(c) is warranted. Prosecution of violations by the Federal Government shall not relieve any distributing agency of its obligation to obtain recovery for improperly distributed or lost donated foods, as required by § 250.15(c).

§ 250.14 Storage facilities.

(a) *Standards for storage facilities.* Distributing agencies, subdistributing agencies and recipient agencies shall provide facilities for the handling, storage and distribution of donated foods which:

(1) Are sanitary and free from rodent, bird, insect and other animal infestation;

(2) Safeguard against theft, spoilage and other loss;

(3) Maintain foods at proper storage temperatures;

(4) Stock and space foods in a manner so that USDA-donated foods are readily identified;

(5) Store donated food off the floor in a manner to allow for adequate ventilation; and

(6) Take other protective measures as may be necessary.

Distributing agencies, subdistributing agencies and recipient agencies shall ensure that storage facilities have obtained all required Federal, State and/or local health inspections and/or approvals and that such inspection/approvals are current.

(b) *Reviews.* All distributing agency-level storage facilities shall be reviewed annually. Distributing agencies shall ensure that subdistributing and recipient agencies. Conduct annual reviews of their respective storage facilities. Documentation shall be maintained on file at the distributing agency or local level as appropriate to reflect compliance with this section, including documentation of corrective action in cases of noncompliance. Corrective action must be taken immediately on all deficiencies identified in the review and the result of the corrective action must be forwarded to the distributing agency. Where applicable, the distributing agency shall determine and pursue claims in accordance with § 250.15(c).

(c) *Contracts.* When contracting for storage facilities, distributing agencies and subdistributing agencies shall enter into written contracts to be effective for no longer than one year. The contract may be extended at the option of both parties for two additional one year periods. At the time the contract is extended, the storage facility must update all pertinent information and demonstrate that all donated foods received during the previous contract period have been accounted for. The contract shall, at a minimum, contain the following:

(1) Assurance that the storage facilities will be maintained in accordance with the standards specified in paragraph (a) of this section;

(2) Evidence that donated food shall be clearly identified;

(3) Assurance that an inventory system shall be maintained and an annual physical inventory will be conducted; and reconciled with the inventory records;

(4) Beginning and ending dates of the contract;

(5) A provision for immediate termination of the contract due to noncompliance on the part of the warehouse management;

(6) A provision allowing for termination of the contract for cause by either party upon 30 days written notification;

(7) The amount of any insurance coverage, which has been purchased to protect the value of food items which are being stored; and

(8) Express written consent for inspection and inventory by the distributing agency, subdistributing agency, recipient agency, the Comptroller General, the Department or any of their duly authorized representatives.

(d) *Physical inventory.* During the annual review required by § 250.14(b), distributing agencies, subdistributing agencies and recipient agencies shall take a physical inventory of all storage facilities. Such inventory shall be reconciled annually with the storage facility's inventory records and maintained on file by the agency which contracted with or maintained the storage facility. Food items which have been lost, stolen or found to be out-of-condition shall be identified during the physical inventory and reported by the subdistributing or recipient agency to the distributing agency. Potential excessive inventory, as described in paragraph (e) of this section, shall be reported by the subdistributing or recipient agency to the distributing agency. Corrective action shall be taken immediately on all deficiencies and inventory discrepancies and the results of the corrective action forwarded to the distributing agency. Where applicable, the distributing agency shall determine and pursue claims in accordance with § 250.15(c).

(e) *Excessive inventories.* (1) The distributing agency shall determine if a subdistributing or recipient agency's inventories are excessive based on:

(i) The rate of distribution;

(ii) Anticipated distribution; and

(iii) Other concerns such as logistical and economic considerations.

(2) In no case may the inventory level of each donated food in storage exceed a six-month supply unless sufficient justification for additional inventory has been submitted and approved. Subdistributing agencies and recipient agencies shall submit justification to the distributing agency in instances where more than a six-month inventory is needed. Justification shall be submitted by the distributing agency to the FNSRO for approval in instances where more than a six-month inventory is needed at the distributing agency level.

(3) The distributing agency shall take corrective action to ensure that excess inventories at all levels are eliminated and shall document actions taken to reduce excessive inventories.

§ 250.15 Financial management.

(a) *Distribution charges.* (1) Except as provided in paragraph (a)(2) of this section, recipient agencies may be required to pay part or all of the intrastate costs of distribution through a system of charges assessed by the distributing or subdistributing agencies. Any system of assessment operated by the distributing or subdistributing agency shall have the prior approval of and be subject to review by the FNSRO. The charges assessed shall be used solely in accordance with the provisions of paragraph (f) of this section.

(2) For the period May 1, 1983, through September 30, 1988, whenever a commodity is donated to a State without charge or credit against entitlement, recipient agencies may not be assessed for any part of the intrastate costs of storage and transportation of such commodity that is in excess of the distributing or subdistributing agency's direct costs for such storage and transportation minus any amount that the Department provides to the State to pay such costs under Part 251 of this chapter.

(3) Under no circumstances shall recipients be required to make any payments in money, materials, or services for or in connection with the receipt of donated foods, nor shall voluntary contributions be solicited (except for the nutrition programs for the elderly) in connection with the receipt of donated foods for any purpose.

(b) *Sale of containers.* When containers or packing materials in which donated foods are received are disposed of by sale, the proceeds of such sale shall be used solely in accordance with the provisions of paragraph (f)(2) of this section.

(c) *Claims.* If a distributing agency improperly distributes or uses any donated foods, or causes loss of or damage to a donated food through its failure to provide proper storage, care, or handling, the distributing agency shall, at the Department's option.

(1) Replace the donated food in its distribution program in kind, or, in the case of section 6 donated foods, where replacement in kind may not be practicable, with other similar foods, or

(2) Pay to the Department the value of the donated food as determined by the Department.

Upon the happening of any event creating a claim in favor of a distributing agency against a subdistributing agency, recipient agency, warehouseman, carrier or other person, for the improper distribution, use, or loss of, or damage to, a donated food, the distributing agency shall take action to obtain recovery. All amounts collected by such action shall, at the Department's option, be used in accordance with the provisions of paragraph (c)(1) of this section, or, except for amounts collected on claims involving section 6 donated foods, shall be expended for program purposes in accordance with the provisions of paragraph (f) of this section. Determinations by a distributing agency that a claim has or has not arisen in favor of the distributing agency against a subdistributing agency, recipient agency, warehouseman, carrier or other person, shall, at the option of the Department, be approved by the Department prior to the distributing agency taking action thereon. Where prior approval has not been given by the Department, a distributing agency's claim determinations shall be subject to review by the Department. In the case of an inventory shortage, when the loss of any one commodity does not exceed one percent of the total quantity of the donated food distributed or utilized from any single storage facility during the fiscal year in which the loss occurred, or during the period for which an audit was conducted by representatives of the Department, or, if approved by FNS, during the period for which an audit was conducted by the distributing agency, if the distributing agency finds that: (i) The cause of the shortage cannot be established, (ii) the lost donated foods were held in non-commercial storage or other facilities owned or operated by the distributing agency, a subdistributing agency or a recipient agency, and (iii) there is no indication that the loss was the result of negligence or continued inefficiency in operations, the distributing agency need not take any further claims action, but the factual basis for not taking further claims action shall be subject to review by the Department. Furthermore, distributing agencies shall not be required to file or pursue a claim for a loss which does not exceed an amount established by State law, regulations, or procedure as a minimum amount for which a claim will be made for State losses generally, but no such claim shall be disregarded where there is evidence of violation of Federal or State statutes. Distributing agencies which fail to pursue claims arising in their favor, or fail to provide for the right to assert such claims, or fail to require their subdistributing agencies and recipient agencies to provide for such rights in accordance with § 250.12(b), shall be responsible to the Department for replacing the donated foods or paying the value thereof in accordance with the provisions of paragraph (c)(1) or (2) of this section. Distributing agencies which pursue claims arising in their favor, but fail to obtain full restitution shall not be liable to the Department for any deficiency unless the Department determines that the distributing agency fraudulently or negligently failed to take reasonable action to obtain restitution. The Department may, at its option, require assignment to it of any claim arising from the distribution of donated foods.

(d) *Demurrage.* Demurrage or other charges which accrue after a car or truck has been placed for unloading by the delivering carrier, or which accrue because placement of a car or truck is prevented, shall be borne by the distributing agency, except that demurrage or other charges may be borne by the Department where such charges accrue because of actions by the Department and without the fault or negligence of the distributing agency.

(e) *Redonation expenditures.* In accordance with § 250.13(g), whenever a distributing agency requests authority to make redonation of any donated foods and the Department requests that the donated foods be federally inspected, these inspections will be made at the expense of the distributing agency. Any donated foods which the Department determines are acceptable for redonation shall be moved at the distributing agency's expense to the closest point within the FNS region in which the State is located where it can be utilized, or to a closer point outside the region, if such a transfer is mutually agreed to by the Department and the distributing agency. In those instances in which the distributing agency satisfactorily demonstrates to the Department that the need for any redonation resulted from no fault or negligence on its part, the Department shall assume such transportation costs as it determines to be proper. Whenever a redonation is made at the request of the Department, the Department shall pay all transportation and handling costs in connection with such redonation and shall pay to the distributing agency all storage and handling costs accrued on the donated foods at the time of redonation, as determined by the Department, except when the request is made as a result of negligence on the part of the distributing agency.

(f) *Use of funds accruing in operation of the program.* (1) *Funds accruing from claims.* Funds accruing from recoveries from loss or damage claims (which are authorized under paragraph (c) of this section to be expended for program purposes) shall be used only for the payment of expenses of the food distributing program, including transportation, storage and handling or donated foods, salaries of persons directly connected with the program, and other administrative expenses. In accordance with paragraph (f)(4) of this section, the receipt and expenditure of funds so accrued shall be reviewed by the distributing agency to determine that fund balances are not in excess of program needs.

