

Subpart E—National School Lunch Program (NSLP) and Other Child Nutrition Programs

SOURCE: 73 FR 46185, Aug. 8, 2008, unless otherwise noted.

§250.56 Provision of donated foods in NSLP.

(a) *Distribution of donated foods in NSLP.* The Department provides donated foods in NSLP to distributing agencies. Distributing agencies provide donated foods to school food authorities that participate in NSLP for use in serving nutritious lunches or other meals to schoolchildren in their nonprofit school food service. The distributing agency must confirm the participation of school food authorities in NSLP with the State administering agency (if different from the distributing agency). In addition to requirements in this part relating to donated foods, distributing agencies and school food authorities in NSLP must adhere to Federal regulations in 7 CFR part 210, as applicable.

(b) *Types of donated foods distributed.* The Department purchases a wide variety of foods for distribution in NSLP each school year. A list of available foods is posted on the FNS Web site, for access by distributing agencies and school food authorities. In addition to Section 6 foods (42 U.S.C. 1755) as described in paragraph (c) of this section, the distributing agency may also receive Section 14 donated foods (42 U.S.C. 1762(a)), and donated foods under Section 32 (7 U.S.C. 612c), Section 416 (7 U.S.C. 1431), or Section 709 (7 U.S.C. 1446a-1), as available.

(c) *National per-meal value of donated foods.* For each school year, the distributing agency receives, at a minimum, the national per-meal value of donated foods, as established by Section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)), multiplied by the number of reimbursable lunches served in the State in the previous school year. The donated foods provided in this manner are referred to as Section 6 foods, or entitlement foods. The national per-meal value is adjusted each year to reflect changes in the Bureau of Labor Statistic's Producer Price Index for Foods Used in Schools and Institutions, in accordance with the Richard B. Russell National School Lunch Act. The adjusted value is published in a notice in the FEDERAL REGISTER in July of each year. Reimbursable lunches are those that meet the nutritional standards established in 7 CFR part 210, and that are reported to FNS, in accordance with the requirements in that part.

(d) *Donated food values used to credit distributing agency entitlement levels.* FNS uses the average price (cost per pound) for USDA purchases of donated food made in a contract period to credit distributing agency entitlement levels.

(e) *Cash in lieu of donated foods.* States that phased out their food distribution facilities prior to July 1, 1974, are permitted to choose to receive cash in lieu of the donated foods to which they would be entitled in NSLP, in accordance with the Richard B. Russell National School Lunch Act (42 U.S.C. 1765) and with 7 CFR part 240.

§250.57 Commodity schools.

(a) *Categorization of commodity schools.* Commodity schools are schools that operate a nonprofit school food service in accordance with 7 CFR part 210, but receive additional donated food assistance rather than the general cash payment available to them under Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753). In addition to requirements in this part relating to donated foods, commodity schools must adhere to Federal regulations in 7 CFR part 210, as applicable.

(b) *Value of donated foods for commodity schools.* For participating commodity schools, the distributing agency receives donated foods valued at the sum of the national per-meal value and the value of the general cash payment available to it under Section 4 of the Richard B. Russell National

School Lunch Act (42 U.S.C. 1753), multiplied by the number of reimbursable lunches served by commodity schools in the previous school year. From the total value of donated food assistance for which it is eligible, a commodity school may elect to receive up to 5 cents per meal in cash to cover processing and handling expenses related to the use of donated foods. In addition to Section 6 and Section 14 foods under the Richard B. Russell National School Lunch Act (42 U.S.C. 1755 and 1762(a)), the distributing agency may also receive donated foods under Section 32 (7 U.S.C. 612c), Section 416 (7 U.S.C. 1431), or Section 709 (7 U.S.C. 1446a-1), as available, for commodity schools.

§250.58 Ordering donated foods and their provision to school food authorities.

(a) *Ordering and distribution of donated foods.* The distributing agency must ensure that school food authorities are able to submit donated food orders through the FNS electronic donated foods ordering system, or through a comparable electronic food ordering system. The distributing agency must ensure that all school food authorities have the opportunity to provide input at least annually in determining the donated foods from the full list that are made available to them for ordering in the FNS electronic donated foods ordering system or other comparable electronic ordering system. The distributing agency must ensure distribution to school food authorities of all such ordered donated foods that may be distributed to them in a cost-effective manner (including the use of split shipments, as necessary), and that they may utilize efficiently and without waste.

