

## § 250.40

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distributing agency's policies and procedures on (1) contract approval, (2) monitoring and review of processing activities, (3) recordkeeping and reporting requirements, (4) inventory controls, and (5) refund applications.

(t) *Waiver authority.* The Food and Nutrition Service may waive any of the requirements contained in this part for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods.

(Approved by the Office of Management and Budget under control number 0584–0007)

[53 FR 20226, June 3, 1988, as amended at 53 FR 20598, June 6, 1988; 53 FR 27476, July 21, 1988; 53 FR 46080, Nov. 16, 1988; 54 FR 7525, Feb. 22, 1989; 54 FR 25564, June 16, 1989; 58 FR 39122, July 22, 1993; 59 FR 62984, Dec. 7, 1994; 61 FR 5272, Feb. 12, 1996]

### Subpart D—Eligible Recipient Agencies and Programs

#### § 250.40 Nonprofit summer camps for children.

(a) *Distribution.* (1) The distributing agency shall distribute donated food only to those summer camps which have entered into a written agreement for participation in the program with the distributing agency in accordance with § 250.12(b). Prior to entering into a written agreement, the summer camp shall provide verification of its tax exempt status under the Internal Revenue Code. In addition to the terms and conditions set forth in § 250.12(b), the written agreement shall, at a minimum, include:

- (i) The name and location of the summer camp(s);
- (ii) Number of camps or sites;
- (iii) Number of sessions to be offered during camping season;
- (iv) Number of adults and children participating in the activities of the summer camp at each session;
- (v) Total number of days meals will be served;
- (vi) Total number of meals to be served daily;
- (vii) Assurance that tax exempt status will be maintained;
- (viii) Indication of whether the summer camp(s) will employ the services of a food service management company;

(ix) Assurance that a brochure or public announcement of open admission policy will be provided and that the summer camp agrees to maintain racial/ethnic data;

(x) Assurance that a physical inventory will be conducted and reconciled at the end of the camping session; and

(xi) Assurance that any excess inventory will, at the distributing agency's option, be returned to the distributing agency for redonation or transferred in accordance with § 250.13(a)(1).

(2) Distributing agencies shall distribute donated foods only after determining that the number of adults participating in camp activities, as compared with the number of children 18 years of age and under, is not unreasonable in light of the nature of the camp and the characteristics of the children in attendance. Persons 19 years of age and over, including program directors, counselors and others who engage in recreational, educational, and direct administrative functions, are to be considered as adults participating in the activities of a summer camp. Employees whose presence on camp premises is solely for the purpose of performing duties such as cooking, gardening, property maintenance or similar support functions are not considered as adults participating in summer camp activities. In addition, persons such as nurses, therapists, and attendants who perform professional, supervisory, or custodial services are not considered as adults participating in the activities of a summer camp if they perform services essential to the participation of mentally, emotionally, or physically handicapped children.

(3) Distributing agencies shall authorize the transfer or redonation of all donated foods remaining in summer camps at the end of the camping season in accordance with § 250.13 (a) or (g) respectively.

(4) Nonprofit summer camps for children may employ food service management companies to conduct food service operations in accordance with § 250.12(d).

(b) *Quantities and value of donated foods.* Distribution of donated food to eligible summer camps shall be made on the basis of the average number of

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meals to be served daily to children as evidence by the most recent written caseload factor information contained in the agreement.

(c) *Types of donated foods authorized for donation.* Nonprofit summer camps for children are eligible to receive donated foods under section 416, section 32, section 709 and section 4(a).

[53 FR 20426, June 3, 1988, as amended at 62 FR 53729, Oct. 16, 1997]

### § 250.41 Charitable institutions.

(a) *Distribution.* (1) The distributing agency shall distribute donated food only to those charitable institutions which have entered into a written agreement for participation in the program with the distributing agency in accordance with § 250.12(b). Prior to entering into a written agreement, the charitable institution shall provide verification of the institution's tax exempt status under the Internal Revenue Code. In addition to the terms and conditions set forth in § 250.12(b), written agreements shall, at a minimum, include:

(i) The name and location of the charitable institution;

(ii) Total number of days meals will be served;

(iii) Average daily number of participants;

(iv) Total number of meals by type to be served daily to needy persons;

(v) Data that show the number of needy persons receiving benefits under another means-tested program or financial data that show the total annual amount of funds received by the institution that are derived, respectively, from (A) subsidized income and (B) nonsubsidized income. For the purpose of this section "subsidized income" shall mean income from public tax funds which are provided on behalf of participants that have been determined to be in need of financial assistance through a means-tested program such as Medicaid or income received through private federally tax exempt contributions which are provided for the care of participants which the institution had determined to be in need of financial assistance. "Nonsubsidized income" shall mean all other income, including payments made on behalf of

participants by persons legally responsible for their support;

(vi) Indication of whether the charitable institution will employ the services of a food service management company to conduct its food service operations;

(vii) Assurance that proper inventory controls will be maintained; and

(viii) Assurance that all reports will be submitted as required by the distributing agency.

(2) Adult correctional institutions are eligible to receive donated foods as charitable institutions, to the extent that needy persons are served, if they conduct rehabilitation programs that are:

(i) Available to either a majority of the total inmate population (including inmates awaiting trial or sentencing) or to a majority of sentenced inmates; and

(ii) Of sufficient scope to permit participation for a minimum of 10 hours per week per inmate by either a majority of the total inmate population or a majority of sentenced inmates.

Prior to entering into an agreement for donation of foods to an adult correctional institution, the distributing agency shall require the institution's director or other responsible official to provide a written statement certifying that the institution conducts such rehabilitation programs. The statement shall be reviewed annually and maintained as part of the agreement.

(3) Charitable institutions may employ food service management companies to conduct food service operations in accordance with § 250.12(d).

(b) *Quantities of donated foods.* Distribution of donated foods to eligible charitable institutions shall be made on the basis of the average number of meals served daily to needy persons. To determine the number of needy persons being served, the distributing agency shall determine the proportion of subsidized income by dividing the subsidized income by the total subsidized and nonsubsidized income (as defined in paragraph (a)(1) of this section) and multiplying that number by the average daily number of participants as required in § 250.41(a)(1)(v), or by simply counting the number of participants that receive benefits under another a