(2) *Other funds.* Funds accruing from the sale of containers, packing materials, salvage of donated foods, distribution charges, or insurance shall be returned to the Department or used only for the payment of expenses of the program which will improve program operations including, but not limited to, transportation, storage and handling of donated foods, salaries of persons directly connected with the program and other program-related expenses. Funds accruing from the collection of distribution charges which are determined to be in excess of program needs pursuant to paragraph (f)(4) of this section shall be used in accordance with that paragraph. Funds accruing from the operation of the program shall not be used for those costs which are unallowable under the cost Principles in the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart T. These unallowable costs include, but are not limited to:

(i) Bad debts;

(ii) Contingencies;

(iii) Contributions and donations;

(iv) Entertainment;

(v) Fines and penalties;

(vi) Governor's expenses;

(vii) Interest and other financial costs;

(viii) Legislative expenses; and

(ix) Losses on other grants.

(3) *Segregation of funds.* Distributing agencies and subdistributing agencies shall maintain two separate accounts for funds accruing from program operations. Funds accruing from the collection of distribution charges shall be maintained in an operating account. Funds accruing from the sale of containers, salvage of foods, insurance and recoveries of claims for the loss or damage of donated foods shall be maintained in a salvage account.

(4) *Excess funds.* The distributing agency shall review the receipt and expenditures of funds annually to ensure that fund balances are not in excess of program needs. At a maximum, the operating account fund shall not exceed the sum of the previous year's highest three-month expenditures. Funds exceeding this maximum shall be considered in excess of program needs unless the distributing agency provides sufficient justification as to the need for such funds and receives approval from the FNSRO. FNSRO may determine that funds equal to or less than the expenditures for the previous year's highest three months are in excess of what is needed. In such instances, the distributing agency shall reduce the excess funds in the operating account by reducing distributing charges or returning the funds to the contributor. The salvage account will have no set limit. FNSRO must, however, give prior approval to each deposit to or expenditure from the salvage fund which is in excess of $2,500. The distributing agency shall impose upon subdistributing agencies and recipient agencies similar provisions for the use of such funds accruing from the operation of their programs.

§ 250.16 Maintenance of records.

(a) *General requirements.* (1) Accurate and complete records shall be maintained with respect to the receipt, distribution/use and inventory of donated foods including:

(i) End products processed from donated foods and

(ii) The determination made as to liability for any improper distribution, use of, loss of, or damage to, such foods and the results obtained from the pursuit of claims by the distributing agency.

Such records shall also be maintained with respect to the receipt and disbursement of funds arising from the operation of the distribution program, including the determination as to the amount of payments to be made by any processor, upon termination of processing contracts.

(2) Distributing agencies shall require all subdistributing and recipient agencies to maintain accurate and complete records with respect to the receipt, distribution/disposal and inventory of donated foods, including end products processed from donated foods, and with respect to any funds which arise from the operation of the distribution program, including refunds made to recipient agencies by processors in accordance with § 250.30(k).

(3) Unless a distributing agency maintains an offer-and-acceptance system in accordance with § 250.48(e), the distributing agency shall maintain accurate and complete records with respect to amounts and value of commodities refused by school food authorities. School food authorities shall also be required to maintain such records of refusals.

(4) Each processor, food service management company, warehouse, or other entity which contracts with a distributing agency, subdistributing agency or recipient agency shall be required to keep accurate and complete records with respect to the receipt, distribution/disposal, storage and inventory of such foods similar to those required of distributing agencies under this paragraph. Where donated foods have been commingled with commercial foods, the processor shall maintain records which permit an accurate determination of the donated-food inventory. The processor shall also be required to keep formula, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use made of such foods and their subsequent redelivery, in whatever form, to any distributing agency, subdistributing agency or recipient agency. Processors must maintain records which will permit a determination regarding compliance with the contracting provisions required by § 250.30(f) (3) and (4) as well as maintain records used as the basis for compiling the processor performance reports required by § 250.30(m).

(5) All recipient agencies shall be required to keep accurate and complete records showing the data and method used to determine the number of eligible persons served by that agency.

(6) Failure by a distributing agency, subdistributing agency, recipient agency, processor, food service management company, warehouse or other entity to maintain records required by this Section shall be considered prima facie evidence of improper distribution or loss of donated foods and the agency, processor or entity shall be subject to the provisions of § 250.13(e).

(b) *Length of maintenance.* All records required by this Section shall be retained for a period of three years from the close of the fiscal year to which they pertain. However, in instances when claims action and/or audit findings have not been resolved, the records shall be retained as long as required for the resolution of such action or findings.

§ 250.17 Reports

(a) *Monthly Report of Receipt and Distribution of Donated Foods (FNS-155).* Distributing agencies shall complete and submit to the FNSRO monthly inventory reports covering the receipt and distribution of donated foods on Form FNS-155 or other format approved by FNS. The report shall be submitted no later than 30 calendar days after the end of the reporting month. The distributing agency shall submit a list of individual food orders received for each food item delivered by the Department as an attachment to the FNS-155.

(b) *Processing inventory reports.* Distributing agencies shall complete and submit a quarterly processing inventory report in accordance with § 250.30(o).

(c) *Performance reports.* Monthly reports of performance shall be submitted by processors to distributing agencies in accordance with § 250.30(m).

(d) *Other reports.* Distributing agencies shall complete and submit other reports relative to distribution operations in such form as may be required from time to time by the Department.

(Reporting requirements contained in paragraph (a) approved by the Office of Management and Budget under control number 0584-0001. Reporting requirements contained in paragraph(d) approved by the Office of Management and Budget under control numbers 0584-0028, 0584-0109, 0584-0288 and 0584-0293).

§ 250.18 Audits.

(a) *Right of inspection and audit.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, may inspect and inventory donated foods in storage or the facilities used in the handling or storage of such donated foods, and may inspect and audit all records, including financial records, and reports pertaining to the distribution of donated foods and may review or audit the procedures and methods used in carrying out the requirements of this Part at any reasonable time. Subdistributing agencies, recipient agencies, processors, food service management companies and warehouses shall be required to permit similar inspection and audit by such entities or their representatives. Fiscal matters shall continue to be reviewed in audits under the Single Audit Act (31 U.S.C. 7501–07) and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

(b) *Independent CPA audits of multi-State processors.* (1) For any year in which a multi-State processor receives more than $250,000 in donated foods, the processor shall obtain an independent CPA (certified public accountant) audit for that year. Multi-State processors which receive $75,000 to $250,000 in donated food each year shall obtain an independent CPA audit every two years and those which receive less than $75,000 in donated foods each year shall obtain an independent CPA audit every three years. Those multi-State processors which are in the two or three-year audit cycle shall move into the next audit cycle at the point in time in which the value of donated foods received reaches $75,000 or $250,000 in any year. In instances in which the Department determines that the audit is not acceptable or that the audit has disclosed serious deficiencies, the processor shall be subject to additional audits at the request of FNS.

(2) Audits shall be conducted in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (7 CFR Part 3015, Subpart I) and the FNS Audit Guide for Multi-State Processors. At the discretion of FNS, auditors will be required to attend training sessions conducted by the Department.

(3) The costs of the audits, including those costs associated with training, shall be borne by the processors.

(4) Audit findings relative to those elements associated with the processing of donated food shall be submitted to the processor and to FNS concurrently.

(5) Noncompliance with the audit requirements in paragraph (b)(1) of this section will render the processor ineligible to enter into another processing contract with any contracting agency until the required audit has been conducted and deficiencies corrected.

(6) *Processor response.* Multi-State processors shall develop a written response to FNS addressing deficiencies which have been identified in the audit. Such responses shall include:

(i) Corrective action which has already been taken to eliminate the deficiency;

(ii) Corrective action which the processor proposes to take to eliminate the deficiency;

(iii) The timeframes for the implementation and completion of the corrective action;

(iv) A determination of what caused the deficiency; and

(v) Deficiencies which have been identified that the processor takes exception to and an explanation for the exception.

Multi-State processors shall submit a written response to FNS in accordance with timeframes established by FNS.

§ 250.19 Reviews.

(a) *General.* Each distributing agency shall establish a review system in order to assess the effectiveness of its food distribution program in meeting the requirements of these regulations.

(b) *Responsibilities of distributing agencies.* (1) Each distributing agency shall establish review procedures encompassing eligibility, food ordering procedures, storage practices, inventory controls, reporting and recordkeeping requirements and compliance with nondiscrimination provisions. The procedures shall include:

(i) An on-site review of all charitable institutions, nutrition programs for the elderly and nonprofit summer camps for children under agreement in accordance with § 250.12(b) at least once every 4 years, with not fewer than 25 percent of each of these recipient agency categories being reviewed each year. These reviews shall also include on-site reviews of storage facilities to ensure compliance with § 250.14(a);

(ii) An on-site review at least once every 2 years of all processors except those that are multi-State processors as defined in § 250.3, with no fewer than 50 percent being reviewed each year;

(iii) An annual on-site review of each storage facility utilized by the distributing agency. On-site reviews conducted by FNS may be considered as contributing to the fulfillment of the minimum coverage required by this paragraph; and

(iv) A biennial review of all food service mangement companies under contract with recipient agencies in accordance with § 250.12(c) which are not under contract with a school participating in the National School Lunch Program or a Commodity School under Part 210 of this chapter, or a school participating in the School Breakfast Program under Part 220 of this chapter.

