

Proposed Rule: Proposed Changes to the Requirements for the Distribution and Control of Donated Foods

Legislation	Current Provision	Proposed Provision
		Subpart A—General Purpose and Administration
None	<p>§ 250.1 This part prescribes the terms and conditions under which donated foods may be obtained from the Department.</p> <p>§ 250.13(a)(2) The quantity of donated foods to be made available is determined by pertinent legislation and program obligations.</p>	<p>§ 250.1 Purpose and use of donated foods.</p> <p>§ 250.1(a) Purpose. Clarifies Department’s purchase of foods for donation to distributing agencies, in accordance with legislation authorizing such assistance in specific programs, or to remove market surpluses and support prices.</p>
None	<p>§ 250.13(a)(1) Donated foods shall only be available for distribution and use in accordance with this part and, as appropriate, with 7 CFR Parts 253 and 254.</p> <p>Donated foods shall not be sold, exchanged, or otherwise disposed of without the approval of the Department.</p> <p>§ 250.15(a)(3) Recipients may not be required to make any payments or perform services in connection w/receipt of donated foods. Voluntary contributions may not be solicited in connection with the receipt of donated foods, except NSIP donated foods.</p> <p>§ 250.13(a)(7) Distributing agency may use donated foods in demonstrations or tests relating to utilization of such foods.</p>	<p>§ 250.1(b) Use of donated foods. Clarifies that donated foods must be used in accordance with Part 250 requirements, and with other Federal regulations, as applicable.</p> <p>Retains prohibition against sale, exchange or other disposition unless approved; adds, “or as permitted in Part 250” (e.g., donated foods may be included in meals sold in NSLP).</p> <p>Retains.</p> <p>Retains.</p>
Section 12(g) of the Richard B. Russell National School Lunch Act, and Section 4(c) of the Agriculture and Consumer Protection Act of 1973.	<p>§ 250.13(i) Persons who embezzle, willfully misapply, steals, or obtains by fraud, donated foods, or any funds, assets, or property deriving from donated foods, or who receive, conceal, or retain such donated foods or assets or property for his/her use or gain, will be subject to Federal criminal prosecution. This provision applicable to funds accruing from donated foods or donated food containers, and donated foods in processed end products. Distributing agency must immediately notify FNS of any suspected violations.</p>	<p>§ 250.1(c) Legislative sanctions. Retains in streamlined form.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.3 Definitions.</p> <p>No current definition.</p> <p>No current definition.</p> <p><u>Disaster.</u> Defines as natural catastrophe or other occasion determined by the President to warrant Federal assistance to support State and local efforts to save lives and protect property and otherwise alleviate the effects of such event.</p> <p>No current definition.</p> <p>No current definition.</p> <p>No current definition.</p> <p>No current definition.</p> <p><u>Subdistributing agency.</u> Defines as 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.</p> <p>State and local agencies and Indian tribal organizations administering TEFAP, FDPIR, or CSFP, are subdistributing agencies subject to all provisions relative to subdistributing agencies contained in this part, unless specifically exempt under Part 251, 253, 254, or 247 of this chapter.</p>	<p>§ 250.2 Definitions.</p> <p><u>Carrier.</u> Defines as a commercial enterprise that transports donated foods from one location to another, but does not store such foods.</p> <p><u>Consignee.</u> Defines as an entity that receives a shipment of donated foods from a vendor, or from a Federal storage facility.</p> <p><u>Disaster.</u> Defines as a Presidentially declared disaster or emergency, in accordance with Robert T. Stafford Disaster Relief and Emergency Assistance Act, in which Federal assistance, including donated food assistance, may be provided to persons in need of such assistance as a result of the disaster or emergency.</p> <p><u>Distribution Charge.</u> Defines as the cumulative charge imposed by distributing agencies on school food authorities to help meet the costs of storing and distributing donated foods, and administrative costs related to such activities.</p> <p><u>Food recall.</u> Defines as an action to remove food products from commerce when there is reason to believe the products may be unsafe, adulterated, or mislabeled. The action is taken to protect the public from products that may cause health problems or possible death.</p> <p><u>Split Shipment.</u> Defines as a shipment of donated foods from a vendor that is split between two or more distributing or recipient agencies, and that usually includes more than one stop-off or delivery location.</p> <p><u>Subdistributing agency.</u> Defines as a State agency, public agency, or a nonprofit organization selected by the distributing agency to perform one or more activities required of the distributing agency in this part, in accordance with a written agreement between the parties. A subdistributing agency may also be a recipient agency.</p> <p>Removes.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.2(a) FNS shall act on behalf of the Department in administration of the program and will evaluate all levels of program operations to assure goals of program are achieved.</p> <p>§ 250.10(a) Federal agencies and State agencies designated by the Governor or State legislature and approved by Department are eligible to become distributing agencies.</p> <p>§ 250.10(b) Private agencies may distribute donated foods, as approved by Department, when State law prohibits distributing agency from making such distributions.</p>	<p>§ 250.3 Administration at the Federal level.</p> <p>§ 250.3(a) Food and Nutrition Service. Clarifies FNS role as the Federal agency that administers Federal food assistance programs and distribution of donated foods to State distributing agencies for further distribution and use.</p> <p>Removes contingency for private nonprofits to act as distributing agencies (they may act only as subdistributing agencies or recipient agencies).</p>
None	<p>§ 250.18(a) Department or authorized representatives may conduct audits or inspections to determine compliance with requirements of Part 250.</p>	<p>§ 250.3(b) Audits or inspections.</p> <p>Retains.</p>
None	<p>§ 250.20 Distributing agency may be disqualified from further participation in distribution of donated foods for failure to comply with requirements of Part 250, or with FNS instructions or procedures.</p> <p>Department may take other actions, including prosecution under applicable Federal statutes.</p>	<p>§ 250.3(c) Suspension or termination. Clarifies that FNS may suspend or terminate distribution of donated foods or provision of administrative funds to distributing agency for failure to comply w/Part 250 requirements or other Federal regulations. FNS must provide written notification of action, including reasons and effective date. Provides for appeal in FDPIR.</p> <p>Retains.</p>
None	<p>§ 250.12(a) Distributing agency must enter into agreement w/ Department that incorporates terms and conditions of Part 250. Agreement is permanent with amendments as needed, subject to Departmental approval.</p> <p>§ 250.2(b) Distributing agency must administer in accordance w/Part 250 requirements and FNS guidelines/instructions.</p> <p>§ 250.2(c) Distributing agency must provide adequate personnel to administer program.</p>	<p>§ 250.4 Administration at the State level.</p> <p>§ 250.4(a) Distributing agency. Clarifies that distributing agency must enter into agreement w/FNS (form FNS-74) to receive, store, and distribute donated foods. Retains permanent agreement, w/amendments.</p> <p>Clarifies that distributing agency is responsible for ensuring compliance w/Part 250 requirements.</p> <p>Removes. FNS cannot determine what constitutes adequate workforce.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.12(b) Distributing agency must enter into agreements with selected subdistributing agencies, which must contain same terms as those required for recipient agencies, as applicable.</p> <p>§ 250.10(c) Distributing agency may not delegate management /control to subdistributing agencies.</p> <p>§ 250.12(c) Agreements are for one year, w/option to extend for 2 1-yr. periods.</p>	<p>§ 250.4(b) <u>Subdistributing agency.</u> Clarifies that distributing agency may select a subdistributing agency to perform specific activities required of the distributing agency in Part 250, in accordance with a written agreement. The agreement must contain provisions in § 250.4(c) of proposed rule.</p> <p>Clarifies that distributing agency may not assign overall responsibility for donated food distribution to subdistributing agency or other entity.</p> <p>Revises to leave duration as a provision of agreement between parties.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.13(d)(1) Distributing agency must ensure that donated foods are distributed only to recipient agencies and recipients eligible to receive them under this part.</p> <p>§ 250.11(b) Distributing agency must determine eligibility of agencies that submit application to participate in program</p> <p>§ 250.11(b) Distributing agency must consider past performance in selecting recipient agencies to receive donated foods.</p> <p>§ 250.12(b) Distributing agency must enter into an agreement with selected recipient agency.</p> <p>§ 250.12(c) Agreements considered permanent w/amendments as necessary.</p> <p>§ 250.12(b) Distributing agency agreements must contain terms necessary to ensure that: (1) Distribution and use of donated foods is in accordance with Part 250. (2) Subdistributing and recipient agencies are responsible to distributing agency for any improper distribution or use of donated foods, or loss of damage caused by negligence. (3) Subdistributing and recipient agencies have and preserve a right to assert claims against other persons to whom donated foods are delivered. (4) Subdistributing and recipient agencies must take claim actions to obtain restitution for donated food losses.</p> <p>§ 250.11(b) Distributing agency must assure welfare agencies are responsible for determining eligibility of applicants to participate in programs.</p> <p>§ 250.11(a) Distributing agency must verify registration of recipient agencies to participate in National Commodity Processing Program.</p>	<p>§ 250.4(c) Recipient agencies. Clarifies that distributing agency must select recipient agencies to receive donated foods, in accordance with eligibility criteria for specific programs or outlets. Clarifies that, for CN programs, distributing agency must enter into agreements w/recipient agencies selected by State administering agency.</p> <p>Retains, but clarifies this requirement applies only to household programs.</p> <p>Retains.</p> <p>Revises to leave duration as a provision of agreement between parties.</p> <p>Requires that agreement: --Ensure compliance w/applicable Part 250 requirements. --Ensure compliance w/food safety/food recall requirements. --Establish duration. --Permit termination for noncompliance. --Permit termination for other cause by either party, w/60-day notification.</p> <p>Removes specific provisions relating to responsibility for donated food losses and claim actions, as they would not apply to all recipient agencies.</p> <p>Removes, in accordance with removal of term “welfare agencies”.</p> <p>Removes, no longer applicable.</p>
