

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Part 250

RIN 0584-AB55

Food Assistance in Disaster and Distress Situations

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the provisions of the Food Distribution Program Regulations that relate to food assistance provided in response to Presidentially declared disasters and emergencies and in other situations of distress. The proposals contained in this rule address: (1) Simultaneous issuance of commodities and food stamps in a disaster; (2) distribution of commodities to households in situations of distress; (3) authorization for providing commodity assistance; (4) reporting requirements; and (5) the replacement of commodities. In addition, revised definitions are being proposed which encompass the definitions contained in the Robert T. Stafford Disaster Relief and Emergency Assistance Act. These revisions will help ensure that commodity assistance is made available to victims of disasters and to those in situations of distress in the most efficient and effective manner possible while maintaining the integrity of the program.

DATES: To be assured of consideration, comments must be postmarked on or before February 6, 1996.

ADDRESSES: Comments should be sent to: Lillie Ragan, Section Head, Household Programs Section, Policy and Program Development Branch, Food Distribution Division, Food and

Consumer Service, U.S. Department of Agriculture, Park Office Center, Room 502, 3101 Park Center Drive, Alexandria, Virginia 22302-1594.

Comments in response to this rule may be inspected at 3101 Park Center Drive, Room 502, Alexandria, Virginia, during normal business hours (8:30 a.m. to 5 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan at the above address or telephone (703) 305-2661.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The Administrator of the Food and Consumer Service (FCS) has certified that this action will not have a significant economic impact on a substantial number of small entities. The primary impact of the procedures in this rulemaking would be on FCS Regional Offices, State governments and individuals who might apply for disaster or distress commodity benefits. To the extent that county or other local governments assist in the distribution of commodities at a disaster or distress feeding site, they would also be affected.

Executive Order 12372

These programs are listed in the Catalog of Federal Domestic Assistance under 10.550 and are 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 notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Information Collection

This proposed rule contains information collection requirements which are subject to review and

approval by the Office of Management and Budget (OMB). As required by section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), FCS has submitted a copy of this proposed rule to OMB for review of these information collection requirements. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens.

Title: Commodity Assistance to Households in Disasters and Situations of Distress.

Description: In instances when the Food Stamp Program is in operation and commodities are being made available for distribution to households, this proposed rule increases the reporting and recordkeeping burden by requiring the collection of the following minimal information from each household receiving commodities during Presidentially declared disasters and other situations of distress: (1) name of one household member; (2) address; (3) number of persons in the household; and (4) a signed statement of assurance that the household is not receiving food stamp benefits. Such information is necessary in that it can be used by local organizations involved in the distribution of commodities to determine if a household is receiving food stamp benefits, thus significantly reducing the possibility of both food stamp and commodity assistance being provided to households simultaneously.

The reporting and recordkeeping requirements identified below have been submitted to OMB for approval and are not effective until such approval is obtained. The new information collection requirements will not become effective until OMB has assigned a control number. Current reporting and recordkeeping requirements for disaster assistance were approved under Control Number 0584-0037.

Description of Respondents: Relief organizations, households receiving commodities for home consumption in Presidentially declared disasters and other situations of distress when the situation warrants.

FOOD ASSISTANCE IN DISASTER AND DISTRESS SITUATIONS DESCRIPTION OF RESPONDENT'S ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section 7 CFR part	Annual Number respondents	Annual frequency response	Average burden per hours	Annual burden
7 CFR 250.43:				
Previous	0	0	0	0
Proposed	1000	1	.020	20
7 CFR 250.44:				
Previous	0	0	0	0
Proposed	1000	1	.020	20

Total Previous Burden Hours: 0; Total Proposed Burden Hours: 66; Total Difference: +66.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of the preamble of the final rule. All available administrative procedures must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Background

On October 13, 1994, the President signed the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. 103-354. One of the provisions of the Act eliminated the Food and Nutrition Service (FNS) and replaced it with the Food and Consumer Service (FCS). Therefore, references to FNS throughout this proposed rule have been changed to FCS. References to FNS in the remainder of 7 CFR Part 250 will be changed through rulemaking at a later date.