(2) Each distributing agency shall design and implement a system to verify sales of end products to all recipient agencies under that distributing agency's authority in instances when a processor transfers end products to a distributor and the distributor sells the end product to the recipient agencies at a discount and the distributor receives a refund from the processor. At a minimum, such a system must:

(i) Provide for the quarterly review of a statistically valid sample of sales information of all processors which contract with the distributing agency or contracting agencies under the authority of the distributing agency, including multi-State processors;

(ii) Support the projection of a claim against the processor when, in the review of the sample, it is determined that the value of donated foods has not been passed on to recipient agencies or when end products have been improperly distributed; and

(iii) Provide for the assessment of claims against the processor in accordance with FNS Instruction 410–1 Non-Audit Claims, Food Distribution Program, in instances when deficiencies have been identified. Distributing agencies may delegate the responsibility of sales verification to processors. In such instances, the distributing agency must establish guidelines which the processor must follow in conducting sales verification. These guidelines must ensure that a statistically valid sample of sales is verified quarterly. Processors shall report their findings to the distributing agency on a quarterly basis in accordance with § 250.30(m).

Distributing agencies must review the processor's sales verification system and the processor's findings for adequacy and submit a copy of the review report of the system findings to the appropriate FNSRO.

(3) The distributing agency shall submit a report of review findings to each entity reviewed. The report shall include:

(i) Each deficiency found;

(ii) The factors contributing to each deficiency;

(iii) Recommendations for needed corrective action, including timetables for completion and/or claims action to be pursued, if any; and

(iv) Provisions for evaluating effectiveness of corrective actions.

A copy of each processor review report shall be provided to the appropriate FNSRO.

(4) Distributing agencies shall monitor progress toward completion and the effectiveness of corrective actions taken in eliminating program deficiences.

(5) In addition to the review requirements of paragraph (b)(1) of this section, each distributing agency shall make a continuing evaluation of all recipient agencies, and processors by monitoring performance reports, food

requests, participation data, and data regarding refunds and discounts to recipient agencies and distributors for the receipt of end products.

(6) Distributing agencies shall, where applicable, require that subdistributing agencies monitor and review their operations in accordance with this paragraph.

(c) *Responsibilities of State Agencies on Aging.* State Agencies on Aging which receive cash payments in lieu of donated foods in accordance with the provisions of § 250.42(c) shall monitor use of such cash after disbursement to nutrition programs for the elderly to ensure that the amounts so received are expended solely for the purchase of U.S. agricultural commodities and other foods of U.S. origin for such programs.

§ 250.20 Sanctions.

Any distributing agency which has failed to comply with the provisions of this Part or any instructions or procedures issued in connection with it or any agreements entered into pursuant to it, may, at the discretion of the Department, be disqualified from further participation in any distribution program. Reinstatement may be made at the option of the Department. Disqualification shall not prevent the Department from taking other action through other available means when considered necessary, including prosecution under applicable Federal statutes.

§ 250.21 Civil rights.

Distributing agencies, subdistributing agencies and recipient agencies shall comply with the Department's nondiscrimination regulations (7 CFR Parts 15, 15a, and 15b) and the FNS civil rights instructions to ensure that in the operation of the program no person is discriminated against because of race, color, national origin, age, sex or handicap.

§ 250.22 Complaints.

Distributing agencies shall investigate promptly complaints received in connection with the distribution or use of donated foods. Irregularities which are disclosed shall be corrected immediately. Serious irregularities shall be promptly reported to the Department. Distributing agencies shall maintain or file evidence of such investigations and actions. The Department also reserves the right to make investigations and shall have the final determination as to when a complaint has been properly handled. Complaints alleged on the basis of race, color, national origin, age, sex or handicap shall be handled in accordance with § 250.21.

Subpart C—Processing and Labeling of Donated Foods

§ 250.30 State processing of donated foods.

(a) *General.* This section sets forth the terms and conditions under which distributing agencies, subdistributing agencies, or recipient agencies may enter into contracts for the processing of donated foods and prescribes the minimum requirements to be included in such contracts. This section does not pertain to food service management companies.

(b) *Permissible contractual arrangements.* (1) A distributing agency, subdistributing agency, or recipient agency may contract for processing, pay the processing fee, and deliver the end products to eligible recipient agencies through its own distribution system.

(2) A distributing agency or subdistributing agency may contract for processing on behalf of one or more recipient agencies. All recipient agencies eligible to receive the donated foods to be processed may receive end products made from those foods and produced under such processing contracts by virtue of the distributing agency—recipient agency agreement required by § 250.12(b). Under this arrangement and subject to the approval of the distributing agency:

(i) Processors shall utilize either a discount or a refund system as defined in § 250.3 when they sell end products directly to recipient agencies, or

(ii) When selling end products through a distributor, processors shall utilize either a refund system or a system which provides refunds to distributors and discounts to recipient agencies through a distributor in accordance with paragraph (e) of this section.

(3) Distributing agencies shall permit subdistributing agencies and recipient agencies to enter into processing contracts with a processor under arrangements similar to those described in paragraph (b) (1) or (2) of this section.

(c) *Requirements for processing contracts.* (1) Contracts with processors shall be in a standard written form and be reviewed by the appropriate FNSRO. Processing contracts shall terminate no later than one year after they have been entered into and shall not be extended without being renegotiated. Distributing agencies shall develop criteria for use in evaluating and selecting processing contracts. The selection criteria shall be used in selecting or rejecting processors in a manner that ensures equitable treatment of processors. The selection criteria shall, at a minimum, include:

(i) The nutritional contribution which the end product will provide;

(ii) The marketability of the end product;

(iii) The distribution method which the processor intends to utilize;

(iv) Price and yield schedule data;

(v) Any applicable labeling requirements; and

(vi) The ability of the processor to meet the terms and conditions set forth in the regulations.

These criteria will be reviewed by the appropriate FNSRO during the management evaluation review of the distributing agency. Distributing agencies and subdistributing agencies which enter into contracts on behalf of recipient agencies but which do not limit the types of end products which can be sold or the number of processors which can sell end products within the State are not required to follow the selection criteria. In addition to utilizing these selection criteria, when a contracting agency enters into a contract both for the processing of donated food and the purchase of the end products produced from the donated food, the procurement standards set forth in Attachment O to OMB Circular A-102 must be followed. Recipient agencies which purchase end products produced under Statewide agreements are also required to comply with Attachment O of OMB Circular A-102. Contracting agencies shall not enter contracts with processors which cannot demonstrate the ability to meet the terms and conditions of the regulations and the distributing agency agreements; furnish prior to the delivery of any donated foods for processing, a performance bond, an irrevocable letter of credit or an escrow account in an amount sufficient to protect the contract value of donated food on hand and on order; demonstrate the ability to distribute end products to eligible recipient agencies; provide a satisfactory record of integrity, business ethics and performance and provide adequate storage.

(2) Standard form contracts shall be prepared or reviewed by the appropriate State legal staff to assure conformity with the requirements of these regulations and of applicable Federal, State and local laws.

(3) The contract shall be signed for the processor by the owner, a partner, or a corporate officer duly authorized to sign the contract, as follows:

(i) In a sole proprietorship, the owner shall sign the contract;

(ii) In a partnership, a partner shall sign the contract;

(iii) In a corporation, a duly authorized corporate officer shall sign the contract.

(4) At a minimum, each processing contract shall include:

(i) The names and telephone numbers of the contracting agency and processor;

(ii) A description of each end product, the quantity of each donated food and any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), and the yield factor for each donated food. The yield factor is the percentage of the donated food which must be returned in the end product to be distributed to eligible recipient agencies. For substitutable donated foods, at least 100 percent of the donated foods provided to the processor must be physically contained in the end products, with no allowable tolerance;

(iii) The contract value of each donated food to be processed and, where processing is to be performed only on a fee-for-service basis, the processing fee to the contracting agency for a specified number, weight or measure of the end products to be delivered;

(iv) A provision for:

(A) Termination of the contract upon thirty days written notice by the contracting agency or the processor and

(B) Immmediate termination of the contract when there has been noncompliance with its terms and conditions by the contracting agency or the processor;

(v) In the event of contract termination, a provision for disposition of donated foods and end products in the processor's inventories or payment of funds in accordance with paragraph (j) of this section;

(vi) A provision for inspection and certification during processing, where applicable, by the appropriate acceptance service in accordance with paragraphs (g) and (h) of this section;

(vii) A provision that end products containing donated foods that are not substitutable under paragraph (f) of this section shall be delivered only to recipient agencies eligible to receive such foods;

(viii) Provisions that the processor shall:

(A) Fully account for all donated foods delivered into its possession by production and delivery to the contracting agency or eligible recipient agencies of an appropriate number of units of end products meeting the contract specifications, and where end products are sold through a distributor, that the processor remains full accountable for the donated foods until refunds or any other credits equal to their contracted value have been made to eligible recipient agencies in accordance with paragraph (k) of this section or to distributing agencies in accordance with paragraph (n)(2) of this section;

(B) Furnish to the contracting agency prior to the delivery of any donated foods for processing documentation that a performance supply and surety bond from a surety company listed in the most recent U.S. Department of Treasury Circular 570, an irrevocable letter of credit or an escrow account has been obtained in an amount that is sufficient to protect the contract value of all donated foods. Since the distributing agency is held liable by FNS for any donated foods provided to a processor the distributing agency shall determine the dollar value of the performance supply and surety bond, irrevocable letter of credit or the escrow account taking into consideration the

(*1*) Value of donated foods on hand;

(*2*) Value of donated foods on order and

(*3*) Anticipated usage rate during the contract period;

