

Food and Nutrition Service, USDA

§ 250.12

out-of-condition (as this term is defined in §250.2), or are not in accordance with ordered amounts. The distributing or recipient agency, or other consignee, must provide notification of the receipt of donated food shipments to FNS, through electronic means, and must maintain an electronic record of receipt of all donated food shipments.

(c) *Replacement of donated foods.* The vendor is responsible for the replacement of donated foods that are delivered out-of-condition. Such responsibility extends until expiration of the vendor warranty period included in the vendor contract with USDA. In all cases, responsibility for replacement is contingent on the determination that the foods were out-of-condition at the time of delivery. Replacement must be in-kind, unless FNS approves similar replacement (the terms in-kind and similar replacement are defined in §250.2). If FNS determines that physical replacement of donated foods is not cost-effective or efficient, FNS may:

(1) Approve payment by the vendor to the distributing or recipient agency, as appropriate, for the value of the donated foods at time of delivery (or at another value determined by FNS); or

(2) Credit the distributing agency's entitlement, as feasible.

(d) *Payment of costs relating to shipments.* The Department is responsible for payment of processing, transportation, handling, or other costs incurred up to the time of delivery of donated foods to a distributing or recipient agency, or other consignee, as the Department deems in its best interest. However, the distributing or recipient agency, or other consignee, is responsible for payment of any delivery charges that accrue as a result of such consignee's failure to comply with procedures in FNS instructions—e.g., failure to provide for the unloading of a shipment of donated foods within a designated time period.

(e) *Transfer of title.* In general, title to donated foods transfers to the distributing agency or recipient agency, as appropriate, upon acceptance of the donated foods at the time and place of delivery. Title to donated foods provided to a multi-State processor, in accordance with its National Processing

Agreement, transfers to the distributing agency or recipient agency, as appropriate, upon acceptance of the finished end products at the time and place of delivery. However, when a recipient agency has contracted with a distributor to act as an authorized agent, title to finished end products containing donated foods transfers to the recipient agency upon delivery and acceptance by the contracted distributor. Notwithstanding transfer of title, distributing and recipient agencies must ensure compliance with the requirements of this part in the distribution, control, and use of donated foods.

[81 FR 23100, Apr. 19, 2016, as amended at 83 FR 18927, May 1, 2018]

§250.12 Storage and inventory management at the distributing agency level.

(a) *Safe storage and control.* The distributing agency or subdistributing agency (which may include commercial storage facilities under contract with either the distributing agency or subdistributing agency, as applicable), must provide facilities for the storage and control of donated foods that protect against theft, spoilage, damage, or other loss. Accordingly, such storage facilities must maintain donated foods in sanitary conditions, at the proper temperature and humidity, and with adequate air circulation. The distributing agency must ensure that storage facilities comply with all Federal, State, or local requirements relative to food safety and health and procedures for responding to a food recall, as applicable, and obtain all required health inspections.

(b) *Inventory management.* The distributing agency must ensure that donated foods at all storage facilities used by the distributing agency (or by a subdistributing agency) are stored in a manner that permits them to be distinguished from other foods, and must ensure that a separate inventory record of donated foods is maintained. The distributing agency's system of inventory management must ensure that donated foods are distributed in a timely manner and in optimal condition. On an annual basis, the distributing agency must conduct a physical review of

donated food inventories at all storage facilities used by the distributing agency (or by a subdistributing agency), and must reconcile physical and book inventories of donated foods. The distributing agency must report donated food losses to FNS, and ensure that restitution is made for such losses.

(c) *Inventory limitations.* The distributing agency is subject to the following limitations in the amount of donated food inventories on-hand, unless FNS approval is obtained to maintain larger inventories:

(1) For TEFAP, NSLP and other child nutrition programs, inventories of each category of donated food may not exceed an amount needed for a six-month period, based on an average amount of donated foods utilized in that period; and

(2) For CSFP and FDPIR, inventories of each category of donated food in the food package may not exceed an amount needed for a three-month period, based on an average amount of donated food that the distributing agency can reasonably utilize in that period to meet CSFP caseload or FDPIR average participation.

(d) *Inventory protection.* The distributing agency must obtain insurance to protect the value of donated foods at its storage facilities. The amount of such insurance must be at least equal to the average monthly value of donated food inventories at such facilities in the previous fiscal year. The distributing agency must also ensure that the following entities obtain insurance to protect the value of their donated food inventories, in the same amount required of the distributing agency in this paragraph (d):

(1) Subdistributing agencies;

(2) Recipient agencies in household programs that have an agreement with the distributing agency or subdistributing agency to store and distribute foods (except those recipient agencies which maintain inventories with a value of donated foods that do not exceed a defined threshold, as determined in FNS policy); and

(3) Commercial storage facilities under contract with the distributing agency or with an agency identified in paragraph (d)(1) or (2) of this section.

