



Food Distribution National Policy Memorandum

United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive

Alexandria, VA
22302-1500

DATE: May 23, 2003 (revised)

POLICY NO.: FD-020: National School Lunch Program (NSLP), Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), & Nutrition Services Incentive Program (NSIP)

SUBJECT: Single Inventory and Related Commodity Issues—Clarification of Regulatory Changes and Other Guidance

The Food and Nutrition Service (FNS) has taken steps to more fully integrate Department of Agriculture (USDA) commodities with other foods utilized by school food authorities (SFAs) in the National School Lunch Program (NSLP), service institutions in the Summer Food Service Program (SFSP), child and adult care institutions under the Child and Adult Care Food Program (CACFP), local agencies participating in the Nutrition Services Incentive Program (NSIP), and charitable institutions and summer camps.

Most USDA commodities are now packed with commercial labels, instead of the USDA label, which has resulted in reduced costs for food purchases and more timely deliveries. In publishing a final rule on October 23, 2002, we amended regulations under 7 CFR Part 250 to allow for streamlined commodity inventory controls, including reporting and recordkeeping requirements, for SFAs and the other recipient agencies listed above. We plan to propose other regulatory changes later this year to further simplify requirements for commodity inventory management, as part of a “plain language” rewrite of 7 CFR Part 250.

The purpose of this memorandum is to clarify the recent regulatory changes, and to provide interim guidance for taking additional actions in advance of further regulatory amendments. To summarize, the October 23 final rule:

- Removed the requirement, in Section 250.14(b)(4), that recipient agencies maintain inventories of donated foods separate from inventories of other foods.
- Removed the requirement, in Section 250.14(e), that recipient agencies do an annual physical inventory of storage facilities, report commodities found to be lost, stolen, or out-of-condition and excessive inventories, and take corrective actions as a result of such findings.
- Removed the prohibition, in Section 250.14(f), against recipient agencies’ maintaining excessive commodity inventories, and the requirement that distributing (State) agencies determine if recipient agencies’ commodity inventories are excessive.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

- Removed the requirement, in Section 250.16(a)(2), that recipient agencies maintain records of the receipt, distribution/disposal, and inventory of commodities.

The removal of these Federal requirements means that, unless State agencies require the recipient agencies referenced above to maintain separate commodity inventories, these agencies may treat commodities like other foods they purchase, store, and use. We expect the commodities to be subject to all of the same safeguards and control as the other foods. While the use of commercial labels makes these changes necessary, they apply for all commodities, with or without commercial labels.

The regulatory changes described above have implications for other requirements in 7 CFR Part 250 that were not amended by the October 23 final rule. As mentioned, we plan to propose other regulatory changes this year. However, in the following paragraphs we provide interim guidance for State agencies and the applicable recipient agencies to follow in these areas.

We must emphasize that the regulatory changes and the interim guidance apply only to recipient agencies in the NSLP, SFSP, CACFP, and NSIP, and to charitable institutions and summer camps, as listed in the first paragraph. They do not apply to recipient (or local) agencies participating in the Food Distribution Program on Indian Reservations (FDPIR), the Commodity Supplemental Food Program (CSFP), and the Emergency Food Assistance Program (TEFAP). They also do not apply to distributing (State) and subdistributing agencies, including those subdistributing agencies that also act as recipient agencies.

Transfers of Commodities

Under Section 250.13(a)(1), recipient agencies may currently transfer commodities to “like recipient agencies” (e.g., SFAs to other SFAs) with the approval of the distributing agency, and may transfer commodities to an “unlike recipient agency” (e.g., from an SFA to a food bank) with the approval of the FNS Regional Office.

Interim change: We will not require FNS or distributing agency approval for transfers of commodities from one recipient agency to another recipient agency (like or unlike). The distributing agency may choose to require its approval of transfers of commodities from one recipient agency to another.

Under 250.13(a)(7), recipient agencies must currently receive the approval of the distributing agency for transfer of commodities for use in demonstrations or tests.

Interim change: We will not require that the recipient agency receive the approval of the distributing agency for such transfers; the distributing agency may choose to continue to require its approval for such transfers.

Claims to Recover Commodities Lost, Damaged, Etc.

Currently, under Sections 250.13(e)(2) and 250.15(c)(2), the distributing agency must pursue a claim if it determines that a recipient agency causes loss of, or damage to commodities, or improperly uses or distributes commodities.

Interim change: We will not require distributing agencies to pursue claims actions against recipient agencies for loss of, damage to, or improper use or distribution of commodities. The distributing agency may choose to pursue claims actions against recipient agencies in such instances; any funds recovered from such claims must be used to cover program expenses, in accordance with 7 CFR 250.15(f)(1).

Maintenance of Records

As described above, the October 23 final rule removed the requirement, in Section 250.16(a)(2), that recipient agencies maintain records of the receipt, distribution/disposal, and inventory of commodities. However, under Section 250.16(a)(6), it states that failure by a recipient agency to maintain these records will be considered evidence of improper distribution or loss of commodities.

Interim change: Because of the amendment to the recordkeeping requirements for recipient agencies referred to above, Section 250.16(a)(6) will no longer apply.

Summary

To summarize, the regulatory changes and interim guidance described in this memorandum apply only to recipient agencies in the NSLP, SFSP, CACFP, and NSIP, and to charitable institutions and summer camps, as listed in the first paragraph. As mentioned, they do not apply to FDPIR, CSFP, and TEFAP. In FDPIR and CSFP, food packages composed solely of commodities are distributed to individuals or households to meet specific nutritional needs. For this reason, distribution and control of commodities must be more closely monitored at local, State, and national levels. In TEFAP, State agencies are required to establish income eligibility criteria to ensure that only needy households receive TEFAP commodities. The established criteria may not apply to other foods distributed by the food banks and food pantries distributing TEFAP foods.

This memorandum also does not apply to food service management companies under contract with SFAs or other recipient agencies to conduct the food service. A separate memorandum will be issued shortly to address the implications of single inventory for food service management companies.

The reduction in requirements for commodity control and distribution are meant to assist SFAs and certain other recipient agencies to manage their food service more efficiently, which will ultimately benefit the children served in school programs and

other program recipients. The affected agencies are, of course, still subject to other regulatory requirements under 7 CFR Part 250 relating to the distribution and control of commodities.

A handwritten signature in black ink, appearing to read "Suzanne Rigby". The signature is written in a cursive style with a large, stylized initial "S".

SUZANNE RIGBY
Acting Director
Food Distribution Division

Date Originally Issued: 04/25/2003