(b) *Value of donated foods offered to school food authorities.* In accordance with Section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)), the distributing agency must offer the school food authority, at a minimum, the national per-meal value of donated food assistance multiplied by the number of reimbursable lunches served by the school food authority in the previous school year. This is referred to as the commodity offer value. For a commodity school, the distributing agency must offer the sum of the national per-meal value of donated foods and the value of the general cash payment available to it under Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753), multiplied by the number of reimbursable lunches served by the school in the previous school year. The school food authority may also receive bonus foods, as available, in addition to the Section 6 foods.

(c) *Receipt of less donated foods than the commodity offer value.* In certain cases, the school food authority may receive less donated foods than the commodity offer value in a school year. This “adjusted” value of donated foods is referred to as the adjusted assistance level. For example, the school food authority may receive an adjusted assistance level if:

- (1) The distributing agency, in consultation with the school food authority, determines that the school food authority cannot efficiently utilize the commodity offer value of donated foods; or
- (2) The school food authority does not order, or select, donated foods equal to the commodity offer value that can be cost-effectively distributed to it.

(d) *Receipt of more donated foods than the commodity offer value.* The school food authority may receive more donated foods than the commodity offer value if the distributing agency, in consultation with the school food authority, determines that the school food authority may efficiently utilize more donated foods than the commodity offer value, and more donated foods are available for distribution. This may occur, for example, if other school food authorities receive less than the commodity offer value of donated foods for one of the reasons described in paragraph (c) of this section.

(e) *Donated food value in crediting.* In meeting the commodity offer value of donated foods for the school food authority, the distributing agency must use the cost-per-pound donated food prices posted annually by USDA, the most recently published cost-per-pound price in the USDA donated foods catalog, and/or a rolling average of the USDA prices (average cost per pound). The distributing agency must credit the school food authority using the USDA purchase price (cost-per-pound), and update the price at least semi-annually to reflect the most recent USDA purchase price.

§250.59 Storage, control, and use of donated foods.

(a) *Storage and inventory management.* The distributing agency must ensure compliance with requirements in §§250.12 and 250.13 in order to ensure the safe and effective storage and inventory management of donated foods, and their efficient and cost-effective distribution to school food authorities. The school food authority must ensure compliance with requirements in §210.13 of this chapter and §§250.13 and 250.14 to ensure the safe and sanitary storage, inventory management, and use of donated foods and purchased foods. In accordance with §250.14(c), the school food authority may commingle donated foods and purchased foods in storage and maintain a single inventory record of such commingled foods, in a single inventory management system.

(b) *Use of donated foods in the nonprofit school food service.* The school food authority must use donated foods, as much as is practical, in the lunches served to schoolchildren, for which they receive an established per-meal value of donated food assistance each school year. However, the school food authority may also use donated foods in other activities of the nonprofit school food service. Revenues received from such activities must accrue to the school food authority's nonprofit school food service account, in accordance with §210.14 of this chapter. Some examples of such activities in which donated foods may be used include:

- (1) School breakfasts or other meals served in child nutrition programs;
- (2) A la carte foods sold to schoolchildren;
- (3) Meals served to adults directly involved in the operation and administration of the nonprofit school food service, and to other school staff; and
- (4) Training in nutrition, health, food service, or general home economics instruction for students.

(c) *Use of donated foods outside of the nonprofit school food service.* The school food authority should not use donated foods in meals or other activities that do not benefit primarily schoolchildren, such as banquets or catered events. However, as their use in such activities may not always be avoided (e.g., if donated foods are commingled with purchased foods in a single inventory management system), the school food authority must ensure reimbursement to the nonprofit school food service for the value of donated foods used in such activities. When such reimbursement may not be based on actual usage of donated foods (e.g., in a single inventory management system), the school food authority must establish an alternate method of reimbursement—e.g., by including the current per-meal value of donated food assistance in the price charged for the meal or other activity.

(d) *Use of donated foods in a contract with a food service management company.* When the school food authority contracts with a food service management company to conduct the food service, in accordance with §210.16 of this chapter, it must ensure compliance with requirements in subpart D of this part, which address the treatment of donated foods under such contract. The school food authority must also ensure compliance with the use of donated foods in paragraphs (b) and (c) of this section under its contract with a food service management company.

(e) *School food authorities acting as a collective unit.* Two or more school food authorities may conduct activities of the 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 with a written agreement or contract between the parties. The school food authority collective unit is subject to the same requirements as a single school food authority in conducting such activities. For example, the school food authority collective unit may use a single inventory management system in its storage and control of purchased and donated foods.

§250.60 Child and Adult Care Food Program (CACFP).