None	<p>§ 250.12(b) Distributing agency must enter into agreements w/warehouses, carriers and other entities to which it delivers donated foods.</p>	<p>§ 250.4(d) Procurement of services of commercial enterprises. Clarifies that distributing or recipient agency must comply w/Dept. procurement requirements in 7 CFR Part 3016 or 3019, as applicable, to obtain services of commercial enterprises to conduct donated food activities. Procurement must also ensure compliance with other applicable regulations and the distributing agency’s written agreement with FNS.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.21 Distributing, subdistributing, and recipient agencies must comply with the Department’s nondiscrimination regulations and FNS civil rights instructions to ensure no person is discriminated against because of race, color, national origin, age, sex, or handicap.</p>	<p>§ 250.5 Civil Rights.</p> <p>§ 250.5(a) Civil rights requirements. Revises to include remove specific basis of discrimination as the basis among FDD programs differ depending on the program.</p>
None	<p>§ 250.22 Complaints alleged on the basis of race, color, national origin, age, sex, or handicap shall be handled in accordance with § 250.21.</p>	<p>§ 250.5(b) Discrimination complaints. Revises to direct recipients to file discrimination complaints to USDA Office of Civil Rights.</p>
		<p>Subpart B—Delivery, Distribution, and Control of Donated Foods</p>
None	<p>§ 250.13(a)(4) FNS shall notify distributing agencies of the types of donated foods available for specific programs or outlets.</p> <p>§ 250.24(d) Distributing agency must ensure that donated foods are provided on an equitable basis and, to the extent practicable, in types and forms must usable by recipient agencies.</p> <p>§ 250.13(a)(2)(ii) Donated foods shall be requested and distributed only in quantities that may be consumed without waste.</p> <p>§ 250.13(d)(2) Section 416 bonus foods may not be distributed to recipient agencies if normal food expenditures would be reduced.</p>	<p>§ 250.10 Availability and ordering of donated foods.</p> <p>§ 250.10(a) Ordering donated foods. Clarifies that distributing agency must utilize request-driven ordering system in submitting orders for donated foods to FNS. Clarifies that distributing agency must provide recipient agencies with opportunity to provide input on at least an annual basis in determining foods from full list that are made available to them for ordering. Based on input, types and forms recipient agencies may best utilize must be made available.</p> <p>Clarifies that donated foods must be ordered and distributed only in amounts that may be utilized efficiently and w/o waste.</p> <p>Removes.</p>
None	<p>§ 250.13(j) Distributing agency must make summaries of commodity specifications available to recipient agencies upon request.</p>	<p>§ 250.10(b) Provision of information on donated foods. Distributing agency must provide, at request of recipient agencies, information including:</p> <ul style="list-style-type: none"> --Types and quantities that may be ordered; --Specifications and nutritional value; --Procedures for disposition of out-of-condition and recalled foods.

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.13(a)(6) Department arranges for deliveries based on information obtained from distributing agencies.</p> <p>§ 250.13(a)(6) Department must to conform to scheduled delivery periods.</p> <p>§ 250.13(a)(3) Foods shall be donated only in such quantities as will protect the lower truck load freight rate, except as the Department determines to be in the best interest of the program.</p>	<p>§ 250.11 Delivery and receipt of donated food shipments.</p> <p>§ 250.11(a) Delivery. Retains. Clarifies that deliveries may be made from vendor or Federal storage facility to distributing agency storage facility, or processor with which distributing agency has contract or agreement. If approved by distributing agency, deliveries may be made to recipient agency or its contractor.</p> <p>Removes. While the Department strives to ensure timely deliveries to distributing and recipient agencies, such deliveries are subject to vendor and storage facility contracts and performance</p> <p>Removes.</p>
None	No current provision.	<p>§ 250.11(b) Receipt of shipments. Requires distributing or recipient agency or other consignee to comply with all applicable Federal requirements in receiving donated food shipments, including disposition of out-of-condition donated foods. Requires notification of receipt of shipments to FNS, through electronic means, and electronic record of receipt of all donated food shipments.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.13(g) Department will replace entitlement donated foods when documentation is provided that such foods were out-of-condition or not in compliance with specifications at time of delivery. Department will replace donated foods provided in addition to entitlement when orders of such foods are limited.</p> <p>Such donated foods may be replaced within 3 months of receipt or, for canned foods, within 6 months of receipt. Department may require documentation of receipt, or re-inspection to determine that donated foods are out-of-condition.</p> <p>Replacement by the vendor must be with the same foods or similar foods approved by the Department. Department may approve cash reimbursement instead of physical replacement, using the value established by the Department at the time of delivery or the replacement cost. Entitlement or cap crediting must use the \$ value deducted from State’s entitlement or cap for that shipment. Department will arrange for delivery of replacement foods when it is cost-effective.</p>	<p>§ 250.11(c) <u>Replacement of donated foods.</u> Clarifies that vendor is responsible for replacement of donated foods (includes entitlement and bonus) delivered out-of-condition.</p> <p>Revises to hold vendor responsible for such replacement until expiration of use-by or best-if-used-by date, or if such date is lacking, until expiration of vendor warranty period included in vendor contract. In all cases, responsibility for replacement is contingent on determination that donated foods were out-of-condition when delivered.</p> <p>Clarifies that replacement must be in-kind, unless FNS approves similar replacement. Clarifies that, if physical replacement of donated foods is not cost-effective or efficient, FNS may: (1) Approve payment by vendor to the distributing or recipient agency, as appropriate, for the value of the donated foods at time of delivery (or another value determined by FNS); or (2) Credit the distributing agency’s entitlement, as feasible.</p>
None	<p>§ 250.13(b) The Department shall pay processing, reprocessing, transporting, handling, and other charges accruing up to time of transfer of title, as deemed in the best interest of Department.</p> <p>§ 250.15(d) Distributing agency is responsible for delivery charges accruing after arrival of truck at delivery site (i.e., demurrage), except if result of action taken by Department.</p>	<p>§ 250.11(d) <u>Payment of costs relating to shipments.</u> Revises to state that Department is responsible for such payment up to time of delivery as deemed in best interest of Department.</p> <p>Clarifies that distributing agency or other consignee is responsible for payment of delivery charges accruing as a result of consignee’s failure to comply with required procedures—e.g., failure to provide for unloading of shipment within designated time period.</p>
None	<p>§ 250.13(c) Title to donated foods transfers to the distributing or recipient agency, as appropriate, upon acceptance of the donated foods at time and place of delivery. Notwithstanding transfer of title, distributing and recipient agency must ensure that donated foods are used in accordance with Part 250 requirements.</p>	<p>§ 250.11(e) <u>Transfer of title.</u> Retains.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.14(b) Distributing, subdistributing, and recipient agencies must provide facilities for the handling, storage, and distribution of donated foods which:</p> <ul style="list-style-type: none"> --Are sanitary and free from infestation. --Safeguard against theft, spoilage, and other loss. --Maintain foods at proper temperatures. --Stock and space foods so that USDA foods are readily identified; --Store donated foods off the floor to allow for adequate ventilation. --Take other protective measures as necessary. <p>Distributing, subdistributing, and recipient agencies must also ensure that storage facilities have obtained all required Federal, State, and local health inspections.</p>	<p>§ 250.12 Storage and inventory management at the distributing agency level.</p> <p>§ 250.12(a) <u>Safe storage and control.</u> Retains.</p> <p>Clarifies that distributing agency must comply with all Federal, State, or local requirements relative to food safety and health, and obtain all required health inspections.</p>
None	<p>§ 250.14(b) Distributing, subdistributing, and recipient agencies must stock and space foods so that USDA foods are readily identified.</p> <p>§ 250.14(e) Distributing agencies must take annual physical inventory at storage facilities. Physical inventory must be reconciled with book inventory. Donated foods that have been lost or stolen must be documented as well as any excessive inventories.</p> <p>§ 250.14(f)(3) Distributing agency must take corrective action to ensure that excessive inventories at all levels are eliminated and document corrective actions taken.</p>	<p>§ 250.12(b) <u>Inventory management.</u> Clarifies that the distributing agency must ensure that donated foods at all storage facilities used by distributing agency (or subdistributing agency) are stored in a manner that permits them to be distinguished from other foods and must maintain separate inventory record of donated foods.</p> <p>Requires that system of inventory management ensures donated foods are distributed in timely manner and in optimal condition.</p> <p>Retains annual physical review and reconciliation of physical and book inventories.</p> <p>Clarifies that distributing agency must report donated food losses to FNS, and ensure that restitution is made for such losses.</p>
