

Food and Nutrition Service, USDA

§ 250.12

processor originally received for processing under full substitution. This is the 100-percent yield requirement.

(d) A processor can substitute commercial product for donated commodity product, as described in paragraph (a) of this section, with some restrictions under limited substitution. Restrictions include, but are not limited to, the prohibition against substituting for backhauled poultry commodity product. FNS may also prohibit substitution of certain types of the same generic commodity. (For example, FNS may decide to permit substitution for bulk chicken but not for canned chicken.)

Welfare agency means a public (Federal, State or local) or private agency offering assistance on a charitable or welfare basis to needy persons, who are not residents of an institution, and to Tribal councils designated by the Bureau of Indian Affairs.

[53 FR 20426, June 3, 1988, as amended at 53 FR 20598, June 6, 1988; 53 FR 27475, July 21, 1988; 58 FR 39120, July 22, 1993; 59 FR 16972, Apr. 11, 1994; 59 FR 62983, Dec. 7, 1994; 62 FR 8365, Feb. 25, 1997; 62 FR 53729, Oct. 16, 1997; 64 FR 72902, Dec. 29, 1999; 67 FR 65014, Oct. 23, 2002]

Subpart B—General Operating Provisions

§ 250.10 Eligible distributing and sub-distributing agencies.

(a) *State and Federal agencies.* Federal agencies and such State agencies as are designated by the Governor of the State, or by the State legislature, and approved by the Secretary are eligible to become distributing agencies.

(b) *Private agencies.* Where distributing agencies are not permitted by law to make distribution to private recipient agencies, or to any class of private recipient agency, private agencies which agree to make distribution of donated food on a State-wide basis and which apply directly to FNS, and are approved by the Secretary are eligible to become distributing agencies.

(c) *Subdistributing agencies.* If distributing agencies use subdistributing agencies to distribute donated foods, the distributing agencies' responsibilities to the Department for overall management and control of the dis-

tribution program shall not be delegated to such subdistributing agencies.

§ 250.11 Eligibility determination for recipient agencies and recipients.

(a) *Verification of recipient agency eligibility.* Distributing agencies at the request of FNS shall:

(1) Verify that recipient agencies registered to participate in the National Commodity Processing (NCP) Program have a current agreement with the distributing agency to receive donated food in accordance with § 252.1(c) and

(2) Report the results of such verification to FNS within timeframes determined by FNS.

(b) *Eligibility of recipient agencies and recipients.* Distributing agencies shall determine the eligibility of any agency which submits an application for participation in the program. Distributing agencies shall consider the past performance of recipient agencies when approving applications for participation. Once a recipient agency has been determined to be eligible for participation in the program, the distributing agency shall enter into an agreement with the agency in accordance with § 250.12(b) and make donated food available. Distributing agencies shall impose upon welfare agencies the responsibility for determining that recipients to whom welfare agencies distribute donated foods are eligible: *Provided, however:* That the State agency or FNSRO administering the applicable program shall determine the eligibility under this part of school food authorities participating under part 210 or part 220, or sponsors participating in the Summer Food Service Program for Children under part 225, of this chapter, and of nonresidential child care institutions participating in the Child Care Food Program under part 226 of this chapter.

§ 250.12 Agreements and contracts.

(a) *Agreements with Department.* Prior to the beginning of a distribution program, distributing agencies shall enter into written agreements with the Department which shall incorporate the terms and conditions set forth in this part. When requested by the Department an eligible agency shall present evidence of its authority to enter into