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shall not apply to distribution to households on all or part of an Indian reservation which is participating in the Food Distribution Program under part 253 and part 254 of this chapter. The distributing agency shall provide guidance to subdistributing agencies and recipient agencies on all aspects of program operations.

(c) *Personnel.* Each distributing agency shall provide adequate personnel, to administer the program in accordance with this part.

#### § 250.3 Definitions.

*Charitable institutions* means:

(a) A nonpenal, noneducational public (Federal, State or local) institution,

(b) A nonprofit, tax exempt, private hospital, or

(c) Any other nonprofit, noneducational, tax exempt private institution, including hospitals and facilities caring for needy infants and children, organized to provide charitable or public welfare services in the same place without marked changes and, at the Department's option, approved by a public welfare agency as meeting a definite need in the community by administering to needy persons, and provides a meal service on a regular basis. Charitable institutions include any institution defined as "service institution"; "nonresidential child care institution"; or "school" which is not a commodity school or does not participate in a child nutrition program. For purposes of this paragraph, tax exempt shall mean exempt from income tax under the Internal Revenue Code, as amended, and a charitable institution shall be considered "noneducational" even though educational courses are given, where such courses are incidental to the primary purpose of the charitable institution.

*Child nutrition program* means the National School Lunch Program, the School Breakfast Program, the Summer Food Service Program for Children, or the Child Care Food Program (parts 210, 220, 225, and 226, respectively of this chapter).

*Commodities* means foods donated, or available for donation, by the Department under any of the legislation referred to in this part (see "Donated Foods").

*Commodity school* means a school that does not participate in the National School Lunch Program under part 210 of this chapter but which operates a nonprofit school food service under agreement with the State educational agency or FNSRO as provided for under part 210 of this chapter and receives donated foods, or donated foods and cash or services of a value of up to 5 cents per lunch in lieu of donated foods under part 240 of this chapter for processing and handling of the donated foods.

*Contract value of the donated foods* means the price assigned by the Department to a donated food which shall reflect the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

*Contracting agency* means the distributing agency, subdistributing agency, or recipient agency which enters into a processing contract.

*Department* means the United States Department of Agriculture or the Commodity Credit Corporation, whichever is the donor under the pertinent legislation.

*Disaster* means (a) Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) (Stafford Act) to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby; or

(b) Any other occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

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*Disaster organizations* means organizations authorized by appropriate Federal or State officials to assist disaster victims.

*Disaster victims* means persons who, because of acts of God or manmade disasters, are in need of food assistance, whether or not they are victims of a major disaster or an emergency as defined in this section.

*Discount system* means a system whereby a recipient agency purchases end products directly from a processor at an established wholesale price minus the contract value of the donated foods contained in the end products.

*Distributing agency* means a State, Federal or private agency, or Indian Tribal Organization (ITO) which enters into an agreement with the Department for the distribution of donated foods to eligible recipient agencies and recipients and the Food and Nutrition Service of the Department when it accepts title to commodities from the Commodity Credit Corporation (CCC) for distribution to eligible recipient agencies pursuant to the National Commodity Processing System. A distributing agency may also be a recipient agency.

*Distributor* means a commercial food purveyor or handler who is independent of a processor and both sells and bills for the end products delivered to recipient agencies.

*Donated foods* means foods donated, or available for donation, by the Department under any of the legislation referred to in this part (see "Commodities").

*End product* means a product containing any amount of donated foods which have been processed.

*Federal acceptance service* means the acceptance service provided by:

- (a) The applicable grading branches of the Department's Agricultural Marketing Service (AMS),
- (b) The Department's Federal Grain Inspection Service, and
- (c) The National Marine Fisheries Service of the U.S. Department of Commerce.

*Fee-for-service* means the price by pound or by case representing a processor's cost of ingredients (other than donated foods), labor, packaging, overhead, and other costs incurred in the

conversion of the donated food into the specified end product.

*Fiscal year* means the period of 12 months beginning October 1 of any calendar year and ending September 30 of the following year.

*FNS* means the Food and Nutrition Service of the Department of Agriculture.

*FNSRO* means the appropriate Food and Nutrition Service Regional Office of the Food and Nutrition Service of the Department of Agriculture.

*Food service management company* means a commercial enterprise or a nonprofit organization which is or may be contracted with by a recipient agency to manage any aspect of its food service in accordance with §250.12(d) of this part or in accordance with part 210, 220, 225, or 226 of this chapter.