None	<p>§ 250.14(f)(2) In no case may the inventory level of each donated food in storage exceed a 6-month supply, unless justification is provided and FNS approval obtained to maintain larger inventory.</p>	<p>§ 250.12(c) <u>Inventory limitations.</u> Retains 6-month inventory limitation for donated foods provided in TEFAP, NSLP and other child nutrition programs.</p> <p>Revises to establish 3-month inventory limitation for donated foods provided in CSFP and FDPIR.</p>
None	No current requirement.	<p>§ 250.12(d) <u>Inventory protection.</u> Requires distributing agency to obtain insurance to protect value of donated foods, and to ensure that subdistributing agencies and recipient agencies that have agreement with distributing agency or subdistributing agency to obtain such insurance. Amount must be at least equal to average monthly value of donated food inventories in previous year.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.13(h) Distributing agency must request FNS approval to redonate donated foods that it cannot efficiently utilize.</p> <p>FNS may require foods to be inspected before redonation.</p> <p>§ 250.15(e) Distributing agency must meet cost of inspection of donated foods that are to be redonated. Department will pay transportation costs, if need for redonation is not the fault of the distributing agency.</p>	<p>§ 250.12(e) <u>Transfer of donated foods.</u> Clarifies that distributing agency may transfer donated foods from its inventories to another agency, or to another program, to ensure use in timely manner and in optimal condition. May transfer donated foods within same program w/o FNS approval, but must request FNS approval to transfer donated foods from one program to another. (Note that the term “transfer” is used in place of “redonation”). Clarifies that distributing agency must obtain health inspection, if there is a question of food safety, or if directed by FNS.</p> <p>Clarifies that distributing agency must meet any transportation or inspection costs, unless it is determined by FNS that the transfer is not the result of negligence or improper action on the part of the distributing agency, and must maintain a record of all transfers from its inventories and of any inspections.</p>
None	<p>§ 250.14(d) Distributing and subdistributing agencies must enter into written contracts with storage facilities, to be effective for no longer than 5 years, including option years extending a contract. Contracts must contain the following provisions:</p> <ol style="list-style-type: none"> (1) Assurance that storage facility will comply with requirements in §250.14(b). (2) Donated foods will be clearly identified. (3) Assurance that inventory system will be maintained and annual physical inventory taken and reconciled with book inventory. (4) Effective dates of contract. (5) Provision for immediate termination for noncompliance. (6) Provision for termination for cause by either party on 30 days notification. (7) Amount of any insurance coverage to protect value of donated foods. (8) Consent for inspection by Department and other parties. 	<p>§ 250.12(f) <u>Commercial storage facilities or carriers.</u> Clarifies that distributing agency may obtain services of a commercial storage facility to store and distribute donated foods, or carrier to transport donated foods, but must ensure compliance with Departmental procurement requirements in 7 CFR Part 3016. Retains contract requirement and required duration of contract for storage facilities and includes same requirements and required provisions for carriers. Retains current contract provisions relating to effective dates, safeguarding inventories, inventory management, amount of any insurance coverage, inspection by Dept. and other parties, and termination for noncompliance, w/minor changes. Requires assurance of compliance w/food safety laws and regulations, including procedures for responding to a food recall. Requires distribution to eligible recipient agencies in timely manner and in optimal condition. Requires provision for termination by either party after 60-day notification period.</p>

Legislation	Current Provision	Proposed Provision
<p>Section 3(d) of the Commodity Distribution Reform Act and WIC Amendments of 1987</p>	<p>§ 250.14(a)(1) Distributing agency must use the most cost-effective and efficient system for providing warehousing and distribution services to recipient agencies.</p> <p>§ 250.24(e) Distribution system must be responsive to needs of recipient agencies.</p> <p>§ 250.13(a)(6) Distributing agency must provide for monthly deliveries, unless such deliveries are not cost-effective and recipient agency agrees to less frequent deliveries. Distributing agency must consider other needs of recipient agencies in arranging for deliveries, and inform them of delivery schedules.</p> <p>§ 250.14(a)(2) Distributing agency must submit evaluations of non-commercial warehousing and distribution systems to FNS every 3 years.</p> <p>§ 250.14(a)(5) Distributing agency must request waiver to continue use of non-commercial system.</p>	<p>§ 250.13 Efficient and cost-effective distribution of donated foods.</p> <p>§ 250.13(a) Direct shipments. Clarifies that distributing agency must ensure distribution of donated foods to recipient agencies in the most efficient and cost-effective manner, and in accordance with specific needs of recipient agencies as feasible. To meet requirement, distributing agency must, to the extent practical:</p> <p>(1) Provide for direct shipments of donated foods from vendors to recipient agencies, including those acting as collective unit;</p> <p>(2) Provide for direct shipments to processors for processing of donated foods and sale of end products to recipient agencies, in accordance with Subpart C of Part 250; and</p> <p>(3) Provide for use of split shipments in arranging for deliveries to recipient agencies that cannot accept full truckload.</p> <p>Remove.</p> <p>Remove.</p>
<p>None</p>	<p>§ 250.15(a) Recipient agencies may be required to pay part or all of the direct costs for intrastate storage and distribution of donated foods.</p> <p>Distribution charge may not be based on a percentage of the value of donated foods distributed. Distribution charge may not be assessed for costs that are unallowable under Departmental regulations for administrative grants (currently 7 CFR 3016).</p>	<p>§ 250.13(b) Distributing agency storage and distribution charge. Clarifies that, if direct shipments are impractical, distributing agency must provide for most efficient/cost-effective distribution at State level, including use of commercial contractors as appropriate. Clarifies that distributing agency must use SAE funds, or other Federal/ State funds, as available, to meet costs of storing and distributing donated foods in child nutrition programs.</p> <p>Clarifies that, if such funds do not fully meet such costs, distributing agency may impose distribution charge on recipient agencies in child nutrition programs to help meet such costs.</p> <p>Clarifies that distribution charge may cover only allowable costs, in accordance with 7 CFR Part 3016 and OMB guidance.</p> <p>Requires distributing agency to maintain a record of costs incurred in storing and distributing donated foods and related administrative costs and the source of funds used to pay such costs.</p>

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None	<p>§ 250.14(a)(7) Distributing agency must request FNS approval at least 90 days in advance of any proposed increased charge in distribution charge beyond normal inflation or decrease in level of service under the distribution charge.</p> <p>§ 250.15(a)(1) The request must include justification for the new or increased amount and the specific costs to be covered by the distribution charge.</p>	<p>§ 250.13(c) FNS approval of amount of distribution charge. Retains, but also requires FNS approval of amount of newly established charge. Adds requirement that the request for change must include justification in any change in the level of service provided under an existing charge, in addition to current requirement for justification for a new or increased charge.</p>
None	<p>§ 250.14(a)(7) If FNS determines charges are inappropriate, it will require distributing agency to adjust them, submit further justification, or reevaluate system.</p> <p>§ 250.14(a)(6) If FNS determines at any time that the distributing agency's storage and distribution system is not cost-effective or efficient, the distributing agency must re-evaluate its system, within 90 days of notification.</p> <p>§ 250.14(a)(7) Distributing agency must request FNS approval for any planned reduction in the level of service provided.</p> <p>§ 250.15(a) Distributing agency must submit to FNS for approval information on its assessment of distribution charge, with data used in calculating rate, every 3 years.</p>	<p>§ 250.13 (d) FNS review authority. Clarifies that FNS may reject proposed amount of distribution charge, if it determines that it would not provide for cost-effective and efficient distribution, or would impact recipient agencies negatively. In such case, distributing agency must adjust proposed amount or consider other options. Clarifies that FNS may require distributing agency to submit documentation to justify the efficiency and cost-effectiveness of the distribution system at other times, and may require distributing agency to re-evaluate its system.</p> <p>Removes.</p> <p>Removes.</p>
None	<p>§ 250.14(b) Recipient agencies must provide facilities for the handling, storage, and distribution of donated foods that:</p> <ul style="list-style-type: none"> --Are sanitary and free from infestation. --Safeguard against theft, spoilage, and other loss. --Maintain foods at proper temperatures. --Store donated foods off the floor to allow for adequate ventilation. --Take other protective measures as necessary. <p>Recipient agencies must also ensure that storage facilities have obtained all required Federal, State, and local health inspections.</p>	<p>§ 250.14 Storage and inventory management at the recipient agency level.</p> <p>§ 250.14 (a) Safe storage and control. Retains requirement that recipient agencies provide facilities for the storage, control, and distribution of donated foods that protect against theft, spoilage, or other loss, and maintain foods at proper temperatures, ventilation.</p> <p>Clarifies that recipient agencies must comply with all Federal, State, or local requirements relative to food safety and health, and obtain all required health inspections.</p>

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None	<p>§ 250.14(b) Distributing, and subdistributing agencies must provide facilities for the handling, storage, and distribution of donated foods that ensure such foods may be readily identified.</p> <p><u>Note:</u> In accordance with the current definition of “subdistributing agency”, recipient agencies in household programs are subject to this requirement. This rule proposes to revise such definition.</p>	<p>§ 250.14(b) <u>Inventory management—household programs.</u> Clarifies that recipient agencies in household programs must store donated foods in a manner that permits them to be distinguished from other foods in storage, and must maintain a separate inventory record of donated foods.</p> <p>Requires that system of inventory management ensures use of donated foods in timely manner and in optimal condition.</p> <p>Requires recipient agencies to notify distributing agency of donated food losses, and take further actions, as directed by distributing agency.</p>
