



United States
Department of
Agriculture

Food and
Nutrition
Service

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SUBJECT: Clarification of State Agency Review Requirements for Donated Foods in the National School Lunch Program and Other Child Nutrition Programs

TO: Regional Directors
Special Nutrition Programs
All Regions

State Agencies	State Agencies
Child Nutrition Programs	Food Distribution Programs
All States	All States

The purpose of this policy memorandum is to clarify the responsibilities of the State administering agency and the State distributing agency with respect to ensuring compliance with requirements for donated foods in the National School Lunch Program (NSLP), the Summer Food Service Program (SFSP), and the Child and Adult Care Food Program (CACFP). The need for such clarification results primarily from the publication of a final rule in the Federal Register on August 8, 2008 (the FSMC final rule), which included new requirements in Part 250 for school food authorities (SFAs) in NSLP and other recipient agencies in child nutrition programs in their contracts with food service management companies (FSMCs). The new requirements help to ensure that such recipient agencies receive the benefit and value of the donated foods provided to FSMCs for use in the food service. However, it is also engendered by an earlier amendment to Part 250, in October 2002, which removed the requirement that SFAs and other recipient agencies in child nutrition programs separately identify donated foods and purchased foods at their storage facilities and in their inventory records. The amendment permitted such recipient agencies to implement a single inventory management system, which greatly streamlined the management and control of donated foods. As a result of this change, SFAs and other recipient agencies in child nutrition programs are not required to separately track donated food use, or to identify and report donated food losses, unless there is evidence that indicates such losses have occurred as a result of theft or fraud. However, in accordance with provisions of the FSMC final rule, such recipient agencies must ensure that FSMCs have credited them for the value of all donated foods received for use in the food service in the school or fiscal year, as applicable.

State Administering and Distributing Agencies

The State administering agency (referred to as “State agency” in Part 210) is the agency responsible for the administration of NSLP, SFSP, and CACFP in the State, in accordance with Parts 210, 225, and 226, respectively. The State distributing agency (referred to as “distributing agency” in Part 250) is the agency responsible for the distribution of USDA donated foods to recipient agencies in these programs, in accordance with Part 250. In some States, one State agency is responsible for all aspects of NSLP, SFSP, or CACFP, including the distribution of donated foods; however, that is not always the case. This memorandum provides clarification primarily for State agencies in those States in which the administering and distributing agencies are two separate agencies. Because the vast majority of donated foods is provided in NSLP, the memorandum focuses on that program. However, it is also applicable to SFSP and CACFP, and the State and recipient agencies responsible for those programs.

Responsibilities of the State Distributing Agency

In accordance with Part 250, the distributing agency is responsible for ordering donated foods for SFAs in NSLP, storage of the donated foods at a State agency storage facility (or a commercial storage facility with which it has entered into a contract), and delivery of the foods to SFAs. The distributing agency is also responsible for signing agreements with commercial processors, and arranging shipments of donated foods to them for processing into end products, in accordance with the requirements in Subpart C of Part 250. The distributing agency must review processors’ monthly performance reports, in order to monitor processors’ donated food inventories and ensure that SFAs receive the types and amounts of processed end products to which they are entitled.

In the FSMC final rule, 250.19 was amended to clarify that the distributing agency’s review system must include procedures encompassing those requirements that apply to specific programs. The distributing agency must conduct on-site reviews of recipient agencies in household programs, in accordance with the Federal regulations that apply specifically to each program (e.g., Part 247 for CSFP). Household programs include the Commodity Supplemental Food Program (CSFP), the Emergency Food Assistance Program (TEFAP), and the Food Distribution Program on Indian Reservations (FDPIR). However, the distributing agency is not required to conduct on-site reviews of SFAs or other recipient agencies in child nutrition programs, nor is it required to monitor such recipient agencies’ management and use of donated foods.

Responsibilities of the State Administering Agency

In accordance with 210.19(a)(4), the State administering agency is responsible for ensuring that SFAs comply with Federal requirements through audits, administrative reviews, technical assistance, training, guidance materials, or other means. The State

administering agency's oversight must encompass SFA compliance with requirements relating to donated foods in Part 210 and Part 250, which include the following:

- Assurance that facilities for the handling, storage, and distribution of purchased and donated foods are such as to properly safeguard against theft, spoilage, and other loss (210.13(c)).
- Use of donated foods in school lunches, or in other nonprofit school food service activities (210.9(b)(15) and 250.60).
- Procurement of end products (i.e., containing donated foods) from commercial processors in accordance with Federal procurement requirements and with requirements in Part 210 and Subpart C of Part 250.
- Inclusion of required provisions in contracts (and procurement documents) with FSMCs in order to ensure compliance with requirements for the use of donated foods in Subpart D of Part 250 (250.53).
- Assurance that the SFA conducts an annual reconciliation and maintains records sufficient to ensure that the FSMC has credited the SFA for the value of all donated foods received for use in the school food service (250.51, and 250.54(a) and (c)).
- Assurance that the SFA's monitoring of the food service, in accordance with 210.16(a)(3), includes a review of the FSMC's compliance with requirements for the use of donated foods (250.51(d)).

As part of its oversight responsibility, the State administering agency must conduct an on-site administrative review of each SFA at least once during a 5-year review cycle, in accordance with 210.18(c). We recommend that the State administering agency include a review of the SFA's compliance with the above requirements relating to donated foods as part of this on-site administrative review.

Correction of Deficiencies and Fiscal Actions

In accordance with 210.18(k), the State administering agency must ensure that SFAs take corrective actions in the event of any deficiencies identified in its administrative reviews, including any deficiencies relating to the use of donated foods. The State administering agency may also take fiscal actions, as appropriate, in order to recover Federal resources misappropriated as a result of such deficiencies, in accordance with 210.19(c). Such action may be taken, for example, if the FSMC failed to credit the SFA for the value of donated foods received for use in the school food service.

Collaboration between State Agencies

Although the State administering agency has ultimate oversight authority for ensuring SFA compliance with requirements relating to donated foods, and for taking appropriate action in the event of noncompliance with such requirements, it may request assistance from the distributing agency in performing some activities. Most importantly, State agencies should carry out their responsibilities in a manner that streamlines State oversight of NSLP and the other child nutrition programs, and that imposes minimal burden on SFAs and other recipient agencies in those programs.

Original Signed

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