(C) Use or dispose of the containers in which donated foods are received from the Department in accordance with the instructions of the contracting agency;

(D) Apply as credit against the processing fee or return to the contracting agency:

(*1*) Any funds received from the sale of containers, and

(*2*) The market value or the price received from the sale of any by-products of donated foods or commercial foods which have been substituted for donated foods;

(E) Substitute donated foods with commercially purchased foods only in accordance with paragraph (f) of this section;

(F) Meet the requirements of paragraph (i) of this section for labeling end products;

(G) Maintain accurate and complete records pertaining to the receipt, disposal, and inventory of donated foods in accordance with § 250.16;

(H) Submit processing performance reports in accordance with paragraph (m) of this section; and

(I) Submit annual reconciliation reports and make payments to distributing agencies for any outstanding refund applications or excessive inventories in accordance with paragraph (n)(2) of this section;

(ix) A provision that approval of the contract by distributing agency shall not obligate that agency or the Department to deliver donated foods for processing;

(x) A description of the processor's quality control system and assurance that an effective quality control system will be maintained for the duration of the contract;

(xi) In instances when the processor is a multi-State processor as defined in § 250.3, a provision that the processor agrees to obtain an independent audit by a certified public accountant in accordance with § 250.18(b);

(xii) A requirement that inventory drawdowns shall be limited to the actual amount of donated foods contained in the end product. Additional commodity required to account for production loss shall be obtained from non-donated foods;

(xiii) In instances when end products are sold through a distributor a description of the system which will be utilized for the sale of the end products to a recipient agencies;

(xiv) In instances when the distributing agency has delegated the responsibility for sales verification for end products provided by a distributor to recipient agencies at a discount, assurance that the processor will submit sales verification data to the distributing agency in accordance with § 250.30(m)(l); and

(xv) A provision that the contracting agency shall give the processor a list of all recipient agencies eligible to purchase end products under the contract.

(5) The processor shall not assign the processing contract or delegate any aspect of processing under a subcontract or other arrangement without the written consent of the contracting agency and the distributing agency.

(d) *End products sold by processors.* When recipient agencies pay the processor for end products, the processing contract shall include:

(1) The processor's established wholesale price schedule for quantity purchases of specified units of end products, and

(2) An assurance that the price of each unit of end product purchased by eligible recipient agencies shall be discounted by the stated contract value of the donated foods contained therein, or a refund equal to such value made upon proof of purchase by an eligible recipient agency in accordance with paragraph (k) of this section.

(e) *End products sold by distributors.* When a processor transfers end products to one or more distributors for sale and delivery to recipient agencies, such sales shall be under either a refund system as defined in § 250.3 or a system which provides refunds to distributors and discounts to recipient agencies. The processor shall make refund payments to distributors or recipient agencies in accordance with paragraph (k) of this section.

(f) *Substitution of donated foods with commercial foods.* (1) The processing contract may provide for substitution of donated foods as defined in § 250.3. If the provision allowing substitution is included, the contract shall stipulate that:

(i) Only butter, cheese, corn grits, corn meal, flour, macaroni, nonfat dry milk, peanut butter, peanut granules, roasted peanuts, rice, rolled oats, rolled wheat, shortening, vegetable oil, spaghetti, and such other food as FNS specifically approves may be substituted (substitution of meat and poultry items shall not be permitted),

(ii) All components of commercial foods substituted for those donated must be of U.S. origin and be identical or superior in every particular of the donated-food specification as evidenced by certification performed by, or acceptable to, the applicable Federal acceptance service, and

(iii) Substitution is allowed without advance approval by the distributing agency only when:

(A) It is necessary to replace donated food with commercial food to meet the 100 percent yield requirement; or

(B) The donated and commercial foods have been commingled through the use of joint storage tanks or bins; or

(C) The processing contract permits the use of concentrated skim milk which has been purchased or manufactured by the processor for donated nonfat dry milk.

(2) Documentation must be maintained by both parties in accordance with § 250.16. When there is substitution, the donated foods shall be used by the processor and shall not otherwise be sold or disposed of in bulk form. The applicable Federal acceptance service shall, upon request by the Department, the contracting agency or the distributing agency determine if the quality analysis meets the requirements set forth by the Agricultural Stabilization and Conservation Service (ASCS) in the original inspection of donated foods and, in the case of concentrated skim milk replacing donated nonfat dry milk, determine if the concentrated skim milk contains the amount of milk solids as specified in the contract. When donated foods are nonsubstitutable, the applicable Federal acceptance service shall ensure against unauthorized substitutions, and verify that quantities of donated foods used are as specified in the contract.

(3) When concentrated skim milk is used to replace donated nonfat dry milk, the contract shall also specify (in addition to the requirements in paragraph (c) of this section):

(i) The percent of milk solids that, at a minimum, must be contained in the concentrated skim milk;

(ii) The weight ratio of concentrated skim milk to donated nonfat dry milk;

(A) The weight ratio is the weight of concentrated skim milk which equals one pound of donated nonfat dry milk, based on milk solids;

(B) In calculating this weight, nonfat dry milk shall be considered as containing 96.5 percent milk solids;

(C) If more than one concentration of concentrated skim milk is to be used, a separate weight ratio must be specified for each concentration;

(iii) The processor's method of verifying that the milk solids content of the concentrated skim milk is as stated in the contract;

(iv) A requirement that inventory drawdowns of donated nonfat dry milk shall be limited to an amount equal to the amount of concentrated skim milk, based on the weight ratio, used to produce the end product;

(v) A requirement that the contract value of donated food for a given amount of concentrated skim milk used to produce an end product is the value of the equivalent amount of nonfat dry milk, based on the weight ratio of the two foods;

(vi) A requirement that the concentrated skim milk shall be produced in a USDA approved plant or in a plant approved by the appropriate regulatory authority for the processing of Grade A milk products; and

(vii) A requirement that documentation sufficient to substantiate compliance with the contract provisions shall be maintained in accordance with § 250.16(a)(4).

(4) Except as specified in paragraph (f)(iii) of this section, processors must receive approval from the distributing agency prior to any substitution. Distributing agencies may approve a processor's request for substitution only when the distributing agency's inability to maintain the necessary inventory of donated food at the processor would disrupt the production of end products.

(5) Title to the substituted food shall transfer to the contracting agency upon the initiation of the processing of the end product containing the substituted food. Title to the equivalent amount of donated food shall transfer to the processor at the same time (except when the substitution is necessary to meet the 100 percent yield requirement or to otherwise replace missing or out-of-condition donated food). Once title has transferred, the processor shall use the substituted food in accordance with the terms and conditions of this part.

(g) *Meat and poultry inspection programs.* When donated meat or poultry products are processed or when any commercial meat or poultry products are incorporated into an end product containing one or more donated foods, all of the processing shall be performed in plants under continuous Federal meat or poultry inspection, or continuous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection programs. In addition to FSIS inspection, all donated meat and poultry processing shall be performed under AMS acceptance service grading. The cost of this service shall be borne by the processor. In the event the processor can demonstrate that grading is impractical, exemptions in the use of acceptance services shall be approved by the distributing agency prior to processing each order. Exemptions in the use of acceptance service graders will be authorized on the basis of each order to be processed provided the processor can demonstrate:

(1) That even with ample notification time, the processor cannot secure the services of a grader,

(2) That the cost for a grader would be unduly excessive relative to the value of foods being processed and that production runs cannot be combined or scheduled to enable prorating of the costs of services among the purchasers of end products, or

(3) The documented urgency of the recipient agency's need for the end product precludes the use of acceptance services.

Prior to approving a processor's request to waive the acceptance service requirement the distributing agency shall ensure, based on the processor's past performance, that the quality of the end product produced will in no way be adversely affected as a result of waiving the requirement.

(h) *Certification by acceptance service.* (1) All processing activities of donated foods shall be subject to review and audit by the Department, including the applicable Federal acceptance service. The contracting agency may also require acceptance and certification by such acceptance service in addition to the requirements set forth in paragraph (g) of this section.

(2) In the case of substitutable donated foods, in deciding whether to require acceptance and certification, the

contracting agency should consider the dollar value of the donated foods delivered to the processor.

(3) When contracting agencies require certification in accordance with paragraph (h) (1) or (2) of this section, the degree of acceptance and certification necessary under the processing contract shall be determined by the appropriate Federal acceptance service after consultation with the distributing agency concerning the type and volume of the donated foods and anticipated value of end products to be processed. The cost of this service shall also be borne by the processor.

(i) *Labeling end products.* (1) Except when end products contain donated foods that are substituted under paragraph (f) of this section, the exterior shipping containers of end products and, where practicable, the individual wrappings or containers of end products, shall be clearly labeled "Contains Commodities Donated by the United States Department of Agriculture. This Product Shall Be Sold Only to Eligible Recipient Agencies."

(2) Labels on all end products shall meet applicable Federal labeling requirements.

(3) When a processor makes any claim with regard to an end product's contribution toward meal requirements of any child nutrition program, the processor shall follow procedures established by FNS, the Food Safety and Inspection Service of the Department, the National Marine Fisheries Service of the U.S. Department of Commerce or other applicable Federal agencies for approval of such labels.