The Department makes commodities available for use in providing food assistance to victims of disasters and emergencies, and to those in situations of distress, in accordance with authority contained in several statutes. Donated commodities are made available for use in providing food assistance to victims of Presidentially declared disasters and emergencies in accordance with the provisions contained in sections 412 and 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (DREAA). DREAA was formerly known as "The Disaster Relief Act of 1974." It was amended and its title changed to DREAA by Public Law 100-707 (November 23, 1988), the Disaster Relief and Emergency Assistance Amendments of 1988.

Donated commodities are made available for use in non-Presidentially declared emergencies (i.e., situations of distress) in accordance with section 32 of the Act of August 24, 1935, section 416 of the Agricultural Act of 1949, and section 4(a) of the Agriculture and Consumer Protection Act of 1973.

The regulations governing the Food Distribution Program (7 CFR Part 250) outline the responsibilities of FCS and distributing agencies with regard to the distribution of donated commodities during a disaster or emergency, and in situations of distress.

As discussed in detail below, some proposals contained in this proposed rule reflect amendments which have been made to the authorizing legislation. This proposed rule also includes regulatory changes recommended by the Task Force for Disaster Preparedness established by the Department of Agriculture (USDA or Department) in response to issues which arose in the course of providing food assistance to victims of several disasters and other types of emergencies in the past several years. The Task Force was comprised of representatives from USDA, the Federal Emergency Management Agency (FEMA), private national organizations such as the Red Cross, and State and local agencies. One of the objectives of the Task Force was to identify current Federal disaster policies that are in need of revision. Regulatory amendments embodying Task Force recommendations are proposed in this rule under the discretionary authority granted to the Secretary by section 32 of the Act of August 24, 1935, section 416 of the Agricultural Act of 1949, and the DREAA. The discretionary changes are part of the Department's effort to ensure that commodity assistance is made available to victims of disasters, emergencies and situations of distress in the most efficient and effective manner possible while maintaining the integrity of the program.

Definitions

Section 250.3 of the current regulations contains definitions of "Emergency" and "Major Disaster" derived from the Disaster Relief Act of 1974 (now "DREAA"). Pub. L. 100-707 amended the Disaster Relief Act of 1974 to revise these definitions.

The DREAA defines "Emergency" as "any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States."

A "Major Disaster" is defined under the DREAA as "any natural catastrophe (including any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought), or, regardless of cause, any fire, flood, or explosion, 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 DREAA 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."

The majority of the general public is not familiar with the specific terms contained in the DREAA (i.e. "Emergency" and "Major Disaster"). Furthermore, this rulemaking establishes no distinctions between the situations these terms represent regarding types of benefits or procedures for authorizing, utilizing, reporting on utilization of, or replacing commodities. Therefore, this rule proposes to: (1) add to Section 250.3 the term "Disaster," which would incorporate the definitions of "Emergency" and "Major Disaster" contained in the DREAA; and (2) delete the terms "Emergency" and "Major

Disaster" currently contained in Section 250.3. These proposed revisions would not impact on program operations or benefits in any way.

The key distinction between disasters and situations of distress with regard to food assistance is whether a Presidential declaration is made. However, there is no definition of "Situation of Distress" under Section 250.3 of the current regulations to make this distinction immediately clear.

Therefore, this rule also proposes to amend Section 250.3 to add a definition for "Situation of Distress." Under this proposal, a "Situation of Distress" is defined as "(1) a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other natural catastrophe not declared by the President to be an emergency or disaster, but which, in the judgment of a State distributing agency, warrants the use of USDA commodities for congregate feeding; and (2) any other situation not declared by the President to be an emergency or disaster, but which, in the judgment of FCS, warrants the use of USDA commodities for congregate feeding or household distribution." This proposed definition will: (1) clarify that a situation of distress lacks a Presidential declaration; and (2) clearly identify those situations in which State distributing agencies can independently initiate USDA commodity assistance, on the one hand, and those in which prior approval by FCS is required.

Reference to the Disaster Relief Act of 1974

The Disaster Relief Act of 1974 is referenced in Sections 250.43(a) and 250.43(e) of the current regulations. Following publication of the regulations, the Disaster Relief Act of 1974 was amended and renamed the DREAA. Therefore, this rule proposes to amend Section 250.43(e) to remove the outdated reference and replace it with a reference to the DREAA, and proposes to remove all reference to any statutory authority in Section 250.43(a) since such reference is unnecessary.

