

was offered to all school food authorities.

(2) *Commodity variety offered.* Distributing agencies shall offer and efficiently deliver to each school food authority the full range of all commodities equitably and consistently to the extent that quantities requested or made available are sufficient to make a statewide distribution. At least annually, distributing agencies shall develop and disseminate to school food authorities a procedure for the allocation of commodities when the amount received from the Department is not sufficient to make a statewide distribution to all school food authorities.

(3) *Bonus commodities.* Bonus commodities (i.e., commodities provided in addition to a State's authorized level of assistance) offered shall be distinguished from entitlement commodities (i.e., commodities provided as part of an authorized level of assistance) and shall not be included as a part of the per-meal value of donated foods which must be offered to school food authorities.

(d) *Cash in lieu of donated foods for schools.* Where a State has phased out its food distribution facilities prior to July 1, 1974, such State may, in accordance with part 240 of this chapter, elect to receive cash payments in lieu of donated foods for use in school lunch programs which participate in the National School Lunch Program under part 210 of this chapter.

(e) *Types of donated foods authorized for donation.* School food authorities which participate in the National School Lunch Program or as commodity schools under part 210 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14. School food authorities which participate in the School Breakfast Program under part 220 are eligible to receive donated foods under section 416, section 32, section 709 and section 14.

(f) *Refusal of donated foods by school food authorities.* (1) Any school food authority participating in food service programs under the National School Lunch Act, as amended, may refuse, at the time they are offered, donated foods and other foods offered for delivery for lunches in any school year if

such foods cannot be used effectively. The school food authority may receive, in lieu of the refused donated foods, other donated foods to the extent that they are available during the school year: *Provided, however:* That not more than 20 percent of the value of the donated foods offered to a school food authority for lunches during the school year shall be subject to replacement with other available donated foods unless replacement based on the refusal of more than 20 percent of such value is feasible and practical. Prior to making distribution to school food authorities, distributing agencies shall notify each school food authority of its right to refuse delivery and to receive other donated foods, if available, in lieu of those refused. Notification of donated food refusal rights shall be provided by means of a letter or by an addendum to the agreement required by §250.12(b) to each school food authority prior to the beginning of each school year.

(2) If the distributing agency demonstrates on the basis of existing records that it is maintaining an effective offer-and-acceptance system as defined in §250.3, there can be no refusal of donated foods as provided in paragraph (e)(1) of this section.

(g) *Use of donated foods in home economics courses.* School food authorities receiving donated foods under this part may use such foods for the purpose of training students in home economics, including college students if the same facilities and instructors are used for training both high school and college students in home economics courses. Home economics includes classes in general home economics, food purchases, nutrition, food preparation, cooking, child care and health.

[53 FR 20426, June 3, 1988, as amended at 53 FR 26219, July 12, 1988; 53 FR 27476, July 21, 1988; 58 FR 39122, July 22, 1993; 62 FR 53729, Oct. 16, 1997]

#### § 250.49 Nonresidential child and adult care institutions.

(a) *Distribution.* The distributing agency shall distribute donated foods only to those nonresidential child care institutions whose eligibility for participation in Child Care Food Program has been confirmed in writing by the State agency of FNSRO administering

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the program, where applicable. Lists of participating nonresidential child care institutions which have been prepared by the administering State agency or FNSRO may serve as written confirmation of eligibility. Nonresidential child care institutions may employ food service management companies to conduct food service operations in accordance with § 250.12(d) and part 226 of this chapter.

(b) *Quantities and value of donated foods*—(1) *Quantities*. Distribution of donated food to a State for nonresidential child and adult care institutions shall be calculated by multiplying the number of lunches and suppers served in the preceding school year which meet the meal-pattern requirements (reimbursable) prescribed in the regulations for the Child and Adult Care Food Program under part 226 of this chapter by the national average value of donated food as described in paragraph (b)(2) of this section. The number of lunches and suppers served shall be derived from the monthly claims submitted by participating institutions as required by Child and Adult Care Food Program regulations at § 226.11(b) of this chapter. After the end of the school year, FNS shall reconcile the number of reimbursable meals served in each State with the number served in the preceding school year and, based on such reconciliation, shall increase or reduce subsequent commodity assistance provided to each State. As early as practicable each year, but not later than September 1, the estimated number of lunches and suppers served in the preceding school year and requests for adjustments shall be provided by the administering State agency or the FNSRO to the distributing agency. At the discretion of FNS, current year adjustments may be made for significant variations in the number of meals served. Such current year adjustments will not be routine and will only be made for unusual problems encountered in a State, such as a disaster that necessitates institutional closures for a prolonged period of time.

(2) *Value*. For each school year, the national average value of donated foods to be made available to States for distribution to nonresidential child care institutions, or cash payments in lieu

thereof, shall not be less than 11 cents for each lunch and supper and shall be adjusted on July 1, 1982, and on each July 1 thereafter, to reflect changes in the Price Index for food used in schools and institutions as prescribed by section 6(e) of the National School Lunch Act, as amended. These adjustments shall be computed to the nearest one-fourth cent and shall be made effective at the beginning of each school year.

(c) *Cash in lieu of donated foods*. In accordance with part 240 of this chapter, State agencies may elect to receive cash payments in lieu of donated foods for use by institutions which participate in the Child Care Food Program under part 226 of this chapter.

(d) *Types of donated foods authorized for donations*. Nonresidential child care institutions which participate in the Child Care Food Program under part 226 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14.

[53 FR 20426, June 3, 1988, as amended at 58 FR 39123, July 22, 1993; 62 FR 53729, Oct. 16, 1997]

### § 250.50 Service institutions.

(a) *Distribution*. The distributing agency shall distribute donated foods only to those service institutions whose eligibility to receive donated foods for use in the Summer Food Service Program for Children under part 225 of this chapter has been confirmed in writing by the State agency or FNSRO administering the program, where applicable. Lists of participating service institutions which have been prepared by the administering State agency or FNSRO may serve as written confirmation of eligibility.

(b) *Quantities and value of donated foods*. Distribution of donated foods to service institutions shall be made on the basis of the average daily number of meals by type to be served which meet the meal-type requirements prescribed in the regulations for the Summer Food Service Program for Children under part 225 of this chapter as evidenced by the most recent written caseload factor information which must be provided by the State agency or FNSRO administering the program