None	<p>§ 250.14(b) Distributing, subdistributing, and recipient agencies must provide facilities for the handling, storage, and distribution of donated foods which:</p> <p>--Excepting recipient agencies, stock and space foods so that USDA foods are readily identified.</p>	<p>§ 250.14(c) <u>Inventory management—child nutrition programs and charitable institutions.</u> Clarifies that recipient agencies in child nutrition programs, and those receiving donated foods as charitable institutions, are not required to store donated foods in a manner that distinguishes them from other foods, or maintain separate inventory record of donated foods (i.e., may utilize single inventory management). For such recipient agencies, donated foods are subject to same safeguards and effective management practices as other foods. Accordingly, recipient agencies in child nutrition programs, and those receiving donated foods as charitable institutions, regardless of system of inventory management utilized, are not required to separately monitor and report donated food use, distribution, or loss to the distributing agency, unless there is evidence that indicates such losses have occurred as a result of theft or fraud.</p>
None	<p>§ 250.13(a)(1) Donated foods provided as part of an approved food package or authorized level of assistance may be transferred between like recipient agencies with distributing agency approval. Donated foods provided in addition to authorized levels may be transferred to any eligible recipient agencies with distributing agency approval. Transfer between unlike recipient agencies must receive FNS approval.</p> <p>All transfers must be documented, and a record maintained.</p>	<p>§ 250.14(d) <u>Transfer of donated foods to another recipient agency.</u> Requires recipient agency operating a household program to request distributing agency approval to transfer donated foods to another recipient agency. Requires distributing agency to request FNS approval to permit transfer to a recipient agency in another program. Other recipient agencies may transfer donated foods to another recipient agency, or to charitable organization, without distributing agency or FNS approval.</p> <p>Removes.</p>

Legislation	Current Provision	Proposed Provision
None	No current provision in Part 250	<p>§ 250.14(e) Commercial storage facilities. Clarifies that recipient agencies may obtain the services of commercial storage facilities to store and distribute donated foods, but must ensure compliance w/ procurement requirements in 7 CFR Part 3016 or 3019, as applicable.</p> <p>Clarifies that recipient agencies must ensure that such commercial storage facilities comply w/applicable Part 250 requirements for storage, inventory management, and control of donated foods.</p>
None	<p>§ 250.13(f) Damaged or out-of-condition donated foods determined to be unfit for human consumption by Federal, State, or local health officials must be disposed of in accordance with Department instructions. Such instructions may require destruction of foods, or may permit sale or restricted use of such foods.</p>	<p>§ 250.15 Out-of-condition donated foods, food recalls, and complaints.</p> <p>§ 250.15(a) Out-of-condition donated foods at distributing agency level. Clarifies that distributing agency must ensure that out-of-condition donated foods at its storage facilities are destroyed, or otherwise disposed of, in accordance with State or local requirements pertaining to food safety and health. Clarifies that distributing agency must obtain inspection of such foods to determine safety and condition, as necessary or as directed by FNS.</p>
None	<p>§ 250.13(f) Damaged or out-of-condition donated foods determined to be unfit for human consumption by Federal, State, or local health officials must be disposed of in accordance with Department instructions. Such instructions may require destruction of foods, or may permit sale or restricted use of such foods.</p>	<p>§ 250.15(b) Out-of-condition donated foods at recipient agency level. Clarifies that recipient agencies in household programs must ensure that out-of-condition donated foods are destroyed, or otherwise disposed of, in accordance with State or local requirements pertaining to food safety and health. Distributing agency must ensure that such agencies obtain inspection of such foods to determine safety and condition, as necessary or as directed by FNS. For CN programs and charitable institutions, donated foods are subject to same safeguards and management practices as other foods, must be treated as other foods when safety is in question. Such recipient agencies must comply w/ State or local requirements in determining food safety and in destruction or other disposition.</p>
None	No current provision.	<p>§ 250.15(c) Food recalls. Requires distributing agency or recipient agency, as appropriate, to follow all applicable Federal, State, or local requirements for donated foods subject to a food recall.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.22 Distributing agency must promptly investigate any complaints received relating to the distribution or use of donated foods.</p> <p>Distributing agency must resolve complaint and promptly report serious irregularities to Department.</p> <p>Distributing agency must maintain or file evidence of investigations or actions.</p> <p>No current provision.</p>	<p>§ 250.15(d) <u>Complaints relating to donated foods.</u> Clarifies that distributing agency must inform recipient agencies of the preferred method for receiving donated food complaints and must resolve complaints from recipients, recipient agencies, or other entities relating to donated foods in expeditious manner, and in accordance with requirements in this part. If the complaint may not be resolved at State level, distributing agency must provide information to FNS regarding the complaint.</p> <p>Prohibits disposal of any donated food subject to complaint w/o guidance and authorization from FNS.</p> <p>Distributing agency must maintain record of investigations or other actions w/respect to donated food complaints.</p> <p>Requires distributing agencies to submit any complaints regarding product quality or specifications, or suggested product improvements, to FNS through the established FNS donated foods complaint system for tracking purposes.</p>
Section 14 of the Commodity Distribution Reform Act and WIC Amendments of 1987	<p>§ 250.15(c) If distributing agency improperly distributes or uses donated foods, or causes loss of, or damage to, donated foods, it must replace the donated food, or pay the Department for the value of the donated food.</p> <p>Distributing agency must take claim actions to obtain recovery for donated foods.</p> <p>§ 250.15(c) Department will hold distributing agency liable for failure to pursue claims.</p> <p>§ 250.15(c)(2) Inventory loss of a donated food that does not exceed 1 percent of total inventory is exempt from claim recoveries, under certain conditions, and losses in amounts that do not exceed thresholds established in State laws or regulations are also exempt.</p>	<p>§ 250.16(a) <u>Distributing agency responsibilities.</u> Clarifies that distributing agency must ensure that restitution is made for loss of donated foods, or for loss or improper use of funds provided for, or obtained as an incident of donated food distribution.</p> <p>Requires the distributing agency to identify and seek restitution from parties responsible for the loss, and to take corrective to prevent future losses.</p> <p>Removes.</p>
None	<p>§ 250.15(c) Distributing agencies which fail to pursue claims shall be responsible to the Department for replacing the donated foods or their value.</p>	<p>§ 250.16(b) <u>FNS claim actions.</u> Clarifies that FNS may pursue claims against the distributing agency or other parties for donated food losses, or for loss or improper use of funds.</p> <p>Clarifies that FNS may also take claim actions for failure of distributing agency to take required claim actions against other parties.</p> <p>Indicates that FNS may compromise, forgive, suspend, or waive a claim. Says FNS may, at its option, require assignment to it of any claim.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.15(f)(2) Funds accruing from the sale of containers, salvage of donated foods, distribution charges, or insurance must be returned to the Department or used for program administrative costs. Funds may not be used for costs not allowable under 7 CFR 3016 and 3019 (formerly 7 CFR 3015).</p> <p>§ 250.15(f)(3) Distributing agency must maintain funds obtained from distribution charge in separate operating account.</p> <p>§ 250.15(f)(4) Operating account must not exceed sum of previous year's highest 3-month expenditures, unless distributing agency provides justification for larger amount and receives FNS approval to maintain such amount in account. If excess funds accrue, distributing agency must reduce distribution charge or return funds to recipient agencies.</p>	<p>§ 250.17 Use of funds obtained incidental to donated food distribution.</p> <p>§ 250.17(a) <u>Distribution charge.</u> Clarifies that distributing agency must use funds obtained from distribution charge to meet costs of storing and distributing donated foods and related administrative costs, consistent w/limitations on use of funds obtained under Federal grant in 7 CFR Parts 3016, and applicable OMB guidance. Clarifies that such funds may not be used to purchase foods to replace donated food losses or to pay claims.</p> <p>Retains.</p> <p>Retains.</p>