Distribution of Commodities to Households in Presidentially Declared Disaster Areas

This section of the preamble addresses "disasters," the proposed definition for which encompasses only situations in which a Presidential declaration has been issued. "Situations of distress," proposed to be defined as situations lacking a Presidential

declaration, are discussed later in this preamble.

On August 19, 1985, an overall revision of Part 250 was published as a proposed rule in the Federal Register (50 FR 33470). Section 250.43 of the proposed rule limited the distribution of commodities to households residing in areas served by the Food Stamp Program to those instances in which commercial channels of trade have been disrupted due to a major disaster or emergency.

Approval of requests to make commodities available for distribution to households was made contingent upon commercial channels of trade having been disrupted because it is in these circumstances that households would have no way of using food stamps. Thus, such a contingency would ensure that commodity and food stamp assistance would not be provided in any area simultaneously, thereby eliminating any possibility of households receiving dual benefits.

In general, commenters on the proposed rule of August 1985 opposed limiting the distribution of commodities to households in this manner. However, the interim rule published in the Federal Register on June 3, 1988, (53 FR 20416) retained the provision as proposed on the premise that in instances in which commercial channels of trade are intact, nutritional needs of disaster victims can be met through the Food Stamp Program.

Since implementation of the interim rule, several disasters have occurred in response to which the Department provided food assistance. This experience, and recommendations of the Task Force for Disaster Preparedness, have led the Department to reevaluate the current regulatory provisions. While the Department still believes that the Food Stamp Program should be the primary food assistance program for disaster victims whenever commercial channels of trade are intact, it also acknowledges that there are instances in which such facilities remain in operation yet are inaccessible to some disaster victims. For example, where roads have been heavily damaged or flooded, some individuals residing in households in that area may not be able to reach food stamp certification offices or local grocery stores. They may, however, have access to emergency commodity distribution sites strategically located in response to the specific situation.

Therefore, in accordance with the discretionary authority provided under the DREAA, to facilitate reasonable access to food assistance for all disaster victims, this rule proposes to amend Section 250.43 of the current regulations

to establish FCS's authority to permit distribution of commodities to households regardless of whether commercial channels of trade have been disrupted or the Food Stamp Program is in operation in instances in which such distributions are warranted. However, the Department believes that most disaster situations will not warrant the simultaneous operation of the Food Stamp Program and a household commodity distribution program in the same area.

Submission of Requests

Section 250.43(c) of the current regulations requires that distributing agencies submit requests to the appropriate FCS Regional Office (FCSRO) for approval prior to making commodities available for distribution to households. However, the process for approving such requests has not been clearly understood.

While the regulations require submission of such requests to the appropriate FCSRO, the requests are forwarded to FCS Headquarters for actual approval. In an effort to eliminate any confusion regarding the approval process, this rule proposes to revise Section 250.43(c) to require that requests be submitted to the FCSRO for forwarding to FCS for approval. Since the FCSRO is typically very close to or on the scene of a disaster, the FCSRO will be expected to submit a recommendation to FCS along with the application for use in making appropriate determinations. In addition, this rule proposes to revise this section to clarify the information currently required to be submitted as part of such requests.

This rule also proposes to apply information requirements established under current rules for approval to make household distributions in situations when commercial channels of trade have been disrupted to situations in which commercial channels are intact. The proposal would also establish additional requirements in both types of situations. In addition to the information distributing agencies are currently required to submit when requesting approval for the distribution of commodities to households, requests would be required to include, at a minimum, the following information: (1) An explanation as to why the distribution of commodities to households is warranted; (2) identification of the specific area(s) included in the request; (3) a statement of assurance that simultaneous food stamp and commodity assistance will not be provided to individual households; and (4) a description of the

system that will be implemented to prevent dual participation.

Submission of such information is necessary in order for FCS to determine if the situation warrants the simultaneous distribution of food stamps and commodities and to ensure that the State has a viable system to prevent dual benefits from being provided to households.

