

**§ 250.4 Administration at the State level.**

(a) *Distributing agency.* The distributing agency, as defined in § 250.2, is responsible for ensuring compliance with the requirements in this part, and in other Federal regulations referenced in this part, in the distribution and control of donated foods. In order to receive, store, and distribute donated foods, the distributing agency must enter into a written agreement with FNS (the *Federal-State Agreement*, form FNS-74) for the distribution of donated foods in accordance with the provisions of this part and other applicable Federal regulations. The Federal-State agreement is permanent, but may be amended with the concurrence of both parties. FNS may terminate the Federal-State agreement if the distributing agency fails to meet its obligations, in accordance with § 250.3(c). Each distributing agency must also provide adequate personnel to administer the program in accordance with this part. The distributing agency may impose additional requirements related to the distribution and control of donated foods in the State, as long as such requirements are not inconsistent with the requirements in this part or other Federal regulations referenced in this part.

(b) *Subdistributing agency.* The distributing agency may enter into a written agreement with a subdistributing agency, as defined in § 250.2, to perform specific activities required of the distributing agency in this part. However, the distributing agency may not assign its overall responsibility for donated food distribution and control to a subdistributing agency or to any other organization, and may not delegate its responsibility to ensure compliance with the performance standards in § 250.22. The agreement entered into with the subdistributing agency must include the provisions in paragraph (c) of this section, and must indicate the specific activities for which the subdistributing agency is responsible.

(c) *Recipient agencies.* The distributing agency must select recipient agencies, as defined in § 250.2, to receive donated foods for distribution to eligible persons, or for use in meals provided to eligible persons, in accordance

with eligibility criteria for specific programs or outlets, and must enter into a written agreement with a recipient agency prior to distribution of donated foods to it. However, for child nutrition programs, the distributing agency must enter into agreements with those recipient agencies selected by the State administering agency to participate in such programs, prior to distribution of donated foods to such recipient agencies. The distributing agency must confirm such recipient agencies' approval for participation in the appropriate child nutrition program with the State administering agency. For household programs, distributing agencies must consider the past performance of recipient agencies when approving applications for participation. Agreements with recipient agencies must include the provisions in this paragraph (c), as well as provisions required in Federal regulations applicable to specific programs (*e.g.*, agreements with local agencies in CSFP must include the provisions in § 247.4(b) of this chapter). The agreements with recipient agencies and subdistributing agencies must:

(1) Ensure compliance with the applicable requirements in this part, with other Federal regulations referenced in this part, and with the distributing agency's written agreement with FNS;

(2) Ensure compliance with all requirements relating to food safety and food recalls;

(3) Establish the duration of the agreement. The duration of the agreement may be established as permanent, but may be amended at the initiation of distributing agencies;

(4) Permit termination of the agreement by the distributing agency for failure of the recipient agency (or subdistributing agency, as applicable) to comply with its provisions or applicable requirements, upon written notification to the applicable party; and

(5) Permit termination of the agreement by either party, upon written notification to the other party, at least 60 days prior to the effective date of termination.

(d) *Procurement of services of commercial enterprises.* The distributing agency, or a recipient agency, must ensure

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compliance with procurement requirements in 2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR parts 400 and 416, as applicable, to obtain the services of a commercial enterprise to conduct activities relating to donated foods. The distributing agency, or a recipient agency, must also ensure compliance with other applicable Departmental regulations in such procurements—for example, a school food authority must ensure compliance with requirements in §§210.16 and 210.21 of this chapter, and in subpart D of this part, in procuring the services of a food service management company.

### § 250.5 Civil rights.

Distributing agencies, subdistributing agencies and recipient agencies must 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 on protected bases as such bases apply to each program.

## Subpart B—Delivery, Distribution, and Control of Donated Foods

SOURCE: 81 FR 23104, Apr. 19, 2016, unless otherwise noted.

### § 250.10 Availability and ordering of donated foods.

(a) *Ordering donated foods.* The distributing agency must utilize a request-driven ordering system in submitting orders for donated foods to FNS. As part of such system, the distributing agency must provide recipient agencies with the opportunity to submit input, on at least an annual basis, in determining the donated foods from the full list that are made available to them for ordering. Based on the input received, the distributing agency must ensure that the types and forms of donated foods that recipient agencies may best utilize are made available to them for ordering. The distributing agency must also ensure that donated foods are ordered and distributed only in amounts that may be utilized efficiently and without waste.

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(b) *Provision of information on donated foods.* The distributing agency must provide recipient agencies, at their request, information that will assist them in ordering or utilization of donated foods, including information provided by USDA. Information provided to recipient agencies must include:

- (1) The types and quantities of donated foods that they may order;
- (2) Donated food specifications and nutritional value; and
- (3) Procedures for the disposition of donated foods that are out-of-condition or that are subject to a food recall.

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

### § 250.11 Delivery and receipt of donated food shipments.

(a) *Delivery.* The Department arranges for delivery of donated foods from the vendor or Federal storage facility to the distributing agency's storage facility, or to a processor with which the distributing agency has entered into a contract or agreement. The Department may also deliver donated foods directly to a recipient agency, or to a storage facility or processor with which the recipient agency has entered into a contract or agreement, with the approval of the distributing agency. The Department will make every reasonable effort to arrange deliveries of donated foods based on information obtained from distributing agencies, to the extent feasible. In accordance with §250.2, an entity that receives a shipment of donated foods directly from a USDA vendor or a Federal storage facility is referred to as the consignee. Consignees must provide a delivery address, and other information as required by FNS, as well as update this information as necessary, to ensure foods are delivered to the correct location.

(b) *Receipt of shipments.* The distributing or recipient agency, or other consignee, must comply with all applicable Federal requirements in receiving shipments of donated foods, including procedures for the disposition of any donated foods in a shipment that are