None	No current provision, but consistent with 7 CFR 210.14.	<p>§ 250.17(b) <u>Processing and food service management company contracts.</u> Clarifies that SFAs must use funds received from processors in processing of donated foods, or from food service management companies in crediting for donated food value, in support of the nonprofit school food service, in accordance with § 210.14. Other recipient agencies must use such funds in accordance with § 250.17(c) of this proposed rule.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.15(f) (1) Funds accruing from claim recoveries must be used for expenses of food distribution, or other allowable program costs. (2) Funds accruing from the sale of containers, salvage of donated foods, distribution charges, or insurance must be returned to the Department or used for program administrative costs. Funds may not be used for costs not allowable under 7 CFR 3016 and 3019 (formerly 7 CFR 3015).</p> <p>(3) Distributing agency must maintain funds received from sources other than distribution charge in separate salvage account.</p> <p>(4) Distributing agency must review receipt and expenditure of funds annually to ensure fund balances are not in excess of program needs. The salvage account has no limit, but FNS must approve each deposit into, or expenditure from, salvage account in excess of \$2,500.</p> <p>No current provision.</p>	<p>§ 250.17(c) <u>Claims and other sources.</u> Clarifies that distributing agency must use funds recovered in claims only for payment of expenses of the food distribution program.</p> <p>Clarifies that, except as otherwise indicated in this section, distributing or recipient agency must use funds obtained incidental to donated food distribution to pay costs of storing and distributing donated foods, and related costs, consistent w/limitations on use of funds obtained under Federal grant in 7 CFR Parts 3016 or 3019, and with OMB regulations, as applicable.</p> <p>Retains, but renames “donated food account”.</p> <p>Revises to require that distributing agency obtain FNS approval for any single deposit into, or expenditure from, the donated food account in excess of \$25,000.</p> <p>Distributing or recipient agencies must maintain a record of all funds obtained and expended in accordance with this proposed 7 CFR 250.17(c).</p>
None	No current provision in Part 250.	<p>§ 250.17(d) <u>Prohibitions.</u> Prohibits distributing agency from using funds to meet State matching requirements for Federal administrative funds received in CSFP, TEFAP, or FDPIR, or to replace SAE funds.</p>
<p>Section 3(h) of the Commodity Distribution Reform Act and WIC Amendments of 1987.</p> <p>Section 12(n) of the Richard B. Russell National School Lunch Act.</p>	<p>§ 250.23(a) When using Federal funds to purchase foods, recipient agencies must purchase only food products produced in the U.S. These are defined as: (1) An unmanufactured product produced in the U.S., or (2) A food product manufactured in the U.S. primarily using food grown in the U.S.</p> <p>§ 250.23(b) Requirements in paragraph (a) do not apply if: (1) Recipients have unusual or ethnic food preferences which can only be met through purchases of food products not produced in the U.S. (2) Product is not produced or manufactured in U.S. in sufficient quantities or of satisfactory quality. (3) Cost of U.S. product is significantly higher than foreign products. (4) Recipient agency is located outside of the mainland U.S.</p>	<p>§ 250.17(e) <u>Buy American.</u> Clarifies that, in using funds obtained in accordance with 7 CFR 250.17 of this proposed rule to purchase foods in commercial market, distributing or recipient agency in continental U.S., and in Hawaii, must, to the maximum extent practical, purchase only domestic foods or food products. Defines domestic foods or food products, for purposes of this section, as: (1) Agricultural commodities that are produced in the U.S.; or (2) Food products that are processed in the U.S. substantially using agricultural commodities that are produced in the U.S.</p> <p>Clarifies that Buy American requirement is also applicable to food purchases made with cash-in-lieu-of-donated-foods received in NSLP and CACFP.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.17(a) Distributing agency must submit semiannual reports of excessive inventories of donated foods, utilizing form FNS-155, Inventory Management Register, except: --For FDPIR, it must submit a monthly report of donated food inventory activity utilizing form FNS-152. --For CSFP, it must submit a monthly report of donated food inventory activity utilizing form FNS-153.</p> <p>Reports must be submitted not later than 30 days after the end of the reporting period.</p> <p>§ 250.13(k) and § 250.17(d) Distributing agency must obtain information from recipient agencies regarding the preferred types and forms of donated foods, and recommendations for specifications and package sizes. Information must be collected from a sample of recipient agencies in NSLP, CACFP, NSIP, CSFP, and FDPIR. Distributing agency must submit a commodity acceptability report (form FNS-663) to FNS by April 30 of each year.</p>	<p>§ 250.18 Reporting requirements.</p> <p>§ 250.18(a) <u>Inventory and distribution of donated foods.</u> Retains requirement that distributing agency submit report of excessive donated food inventories for TEFAP, NSLP, and other child nutrition programs. Retains inventory reporting requirements for FDPIR and CSFP, but removes explicit reference to submission of form FNS-153 and instead references requirements in other regulations (i.e., 7 CFR Part 247).</p> <p>Revises to require submission in accordance w/time frames established by FNS.</p> <p>Removes commodity acceptability information collection and reporting requirement. See proposed 250.15(d).</p>
None	<p>§ 250.17(b) Processors must submit performance reports, in accordance with § 250.30(m).</p>	<p>§ 250.18(b) <u>Processor performance reports.</u> Retains.</p>
None	<p>§ 250.69(f) and 250.70(f) Within 45 days following termination of assistance, distributing agency must provide summary report using form FNS-292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.</p> <p>§ 250.69(g) and 250.70(g) Distributing agency must submit written request for replacement of donated foods used in disaster/situation of distress within 30 days following termination of assistance.</p>	<p>§ 250.18(c) <u>Disasters and situations of distress.</u> Requires distributing agency to submit electronic report of the types and amounts of donated foods used in disasters and situations of distress, and a request for replacement of such foods, using electronic form FNS-292A, Report of Commodity Distribution for Disaster Relief, in accordance with §§ 250.69(f) and 250.70(f) of this proposed rule. Requires report to be submitted within 30 days of termination of assistance.</p>
None	<p>§ 250.17(e) Distributing agency must submit other reports as required by Department.</p>	<p>§ 250.18(d) <u>Other information.</u> Clarifies that distributing agency must submit other information as requested by FNS, in order to ensure compliance w/Part 250 requirements. For example, FNS may require the distributing agency to submit information with respect to its assessment of a distribution charge, or to justify the efficiency and cost-effectiveness of its distribution system, in accordance with § 250.13(c) and (d) of this proposed rule.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.16(a) Accurate and complete records must be maintained with respect to the receipt, distribution/use, and inventory of donated foods, including:</p> <ul style="list-style-type: none"> --End products processed from donated foods. --Liability for any improper distribution, use of, loss of, or damage to, donated foods, or resulting claim actions. --Receipt and expenditure of funds arising from operation of the program, including processor payments upon termination of agreements. <p>Failure to maintain required records shall be considered evidence of improper distribution of donated foods and the applicable agency or entity shall be subject to a claim.</p> <p>Recipient agencies must maintain records of the data and method used to determine number of eligible persons served.</p>	<p>§ 250.19 Recordkeeping requirements.</p> <p>§ 250.19(a) Required records. Clarifies that distributing agencies, recipient agencies, and other entities must maintain records of agreements and contracts, receipt of donated food shipments and end products, reports, audits, and claim actions, funds obtained as an incident of donated food distribution, and other records specifically required in 7 CFR Part 250 or in other Departmental regulations, as applicable. Clarifies that distributing agencies must keep records of the value of donated foods received by each school food authority. Further clarifies that, for processors, such requirement includes records documenting sales of end products to recipient agencies, including such sales through distributors.</p> <p>Clarifies that failure to maintain such records shall be considered prima facie evidence of improper distribution or loss of donated foods and may result in a claim against the responsible party for the loss of donated foods, in accordance with § 250.16 of this proposed rule.</p> <p>Removes.</p>
None	<p>§ 250.16(b) All records must be retained for a period of 3 years from the close of the fiscal year to which they pertain, except that records relating to unresolved claims or audits must be retained until such actions have been resolved.</p>	<p>§ 250.19(b) Retention of records. Retains.</p>
None	<p>§ 250.18(a) Fiscal matters must be reviewed in accordance with the Single Audit Act and the Department's regulations (currently 7 CFR Part 3052).</p>	<p>§ 250.20 Audits.</p> <p>§ 250.20(a) Requirements for distributing and recipient agencies. References audit requirements for State or local gov't. or nonprofit agency in 7 CFR Part 3052. Indicates that value of donated foods must be used in determining if audit is required. References FNS guidance, which provides guidance in valuing donated foods for audit purposes.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.18(b) No current requirement for in-State processors.</p> <p>Requires multi-State processors to obtain independent CPA audit at frequency determined by average value of donated foods received for processing per year.</p> <p>Multi-State processor must meet cost of audits.</p>	<p>§ 250.20(b) Requirements for processors. Requires in-State processors to obtain an independent CPA audit in first year of receiving donated foods for processing, and multi-State processors to obtain such an audit in each of first two years of receiving donated foods for processing.</p> <p>In subsequent years, requires both multi-State and in-State processors to obtain independent CPA audit at a frequency determined by the average value of donated foods received for processing per year. Revises upward the current donated food value thresholds.</p> <p>Requires all processors to pay for required audits.</p>
None	<p>§ 250.18(b)</p> <p>No current requirement.</p> <p>Multi-State processors must submit written documentation of deficiencies and corrective actions to FNS.</p>	<p>§ 250.20(c) Post-audit actions required of processors. In-State processors must submit copy of audit to distributing agency for review by 12/31 of each year in which an audit is required. Distributing agency must ensure that in-State processors correct any deficiencies identified in the audit, or provide a corrective action plan with timelines for correcting all such deficiencies.</p> <p>Multi-State processors must submit a copy of the audit, and corrective action plan, as appropriate, to FNS for review by 12/31 of each year in which an audit is required.</p>