Collection of Household Information

While various forms have been developed by States for use in collecting household data, current regulations contain no provisions concerning the collection of information from households for the receipt of donated foods during a disaster. Under the provisions contained in this proposed rule, food stamp benefits can be issued and commodities distributed for home consumption in areas where it has been determined by the Department that the situation warrants such simultaneous operations. However, the Department is concerned that in such instances food stamp benefits and commodities may be provided to the same household simultaneously. In an effort to ensure that information necessary to prevent the issuance of dual benefits and for establishing and pursuing claims action is available, this rule proposes to amend section 250.43(c) to require that organizations distributing donated foods to households in areas where the Food Stamp Program is in operation obtain, at a minimum, the name of the household member applying for assistance, number of members in the household, and the household's address. Such information must be recorded in whatever format the State deems appropriate.

In addition to providing the above information, organizations distributing donated foods to households would be required to obtain a signed statement of assurance from the adult member of the household applying for benefits to the effect that the household: (1) Is in need of food assistance as a result of the disaster; (2) understands that misrepresentation of need and the sale or exchange of the donated food are prohibited and could result in a fine, imprisonment, or both; (3) is not residing in a shelter which provides food assistance; and (4) is not receiving food stamp assistance. While the intent of this signed statement is to prevent applicants from receiving duplicative food assistance benefits, it should be reasonably interpreted in the context of the individual case. For example, a household which applies for commodity assistance en route from a shelter where food assistance was provided to reoccupy its permanent residence

should not be considered to be "residing in a shelter." The signing of such statements will ensure that households understand the conditions under which the food assistance is being provided. Such statements will also provide further support for pursuing a claim against a household in instances in which both food stamp and commodity assistance were provided. Under the proposal, all signed statements must be provided to the distributing agency unless the organization distributing the commodities is an agency of the State. At the discretion of the distributing agency, non-State agencies may be assigned responsibility of retaining such statements rather than forwarding them to the State.

In instances when it is determined that claims action against a household is warranted due to the receipt of both food stamp and commodity assistance, the Department intends to pursue such action through establishment of a claim against the household for the value of the food stamps issued. This course of action is preferred since the recordkeeping requirements that would have to be imposed on a disaster organization to ensure availability of information necessary to establish a claim for the value of commodities would be significant, while recording the value of the food stamp benefit provided is already required and much less time consuming.

There have been instances in past years in which other Federal agencies have been involved in providing food assistance to disaster victims with USDA commodities. Questions were raised as to whether these agencies were subject to the requirements set forth for disaster situations. In instances in which it has been determined that the collection of certain information is necessary and the regulations contain information collection requirements, all organizations, regardless of the type, must comply with the requirements. This proposed rule will clarify that any entity, including Federal, State, and local agencies, involved in the distribution of USDA commodities must comply with all such regulatory requirements. In addition, this proposed rule will clarify that State and Federal agencies can act as a disaster organization in providing food assistance during disasters and situations of distress.

Replacement of Commodities

Section 250.43(g) of the current regulations states that USDA commodities used from the State's inventory for a major disaster or

emergency will be replaced by FCS to the extent that foods are available.

Section 413(b) of the DREAA authorizes the use of funds under section 32 of the Act of August 24, 1935, to purchase food necessary to provide adequate supplies for use in a major disaster or emergency. This rule proposes to amend paragraph (g) of Section 250.43 to reflect the statutory authority. This change will guarantee that USDA commodities used by a State for disaster assistance are replaced, provided that a timely request is submitted by the distributing agency.

Use of Commodities in Situations of Distress

The primary difference between a disaster and a situation of distress, with regard to USDA food assistance, is that a situation of distress is not of a magnitude to warrant an emergency or disaster declaration by the President. This section of the preamble addresses only such situations of distress.

Section 250.44 of the current regulations permits, upon approval by the Secretary, the distribution of donated foods to organizations for use in preparing meals in situations in which the need for food assistance cannot be met through other provisions of Part 250 regulations. Prior to the overall revision of Part 250, which was published as an interim rule in the Federal Register on June 3, 1988, (53 FR 20416), the regulations also permitted the Department to authorize distribution of commodities to households in all such situations. In drafting the overall revision, the Department decided to delete those provisions relative to household distribution in situations of distress on the premise that food assistance to households can be provided through the Food Stamp Program.