*Household* means a group of related or non-related individuals, exclusive of boarders, who are not residents of an institution, but who are living as one economic unit and for whom food is customarily purchased and prepared in common. It also means a single individual living alone.

*In-kind replacement* means replacement of lost donated foods with a quantity of the same foods of U.S. origin that are of equal or better quality than the lost foods and that are of at least equal monetary value to the Department's cost of replacing the lost foods.

*Multi-State processor* means:

- (a) A processor which has entered into a processing contract with contracting agencies in more than one State, or
- (b) A processor which has entered into a processing contract with one or more contracting agencies located in a State other than the one in which either the processor's plant or business office is located.

*Needy persons* means:

- (a) Persons provided service by charitable institutions, who, because of their economic status, are in need of food assistance,
- (b) All the members of a household who are certified as in need of food assistance, and
- (c) Disaster victims.

*Nonprofit school food service* means all food service operations conducted by the school food authority principally

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for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food services.

*Nonprofit summer camps for children* means nonprofit camps which do not participate in the Summer Food Service Program for Children authorized under section 13 of the National School Lunch Act, as amended (42 U.S.C. 1761), and in which, during the months of May through September, meal services are conducted for children of high school grade and under.

*Nonresidential child or adult care institution* means any child or adult care institution (as defined in part 226 of this chapter) which participates in the Child and Adult Care Food Program authorized under section 17 of the National School Lunch Act, as amended (42 U.S.C. 1766).

*Nutrition program for the elderly* means a project conducted by a recipient of a grant or contract under title III or title VI of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a).

*Offer-and-acceptance system* means a procedure whereby a school food authority is given the opportunity to order only the amounts and varieties of donated foods it desires for its school lunch program on the basis of advance notification by the distributing agency.

*Performance supply and surety bond* means a written instrument issued by a surety company which guarantees performance and supply of end products by a processor under the terms of a processing contract.

*Processing* means:

(a) The conversion of a donated food or donated foods into a different end product or

(b) The repackaging of a donated food or donated foods.

*Processor* means any commercial facility which processes or repackages donated foods. However, commercial enterprises which handle, prepare and/or serve products or meals containing donated foods on-site solely for the individual recipient agency under contract are exempt under this definition. Notwithstanding this definition, a recipient agency which prepares products or meals containing donated foods for more than one recipient agency under

more than one contract in the same facility or prepares products or meals for any one recipient agency off-site shall not be a processor if the recipient agency preparing products or meals provides: (1) accountability for any donated foods received from another recipient agency consistent with § 250.16 of this part and (2) any funds received as payment for preparing products or meals shall be deposited in the nonprofit meal account of the recipient agency preparing products or meals.

*Program* means the Food Distribution Program.

*Recipient agencies* means nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, disaster organizations, school food authorities, schools, nonresidential child care institutions, service institutions, and welfare agencies receiving foods for their own use or for distribution to eligible recipients.

*Recipients* means the needy persons receiving commodities for household consumption.

*Refund* means (a) a credit or check issued to a distributor in an amount equal to the contract value of donated foods contained in an end product sold by the distributor to a recipient agency at a discounted price and (b) a check issued to a recipient agency in an amount equal to the contract value of donated foods contained in an end product sold to the recipient agency under a refund system.

*Refund application* means an application by a recipient agency in any form acceptable to the processor which certifies purchase of end products and requests a refund of the contract value of the donated foods contained in the end products purchased.

*Refund system* means a system whereby a recipient agency purchases a processor's end products and receives from the processor a payment equivalent to the contract value of the donated foods contained in the end products.

*School* means (a) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under"

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includes classes of preprimary grade when recognized as part of the education system of the States;

(b) Any public or nonprofit private classes of preprimary grade when they are conducted in those schools defined in paragraph (a) of this definition having classes of primary or of higher grade;

(c) Any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes. The term "residential child care institutions" includes, but is not limited to: homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more; or

(d) With respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

*School food authority* means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a nonprofit school food service therein or otherwise approved by FNS to operate the NSLP.

*School year* means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.

*Secretary* means the Secretary of Agriculture.

*Section 4(a)* means section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note). Section 4(a) authorizes the pur-

chase of foods for distribution to maintain the traditional level of assistance for food assistance programs as are authorized by law, including institutions, supplemental feeding programs, disaster areas, summer camps for children, the Trust Territory of the Pacific Islands, and Indians whenever a tribal organization requests distribution of federally-donated foods under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)).