(j) *Termination of processing contracts.* (1) When contracts are terminated or completed and the processor has commodities remaining in inventory, the processor shall be directed, at the option of the distributing agency and the FNSRO, to do the following:

(i) With respect to nonsubstitutable commodities, the processor shall:

(A) Return the commodities to the contracting agency;

(B) Pay the contracting agency for the commodities based on the Department's replacement costs, determined by using the most recent data provided by the Department; or

(C) Pay the contracting agency for the commodities based on the contract value stated in the processor's contract;

(ii) With respect to substitutable commodities, the processor shall:

(A) With the concurrence of any affected contracting agencies, transfer the donated foods to the accounts of other contracting agencies with which the processor has contracts;

(B) Return the foods donated to the contracting agency;

(C) Replace the commodities with the same foods of equal or better quality as certified in accordance with paragraph (f)(2) of this section and deliver such foods to the contracting agency;

(D) Pay the contracting agency for the commodities based on the Department's replacement costs, determined by using the most recent data provided by the Department; or

(E) Pay the contracting agency for the commodities based on the contract value stated in the processor's contract.

(2) When a processor's contract is terminated at the processor's request or due to noncompliance or negligence on the part of the processor and commodities remaining in the processor's inventory are transported pursuant to paragraph (j)(1)(i)(A), (j)(1)(ii)(B) or (j)(1)(ii)(C) of this section, the processor shall pay the transportation costs.

(3) Funds received by distributing agencies upon termination of contracts shall be used in accordance with FNS Instruction 410-1, Non-Audit Claims, Food Distribution Program.

(k) *Refund payments.* (1) When end products are sold to recipient agencies in accordance with the refund provisions of paragraph (d) or (e) of this section, each recipient agency shall submit refund applications to the processor within 60 days of the date of purchase of end products in order to receive benefits. The recipient agency shall also forward a copy of the refund application to the distributing agency at the same time.

(2) In instances when refunds are to be provided to distributors which have sold end products to recipient agencies at a discount, distributors shall submit refund applications to processors within 60 days of the date of sale to recipient agencies in order to receive benefits.

(3) Not later than 10 days after receipt of the application by the processor, the processor shall make a payment to the recipient agency or distributor equal to the stated contract value of the donated foods contained in the purchased end products covered by the application. Copies of requests for refunds and payments to recipient agencies and/or distributors shall be forwarded to the appropriate distributing agency by the processor.

(l) *Contract approvals.* Distributing agencies shall review and approve processing contracts entered into by subdistributing and recipient agencies prior to the delivery of commodities for processing under such contracts. The distributing agency which enters into or approves a processing contract shall provide a copy of the contract and of these regulations to the processors, forward a copy of the contract to the appropriate FNSRO, and retain a copy for its files.

(m) *Performance reports.* (1) Processors shall be required to submit to distributing agencies monthly reports of performance under each processing contract. Processors contracting with agencies other than a distributing agency shall submit such reports to the distributing agency having authority over that particular contracting agency. Performance reports shall be received no later than the final day of the month following the reporting period. The report shall include:

(i) A list of all recipient agencies purchasing end products under the contract;

(ii) Donated-food inventory at the beginning of the reporting period;

(iii) Amount of donated foods received during the reporting period;

(iv) Amount of donated foods transferred to and/or from existing inventory;

(v) Number of units approved end products delivered to each eligible recipient agency during the reporting period and the number of pounds of each donated food represented by these delivered end products;

(vi) Donated food inventory at the end of the reporting period;

(vii) Number of pounds of each donated food represented in sales to distributors;

(viii) List of all contracting agencies and their locations with which the processor has processing contracts;

(ix) In instances in which sales verification has been delegated to the processor pursuant to § 250.19(b)(2), sales verification findings shall be reported as an attachment to the September, December, March and June performance reports in whatever format the distributing agency deems necessary; and

(x) A certification statement that sufficient donated foods are in inventory or on order to account for the quantities needed for production of end products for State processing contracts and that the processor has on hand or on order adequate quantities of foods purchased commercially to meet the processor's production requirements for commercial sales.

(2) In addition to reporting the information identified in paragraph (m)(1) of this section, processors which substitute concentrated skim milk for donated nonfat dry milk shall also report the following information for the reporting period:

(i) The number of pounds of nonfat dry milk used in commercial products sold to outlets which are not recipient agencies; and

(ii) The number of pounds of concentrated skim milk, and the percent of milk solids contained therein, used in end products sold to recipient agencies.

(3) Distributing agencies shall review and analyze reports submitted by processors to ensure that performance under each contract is in accordance with the provisions set forth in this section.

(n) *Inventory controls.* (1) Distributing agencies shall monitor processor inventories to ensure that the quantity of donated foods for which a processor is accountable is the lowest cost-efficient level but in no event more than a six-month supply based on the processor's average monthly usage, unless a higher level has been specifically approved by the distributing agency on the basis of a written justification submitted by the processor. Under no circumstances should the amount of donated foods ordered by the contracting agency for processing purposes be in excess of anticipated usage or beyond the processor's ability to accept and store the donated foods at any one time. Distributing agencies shall make no further distribution to processors whose inventories exceed these limits until such inventories have been reduced.

(2) For processors substituting concentrated skim milk for donated nonfat dry milk, distributing agencies shall review the processors' monthly performance reports to ensure that:

(i) Donated nonfat dry milk inventory is being drawn down based on the amount of milk solids contained in the concentrated skim milk which was used in end products sold to eligible recipient agencies;

(ii) An amount of milk solids equivalent to the amount in the donated nonfat dry milk is contained in end products sold to eligible recipient agencies; and

(iii) Donated nonfat dry milk is not being sold in bulk form.

(3) Processors shall complete and submit annual reconciliation reports to distributing agencies within 90 days following the end of the contract period. As a part of this annual reconciliation, processors shall pay distributing agencies for the contract value of donated foods.

(i) For any donated foods for which a timely refund application has not been submitted in accordance with paragraph (k) of this section and

(ii) For inventories in excess of a six-month supply.

In instances when the distributing agency has assigned an inventory level other than a six-month level, the processor shall pay the contract value of any donated food in excess of that level.

(4) Distributing agencies shall certify the accuracy of the annual reconciliation report and forward it to the FNSRO. All monies shall be used in accordance with FNS Instruction 410-1, Non-Audit Claims, Food Distribution Program.

(5) Distributing agencies shall not submit food requisitions for processors reporting no sales activity during the prior year's contract period unless documentation is submitted by the processor which outlines specific plans for product promotion or sales expansion.

(o) *Processing inventory reports.* (1) Distributing agencies shall submit to the FNSRO not later than 60 days following the close of each Federal fiscal quarter a report showing separately for each processor under agreement with contracting agencies within the State:

(i) The donated food inventory at the beginning of the previous quarter;

(ii) Amount of donated foods received during the quarter;

(iii) Amount of donated foods transferred to and/or from existing inventory;

(iv) Amounts of donated foods used during the quarter;

(v) Inventory at the close of the quarter;

(vi) Each contracting agency and its location with which the processor has processing contracts.

(2) In addition to reporting the information identified in paragraph (o)(1) of this section, for each processor which substitutes concentrated skim milk for donated nonfat dry milk the distributing agency shall also report the following information for the reporting period:

(i) The number of pounds of nonfat dry milk used in commercial products sold to nonprogram outlets; and

(ii) The number of pounds of concentrated skim milk and the percent of milk solids contained therein used in end products sold to recipient agencies.

(p) *Cooperation with administering agencies for child nutrition programs.* If the distributing agency which enters into or approves contracts for end products to be used in a child nutrition program does not also administer such program, it shall collaborate with the administering agency by:

(1) Giving that agency an opportunity to review all such contracts to determine whether end products to be 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 outstanding refund applications or excessive inventories 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.

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

Subpart D—Eligible Recipient Agencies and Programs

§ 250.40 Nonprofit summer camps for children.

(a) *Distribution.* (1) The distributing agency shall distribute donated food only to those summer camps which have entered into a written agreement for participation in the program with the distributing agency in accordance with § 250.12(b). Prior to entering into a written agreement, the summer camp shall provide verification of its tax exempt status under the Internal Revenue Code. In addition to the terms and conditions set forth in § 250.12(b), the written agreement shall, at a minimum, include:

(i) The name and location of the summer camp(s);

(ii) Number of camps or sites;

(iii) Number of sessions to be offered during camping season;

(iv) Number of adults and children participating in the activities of the summer camp at each session;

(v) Total number of days meals will be served;

(vi) Total number of meals to be served daily;

(vii) Assurance that tax exempt status will be maintained;

(viii) Indication of whether the summer camp(s) will employ the services of a food service management company;

(ix) Assurance that a brochure or public announcement of open admission policy will be provided and that the summer camp agrees to maintain racial/ethnic data;

(x) Assurance that a physical inventory will be conducted and reconciled at the end of the camping session; and

(xi) Assurance that any excess inventory will, at the distributing agency's option, be returned to the distributing agency for redonation or transferred in accordance with § 250.13(a)(1).

(2) Distributing agencies shall distribute donated foods only after determining that the number of adults participating in camp activities, as compared with the number of children 18 years of age and under, is not unreasonable in light of the nature of the camp and the characteristics of the children in attendance. Persons 19 years of age and over, including program directors, counselors and others who engage in recreational, educational, and direct administrative functions, are to be considered as adults participating in the activities of a summer camp. Employees whose presence on camp premises is solely for the purpose of performing duties such as cooking, gardening, property maintenance or similar support functions are not considered as adults participating in summer camp activities. In addition, persons such as nurses, therapists, and attendants who perform professional, supervisory, or custodial services are not considered as adults participating in the activities of a summer camp if they perform services essential to the participation of mentally, emotionally, or physically handicapped children.

(3) Distributing agencies shall authorize the transfer or redonation of all donated foods remaining in summer camps at the end of the camping season in accordance with § 250.13 (a) or (g) respectively.

(4) Nonprofit summer camps for children may employ food service management companies to conduct food service operations in accordance with § 250.12(c).

(b) *Quantities and value of donated foods.* Distribution of donated food to eligible summer camps shall be made on the basis of the average number of meals to be served daily to children as evidence by the most recent written caseload factor information contained in the agreement.

