Food Distribution
National Policy Memorandum

United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive

Alexandria, VA 22302-1500

DATE: June 21, 2006

POLICY NO.: FD-059: Charitable Institutions

SUBJECT: Eligibility of Private Adult Correctional Institutions to Receive and Use donated Foods

This memorandum addresses the eligibility of privately owned or managed adult correctional institutions to receive donated foods for their own use, as charitable institutions, or to receive and use donated foods to provide meals for another charitable institution's food service.

In accordance with 7 CFR 250.3, a charitable institution may be a public institution or a private nonprofit organization with tax-exempt status under the Internal Revenue Code. Adult correctional institutions that are public institutions or private nonprofit organizations with such tax-exempt status may receive donated foods as charitable institutions if they conduct rehabilitation programs that meet the specific requirements in 7 CFR 250.41(a)(2). They must also meet the other requirements for charitable institutions in 7 CFR 250.41(a), including having a signed agreement with the distributing agency. However, a private for-profit correctional institution is not eligible to receive donated foods as a charitable institution as it does not meet the definition of charitable institution in 7 CFR 250.3.

In accordance with 7 CFR 250.3, a food service management company is a private nonprofit organization or a commercial (i.e., for profit) enterprise that manages any aspect of a recipient agency's food service, in accordance with a contract with the recipient agency. In accordance with 7 CFR 250.12(d), the contract must ensure that donated foods provided to the food service management company are used solely on behalf of the recipient agency's food service. In accordance with 7 CFR 250.41(a)(3), a charitable institution may employ a food service management company to conduct its food service, including the use of donated foods. Hence, a charitable institution may employ a private non-profit or for-profit correctional institution in such a capacity, in accordance with a contract that meets the requirements in 7 CFR 250.12(d). However, a for-profit correctional institution that repackages donated foods, or converts them into a different end product, at its commercial facility (including the preparation of meals) would fall under the definition of "processor" in 7 CFR 250.3, and would be subject to the requirements in 7 CFR 250.30 for the processing of donated foods.

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for Cathie McCullough
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