*Section 6* means section 6 of the National School Lunch Act, as amended (42 U.S.C. 1755). Section 6 authorizes the purchase of foods for distribution to schools and institutions participating in child nutrition programs under the National School Lunch Act and specifies the level of assistance which is to be provided.

*Section 14* means section 14 of the National School Lunch Act, as amended (42 U.S.C. 1762a). Section 14 authorizes the purchase of foods for distribution to maintain the annually programmed level of assistance for programs carried on under the National School Lunch Act, the Child Nutrition Act of 1966, and title III of the Older Americans Act of 1965.

*Section 32* means section 32 of Pub. L. 74-320, as amended (7 U.S.C. 612c). Section 32 authorizes the Department to purchase nonbasic perishable foods available under surplus-removal operations, for the purpose of encouraging the domestic consumption of such foods by diverting them from the normal channels of trade or commerce.

*Section 311* means section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a). Section 311 authorizes the purchase of commodities for nutrition programs for the elderly.

*Section 416* means section 416 of the Agricultural Act of 1949, as amended (7 U.S.C. 1431). Section 416 authorizes the Department to donate basic nonperishable foods acquired through Federal price-support operations for use by needy persons, for use in nonprofit school lunch programs and nonprofit summer camps for children, and for use in charitable institutions to the extent that needy persons are served.

*Section 709* means section 709 of the Food and Agricultural Act of 1965, as amended (7 U.S.C. 1446a-1). Section 709

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authorizes the purchase of adequate supplies of dairy products to meet the requirements of schools, domestic relief distribution, and other programs authorized by law when the stocks of the Commodity Credit Corporation are insufficient to meet those requirements.

*Service institutions* means camps or sponsors (as those terms are defined in part 225 of this chapter) which participate in the Summer Food Service program authorized under section 13 of the National School Lunch Act, as amended (42 U.S.C. 1761).

*Similar replacement* means replacement of lost donated foods with a quantity of similar foods of U.S. origin of the same types as those normally donated by the Department and of at least equal monetary value to the Department's cost of replacing the lost foods. Such replacement shall be subject to the approval of the FNSRO.

*Situation of distress* means (a) A hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other natural catastrophe not declared by the President to be a disaster, but which, in the judgment of the distributing agency, warrants the use of USDA commodities for congregate feeding; and

(b) Any other situation not declared by the President to be a disaster, but which, in the judgment of FNS, warrants the use of USDA commodities for congregate feeding or household distribution.

*State and United States* means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

*State Agency on Aging* means:

(a) The State agency that has been designated by the Governor and approved by the United States Department of Health and Human Services (DHHS) to administer nutrition programs for the elderly under title III of the Older Americans Act of 1965, as amended or

(b) The Indian tribal organization which has been approved by DHHS to

administer nutrition programs for the elderly under title VI of such act.

*Storage facility* means an operation that provides warehousing services, or provides both warehousing and delivery services.

*Students in home economics* means students in regular classes wherein they are taught general home economics including food preparation, cooking, serving, nutrition, food purchasing, child care and health.

*Subdistributing agency* means an agency performing one or more distribution functions for a distributing agency other than, or in addition to, functions normally performed by common carriers or warehousemen. A subdistributing agency may also be a recipient agency. State and local agencies, and Indian Tribal Organizations administering the Emergency Food Assistance Program, the Food Distribution Program on Indian Reservations, or the Commodity Supplemental Food Program, are subdistributing agencies subject to all provisions relative to subdistributing agencies contained in this part, unless specifically exempt under part 251, part 253, part 254, or part 247 of this chapter.

*Substituted food* means domestically produced food that is purchased or manufactured by a processor and is substituted for donated food.

*Substitution* means:

(a) The replacement of donated foods with like quantities of domestically produced commercial foods of the same generic identity and of equal or better quality (i.e. cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.).

(b) In the case of donated nonfat dry milk, substitution as defined under (a) of this definition or replacement with an equivalent amount, based on milk solids content, of domestically produced concentrated skim milk.

(c) A processor can substitute commercial product for donated commodity, as described in paragraph (a) of this section, without restrictions under full substitution. The processor must return to the contracting agency, in finished end products, the same number of pounds of commodity that the

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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 subdistributing 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