(c) *Types of donated foods authorized for donation.* Nonprofit summer camps for children are eligible to receive donated foods under section 416, section 32, section 709 and section 4(a).

§ 250.41 Charitable institutions.

(a) *Distribution.* (1) The distributing agency shall distribute donated food only to those charitable institutions which have entered into a written agreement for participation in the program with the distributing agency in accordance with § 250.12(b). Prior to entering into a written agreement, the charitable institution shall provide verification of the institution's tax exempt status under the Internal Revenue Code. In addition to the terms and conditions set forth in § 250.12(b), written agreements shall, at a minimum, include:

(i) The name and location of the charitable institution;

(ii) Total number of days meals will be served;

(iii) Average daily number of participants;

(iv) Total number of meals by type to be served daily to needy persons;

(v) Data that shows the number of needy persons receiving benefits under another means-tested program or financial data that show the total annual amount of funds received by the institution that are derived, respectively, from (A) subsidized income and (B) nonsubsidized income. For the purpose of this Section "subsidized income" shall mean income from public tax funds which are provided on behalf of participants that have been determined to be in need of financial assistance through a means-tested program such as Medicaid or income received through private federally tax exempt contributions which are provided for the care of participants which the institution had determined to be in need of financial assistance. "Nonsubsidized income" shall mean all other income, including payments made on behalf of participants by persons legally responsible for their support;

(vi) Indication of whether the charitable institution will employ the services of a food service management company to conduct its food service operations;

(vii) Assurance that proper inventory controls will be maintained; and

(viii) Assurance that all reports will be submitted as required by the distributing agency.

(2) Adult correctional institutions are eligible to receive donated foods as charitable institutions, to the extent that needy persons are served, if they conduct rehabilitation programs that are:

(i) Available to either a majority of the total inmate population (including inmates awaiting trial or sentencing) or to a majority of sentenced inmates; and

(ii) Of sufficient scope to permit participation for a minimum of 10 hours per week per inmate by either a majority of the total inmate population or a majority of sentenced inmates.

Prior to entering into an agreement for donation of foods to an adult correctional institution, the distributing agency shall require the institution's director or other repsonsible official to provide a written statement certifying that the institution conducts such rehabilitation programs. The statement shall be reviewed annually and maintained as part of the agreement.

(3) Charitable institutions may employ food service management companies to conduct food service operations in accordance with § 250.12(c).

(b) *Quantities of donated foods.* Distribution of donated foods to eligible charitable institutions shall be made on the basis of the average number of meals served daily to needy persons. To determine the number of needy persons being served, the distributing agency shall determine the proportion of subsidized income by dividing the subsidized income by the total subsidized and nonsubsidized income (as defined in paragraph (a)(1) of this section) and multiplying that number by the average daily number of participants as required in § 250.41(a)(1)(v), or by simply counting the number of participants that receive benefits under another a means-tested program. The distributing agency shall use the income and average daily participation figures reflected in the agreement in determining the number of needy persons being served by the institution in accordance with the above formula. Income and participation figures shall be based on the institution's records for the previous year. The distributing agency shall obtain updated pertinent information by September 30 of each fiscal year.

(c) *Types of donated foods authorized for donation.* Charitable institutions are eligible to receive donated foods under section 416, section 32, section 4(a), and section 709.

(Approved by the Office of Management and Budget under control number 0584-0305)

§ 250.42 Nutrition programs for the elderly.

(a) *Distribution.* Distributing agencies shall distribute donated foods only to nutrition programs for the elderly which have entered into an agreement for donation of commodities in accordance with § 250.12(b). Food service management companies may be employed to conduct food service operations in accordance with § 250.12(c).

(b) *Quantities and value of donated foods.* (1) *Quantities.* Distribution of donated foods to nutrition programs for the elderly shall be based on the level of assistance per meal as required by the Older Americans Act of 1965, as amended, and on the number of eligible meals served within the State as evidenced by written caseload factor information provided by the State Agency on Aging.

(2) *Value.* (i) For the fiscal years 1986 through 1991, the quantity of donated foods to be made available to each State Agency on Aging for distribution to nutrition programs for the elderly shall be valued at not less than 56.76 cents for each meal which such State Agency on Aging, in accordance with regulations and guidelines authorized by the Commissioner on Aging, United States Department of Health and Human Services, reports as having been served or, where necessary, estimates will be served within the State or to Indian Tribal Organizations during the year: *Provided, however,* That:

(A) This quantity will be reduced to the extent that a State Agency on Aging elects to receive cash in lieu of donated foods in accordance with paragraph (c) of this section and

(B) The quantity of donated foods to be provided to any State Agency on Aging for any fiscal year shall not be adjusted on the basis of meal reports or estimates submitted after July 1 of such fiscal year.

(ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, in any fiscal year in which compliance with paragraph (b)(2)(i) of this section costs more than the amounts authorized to be appropriated under the Older Americans Act of 1965, as amended for that fiscal year, the Secretary shall reduce the cents per meal level determined pursuant to paragraph (b)(2)(i) of this section for that fiscal year as necessary to meet the authorization of appropriations for that fiscal year. If such action is necessary, the per meal level will be reduced uniformly for each meal served during that fiscal year.

(c) *Cash in lieu of donated foods.* (1) Any State Agency on Aging may, for the purposes of the programs authorized by Titles III and VI of the Older Americans Act of 1965, as amended, elect to receive cash payments in lieu of all or any portion of the donated foods that it would otherwise receive under paragraph (b) of this section during any fiscal year.

(2) When a State Agency on Aging elects to receive cash payments in lieu of donated foods, that election shall be binding on the State Agency on Aging for the entire fiscal year to which it pertains, and FNS shall make cash payments to the State Agency on Aging equivalent in value to the donated foods that would otherwise have been provided. Cash payments shall be made for each fiscal quarter by means of Letters of Credit issued by FNS through the appropriate U.S. Treasury Regional Disbursing Office or, where applicable, by means of U.S. Treasury checks, based on the best data available to FNS as to the number of meals to be served by nutrition programs for the elderly administered by each State Agency on Aging during that fiscal quarter.

(3) In instances when it is necessary to reduce the annual level of assistance specified in paragraph (b)(2)(i) of this section, the level will be reduced in accordance with paragraph (b)(2)(ii) of this section. Once it has been established that the reduced per meal level will be sufficient to avoid any further adjustment, any remaining funds (up to the level of assistance specified in paragraph (b)(2)(i) of this section) will be disbursed so that each State will receive an equal amount on a per meal basis.

(4) To be eligible for reimbursement by FNS, claims for cash payment for meals served by nutrition programs for the elderly shall be submitted by State Agencies on Aging and Indian Tribal Organizations no later than 90 days following the close of the Federal fiscal quarter for which payment is claimed.

(5) The State Agency on Aging desiring to receive funds under this paragraph shall enter into a written agreement with FNS pursuant to § 250.12(a) to:

(i) Promptly and equitably disburse any cash it receives in lieu of donated foods to nutrition programs for the elderly after consideration of the needs of such programs and the availability of other resources, including any donated foods available under paragraph (b) of this section;

(ii) Establish such procedures as may be necessary to ensure that the cash disbursements are used by nutrition programs for the elderly solely for the purpose of purchasing U.S. agricultural commodities and other foods of U.S. origin for their food service operations;

(iii) Maintain and retain for 3 years from the close of the Federal fiscal year to which they pertain complete and accurate records of:

(A) All amounts received and disbursed under paragraph (c) of this section and

(B) The manner in which consideration was given to the needs and resources as required by paragraph (c)(5)(i) of this section; and

(iv) Permit representatives of the Department and of the General Accounting Office of the United States to inspect, audit, and copy such records at any reasonable time.

(6) Funds provided under paragraph (c) of this section shall be subject to the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

(d) *Types of donated foods authorized for donation.* Nutrition programs for the elderly are eligible to receive donated foods under section 416, section 32, section 311, section 709, and section 14.

§ 250.43 Disaster organizations.

(a) *Eligibility.* In instances in which the President has declared a major disaster or emergency pursuant to section 301 of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5141) and the Secretary has determined that as a result of the major disaster or emergency low-income households are unable to purchase adequate amounts of nutritious food, disaster organizations may be eligible to receive donated foods for congregate meal service or household distribution to disaster victims. Disaster organizations shall remain eligible for disaster assistance for as long as the Secretary determines necessary, taking into consideration the consequences of the major disaster or emergency on the earning power of the disaster victims; *Except*, that in areas where the Food Stamp Program is in operation, donated foods may be distributed for household use only so long as the Secretary finds that the commercial channels of trade have been disrupted because of a major disaster or emergency. Prior to providing donated foods to disaster organizations, the distributing agency shall require the disaster organization to make application for the receipt and distribution of donated foods in accordance with paragraphs (b) and (c) of this section. Such applications shall be confirmed in writing and maintained in accordance with the recordkeeping requirements of this part.

(b) *Distribution of donated foods for use in providing congregate meal service.* (1) In order to obtain donated foods for use in providing congregate meal service, disaster organizations shall request approval from the appropriate distributing agency, giving the following information to the extent possible:

(i) Description of major disaster or emergency situation;

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

(iii) Quantity and types of food needed for congregate meal service; and

(iv) Number and location of sites providing congregate meal service.

(2) Following its approval of the request for donated foods, the distributing agency is authorized and shall make appropriate donated foods available from any sources within the State to the disaster organization and within 24 hours shall report to the appropriate FNSRO the information listed in paragraph (b)(1) of this section.