(e) *Transfer of donated foods.* The distributing agency may transfer donated foods from its inventories to another distributing agency, or to another program, in order to ensure that such foods may be utilized in a timely manner and in optimal condition, in accordance with this part. However, the distributing agency must request FNS approval. FNS may also require a distributing agency to transfer donated foods at the distributing agency's storage facilities or at a processor's facility, if inventories of donated foods are excessive or may not be efficiently utilized. If there is a question of food safety, or if directed by FNS, the distributing agency must obtain an inspection of donated foods by State or local health authorities, as necessary, to ensure that the donated foods are still safe and not out-of-condition before transferring them. The distributing agency is responsible for meeting any transportation or inspection costs incurred, unless it is determined by FNS that the transfer is not the result of negligence or improper action on the part of the distributing agency. The distributing agency must maintain a record of all transfers from its inventories, and of any inspections related to such transfers.

(f) *Commercial storage facilities or carriers.* The distributing agency may obtain the services of a commercial storage facility to store and distribute donated foods, or a carrier to transport donated foods, but must do so in compliance with procurement requirements in 2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR parts 400 and 416. The distributing agency must enter into a written contract with a commercial storage facility or carrier, which may not exceed five years in duration, including any extensions or renewals. The contract must include applicable provisions required by Federal statutes and executive orders listed in 2 CFR part 200, appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and USDA implementing regulations at 2 CFR parts 400 and 416. The contract must also include, as applicable to a storage facility or carrier, provisions that:

Food and Nutrition Service, USDA

§ 250.13

(1) Assure storage, management, and transportation of donated foods in a manner that properly safeguards them against theft, spoilage, damage, or other loss, in accordance with the requirements in this part;

(2) Assure compliance with all Federal, State, or local requirements relative to food safety and health, including required health inspections, and procedures for responding to a food recall;

(3) Assure storage of donated foods in a manner that distinguishes them from other foods, and assure separate inventory recordkeeping of donated foods;

(4) Assure distribution of donated foods to eligible recipient agencies in a timely manner, in optimal condition, and in amounts for which such recipient agencies are eligible;

(5) Include the amount of insurance coverage obtained to protect the value of donated foods;

(6) Permit the performance of on-site reviews of the storage facility by the distributing agency, the Comptroller General, the Department of Agriculture, or any of its duly authorized representatives, in order to determine compliance with requirements in this part;

(7) Establish the duration of the contract, and provide for extension or renewal of the contract only upon fulfillment of all contract provisions;

(8) Provide for expeditious termination of the contract by the distributing agency for noncompliance with its provisions; and

(9) Provide for termination of the contract by either party for other cause, after written notification of such intent at least 60 days prior to the effective date of such action.

§ 250.13 Efficient and cost-effective distribution of donated foods.

(a) *Direct shipments.* The distributing agency must ensure that the distribution of donated foods is conducted in the most efficient and cost-effective manner, and, to the extent practical, in accordance with the specific needs and preferences of recipient agencies. In meeting this requirement, the distributing agency must, to the extent practical, provide for:

(1) Shipments of donated foods directly from USDA vendors to recipient agencies, including two or more recipient agencies acting as a collective unit (such as a school co-op), or to the commercial storage facilities of such agencies;

(2) Shipments of donated foods directly from USDA vendors to processors for processing of donated foods and sale of end products to recipient agencies, in accordance with subpart C of this part; and

(3) The use of split shipments, as defined in § 250.2, in arranging for delivery of donated foods to recipient agencies that cannot accept a full truckload.

(b) *Distributing agency storage and distribution charge.* (1) If a distributing agency determines that direct shipments of donated foods, as described in paragraph (a) of this section, are impractical, it must provide for the storage of donated foods at the distributing agency level, and subsequent distribution to recipient agencies, in the most efficient and cost-effective manner possible. The distributing agency must use a commercial storage facility, in accordance with § 250.12(f), if the use of such system is determined to be more efficient and cost-effective than other available methods.

(2) The distributing agency must utilize State Administrative Expense (SAE) funds in child nutrition programs, as available, to meet the costs of storing and distributing donated foods for school food authorities or other recipient agencies in child nutrition programs, and administrative costs related to such activities, in accordance with 7 CFR part 235. If SAE funds, or any other Federal or State funds received for such purpose, are insufficient to fully meet the distributing agency's costs of storing and distributing donated foods, and related administrative costs (*e.g.*, salaries of employees engaged in such activities), the distributing agency may require school food authorities or other recipient agencies in child nutrition programs to pay a distribution charge, as defined in § 250.2, to help meet such costs. The distribution charge may cover only allowable costs, in accordance with 2 CFR part 200, subpart E,