

and USDA implementing regulations at 2 CFR part 400. The distributing agency must maintain a record of costs incurred in storing and distributing donated foods and related administrative costs, and the source of funds used to pay such costs.

(c) *FNS approval of amount of State distributing agency distribution charge to school food authorities and other recipient agencies in child nutrition programs.* In determining the amount of a new distribution charge, or in increasing the amount (except for normal inflationary adjustments) or reducing the level of service provided once a distribution charge is established, the distributing agency must request FNS approval prior to implementation. Such requirement also applies to the distribution charge imposed by a commercial storage facility under contract with the distributing agency. The request for approval must be submitted to FNS at least 90 days in advance of its projected implementation, and must include justification of the newly established amount, or any increased charge or reduction in the level of service provided under an established distribution charge, and the specific costs covered under the distribution charge (*e.g.*, storage, delivery, or administrative costs).

(d) *FNS review authority.* FNS may reject the distributing agency's proposed new, or changes to an existing, distribution charge for school food authorities and other recipient agencies in child nutrition programs if FNS determines that the charge would not provide for distribution of donated foods in the most efficient and cost-effective manner, or may otherwise impact recipient agencies negatively. In such case, the distributing agency would be required to adjust the proposed amount or the level of service provided in its distribution charge, or consider other distribution options. FNS may also require the distributing agency to submit documentation to justify the efficiency and cost-effectiveness of its storage and distribution system at other times, and may require the distributing agency to re-evaluate such system in order to ensure compliance with the requirements in this part.

§ 250.14 Storage and inventory management at the recipient agency level.

(a) *Safe storage and control.* Recipient agencies 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. Recipient agencies 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—household programs.* Recipient agencies in household programs must store donated foods in a manner that permits them to be distinguished from other foods in storage, and must maintain a separate inventory record of donated foods. Such recipient agencies' system of inventory management must ensure that donated foods are distributed to recipients in a timely manner that permits use of such foods while still in optimal condition. Such recipient agencies must notify the distributing agency of donated food losses and take further actions with respect to such food losses, as directed by the distributing agency.

(c) *Inventory management—child nutrition programs and charitable institutions.* Recipient agencies in child nutrition programs, and those receiving donated foods as charitable institutions, in accordance with § 250.67, are not required to store donated foods in a manner that distinguishes them from purchased foods or other foods, or to maintain a separate inventory record of donated foods—*i.e.*, they may utilize single inventory management, as defined in § 250.2. For such recipient agencies, donated foods are subject to the same safeguards and effective management practices as other foods. Accordingly, recipient agencies in child nutrition programs and those receiving donated foods as charitable institutions (regardless of the inventory management system utilized), are not required to separately monitor and report donated

Food and Nutrition Service, USDA

§ 250.15

food use, distribution, or loss to the distributing agency, unless there is evidence indicating that donated food loss has occurred as a result of theft or fraud.

(d) *Transfer of donated foods to another recipient agency.* A recipient agency operating a household program must request approval from the distributing agency to transfer donated foods at its storage facilities to another recipient agency. The distributing agency may approve such transfer to another recipient agency in the same household program (e.g., the transfer of TEFAP foods from one food pantry to another) without FNS approval. However, the distributing agency must receive FNS approval to permit a recipient agency in a household program to transfer donated foods to a recipient agency in a different program (e.g., the transfer of TEFAP foods from a food pantry to a CSFP local agency), even if the same recipient agency administers both programs. A recipient agency operating a child nutrition program, or receiving donated foods as a charitable institution, in accordance with § 250.67, may transfer donated foods to another recipient agency or charitable organization without approval from the distributing agency or FNS. However, the recipient agency must still maintain records of donated food inventories.

(e) *Commercial storage facilities.* Recipient agencies may obtain the services of commercial storage facilities to store and distribute 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, as applicable. Recipient agencies must ensure that commercial storage facilities comply with all of the applicable requirements in this section regarding the storage and inventory management of donated foods.

§ 250.15 Out-of-condition donated foods, food recalls, and complaints.

(a) *Out-of-condition donated foods at the distributing agency level.* The distributing agency must ensure that donated foods that are out-of-condition, as defined in § 250.2, at any of its storage facilities are removed, destroyed, or otherwise disposed of, in accordance with

FNS instruction and State or local requirements pertaining to food safety and health. The distributing agency must obtain an inspection of donated foods by State or local health authorities to determine their safety and condition, as necessary, or as directed by FNS. Out-of-condition donated foods may be sold (e.g., to a salvage company), if permitted by FNS and State or local laws or regulations.

(b) *Out-of-condition donated foods at the recipient agency level.* Recipient agencies in household programs must report out-of-condition donated foods at their storage facilities to the distributing agency, in accordance with § 250.14(b), and must ensure that such donated foods are removed, destroyed, or otherwise disposed of, in accordance with FNS instruction and State or local requirements pertaining to food safety and health. The distributing agency must ensure that such recipient agencies obtain an inspection of donated foods by State or local health authorities to determine their safety and condition, as necessary, or as directed by FNS. For charitable institutions, in accordance with § 250.67, and recipient agencies in child nutrition programs, donated foods must be treated as other foods when safety is in question. Consequently, such recipient agencies must comply with State or local requirements in determining the safety of foods (including donated foods), and in their destruction or other disposition. However, they are not required to report such actions to the distributing agency.

(c) *Food recalls.* The distributing or recipient agency, as appropriate, must follow all applicable Federal, State or local requirements for donated foods subject to a food recall, as this term is defined in § 250.2. Further, in the event of a recall, Departmental guidance is provided, including procedures or instructions for all parties in responding to a food recall, replacement of recalled donated foods, and reimbursement of specific costs incurred as a result of such actions.

(d) *Complaints relating to donated foods.* The distributing agency must inform recipient agencies of the preferred method of receiving complaints regarding donated foods. Complaints received