None	<p>§ 250.18(b) Noncompliance with audit requirements will make processor ineligible to enter into further processing contracts until audit has been conducted and deficiencies corrected.</p>	<p>§ 250.20(d) Failure to meet audit requirements. If distributing or recipient agency fails to obtain the required audit, or fails to correct deficiencies identified in audit, FNS may withhold, suspend, or terminate the Federal award.</p> <p>If a processor fails to obtain the required audit, or fails to correct deficiencies identified in audit, the distributing or recipient agency may terminate processing agreement, and may not extend or renew such agreement. FNS may also prohibit further distribution of donated foods to processor.</p>
None	<p>§ 250.19 The distributing agency must establish a review system to assess effectiveness of food distribution, including procedures to ensure compliance with w/Part 250 and other requirements.</p>	<p>§ 250.21 Distributing agency reviews.</p> <p>§ 250.21(a) Scope of review requirements. Clarifies that distributing agency must ensure compliance with Part 250 requirements, and other Federal regulations, through on-site reviews required in paragraph (b) of this section, and review of required reports or audits. Clarifies that distributing agency is not responsible for review of school food authorities and other recipient agencies in child nutrition programs, as State administering agency is responsible for such reviews in accordance with part 210.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.19(b)(1) Reviews must include:</p> <ul style="list-style-type: none"> --On-site review of all charitable institutions whenever distributing agency identifies actual or probable deficiencies. --On-site review on annual basis of all distributing agency-level storage facilities. --On-site review every 2 years of all in-State processors. <p>§ 250.19(b)(2) Distributing agency must implement system of verification of sales of processed end products sold through distributors.</p>	<p>§ 250.21(b) On-site reviews. Distributing agency must conduct on-site review of:</p> <ul style="list-style-type: none"> --Retains current requirement for charitable institutions, but removes reference to review of contracted FSMCs. --Retains current requirement for distributing agency-level storage facilities and clarifies that it includes contracted commercial storage facilities. --Removes requirement for review of in-State processors. --Includes reference to on-site reviews of subdistributing and recipient agencies in CSFP (i.e., local agencies), TEFAP, and FDPIR, in accordance with 7 CFR Parts 247, 251, and 253, respectively. <p>Removes.</p>
None	<p>§ 250.19(b)(3) Distributing agency must submit a report of review findings to each entity reviewed, including:</p> <ul style="list-style-type: none"> --Each deficiency found. --Factors contributing to each deficiency. --Recommendations for needed corrective action. --Provisions for evaluating effectiveness of corrective actions. <p>§ 250.19(b)(4) Distributing agency must monitor progress toward correction of deficiencies.</p> <p>§ 250.19(b)(6) Distributing agency must require that subdistributing agencies monitor and review their operations in accordance with requirements.</p>	<p>§ 250.21(c) Identification and correction of deficiencies. Clarifies that the distributing agency must inform each subdistributing agency, recipient agency, or other entity of all deficiencies identified in its review, and recommend specific actions to correct deficiencies. Distributing agency must ensure implementation of corrective actions to correct deficiencies in a timely manner.</p> <p>Removes. Distributing agency must retain responsibility for review and oversight, in accordance with § 250.4(a) of this proposed rule.</p>

Legislation	Current Provision	Proposed Provision
Section 3(e) of the Commodity Distribution Reform Act and WIC Amendments of 1987.	<p>§ 250.24 Establishes basic performance standards for distributing agencies that address the level of service provided to recipient agencies. Distributing agency must:</p> <ul style="list-style-type: none"> --Conduct reviews. --Provide information necessary for effective participation in program, including regulations, commodity specifications, recipes, and procedures. --Maintain effective financial management system. --Ensure that donated foods are provided on an equitable basis, and, to extent practicable, in types and forms most usable by recipient agencies. --Use storage/distribution system that is efficient, cost-effective, and responsive to needs of recipient agencies. --Establish system to handle donated food complaints, and replacement of donated food losses. --Provide for processing of donated foods in accordance w/Subpart C, ensure recipient agencies are aware of processing options. 	<p>§ 250.22 Distributing agency performance standards.</p> <p>§ 250.22(a) Performance standards. Streamlines performance standards, as follows:</p> <ul style="list-style-type: none"> --Provide pertinent information on donated foods to recipient agencies as requested. --Implement request-driven ordering system. --Offer SFAs commodity offer value. --Provide for storage, distribution, and control of donated foods in accordance w/food safety requirements. --Provide for distribution in most efficient/cost-effective manner including, to extent practical, direct shipments, and including use of split shipments. --Use SAE funds or other Federal/State funds, as available, in paying State storage and distribution costs in child nutrition programs and impose distribution charge only if such funds are insufficient. --Provide for testing of end products when making procurements on behalf of recipient agencies. <p>Adds a performance standard requiring distributing agencies to provide recipient agencies information regarding the preferred method for submission of donated foods complaints to the distributing agency and act expeditiously to resolve submitted complaints.</p> <p>Removes other performance standards not relating directly to distribution/control of donated foods.</p>
None	<p>§ 250.19(c) Distributing agency must submit corrective action plan whenever it is found by FNS to be substantially out of compliance w/performance standard or other provision of Part 250. Plan must identify corrective actions needed and timeline. Plan must be submitted to FNS within 60 days after notification of deficiency.</p>	<p>§ 250.22(b) Corrective action plan. Retains.</p>
None	<p>§ 250.20 Distributing agency may be disqualified from further participation in distribution of donated foods for failure to comply with requirements of Part 250, or with FNS instructions or procedures. Department may take other actions, including prosecution under applicable Federal statutes.</p>	<p>§ 250.22(c) Termination or suspension. Clarifies that FNS may suspend or terminate all, or part, of distributing agency's participation in donated food distribution or program for failure to comply w/Part 250 requirements, other applicable Federal regulations, or with its written agreement with FNS.</p>

Legislation	Current Provision	Proposed Provision
		Subpart C—Processing and Labeling of Donated Foods
None	<p>§ 250.30(n)(3) As part of the annual reconciliation, a processor that has entered into a contract with the contracting agency for the next year must pay the distributing agency, at the contract value, for any excessive donated food inventories.</p> <p>§ 250.30(k)(3), Processor must submit copies of requests for refunds and refund payments to the distributing agency.</p> <p>§ 250.30(n)(4) and § 250.30(o) Distributing agency must submit monthly performance reports, or information from such reports, to FNS on a periodic basis.</p> <p>§ 250.30(m)(1)(viii), Processor must report sales verification findings to the distributing agency.</p> <p>§ 250.30(q) FNS Regional Office must review processing contracts and inventory reports.</p> <p>§ 250.30(r) FNS will provide copies of contracts upon request.</p>	<p>§ 250.30 State processing of donated foods.</p> <p>(n) <u>Inventory controls.</u></p> <p>(3) Revises to require distributing agency to ensure that a processor with excessive inventories of donated foods at annual reconciliation reduces such inventories.</p> <p>Removes</p> <p>Removes</p> <p>Removes</p> <p>Removes</p> <p>Removes</p>
		Subpart D—Donated Foods in Contracts with Food Service Management Companies
	<p>§ 250.50(a) Prior to donated foods being made available to a food service management company, the recipient agency must enter into a contract with the food service management company. The contract must ensure that all donated foods received for use by the recipient agency for a period specified as either the school year or fiscal year are used in the recipient agency's food service.</p>	<p>§ 250.50(a) Contract requirements and procurement. Clarifies that the food service management company must use all donated foods received in the recipient agency's food service, or must use commercial substitutes in place of such donated foods only as permitted in 7 CFR 250.51(d).</p>
	<p>§ 250.52(a) Contracts between recipient agencies in child nutrition programs and food service management companies must also ensure compliance with other requirements in this subpart relating to donated foods, as well as other Federal requirements in 7 CFR parts 210, 220, 225, or 226, as applicable.</p>	<p>§ 250.52(a) Storage and inventory management of donated foods. Clarifies that the food service management company must meet the requirements in 7 CFR 250.14(a) of this proposed rule for the safe storage and control of donated foods.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.58(a) Distributing agency must ensure SFAs are aware of full list of available donated foods and provide opportunity for all SFAs to determine donated foods from full list that are made available to them for ordering. Distributing agency must ensure distribution to SFAs of all selected donated foods that may be cost-effectively distributed to them, and may not prohibit split shipments.</p>	<p>Subpart E—National School Lunch Program (NSLP) and Other Child Nutrition Programs</p> <p>§ 250.58 Ordering donated foods and their provision to SFAs.</p> <p>§ 250.58(a) <u>Ordering and distribution of donated foods.</u> Revises to require distributing agency to ensure that SFAs are able to submit donated food orders to FNS directly in WBSCM or other comparable electronic system. As part of such system, distributing agency must ensure that all SFAs have opportunity to submit input at least annually in determining donated foods from full list that are made available to them for ordering. Based on input, distributing agency must ensure types and forms SFAs may best utilize are made available. Distributing agency must ensure distribution to SFAs of all ordered donated foods that may be distributed to them in a cost-effective manner (including split shipments, as necessary) and that they may efficiently utilize.</p>