Since implementation of the interim rule, the Department has determined that the Food Stamp Program may not be able to meet the nutritional needs of all affected households in situations of distress. For example, it may not be possible for some households to obtain food stamp benefits due to certain eligibility requirements, such as resource limits on the value of vehicles, or citizenship. In addition, there may be instances in which certain areas are hard hit by a non-Presidentially declared disaster (i.e., situation of distress) and using food stamps is not feasible because commercial channels of trade in those particular areas are disrupted.

Therefore, to ensure that food assistance can be made available to households in these types of situations,

this rule proposes to revise Section 250.44 to reinstate the Department's authority to permit the distribution of commodities to households in situations of distress. This discretionary authority is afforded the Secretary under section 416 of the Agricultural Act of 1949, and section 32 of the Act of August 24, 1935.

Section 250.44 is being revised instead of Section 250.43, which sets forth provisions relative to disasters, in order to clarify and underscore the different treatment of Presidentially declared "disasters," on the one hand, and "situations of distress," on the other.

Submission of Requests

Section 250.44 of the current regulations requires that all requests for the donation of commodities for use in situations of distress be submitted for approval by the Secretary.

This rule proposes to revise Section 250.44 to delegate the authority for approving requests for the donation of commodities for use in congregate feeding to the distributing agency in instances in which the need for such assistance meets the conditions of paragraph (1) of the definition of "Situation of Distress" set forth in Section 250.3. Those instances include "a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other natural catastrophe not declared by the President to be an emergency or disaster." This delegation of authority is consistent with the delegation of authority contained in Section 250.43 for the use of commodities for congregate feeding in Presidentially declared disasters. While the Department recognizes that instances other than those included above may warrant the donation of commodities for use in preparing congregate meals, such donations should be limited to those situations where it can be determined that other traditional Federal or State assistance programs cannot meet the needs of individuals who have been adversely affected by the situation. Thus, in an effort to ensure consistency in such determinations, Section 250.44 of this rule proposes to require that requests for the donation of commodities for use in preparing congregate meals in instances when the situation of distress does not fit the above criteria be submitted for approval by FCS. Approval by FCS, instead of by the Secretary, will facilitate expeditious handling of requests, while still maintaining an appropriate level of oversight.

Section 250.44(c)(2) of this rule also proposes to require that requests for the donation of commodities for distribution to households in situations of distress, regardless of the type of situation, be submitted for approval by FCS. The proposal would require this level of approval in an effort to ensure that: (1) Such distributions are limited to situations that warrant this type of assistance; and (2) households will not be receiving food stamp and commodity assistance simultaneously.

As discussed in the Definitions section earlier in this preamble, for purposes of clarification, this rule also proposes to specify the above-described approval authorities for congregate feeding and household distribution, respectively, in the definition of "Situation of Distress" contained in Section 250.3.

This rule also proposes to amend Section 250.44 to require that organizations requesting the donation of commodities for use in congregate meal service for victims of situations of distress provide the following information to the distributing agency: (1) A description of the distress situation; (2) number of people requiring meals; (3) period of time for which the donations are being requested; and (4) quantity and types of food needed. In addition, information on the number and location of sites providing meals will be provided as sites are established.

It is imperative that this information be provided so that FCS and the distributing agency are able to determine if: (1) The donation of commodities is warranted; (2) the amount and types of commodities requested are appropriate for the situation; and (3) there is sufficient food in inventory within the State to meet the needs of the organizations. When the distributing agency has approved requests for the donation of commodities for congregate feeding in accordance with the delegation of authority prescribed above, it must forward this information to the appropriate FCSRO.

This rule proposes to revise Section 250.44 to require that requests to FCS for permission to distribute commodities to households contain, at a minimum, the following information: (1) A description of the situation; (2) an explanation as to why such distributions are warranted; (3) period of time for which the request is being made; (4) identification of the specific area(s) included in the request; (5) number of households expected to participate; (6) quantity and types of food needed; (7) a statement of

assurance that both food stamp and commodity assistance will not be provided to individual households simultaneously; and (8) a description of the system that will be implemented to prevent dual participation in the Food Stamp Program and the commodity household distribution program. In addition, information relative to the number and location of distribution sites must be provided to FCS as sites are established.

