§ 251.10 Miscellaneous provisions.

(a) Records—(1) Commodities. State agencies, subdistributing agencies (as defined in §250.3 of this chapter), and eligible recipient agencies must maintain records to document the receipt, disposal, and inventory of commodities received under this part that they, in turn, distribute to eligible recipient agencies. Such records must be maintained in accordance with the requirements set forth in §250.16 of this chapter. Eligible recipient agencies must sign a receipt for program commodities which they receive under this part for distribution to households or for use in preparing meals, and records of all such receipts must be maintained.

(2) Administrative funds. In addition to maintaining financial records in accordance with 7 CFR part 3016, State agencies must maintain records to document the amount of funds received under this part and paid to eligible recipient agencies for allowable administrative costs incurred by such eligible recipient agencies. State agencies must also ensure that eligible recipient agencies maintain such records.

(3) Household information. Each distribution site must collect and maintain on record for each household receiving TEFAP commodities for home consumption, the name of the household member receiving commodities, the address of the household (to the extent practicable), the number of persons in the household, and the basis for determining that the household is eligible to receive commodities for home consumption.

(4) Record retention. All records required by this section must be retained for a period of 3 years from the close of the Federal Fiscal Year to which they pertain, or longer if related to an audit or investigation in progress. State agencies may take physical possession of such records on behalf of their eligible recipient agencies. However, such records must be reasonably accessible at all times for use during management evaluation reviews, audits or investigations.

(b) Commodities not income. In accordance with section 206 of Pub. L. 98–8, as amended, and notwithstanding any other provision of law, commodities distributed for home consumption and meals prepared from commodities distributed under this part shall not be considered income or resources for any purposes under any Federal, State, or local law.

(c) Nondiscrimination. There shall be no discrimination in the distribution of foods for home consumption or availability of meals prepared from commodities donated under this part because of race, color, national origin, sex, age, or handicap.

(d) Reports—(1) Submission of Form FNS–667. Designated State agencies must identify funds obligated and disbursed to cover the costs associated with the program at the State and local level. State and local costs must be identified separately. The data must be identified on Form FNS–667, Report of Administrative Costs (TEFAP) and submitted to the appropriate FNS Regional Office on a quarterly basis. The quarterly report must be submitted no later than 30 calendar days after the end of the quarter to which it pertains. The final report must be submitted no later than 90 calendar days after the end of the fiscal year to which it pertains.

(2) Reports of excessive inventory. Each State agency must complete and submit to the FNS Regional Office reports to ensure that excessive inventories of donated foods are not maintained, in accordance with the requirements of §250.17(a) of this chapter.

(e) State monitoring system. (1) Each State agency must monitor the operation of the program to ensure that it is being administered in accordance with Federal and State requirements. State agencies may not delegate this responsibility.

(2) Unless specific exceptions are approved in writing by FNS, the State agency monitoring system must include:

(i) An annual review of at least 25 percent of all eligible recipient agencies which have signed an agreement with the State agency pursuant to
§ 251.10

§ 251.2(c), provided that each such agency must be reviewed no less frequently than once every four years; and
(ii) An annual review of one-tenth or 20, whichever is fewer, of all eligible recipient agencies which receive TEFAP commodities and/or administrative funds pursuant to an agreement with another eligible recipient agency. Reviews must be conducted, to the maximum extent feasible, simultaneously with actual distribution of commodities and/or meal service, and eligibility determinations, if applicable. State agencies must develop a system for selecting eligible recipient agencies for review that ensures deficiencies in program administration are detected and resolved in an effective and efficient manner.

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

(4) Upon concurrence by FNS, reviews of eligible recipient agencies which have been conducted by FNS Regional Office personnel may be incorporated into the minimum coverage required by paragraph (e)(2) of this section.

(5) If deficiencies are disclosed through the review of an eligible recipient agency, the State agency must submit a report of the review findings to the eligible recipient agency and ensure that corrective action is taken to eliminate the deficiencies identified.

(f) Limitation on unrelated activities.

(1) Activities unrelated to the distribution of TEFAP foods or meal service may be conducted at distribution sites as long as:
(i) The person(s) conducting the activity makes clear that the activity is not part of TEFAP and is not endorsed by the Department;
(ii) The person(s) conducting the activity makes clear that cooperation is not a condition of the receipt of TEFAP commodities for home consumption or prepared meals containing TEFAP commodities (cooperation includes contributing money, signing petitions, or conversing with the person(s)); and
(iii) The activity is not conducted in a manner that disrupts the distribution of TEFAP commodities or meal service.

(2) Eligible recipient agencies and distribution sites shall ensure that activities unrelated to the distribution of TEFAP foods or meal service are conducted in a manner consistent with paragraph (f)(1) of this section.

(3) Termination for violation. Except as provided in paragraph (f)(4) of this section, State agencies shall immediately terminate from further participation in TEFAP operations any eligible recipient agency that distributes or permits distribution of materials in a manner inconsistent with the provisions of paragraph (f)(1) of this section.

(4) Termination exception. The State agency may withhold termination of an eligible recipient agency’s or distribution site’s TEFAP participation if the State agency cannot find another eligible recipient agency to operate the distribution in the area served by the violating organization. In such circumstances, the State agency shall monitor the violating organization to ensure that no further violations occur.

(g) Use of volunteer workers and non-USDA commodities. In the operation of the Emergency Food Assistance Program, State agencies and eligible recipient agencies shall, to the maximum extent practicable, use volunteer workers and foods which have been donated by charitable and other types of organizations.

(h) Maintenance of effort. The State may not reduce the expenditure of its own funds to provide commodities or services to organizations receiving funds or services under the Emergency Food Assistance Act of 1983 below the level of such expenditure existing in
the fiscal year when the State first
began administering TEFAP, or Fiscal
Year 1988, which is the fiscal year in
which the maintenance-of-effort re-
quirement became effective, whichever
is later.

(i) Data collection related to eligible re-
cipient agencies. (1) Each State agency
must collect data related to eligible re-
cipient agencies that have an agree-
ment with the State agency to partici-
pate in the program for each of Federal
fiscal years 2006 through 2009, including
those eligible recipient agencies that
participated only for part of the fiscal
year. Such data shall include:

(i) The name of each eligible recipi-
ent agency;

(ii) The city in which each partici-
pating eligible recipient agency was
headquartered and the name of the state;

(iii) The amount of funds provided to
the participating organization, i.e., the
sum of the amount of federal adminis-
trative funds plus the value of the com-
modities purchased under Section 214
of the Emergency Food Assistance Act
of 1983 provided to each participating
eligible recipient agency; and

(iv) The type of participating organi-
zation, e.g., government agency, edu-
cational institution, non-profit organi-
zation/ secular, non-profit organization/
faith-based, and “other.”

(2) On or before August 31, 2007, and
each subsequent year through 2010,
State agencies must report to FNS
data as specified in paragraph (i)(1) of
this section for the prior Federal fiscal
year. State agencies must submit this
data in a format designated by FNS.

(Approved by the Office of Management and
Budget under control number 0584–0313)

§ 252.2 Definitions.
The terms used in this part that are
defined in §§ 250.3 and 251.3 shall have
the meanings ascribed to them therein,
except as set forth in this section.

Agreement value of the donated com-
modity means the price assigned by the
Department to a donated food which
reflects the Department’s current ac-
quision price, transportation and, if
applicable, processing costs related to
the food.