(c) *Household distribution.* In order to obtain donated foods for household distribution in areas served by the Food Stamp Program when commercial food distribution channels are disrupted, the distributing agency shall request prior approval by the appropriate FNSRO. In the request, the distributing agency shall cite the following information:

(i) Description of major disaster or emergency situation;

(ii) Number of households affected;

(iii) Anticipated distribution period;

(iv) Method of distribution available; and

(v) Quantity and types of food needed for distribution.

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

(e) *Types of donated foods authorized for donation.* Disaster organizations providing major disaster or other emergency food assistance under this Part are eligible to receive donated foods under section 416, section 32, section 709, section 4(a) and sections 409 and 410 of the Disaster Relief Act of 1974 (42 U.S.C. 5181–82), as amended.

(f) *Summary report.* Within 30 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.* To the extent donated foods are available, FNS will replace donated foods used from the States' stocks for major disaster and emergency assistance. The distributing agency shall request the replacement of foods used for major disaster and other emergency food assistance, in writing to FNSRO, no later than 30 days following termination of the disaster assistance.

§ 250.44 Special group food assistance programs.

In situations of distress in which needs for food assistance cannot be met under other provisions of this part, a distributing agency may, upon request to and approval by the Secretary, distribute donated foods to any institution, or to any association of persons engaged in charitable activities, for use in conducting special group-feeding programs on a temporary basis for persons in need of such food assistance. Such distributions shall not exceed 30 days. The distributing agency, and any such institution or association, shall conduct any distribution under this Section in accordance with such instructions as the Secretary may specify, and any such institution or association shall give to the distributing agency an assurance that feeding programs will be conducted in accordance with the instructions.

§ 250.45 Commodity Supplemental Food Program.

(a) *Distribution.* The distributing agency shall distribute donated foods to the State agency which is designated by the State to administer the Commodity Supplemental Food Program for that State and which has entered into a written agreement with the Department for the administration of that program in accordance with 7 CFR Part 247, the regulations for that program. The State agency administering the Commodity Supplemental Food Program shall distribute donated foods to local agencies for use by eligible recipients in accordance with the provisions of 7 CFR Part 247 and with the provisions of this Part, and may enter into an agreement with the distributing agency for use of the distributing agency's facilities for distribution.

(b) *Quantities of donated foods.* Distribution of donated foods to the designated State agencies for the Commodity Supplemental Food Program shall be made on the basis of each State agency's quarterly estimate of need.

(c) *Types of donated foods authorized for donation.* State agencies distributing donated foods through the Commodity Supplemental Food Program are eligible to receive such foods under section 32, section 416, section 709 and section 4(a).

§ 250.46 Food Distribution Program in the Trust Territory of the Pacific Islands.

(a) *Distribution.* The distributing agency shall make donated foods available for distribution to households in the Trust Territory of the Pacific Islands by those welfare agencies which certify households in accordance with a plan of operation approved by FNS, as required by paragraph (d) of this section. Distribution of donated foods to households shall be made in accordance with the approved plan of operation.

(b) *Quantities and value of donated foods.* Distribution of donated foods shall be based on the actual number of households in need of food assistance.

(c) *Types of donated foods authorized for donation.* Agencies which make distribution to needy persons are eligible to receive foods under section 416, section 32, section 709 and section 4(a).

(d) *Plan of operation.* Prior to making distribution to agencies or households, the distributing agency shall submit a plan of operation for approval by the appropriate FNSRO. Such plans shall incorporate the procedures and methods to be used in certifying households in need of food assistance, in making distribution to households, and in providing a fair hearing to households whose claims for food assistance under the plan are denied or are not acted upon with reasonable promptness, or who are aggrieved by an agency's interpretation of any provision of the plan. No amendment to the plan of operation of the distributing agency shall be made without prior approval of FNS, and FNS may require amendment of any plan as a condition of continuing approval. The distributing agency shall require welfare agencies making distribution to households to conduct distribution programs in accordance with all provisions of the plan of operation. At a minimum, the plan shall include the following:

(1) The name of the public welfare agency or agencies which will be responsible for certification of households;

(2) The manner in which donated food will be distributed, including, but not limited to, the identity of the agency that will distribute donated foods, the storage and distribution facilities to be used and the method of financing;

(3) *The specific criteria to be used in certifying households as in need of food assistance.* The income and resource standards establishes by the distributing agency for use by welfare agencies in determining the eligibility of applicant households, after October 1979, shall continue to be those standards used as of that date which were incorporated in a plan of operation approved by FNS, unless an amendment to such standard is required or approved by FNS;

(4) The method or methods that will be used to verify the information upon which the certification of eligibility is based, including the kinds of documentary evidence that applicants are required to furnish to obtain certification;

(5) Provisions for periodically reviewing the certifications of households to discover any change in their status which would necessitate a change in the determination of eligibility. The eligibility of households shall be reviewed at least every three months, except that such reviews may be made at longer periods, not to exceed 12 months, provided that such longer periods are based upon a determination by the certifying agency that the income and resources available to such households will probably remain essentially unchanged during such period;

(6) Provisions for identifying each person who has been designated to receive donated foods for a household;

(7) Assurance that the distribution of donated foods shall not be used as a means to further the political interest of any individual or party, and that there shall be no discrimination against recipients of donated foods because of race, color, national origin, sex, age or handicap;

(8) Assurance that:

(i) Citizenship or durational residence requirements shall not be imposed as a condition of eligibility and

(ii) Recipients shall not be required to make any payments in money, materials or services, for or in connection with the receipt of donated foods, and that they shall not be solicited in connection with the receipt of donated foods for voluntary cash contributions for any purpose;

(9) The manner in which the distributing agency plans to supervise the program; and

(10) Definitions of any terms used which cannot be determined by reference to Webster's New International Dictionary (third edition).

(e) *Operating expense funds*—(1) *Application for funds.* To receive administrative funds, the distributing agency shall submit Form AD-623, "Application for Federal Assistance," to the appropriate FNSRO at least three months prior to the beginning of the Federal fiscal year. Approval of the application by FNS shall be a prerequisite to payment of any funds to the distributing agency. The Department will make payments to the distributing agency to assist it in meeting operating expenses incurred in administering food distribution for needy persons.

(2) *Availability of funds.* FNS will review and evaluate the budget information submitted by the distributing agency in relationship to the distributing agency's plan of operation and any other factors which may be relevant to FNS' determination as to whether the estimated expenditures are reasonable and justified. FNS will give written notification to the distributing agency of:

(i) Its approval or disapproval of any or all of the estimated expenditures; and

(ii) The amount of funds which will be made available.

(3) *Payment of funds.* Payments shall be made to the distributing agency through a Letter of Credit or an advance by Treasury Check. These payments will be issued in accordance with Treasury Department procedures, Treasury Circular No. 1075 and through the appropriate Treasury Regional Disbursing Office (RDO).

(4) *Use of funds.* The distributing agency shall make every reasonable effort to ensure the availability of a food distribution program for needy persons in households and shall assign priority in the use of any funds received under this Section to accomplish that objective. Any remaining funds shall be used to expand and improve distribution to needy households. Such funds may be used for any costs which are not disallowed under Office of Management and Budget Circular A-87 (a copy of which may be obtained from FNS) and which are incurred in distributing donated foods to households, including determining eligibility of recipients, except for the purchase cost of land and buildings. In no event shall such funds be used to pay any portion of any expenses if reimbursement or payment therefore is claimed or made available from any other Federal source.

(5) *Accounting for funds.* The distributing agency which receives administrative funds under this Section shall establish and maintain an effective system of fiscal control and accounting procedures. The accounting procedures maintained by the distributing agency shall be such as to accurately reflect the receipt, expenditure and current balance of funds provided by FNS. The accounting procedures shall also provide for segregation of costs specifically identifiable to the Food Distribution Program from any other costs incurred by the distributing agency. Any budget revisions by the distributing agency which require the transfer of funds from an FNS approved cost category to another shall be in accordance with the budget revision procedures set forth in 7 CFR Part 3015 and shall be approved by FNS prior to any transfer of funds.

(6) *Return, reduction and reallocation of funds.* (i) FNS may require the distributing agency to return prior to the end of the Federal fiscal year any or all unobligated funds received under this section, and may reduce the amount it has apportioned or agreed to pay to the distributing agency if FNS determines that:

(A) The distributing agency is not administering the Food Distribution Program in accordance with its plan of operation approved by FNS and the provisions of this Part;

(B) The amount of funds which the distributing agency requested from FNS is in excess of actual need, based on reports of expenditures and current projections of program needs; or

(C) Circumstances or conditions justify the return, reallocation or transfer of funds to accomplish the purposes of this Part.

(ii) The distributing agency shall return to FNS within 90 days following the close of each Federal fiscal year any funds received under paragraph (e) of this section which are obligated at that time.

(7) *Financial reports.* The distributing agency shall submit quarterly and annual reports to FNS on Form SF-269 concerning the obligations, expenditure and status of funds received under this

Section. In addition, the distributing agency receiving funds under paragraph (e) of this section shall submit any other reports in such form as may be required from time to time by the Department.

(f) *Records, reports and audits.* The distributing agency shall:

(1) Maintain and retain for three years from the close of the Federal fiscal year to which they pertain, complete and accurate records of all amounts received and disbursed under paragraph (e) of this section,

(2) Keep such accounts and records as may be necessary to enable FNS to determine whether there has been compliance with this Section, and

(3) Permit representatives of the Department and of a General Accounting Office of the United States to inspect, audit and copy such records and accounts at any reasonable time.

§ 250.47 Food Distribution Program on Indian Reservations.