Collection of Household Information

Section 250.44 is also revised in this proposed rule to require that any entity, including Federal, State, and local agencies, involved in the distribution of USDA commodities comply with the requirements contained in Section 250.43(c) of this proposed rule regarding the collection and submission of information (i.e., household information, and statements of assurance). As with Presidentially declared disasters, this information will be used to ensure that such distributions are warranted and to enhance program accountability.

Submission of Form FNS-292

This rule proposes to incorporate in Section 250.44 a requirement that distributing agencies submit a summary report to the FCSRO using Form FNS-292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief, within 30 days following termination of the distribution period. This requirement is being incorporated to ensure timely reporting, strengthen program accountability, and facilitate timely replacement of State inventories of USDA commodities in instances in which replacement commodities are available.

Thirty-Day Restriction

Section 250.44 of the current regulations limits the distribution of commodities in situations of distress to a period of 30 days. However, it is the opinion of the Department that some situations of distress may warrant a longer distribution period. Thus, this rule proposes to amend Section 250.44 to permit the distribution of commodities for longer periods of time when the situation warrants. In instances in which the distributing agency approves the distribution of commodities for use in preparing congregate meals, such approval may be granted for a period not to exceed 30 days. Should the distributing agency determine that the situation warrants a longer distribution period, the distributing agency must submit a request to justify an extension to FCS for

approval. These provisions will afford FCS increased flexibility in responding to situations of distress, and at the same time ensure that the use of USDA commodities in these situations is warranted.

In addition, this rule proposes to clarify in Section 250.44 that the determination as to the appropriate period of time for which commodities will be made available would be subject to revision as developing circumstances dictate. In instances when the distributing agency extends the distributions within the 30-day period discussed above, it must notify the FCSRO of such extensions. Submission of this information to the FCSRO is

necessary to facilitate accurate replacement of USDA commodities, as discussed below.

Replacement of Commodities

Section 250.44 of the current regulations does not contain provisions relative to the replacement of the USDA commodities that States use to provide assistance during a situation of distress. USDA has limited funding to purchase commodities for use in providing food assistance in situations of distress, and can also donate for this use commodities purchased under price-support and surplus removal authorities. Therefore, USDA commodities that are used from the

State's inventory for a situation of distress will be replaced at the request of the distributing agency to the extent that inventories of price-support and surplus-removal commodities permit. This rule proposes to amend Section 250.44 to include this replacement policy. In addition, to ensure timely submission of requests for replacement, this rule proposes to incorporate a requirement that such requests be submitted within 30 days following termination of the distributions.

The attached chart has been included in this preamble to assist readers in understanding the basic provisions set forth in this proposed rule.

	Disaster	Situation of distress
Definition	(1) any natural catastrophe (including any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought), or, regardless of cause, any fire, flood, or explosion, in any part of the U.S., which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the DREAA 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; or (2) any other occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the U.S.	(1) a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other natural catastrophe not declared by the President to be an emergency or disaster, but which, in the judgment of the distributing agency, warrants the use of USDA commodities for congregate feeding; and (2) any other situation not declared by the President to be an emergency or disaster, but which, in the judgment of FCS, warrants the use of USDA commodities for congregate feeding or household distribution.

Food assistance authorized	Congregate feeding	Household distribution	Congregate feeding	Household distribution
Approval authority	State distributing agency.	FCS HQ	If distress situation in accordance with (1) in above definition, State distributing agency; Otherwise, FCS HQ.	FCS HQ.
Applicable sections of regulations.	250.43(b)	250.43(c)	250.44(b)	250.44(c).
Household information required.	None	Name; Address; Number in Household; Assurance Statement re: need and dual participation in food stamps; Signature (in instances when the Food Stamp Program is in operation).	None	Name; Address; Number in Household; Assurance Statement re: need and dual participation in food stamps; Signature (in instances when the Food Stamp Program is in operation).
Replacement of USDA commodities.	Yes	Yes	To the extent available	To the extent available.

