



# Food Distribution National Policy Memorandum

United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

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**DATE:** OCT 13 2011

**POLICY NO:** FD-118 Charitable Institutions (CI), Commodity Supplemental Food Program (CSFP), The Emergency Food Assistance Program (TEFAP)

**SUBJECT:** Automatic Revocation of Tax-Exempt Status

The Internal Revenue Service (IRS) has recently changed its filing requirements for some tax-exempt organizations. Failure to comply with the requirements may result in the revocation of an organization's tax-exempt status by the IRS. Some Food Distribution programs, including CIs, CSFP, and TEFAP, require tax-exempt status in order for certain organizations to receive USDA foods under each respective program. It has come to our attention that a number of organizations receiving USDA foods have had their tax-exempt status revoked. The purpose of this memorandum is to outline the procedures for each Food Distribution program in addressing organizations that have lost tax-exempt status for failing to meet IRS filing requirements.

According to the IRS, most tax-exempt organizations are required to file an annual return or notice with the IRS. Exceptions to this requirement include governmental and many faith-based organizations. Pursuant to authority in Section 6033(j) of the Internal Revenue Code (IRC), the IRS must automatically revoke the tax exemption of any private nonprofit organization that fails to satisfy its filing requirement for three consecutive years. The IRS has in place an application process in which organizations may seek reinstatement of tax-exempt status after automatic revocation. Additional information about automatic revocation of tax-exempt status may be found at: <http://www.irs.gov/charities/article/0,,id=239696,00.html>. Recently, the IRS initiated this automatic tax-exemption revocation. The IRS Automatic Revocation of Exemption List (List), which is organized by State, may be found at: <http://www.irs.gov/charities/article/0,,id=240099,00.html>.

## TEFAP

The Emergency Food Assistance Act of 1983 requires that an eligible recipient agency must be "nonprofit," per 7 U.S.C. 7501(3). TEFAP regulations at 7 CFR 251.5(a)(3) establish that if not a public entity, an eligible organization must possess tax-exempt status, or be automatically exempt as "organized or operated exclusively for religious purposes," as described in the IRC, or have made an application and be working towards tax-exempt status. By November 18, 2011, all TEFAP State agencies must review the List and determine whether any of the eligible recipient agencies (ERA) with which the State agency has a TEFAP agreement are listed. By this date, the State agency must also require that any ERA with which it has an agreement to further distribute TEFAP foods or funds review the List and determine whether any of the ERAs with which that ERA has a TEFAP agreement are listed. After the initial review, State agencies and ERAs should check the List periodically, but no less

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frequently than annually, to ensure that ERAs with which they have a TEFAP agreement do not appear on the List.

Should any ERA appear on the List, the State agency or ERA must notify the organization in writing that it has 30 days to provide documentation that it has applied for reinstatement of tax-exempt status or it will be terminated from TEFAP. Per 7 CFR 251.5(a)(3)(iv), the organization then must forward documentation of IRS recognition of tax-exempt status to the State or ERA within 180 days of the above-mentioned notification. A State agency or ERA may grant one 90-day extension if the organization can demonstrate, as described in 7 CFR 251.5(a)(3)(iv), that its inability to obtain appropriate status during the initial period was due to circumstances beyond the organization's control.

In addition to regular checks of established ERAs, State agencies and ERAs must verify that organizations that are applying to become ERAs do not appear on the List prior to approving the organization's application.

#### **CSFP**

Consistent with regulations applicable to CSFP, including 7 CFR Parts 247 and 250, CSFP local and subdistributing agencies must be public or private nonprofit agencies. All private nonprofit agencies participating in CSFP must either possess tax-exempt status, be automatically exempt as organized or operated exclusively for religious purposes, as described in the IRC, or have made an application and be working towards tax-exempt status in order to be eligible for participation. By November 18, 2011, all CSFP State agencies must review the List and determine whether any of its CSFP local or subdistributing agencies are listed. By this date, the State agency must also require that any local or subdistributing agencies that have agreements with other local agencies review the List and determine whether any of those agencies are listed. After the initial review, State, local, and subdistributing agencies should check the List periodically, but no less frequently than annually, to ensure that local and subdistributing agencies with which they have an agreement do not appear on the List.

Should any local or subdistributing agency appear on the List, the State, local, or subdistributing agency must notify the organization that it has 30 days to provide documentation that it has applied for reinstatement of tax-exempt status or it will be terminated from CSFP. Consistent with CSFP regulations at 7 CFR 247.7(c), the organization then must forward documentation of IRS recognition of tax-exempt status to the State within 180 days of the above-mentioned notification. A State, subdistributing, or local agency may grant one 90-day extension if the organization can demonstrate that its inability to obtain appropriate status during the initial period was due to circumstances beyond the organization's control.

In addition to regular checks of established agencies, State agencies, local agencies, and subdistributing agencies must also verify that organizations that are applying to be

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local or subdistributing agencies do not appear on the List prior to approving the organization's application.

**Charitable Institutions**

Per 7 CFR 250.3, CIs that are not public institutions must be private nonprofit organizations with tax-exempt status. By November 18, 2011, all State distributing agencies (SDA) must review the List and determine whether any CIs with which the SDA has an agreement are listed. SDAs must immediately notify and terminate from the program any CI that is on the List. A CI may reapply for the program once its tax-exempt status is reinstated. After the initial review, State agencies should check the List periodically, but no less frequently than annually, to ensure that CIs with which they have an agreement do not appear on the List.

In addition to regular checks of established agencies, States agencies must also verify that private nonprofit organizations that are applying to be CIs do not appear on the List prior to approving the organization's application.



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