None	<p>§ 250.58(e) Distributing agency must use one of following values in crediting SFA for commodity offer value:</p> <ol style="list-style-type: none"> (1) USDA purchase price. (2) Estimated cost provided by Department. (3) USDA commodity file cost. 	<p>§ 250.58(e) <u>Donated food value in offer and crediting.</u> Revises to require DAs to use either the donated food price published annually by USDA or the most recently published cost in the USDA donated foods catalog in offering SFAs donated foods. DAs must use the USDA purchase price in crediting SFAs for donated foods, and must update this price at least semi-annually to reflect the most recent purchase price.</p>
None	<p>§ 250.59(a) Distributing agency and recipient agencies must meet general requirements for storage and inventory management of donated foods in § 250.12.</p> <p>§ 250.59(b) Distributing agency must store donated foods in manner that permits them to be distinguished from commercially purchased foods or other foods.</p> <p>§ 250.59(c) SFA may store and inventory donated foods together with commercially purchased foods or other foods in single inventory management system, unless distributing agency requires separation from other foods.</p> <p>§ 250.59(d) Storage facility under contract with SFA may store/ inventory donated foods w/commercially purchased foods it is storing for the SFA, unless prohibited by contract. Storage facility may not commingle such foods with foods it is storing for another entity.</p>	<p>§ 250.59 Storage, control, and use of donated foods.</p> <p>§ 250.59(a) <u>Storage and inventory management.</u> Distributing agency must ensure compliance w/requirements in §§250.12 and 250.13 to ensure safe and effective storage/inventory management of donated foods, and efficient and cost-effective distribution to SFAs. SFAs must ensure safe and sanitary control of all foods in accordance w/7 CFR 210.13. Removes option for distributing agency to require separate inventory management of donated foods.</p> <p>Removes, but SFAs must ensure commercial contractors meet such requirements in accordance with § 250.14(e) and § 250.59(a) of this proposed rule.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.60(a) SFA should use donated foods, as practical, in school lunches, but may use them in other nonprofit school food service activities. Revenues must accrue to nonprofit school food service account.</p>	<p>§ 250.59(b) <u>Use of donated foods in the nonprofit school food service.</u></p> <p>Retains.</p>
None	<p>§ 250.60(b) SFA should not use donated foods in meals or activities that do not benefit primarily schoolchildren, such as banquets or catered events, but provides for such contingency resulting from single inventory: SFA must ensure reimbursement of donated food value to nonprofit school food service account.</p>	<p>§ 250.59(c) <u>Use of donated foods outside of the nonprofit school food service.</u></p> <p>Retains.</p>
None	<p>250.60(c) SFA may use donated foods in a contract with FSMC. Contract must meet requirements in Subpart D of Part 250, must also meet other requirements in Part 210 and 7 CFR 3016 or 3019, as applicable. SFA must ensure that FSMC using donated foods outside of nonprofit school food service provides reimbursement to nonprofit school food service account for donated food value.</p>	<p>§ 250.59(d) <u>Use of donated foods in a contract with a food service management company.</u></p> <p>Retains. Clarifies that SFA must ensure compliance with treatment of donated foods in § 250.59(b) and (c) under its contract w/FSMC.</p>
None	<p>§ 250.60(d) SFA may use donated foods to provide meal service to other SFAs under an agreement between the parties. Such SFA may commingle its own donated foods with those of other SFAs that are parties to agreement.</p>	<p>§ 250.59(e) <u>School food authorities acting as a collective unit.</u> Clarifies that SFAs may conduct activities of nonprofit school food service as a collective unit (e.g., in a school co-op or consortium), including activities relating to donated foods. Such activities must be conducted in accordance w/written agreement or contract between the parties. Clarifies that SFAs acting as a collective unit are subject to the same requirements as a single SFA conducting such activities. The SFA collective unit may, for example, use single inventory management in its storage and control of purchased and donated foods.</p>
		<p>Subpart F—Household Programs</p>
None	<p>§ 250.63(a) Distributing agency (i.e., the State agency that administers CSFP) must distribute donated foods to local agencies for use by eligible recipients, in accordance with 7 CFR Part 247.</p> <p>§ 250.63(b) Distribution of donated foods to State agencies must be on the basis of each State's quarterly estimate of need.</p>	<p>§ 250.63 Commodity Supplemental Food Program (CSFP).</p> <p>§ 250.63(a) <u>Distribution of donated foods in CSFP.</u> Clarifies that Department provides donated foods to the distributing agency (i.e., the State agency, in accordance with 7 CFR Part 247) for further distribution in State, in accordance with 7 CFR Part 247. State agencies and recipient agencies (i.e., local agencies in 7 CFR Part 247) must comply with the requirements of this part in the distribution, control, and use of donated foods in CSFP, to the extent that such requirements are not inconsistent with the requirements in 7 CFR Part 247.</p> <p>Removes.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.63(c) State agencies are eligible to receive foods under Section 4(a), 416, 709, and 32.</p>	<p>§ 250.63(b) <u>Types of donated foods distributed.</u> Clarifies that donated foods distributed in CSFP include Section 4(a) foods, and donated foods provided under Section 32, Section 416, or Section 709, as available.</p>
Section 103(f)(2)(A)(ii) of the Compact of Free Association Amendments Act of 2003 (P.L. 108-188).	<p>§ 250.64 Food Distribution Program in Trust Territory of the Pacific Islands. Distributing agency must make donated foods available for distribution to eligible households in the Trust Territory of the Pacific Islands, in accordance with plan of operation approved by FNS.</p>	<p>Removes, donated foods no longer provided to Trust Territory of the Pacific Islands.</p>
None	No current provision in Part 250.	<p>§ 250.64 The Emergency Food Assistance Program (TEFAP).</p> <p>§ 250.64(a) <u>Distribution of donated foods in TEFAP.</u> The Department provides donated foods to the distributing agency (i.e., the State agency, in accordance with Part 251) for further distribution in the State, in accordance with Part 251. State agencies and recipient agencies must comply with Part 250 requirements in the distribution, control, and use of donated foods, to the extent that such requirements are not inconsistent with the requirements Part 251.</p>
None	No current provision in Part 250.	<p>§ 250.64(b) <u>Types of donated foods distributed.</u> Donated foods are provided in TEFAP under Section 27 (as defined in § 250.2 of this proposed rule) and, as available, under Section 32, Section 416, or Section 709.</p>
None	<p>§ 250.65 Distributing agencies which operate FDPIR must comply with relevant provisions in Part 250 in addition to Parts 253 and 254.</p>	<p>§ 250.65 Food Distribution Program on Indian Reservations (FDPIR).</p> <p>§ 250.65(a) <u>Distribution of donated foods in FDPIR.</u> Clarifies that Department provides donated foods in FDPIR to the distributing agency (i.e., the State agency in accordance with 7 CFR Parts 253 and 254, which may be an Indian tribal organization) for further distribution, in accordance w/Parts 253 and 254. Clarifies that State agency must comply with Part 250 requirements in the distribution, control, and use of donated foods in FDPIR, to the extent that such requirements are not inconsistent with the requirements in 7 CFR Parts 253 and 254.</p>
None	No current provision.	<p>§ 250.65(b) <u>Types of donated foods distributed.</u> Clarifies that donated foods are provided in FDPIR under Section 4(a), and, as available, under Section 32, Section 416, or Section 709.</p>
None	<p>§ 250.66 Special Supplemental Nutrition Program for Women, Infants, and Children. Describes distribution of donated foods in WIC at request of State agencies.</p>	<p>Removes, donated foods no longer provided in WIC.</p>

Legislation	Current Provision	Proposed Provision
		Subpart G—Other Donated Food Outlets
None	<p>§ 250.69(b) Distributing agency may provide donated foods from any source within the State.</p>	<p>§ 250.69 Disasters.</p> <p>§ 250.69(a) <u>Use of donated foods to provide congregate meals.</u> Clarifies that the distributing agency may provide donated foods from current inventories at the distributing or recipient agency level to a disaster organization for use in providing congregate meals to persons in need of food assistance as a result of a disaster (i.e., a Presidentially-declared disaster or emergency). FNS approval is not required for such use, but distributing agency must notify FNS, including period of time assistance is expected to be provided.</p>
None	<p>§ 250.69(c) Distributing agency must submit request for distribution of donated foods to households to FNS for approval. FNS will determine the period of time that household distribution may continue.</p>	<p>§ 250.69(b) <u>Use of donated foods for distribution to households.</u> Clarifies that distributing agency may provide donated foods from current inventories to a disaster organization for distribution to households in need of food assistance as a result of the disaster only if FNS has approved such distribution. If approved, the distributing agency may distribute donated foods for such purpose for the period of time that FNS deems necessary to meet household needs. Households receiving D-SNAP benefits are not eligible to receive donated food assistance.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.69(a) Distributing agency may approve applications of disaster organizations to receive donated foods in a Presidentially declared disaster for congregate meal service or household distribution to disaster victims.</p> <p>§ 250.69(c) Distributing agency must submit request for distribution of donated foods to households to FNS for approval. FNS will determine the period of time that household distribution may continue.</p> <p>§ 250.69(b) Applications must include the following information: --Description of disaster situation; --Number of people requiring assistance; --Period of time for which donated foods are requested; --Quantity and types of food needed; --Number and location of sites where donated foods are to be used, to the extent that such information is known.</p> <p>§ 250.69(c) Applications for distribution to households must also include: --Why distribution of donated foods to households is needed. --Method(s) of distribution available. --Assurance that D-SNAP and donated foods will not be provided simultaneously, and a description of system to prevent dual participation.</p>	<p>§ 250.69(c) <u>Approval of disaster organization.</u> Clarifies that the distributing agency must review and approve disaster organization’s application to receive donated foods.</p> <p>Clarifies that FNS approval of such application is also required to permit distribution of donated foods to households.</p> <p>Retains current required elements of application.</p> <p>Retains current required elements of application for distribution to households.</p>