List of Subjects

7 CFR Part 250

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

Accordingly, 7 CFR Part 250 is proposed to be amended as follows:

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

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

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612 note, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a-1, 1859; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

2. In Section 250.3:

- a. The definitions of *Emergency* and *Major Disaster* are removed; and
- b. definitions of *Disaster* and *Situation of Distress* are added in alphabetical order.

The additions read as follows:

§ 250.3 Definitions.

* * * * *

Disaster means:

(a) any natural catastrophe (including any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought), or, regardless of

cause, any fire, flood, or explosion, 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 and Emergency Assistance Act 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; or

(b) any other occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

* * * *

Situation of Distress means:

(a) a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other natural catastrophe not declared by the President to be an emergency or disaster, but which, in the judgment of the distributing agency, warrants the use of USDA commodities for congregate feeding; and

(b) any other situation not declared by the President to be an emergency or disaster, but which, in the judgment of FCS, warrants the use of USDA commodities for congregate feeding or household distribution.

* * * *

3. Section 250.43 is revised to read as follows:

§ 250.43 Disaster Food Assistance.

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

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

(2) *Applications.* Disaster organizations shall submit applications for the receipt and distribution of donated foods for use in providing congregate meal service to the distributing agency. Applications shall, to the extent possible, include the following information:

- (i) Description of disaster or emergency situation;
- (ii) Number of people requiring meals;
- (iii) Period of time for which commodities are requested; and
- (iv) Quantity and types of food needed for congregate meal service.

In addition, organizations shall report the number and location of sites providing congregate meal service as sites are established.

(c) *Household distribution.* (1) *Approval authority and duration.* Distributing agencies shall submit applications for the distribution of donated foods to households to the appropriate FCSRO for submission to FCS for approval. FCS will determine the length of time such donations will be made, taking into consideration the magnitude of the situation, and may extend the duration of such donations as developing circumstances dictate.

(2) *Applications.* Disaster organizations shall submit applications for the receipt and distribution of donated foods to households to the distributing agency. Applications shall, to the extent possible, include the following information:

- (i) Description of disaster or emergency situation;
- (ii) Identification of the specific area(s) included in the request;
- (iii) Number of households affected;
- (iv) Explanation as to why the distribution of commodities to households is warranted;
- (v) Anticipated distribution period;

(vi) Method of distribution available;

(vii) Quantity and types of food needed for distribution;

(viii) Statement of assurance that simultaneous food stamp and commodity assistance will not be provided to individual households; and

(ix) Description of the system that will be implemented to prevent dual participation.

Information on the number and location of sites where commodities are to be distributed shall be provided as sites are established.

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

- (i) Name of household member applying for assistance;
- (ii) Address;
- (iii) Number of household members; and
- (iv) Statement signed by the household certifying that the household:
 - (A) is in need of food assistance;
 - (B) understands that misrepresentation of need, and the sale or exchange of the donated food are prohibited and could result in a fine, imprisonment, or both;
 - (C) is not residing in a shelter which provides food assistance; and
 - (D) is not receiving food stamp assistance.

(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 organizations.

(e) *Types of donated foods authorized for donation.* Disaster organizations providing food assistance under this Section are eligible to receive donated foods under section 416, section 32, section 709, section 4(a), and sections 412 and 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5181-82).

(f) *Summary report.* Within 30 days following termination of the disaster assistance, the distributing agency shall provide a summary report to the appropriate FCSRO using Form FNS-

292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

(g) *Replacement.* The distributing agency shall request, in writing to the FCSRO, the replacement of foods used for disaster assistance within 30 days following termination of the assistance. FCS will replace donated foods used from State and/or local inventories for disaster assistance in instances when a request for replacement is submitted within the required 30 days or sufficient justification exists to waive the 30-day requirement.

4. Section 250.44 is revised to read as follows:

§ 250.44 Food Assistance in Situations of Distress.

(a) *Organizational eligibility.* In situations of distress in which needs for food assistance cannot be met under other provisions of this Part, organizations (including agencies of State and Federal government) may be eligible to receive donated foods for congregate meal service or household distribution to victims of the situation of distress. Applications submitted for the receipt and distribution of donated foods in accordance with paragraphs (b)(2) and (c)(2) of this section shall be initially submitted in writing if circumstances permit and, if not, confirmed in writing in a timely manner. Both the applications and the written approval for the use of USDA commodities shall be maintained in accordance with the recordkeeping requirements of this Part.

