

PROPOSED RULE, REVISIONS AND CLARIFICATIONS IN REQUIREMENTS FOR THE PROCESSING OF DONATED FOODS - BRIEFING SHEET

This rule proposes to revise and clarify requirements in 7 CFR Part 250 for the processing of donated foods, in order to formalize processing options already being used in current practice, incorporate input received from processors and State and local agencies administering child nutrition programs, and rewrite much of 7 CFR Part 250 Subpart C in a more user-friendly, “plain language” format.

USDA Foods further processing allows State distributing agencies (SDA) and recipient agencies (RA) such as school districts to contract with commercial food processors to convert raw and/or bulk USDA Foods into a variety of convenient, ready-to-use end products. Further processing is only used in school-based programs.

The following proposed requirements in this rule *are* currently being practiced via program policy but are not written into regulation:

- Require multi-State processors to enter into National Processing Agreements to process donated foods into end products and to submit end product data schedules to FNS for approval.
- Require multi-State processors to provide a performance bond or irrevocable letter of credit to FNS, in accordance with their National Processing Agreements, to protect the value of donated foods in processor inventories.
- Permit processors, with a USDA-approved substitution plan, to substitute donated beef and pork delivered to them from a USDA vendor with commercial beef and pork of U.S. origin of equal or better quality.

The following proposed requirements in this rule *are not* currently required via program policy or regulation but reflect recommendations from program stakeholders with the aim of improving program integrity:

- Require processors providing end products containing donated foods to a distributor to enter into a written agreement with the distributor. The written agreement must include provisions for financial liability for the replacement value of donated foods, at least monthly end product sales reporting, and which applicable value pass through system will be used. This was a direct result of an American Commodity Distribution Association recommendation.
- Require a title transfer exception dictating that when a recipient agency has contracted with a distributor to act as an authorized agent, title to finished end products containing donated foods transfers to the recipient agency upon delivery and acceptance by the contracted distributor.
- Permit processing agreements between State or recipient agencies and processors of up to 5 years in duration, rather than the current 1 year duration.