Distribution. (a) Distributing agencies which operate a food distribution program on Indian reservation shall comply with the provisions set forth in §§ 250.1, 250.2, 250.3, 250.10, 250.11, 250.12, 250.13 (with the exception of paragraph (d)(2)), §§ 250.14 and 250.15 to the extent that these provisions are not inconsistent with the regulations cited in paragraph (b) of this section. (b) In addition to complying with the provisions identified in paragraph (a) of this section, distributing agencies shall also comply with the provisions set forth in Part 253, Food Distribution Program on Indian Reservations or Part 254, Food Distribution Program in Oklahoma, as applicable.

§ 250.48 School food authorities and commodity schools.

(a) *Distribution.* School food authorities which participate in the National School Lunch Program or as commodity schools under Part 210 of this chapter or the School Breakfast Program under Part 220 of this chapter are eligible to receive donated foods. The distributing agency shall distribute donated foods only to those school food authorities whose eligibility for participation in the program has been confirmed in writing by the State agency or FNSRO administering the applicable program. Lists of participating school food authorities which have been provided to the distributing agency by the administering State agency or FNSRO may serve as written confirmation of eligibility. School food authorities may employ food service management companies to conduct food service operations in accordance with § 250.12(c) and Parts 210 and 220 of this chapter.

(b) *Quantities and value of donated foods.*—(1) *Quantities.* Distribution of donated foods to school food authorities which participate in the National School Lunch Program or as commodity school under Part 210 shall be made on the basis of the average daily number of meals by type to be served which meet the meal-type requirements prescribed in the regulations for the National School Lunch Program under Part 210 of this chapter, as evidenced by the most recent estimate of the average daily numbers of meals which must be provided by the administering State agency or FNSRO to the distributing agencies as early as practicable each school year but not later than September 1, as revised to reflect additions or deletions of eligible schools and any necessary adjustment in the number of meals served.

(2) *Value.* (i) For each school year, the national average value of donated foods to be made available to States for distribution to school food authorities participating in the National School Lunch Program (7 CFR Part 210), or where applicable, cash payments in lieu thereof, shall not be less than 11 cents for each lunch and shall be adjusted on July 1, 1982, and on each July 1 thereafter, to reflect changes in the Price Index for food used in schools and institutions as prescribed by Section 6(e) of the National School Lunch Act, as amended. These adjustments shall be computed to the nearest one-fourth cent and shall be made effective as of the beginning of each school year. Not less than 75 percent of the food distribution assistance shall be in the form of donated foods.

(ii) For each school year, the national average value of donated foods to be provided to States for distribution to commodity schools shall not be less than the amount specified in paragraph (b)(2)(i) of this section, plus an amount equal to the national average payment established under section 4 of the National School Lunch Act, as amended, for each lunch served by such schools: *Provided, however:* That this amount shall be reduced to the extent that FNS provides up to 5 cents per lunch of this value in cash in lieu of donated foods for donated food processing and handling expenses on behalf of such school food authorities in accordance with Part 240 of this chapter.

(c) *Cash in lieu of donated foods for schools.* Where a State has phased out its food distribution facilities prior to July 1, 1974, such State may, in accordance with Part 240 of this chapter, elect to receive cash payments in lieu of donated foods for use in school lunch programs which participate in the National School Lunch Program under Part 210 of this chapter.

(d) *Types of donated foods authorized for donation.* School food authorities which participate in the National School Lunch Program or as commodity schools under Part 210 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14. School food authorities which participate in the School Breakfast Program under Part 220 are eligible to receive donated foods under section 416, section 32, section 709 and section 14.

(e) *Refusal of donated foods by school food authorities.* (1) Any school food authority participating in food service programs under the National School Lunch Act, as amended, may refuse, at the time they are offered, donated foods and other foods offered for delivery for lunches in any school year if such foods cannot be used effectively. The school food authority may receive, in lieu of the refused donated foods, other donated foods to the extent that they are available during the school year: *Provided, however:* That not more than 20 percent of the value of the donated foods offered to a school food authority for lunches during the school year shall be subject to replacement with other available donated foods unless replacement based on the refusal of more than 20 percent of such value is feasible and practical. Prior to making distribution to school food authorities, distributing agencies shall notify each school food authority of its right to refuse delivery and to receive other donated foods, if available, in lieu of those refused. Notification of donated food refusal rights shall be provided by means of a letter or by an addendum to the agreement required by § 250.12(b) to each school food authority prior to the beginning of each school year.

(2) If the distributing agency demonstrates on the basis of existing records that it is maintaining an effective offer-and-acceptance system as defined in § 250.3, there can be no refusal of donated foods as provided in paragraph (e)(1) of this section.

(f) *Use of donated foods in home economics courses.* School food authorities receiving donated foods under this Part may use such foods for the purpose of training students in home economics, including college students if the same facilities and instructors are used for training both high school and college students in home economics courses. Home economics includes classes in general home economics, food purchases, nutrition, food preparation, cooking, child care and health.

§ 250.49 Nonresidential child care institutions.

(a) *Distribution.* The distributing agency shall distribute donated foods only to those nonresidential child care institutions whose eligibility for participation in Child Care Food Program has been confirmed in writing by the State agency of FNSRO administering the program, where applicable. Lists of participating nonresidential child care institutions which have been prepared by the administering State agency or FNSRO may serve as written confirmation of eligibility. Nonresidential child care institutions may employ food service management companies to conduct food service operations in accordance with § 250.12(c) and Part 226 of this chapter.

(b) *Quantities and value of donated foods.* (1) *Quantities.* Distribution of donated foods to nonresidential child care institutions shall be made on the basis of the average daily number of lunches and suppers to be served which meet the meal-type requirements prescribed in the regulations for the Child Care Food Program under Part 226 of this chapter, as evidenced by the most recent written caseload factor information which must be provided by the administering State agency or FNSRO to the distributing agency not later than June 1 each year.

(2) *Value.* For each school year, the national average value of donated foods to be made available to States for distribution to nonresidential child care institutions, or cash payments in lieu thereof, shall not be less than 11 cents for each lunch and supper and shall be adjusted on July 1, 1982, and on each July 1 thereafter, to reflect changes in the Price Index for food used in schools and institutions as prescribed by section 6(e) of the National School Lunch Act, as amended. These adjustments shall be computed to the nearest one-fourth cent and shall be made effective at the beginning of each school year.

(c) *Cash in lieu of donated foods.* In accordance with Part 240 of this chapter, State agencies may elect to receive cash payments in lieu of donated foods for use by institutions which participate in the Child Care Food Program under Part 226 of this chapter.

(d) *Types of donated foods authorized for donations.* Nonresidential child care institutions which participate in the Child Care Food Program under Part 226 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14.

§ 250.50 Service institutions.

(a) *Distribution.* The distributing agency shall distribute donated foods only to those service institutions whose eligibility to receive donated foods for use in the Summer Food Service Program for Children under Part 225 of this chapter has been confirmed in writing by the State agency or FNSRO administering the program, where applicable. Lists of participating service institutions which have been prepared by the administering State agency or FNSRO may serve as written confirmation of eligibility.

(b) *Quantities and value of donated foods.* Distribution of donated foods to service institutions shall be made on the basis of the average daily number of meals by type to be served which meet the meal-type requirements prescribed in the regulations for the Summer Food Service Program for Children under Part 225 of this chapter as evidenced by the most recent written caseload factor information which must be provided by the State agency or FNSRO administering the program to the distributing agency by June 1 of each year.

(c) *Types of donated foods authorized for donation.* Service institutions which participate in the Summer Food Service Program for Children under Part 225 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, and section 14.

§ 250.51 Special Supplemental Food Program for Women, Infants and Children.

(a) *Distribution.* At the request of the State agency responsible for administering the Special Supplemental Food Program for Women, Infants and Children (WIC Program) under part 246 of this chapter and with approval of the Department, donated foods may be made available for distribution to program participants. In instances when donated foods are made available, State agencies shall pay the Department using funds allocated to the State for the WIC Program for those donated foods which are provided to participants as part of the food package. Donated foods which are provided to participants in addition to the quantities authorized for the food package will be made available to the State agency free of charge.

(b) *Quantities and value of donated foods.* Distribution of donated foods to State agencies for the WIC Program shall be made on the basis of each State agency's quarterly estimate of need.

(c) *Types of donated foods authorized for donation.* State agencies participating in the WIC Program under Part 246 of this chapter are eligible to receive donated foods under section 416 and section 32.

Subpart E—Where to Obtain Information

§ 250.60 Program information.

Interested persons desiring information concerning the program may make written request to the following Regional Offices:

(a) Northeast Region, Food and Nutrition Service, USDA, 10 Causeway Street, Boston, Massachusetts 02222–1065 for the following States: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont.

(b) Mid-Atlantic Region, Food and Nutrition Service, USDA, Mercer Corporate Park, Corporate Blvd., CN 02150, Trenton, New Jersey 08650, for the following States: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands and West Virginia.

(c) Southeast Region, Food and Nutrition Service, USDA, 1100 Spring Street, NW, Atlanta, Georgia 30367, for the following States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.

(d) Midwest Region, Food and Nutrition Service, USDA, 50 East Washington Street, Chicago, Illinois 60602, for the following States: Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.

(e) Mountain Plains Region, Food and Nutrition Service, USDA, 2420 West 26th Avenue, Room 430–D, Denver, Colorado 80211, for the following States: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.

(f) Southwest Region, Food and Nutrition Service, USDA, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75242, for the following States: Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

(g) Western Region, Food and Nutrition Service, USDA, 550 Kearney Street, Room 400, San Francisco, California 94108 for the following States: Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory and Washington.

Dated: May 25, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88–12220 Filed 6–2–88; 8:45 am]

BILLING CODE 3410-30-M