(b) *Congregate meal service.* (1) *Approval authority and duration.* Distributing agencies may review and approve applications for the donation of foods for use in preparing congregate meals for a period not to exceed 30 days for victims of situations of distress in instances in which the need for such assistance meets the conditions of paragraph (a) of the definition of *Situation of Distress* in Section 250.3. Following approval of a request, distributing agencies shall report the information listed in paragraph (b)(2) of this section to the appropriate FCSRO within 24 hours. In instances when the distributing agency extends the distribution period initially approved up to the 30-day limit, it shall notify the FCSRO of such extensions. Distributing agencies shall request approval from FCS, via the appropriate FCSRO, for donations to exceed 30 days. Applications for the donation of foods for congregate meals in instances other than those that meet the criteria in paragraph (a) of the definition of *Situation of Distress* in Section 250.3

shall be forwarded by the distributing agency to the appropriate FCSRO for submission to FCS for approval. FCS will determine the duration of such donations, taking into consideration the magnitude of the situation. Determinations as to the length of donations may be revised as developing circumstances dictate.

(2) *Applications.* (i) Organizations shall submit applications for the receipt and distribution of donated foods for use in providing congregate meal service to the distributing agency. Applications shall, to the extent possible, include the following information:

(A) Description of the situation of distress;

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

(C) Quantity and types of food needed.

(ii) In addition, information on the number and location of sites providing meals shall be submitted as sites are established.

(c) *Household distribution.* (1)

Approval authority and duration.

Applications for the donation of foods for distribution to households shall be forwarded by the distributing agency to the appropriate FCSRO for submission to FCS for approval. FCS will determine the duration of the donations, taking into consideration the magnitude of the situation. Such determinations may be revised as developing circumstances dictate.

(2) *Applications.* Organizations shall submit applications for the receipt and distribution of donated foods to households to the distributing agency. The distributing agency shall review and submit applications to the appropriate FCSRO. Applications shall, to the extent possible, include the following information:

(i) Description of the situation of distress;

(ii) Explanation as to why the distribution of commodities to households is warranted;

(iii) Identification of the specific area(s) included in the request;

(iv) Anticipated distribution period;

(v) Number of households expected to participate;

(vi) Quantity and types of food needed for distribution;

(vii) Statement of assurance that simultaneous food stamp and commodity assistance will not be provided to individual households; and

(viii) Description of the system that will be implemented to prevent dual participation.

In addition, information on the number and location of sites shall be provided as sites are established.

(3) *Collection of household information.* In a format prescribed by the distributing agency, any entity (i.e. Federal, State, or local) distributing donated foods to households in an area where the Food Stamp Program is in operation shall, at a minimum, collect the information listed below. Such information shall be forwarded to the distributing agency and maintained by the distributing agency in accordance with the recordkeeping requirements contained in this Part, *except* that such information may, at the discretion of the distributing agency, be maintained by the organization distributing commodities if such organization is an agency of the State government.

(i) Name of household member

applying for assistance;

(ii) Address;

(iii) Number of household members; and

(iv) Statement signed by the household certifying that the household:

(A) is in need of food assistance;

(B) understands that misrepresentation of need, and the sale or exchange of the donated food are prohibited and could result in a fine, imprisonment, or both;

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

(D) is not receiving food stamp assistance.

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

(e) *Types of donated foods authorized for donation.* Organizations providing food assistance in situations of distress are eligible to receive donated foods under section 416, section 32, section 709, and section 4(a).

(f) *Summary report.* Within 30 days following termination of the assistance, the distributing agency shall provide a summary report to the appropriate FCSRO using Form FNS-292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

(g) *Replacement.* The distributing agency shall request, in writing to the FCSRO, the replacement of foods used for a situation of distress within 30 days following termination of the assistance. FCS will replace donated foods used from State and/or local inventories for situations of distress to the extent that foods are available.

Dated: November 28, 1995.

William E. Ludwig,
Administrator.

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