(a) *Distribution of donated foods in CACFP.* The Department provides donated foods in CACFP to distributing agencies, which provide them to child care and adult care institutions participating in CACFP for use in serving nutritious lunches and suppers to eligible recipients. Distributing agencies and child care and adult care institutions must also adhere to Federal regulations in 7 CFR part 226, as applicable.

(b) *Types and quantities of donated foods distributed.* For each school year, the distributing agency receives, at a minimum, the national per-meal value of donated food assistance (or cash in lieu of donated foods) multiplied by the number of reimbursable lunches and suppers served in the State in the previous school year, as established in Section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)). The national per-meal value is adjusted each year to reflect changes in the Bureau of Labor Statistic's Producer Price Index for Foods Used in Schools and Institutions. The adjusted per-meal value is published in a notice in the FEDERAL REGISTER in July of each year. Reimbursable lunches and suppers are those meeting the nutritional standards established in 7 CFR part 226. The number of reimbursable lunches and suppers may be adjusted during, or at the end of the school year, in accordance with 7 CFR part 226. In addition to Section 6 entitlement foods (42 U.S.C. 1755(c)), the distributing agency may also receive Section 14 donated foods (42 U.S.C. 1762(a)), and donated foods under Section 32 (7 U.S.C. 612c), Section 416 (7 U.S.C. 1431), or Section 709 (7 U.S.C. 1446a-1), as available, for distribution to child care and adult care institutions participating in CACFP.

(c) *Cash in lieu of donated foods.* In accordance with the Richard B. Russell National School Lunch Act, and with 7 CFR part 226, the State administering agency must determine whether child care and adult care institutions participating in CACFP wish to receive donated foods or cash in lieu of donated foods, and ensure that they receive the preferred form of assistance. The State administering agency must inform the distributing agency (if a different agency) which institutions wish to receive donated foods and must ensure that such foods are provided to them. However, if the State administering agency, in consultation with the distributing agency, determines that distribution of such foods would not be cost-effective, it may, with the concurrence of FNS, provide cash payments to the applicable institutions instead.

(d) *Use of donated foods in a contract with a food service management company.* A child care or adult care institution may use donated foods in a contract with a food service management company to conduct its food service. The contract must meet the requirements in subpart D of this part with respect to donated foods, and must also meet requirements in 7 CFR part 226, 2 CFR part 200, subpart D and appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and USDA implementing regulations at 2 CFR parts 400 and 416, as applicable, with respect to the formation of such contracts.

(e) *Applicability of other requirements in this subpart to CACFP.* The requirements in this subpart relating to the ordering, storage and inventory management, and use of donated foods in NSLP, also apply to CACFP. However, in accordance with 7 CFR part 226, a child care or adult care institution that uses donated foods to prepare and provide meals to other such institutions is considered a food service management company.

§250.61 Summer Food Service Program (SFSP).

(a) *Distribution of donated foods in SFSP.* The Department provides donated foods in SFSP to distributing agencies, which provide them to eligible service institutions participating in SFSP for use in serving nutritious meals to needy children primarily in the summer months, in their nonprofit food service

programs. Distributing agencies and service institutions in SFSP must also adhere to Federal regulations in 7 CFR part 225, as applicable.

(b) *Types and quantities of donated foods distributed.* The distributing agency receives donated foods available under Section 6 and Section 14 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755 and 1762), and may also receive donated foods under Section 32 (7 U.S.C. 612c), Section 416 (7 U.S.C. 1431), or Section 709 (7 U.S.C. 1446a-1), as available, for distribution to eligible service institutions participating in SFSP. Section 6 donated foods are provided to distributing agencies in accordance with the number of meals served in the State in the previous school year that are eligible for donated food support, in accordance with 7 CFR part 225.

(c) *Distribution of donated foods to service institutions in SFSP.* The distributing agency provides donated food assistance to eligible service institutions participating in SFSP based on the number of meals served that are eligible for donated food support, in accordance with 7 CFR part 225.

(d) *Use of donated foods in a contract with a food service management company.* A service institution may use donated foods in a contract with a food service management company to conduct the food service. The contract must meet the requirements in subpart D of this part with respect to donated foods, and must also meet requirements in 7 CFR part 225, 2 CFR part 200, subpart D and appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and USDA implementing regulations at 2 CFR parts 400 and 416, as applicable, with respect to the formation of such contracts.

(e) *Applicability of other requirements in this subpart to SFSP.* The requirements in this subpart relating to the ordering, storage and inventory management, and use of donated foods in NSLP, also apply to SFSP.

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