None	<p>§ 250.69(c) If the issuance of disaster food stamp benefits has been approved, the disaster organization must obtain the following information from households: --Name/address of household member applying for assistance. --Number of household members. --Statement from household certifying that it: --Is in need of food assistance; --Understands penalties for misrepresentation of need, and that sale or exchange of donated foods is prohibited; --Is not residing in a shelter which provides food assistance. --Is not receiving D-SNAP benefits.</p>	<p>§ 250.69(d) <u>Information from households.</u> Retains current requirements for the collection and retention of information from households in the event that issuance of D-SNAP benefits has been approved.</p>
None	<p>§ 250.13(d)(1) Disaster relief workers are eligible to receive meals containing donated foods as an incident of their service to eligible recipients.</p>	<p>§ 250.69(e) <u>Eligibility of emergency relief workers for congregate meals.</u> Clarifies that disaster organization may use donated foods to provide meals to any emergency relief workers at the congregate feeding site that are directly engaged in providing relief assistance.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.69(c) Information on number and location of sites must be reported to the distributing agency as such sites are established.</p> <p>§ 250.69(f) Distributing agency must submit summary report to FNS, using form FNS-292, <u>Report of Coupon Issuance and Commodity Distribution for Disaster Relief</u>, within 45 days from the termination of disaster assistance.</p>	<p>§ 250.69 (f) Reporting and recordkeeping requirements. Retains current reporting requirements for the distributing agency, but revises to require submission electronically, using form FNS-292A, <u>Report of Commodity Distribution for Disaster Relief</u>.</p> <p>Also requires use of form to request replacement of donated foods.</p> <p>Revises to require submission of report within 30 days of termination of disaster assistance.</p>
None	<p>§ 250.69(g) Distributing agency must submit request for replacement of donated foods used in disaster to FNS within 30 days of termination of assistance.</p> <p>No current provision.</p>	<p>§ 250.69(g) Replacement of donated foods. Clarifies that the distributing agency must submit to FNS a request for replacement of donated foods within 30 days following the termination of disaster assistance, using form FNS-292A, <u>Report of Commodity Distribution for Disaster Relief</u>.</p> <p>Clarifies that distributing agency may request replacement of foods used from inventories in which donated foods are commingled w/other foods if recipient agency received donated foods of same type as the foods used during preceding year. FNS will replace such foods in the amounts used, or in the amount of like donated foods received in the preceding year.</p>
None	No current provision.	<p>§ 250.69(h) Reimbursement of transportation costs. Clarifies that the distributing agency may receive reimbursement of costs incurred in transporting donated foods within the State, or from one State to another, in a disaster if it submits to FNS a public voucher requesting such reimbursement.</p>
None	<p>§ 250.70(b) Distributing agency may approve application for use of donated foods in congregate meals if the situation of distress is the result of a natural event (e.g., a hurricane, flood, or snowstorm), and if the duration of such assistance will not exceed 30 days.</p> <p>In other cases, distributing agency must forward application to FNS for approval.</p>	<p>§ 250.70 Situations of Distress.</p> <p>§ 250.70(a) Use of donated foods to provide congregate meals. Clarifies that distributing agency may provide donated foods from current inventories at the distributing or recipient agency level to a disaster organization for use in providing congregate meals to persons in need of food assistance as a result of a situation of distress. FNS approval is not required for such use if situation of distress is result of a natural event, and duration will not exceed 30 days, but distributing agency must notify FNS. FNS approval is required if situation of distress is not result of natural event, or if it exceeds 30 days.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.70(c) Distributing agency must submit request for distribution of donated foods to households to FNS for approval. FNS will determine the period of time that household distribution may continue.</p>	<p>§ 250.70(b) <u>Use of donated foods for distribution to households.</u> Clarifies that distributing agency may provide donated foods from current inventories to a disaster organization for distribution to households in need of food assistance as a result of a situation of distress only if FNS has approved such distribution. If approved, the distributing agency may distribute donated foods for such purpose for the period of time that FNS deems necessary to meet household needs. Households receiving D-SNAP benefits are not eligible to receive such donated food assistance.</p>
None	<p>§ 250.70(b) Disaster organizations must include same information in applications as is required for disasters.</p> <p>§ 250.70(c) For distribution to households, disaster organizations must include the same information in applications as is required for disasters, except for the methods of distribution available.</p>	<p>§ 250.70(c) <u>Approval of disaster organizations.</u> Clarifies that distributing agency must review and approve disaster organization’s application to receive donated foods.</p> <p>Clarifies that FNS approval of such application is also required to permit distribution of donated foods to households. Retains current required elements of application, and adds requirement to include methods of distribution available for household distribution.</p>
None	<p>§ 250.70(c) If the issuance of D-SNAP benefits has also been approved, disaster organization must obtain the same information from households as is required in a disaster.</p>	<p>§ 250.70(d) <u>Information from households.</u> Retains current requirements for the collection and retention of information from households in the event of issuance of D-SNAP benefits.</p>
None	<p>§ 250.13(d) (1) Disaster relief workers are eligible to receive meals containing donated foods as an incident of their service to eligible recipients.</p>	<p>§ 250.70(e) <u>Eligibility of emergency relief workers for congregate meals.</u> Clarifies that disaster organization may use donated foods to provide meals to any emergency relief workers at the congregate feeding site that are directly engaged in providing relief assistance.</p>
None	<p>§ 250.70(f) Distributing agency must submit summary report to FNS, using form FNS-292, <u>Report of Coupon Issuance and Commodity Distribution for Disaster Relief</u>, within 45 days from the termination of assistance.</p>	<p>§ 250.70(f) <u>Reporting and recordkeeping requirements.</u> Retains current reporting requirements for the distributing agency, but revises to require submission electronically, using form FNS-292A, <u>Report of Commodity Distribution for Disaster Relief</u>.</p> <p>Also requires use of form to request replacement of donated foods.</p> <p>Revises to require submission of report within 30 days of termination of disaster assistance.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 250.70(g) Distributing agency must submit request for replacement of donated foods used in situation of distress to FNS within 30 days of termination of assistance. FNS will replace such foods to the extent that foods are available.</p> <p>No current provision.</p>	<p>§ 250.70(g) <u>Replacement of donated foods.</u> Retains. Clarifies that FNS will replace donated foods used in situation of distress to extent that funds are available. Requires that such replacement be requested electronically, utilizing form FNS-292A, <u>Report of Commodity Distribution for Disaster Relief</u>, along with the report of the donated foods used in the situation of distress.</p> <p>Clarifies that distributing agency may request replacement of foods used from inventories in which donated foods are commingled w/other foods if donated foods received of same type as the foods used during preceding year. Subject to availability of funds, FNS will replace such foods in amounts used, or in amount of like donated foods received in preceding year.</p>
None	<p>§ 250.70(e) Organizations providing food assistance in situation of distress are eligible to receive donated foods under Sections 416, 32, 709, and 4(a).</p>	<p>Removes, all donated foods received by distributing agency may be used.</p>
None	<p>No current provision.</p>	<p>§ 250.70(h) <u>Reimbursement of transportation costs.</u> Clarifies that the distributing agency may receive reimbursement of costs incurred in transporting donated foods within the State, or from one State to another, in a situation of distress if it submits to FNS a public voucher requesting such reimbursement, and to the extent that funds are available.</p>
		<p>7 CFR Part 251—The Emergency Food Assistance Program</p>
None	<p>§ 251.4(f)(4) External shipping containers and product labels must indicate products are USDA donated foods.</p>	<p>Remove.</p>

Legislation	Current Provision	Proposed Provision
None	<p>§ 251.4(g) Donated foods may be used only in accordance w/Part 251 requirements, and may not be sold or exchanged.</p> <p>Donated foods provided under Section 32 may be transferred to other eligible recipient agencies.</p> <p>§ 251.4(l) Includes State agency responsibility to pursue claims for losses of TEFAP foods, and describes required claim actions.</p>	<p>§ 251.4 Availability of commodities.</p> <p>§ 251.4(g) <u>Distribution and control of donated commodities.</u> Clarifies that State agency must ensure use of donated foods in accordance with requirements in Part 251, and Part 250, to the extent that they are not inconsistent w/Part 251.</p> <p>Removes. Clarifies that §§ 250.12(d) and 250.14(d) of this proposed rule are applicable to transfer of TEFAP donated foods.</p> <p>Revises to require the State agency to ensure that restitution is made for loss of donated foods, or loss or improper use of funds provided for, or obtained as an incidence of, donated food distribution, in accordance with § 250.16 of this proposed rule. Clarifies that, in accordance with § 250.16 of this proposed rule, the State agency is subject to claims for such losses for which it is responsible, or for its failure to initiate or pursue claims against other responsible parties.</p>