

Processing Rule Side-by-Side

7/28/2016

Current		Proposed		
Reg	Text	Reg	Text	Change
250.2	No current definition.	250.2	Backhauling means the delivery of donated foods to a processor for processing from a recipient agency's storage facility.	Added
250.2	No current definition.	250.2	Commingling means the storage of donated foods together with commercially purchased foods.	Added
250.2	Contracting agency means the distributing agency, subdistributing agency, or recipient agency which enters into a processing contract.	250.2	No proposed definition.	Deleted
250.2	No current definition.	250.2	End product data schedule means a processor's description of its processing of donated food into a finished end product, including the processing yield of donated food.	Added
250.2	Fee-for-service means the price by pound or by case representing a processor's cost of ingredients (other than donated foods), labor, packaging, overhead, and other costs incurred in the conversion of the donated food into the specified end product.	250.2	No proposed definition.	Deleted
250.2	No current definition.	250.2	In-State Processing Agreement means a distributing agency's agreement with an in-state processor to process donated foods into finished end products for sale to eligible recipient agencies, or for sale to the distributing agency.	Added
250.2	No current definition.	250.2	National Processing Agreement means an agreement between FNS and a multi-State processor to process donated foods into end products for sale to distributing or recipient agencies.	Added
250.2	No current definition.	250.2	Recipient Agency Processing Agreement means a recipient agency's agreement with a processor to process donated foods and to purchase the finished end products.	Added

Current		Proposed		
Reg	Text	Reg	Text	Change
250.2	No current definition.	250.2	Replacement value means the price assigned by the Department to a donated food which must reflect the current price in the market to ensure compensation for donated foods lost in processing or other activities. The replacement value may be changed by the Department at any time.	Added
250.2	No current definition.	250.2	State Participation Agreement means a distributing agency's agreement with a multi-State processor to permit the sale of finished end products produced under the processor's National Processing Agreement to eligible recipient agencies in the State, or to directly purchase such finished end products.	Added
250.11(e)	Transfer of title. Title to donated foods shall pass to distributing agencies upon their acceptance of donated foods at time and place of delivery, limited, however, by the obligation of the distributing agency to use such donated foods for the purposes and upon the terms and conditions set forth in this part.	250.11(e)	Transfer of title. In general, title to donated foods transfers to the distributing agency or recipient agency, as appropriate, upon acceptance of the donated foods at the time and place of delivery. Title to donated foods provided to a multi-State processor, in accordance with its National Processing Agreement, transfers to the distributing agency or recipient agency, as appropriate, upon acceptance of the finished end products at the time and place of delivery, however, 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. Notwithstanding transfer of title, distributing and recipient agencies must ensure compliance with the requirements of this part in the distribution, control, and use of donated foods.	Title transfer for multi-state processors occurs when finished end product is delivered. Also adds an exception for when a distributor is acting as an RA's authorized agent that title transfer occurs upon delivery to the distributor.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.18(b)	Processor performance reports. Processors must submit monthly performance reports to the distributing agency, in accordance with § 250.30(m). Such reports must include the information listed in § 250.30(m).	250.18(b)	Processor performance. Processors must submit performance reports and other supporting documentation, as required by the distributing agency or by FNS, in accordance with § 250.37(a), to ensure compliance with requirements in this part.	Clarifies reference to reporting requirements in the proposed Subpart C.
250.19(a)	Required records. Distributing agencies, recipient agencies, and other entities must maintain records of agreements and contracts, reports, audits, and claim actions, funds obtained as an incident of donated food distribution, and other records specifically required in this part or in other Departmental regulations, as applicable. In addition, distributing agencies must keep a record of the value of donated foods each of its school food authorities receives, in accordance with 250.58(e), and records to demonstrate compliance with the professional standards for distributing agency directors established in 235.11(g). Processors must also maintain records documenting the sale of end products to recipient agencies, including the sale of such end products by distributors, and must submit monthly performance reports, in accordance with 250.30(m). Specific recordkeeping requirements relating to the use of donated foods in contracts with food service management companies are included in § 250.54. Failure of the distributing agency, recipient agency, processor, or other entity to comply with recordkeeping requirements must be considered prima facie evidence of improper distribution or loss of donated foods and may result in a claim against such party for the loss or misuse of donated foods, in accordance with § 250.16, or in other sanctions or corrective actions.	250.19(a)	Required records. Distributing agencies, recipient agencies, and other entities must maintain records of agreements and contracts, reports, audits, and claim actions, funds obtained as an incident of donated food distribution, and other records specifically required in this part or in other Departmental regulations, as applicable. In addition, distributing agencies must keep a record of the value of donated foods each of its school food authorities receives, in accordance with 250.58(e), and records to demonstrate compliance with the professional standards for distributing agency directors established in 235.11(g). Processors must also maintain records documenting the sale of end products to recipient agencies, including the sale of such end products by distributors, and must submit monthly performance reports, in accordance with Subpart C of this part and with any other recordkeeping requirements included in their agreements or contracts. Specific recordkeeping requirements relating to the use of donated foods in contracts with food service management companies are included in § 250.54. Failure of the distributing agency, recipient agency, processor, or other entity to comply with recordkeeping requirements must be considered prima facie evidence of improper distribution or loss of donated foods and may result in a claim against such party for the loss or misuse of donated foods, in accordance with § 250.16, or in other sanctions or corrective actions.	Clarifies reference to reporting requirements in the proposed Subpart C.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30	No current mention of repackaging	250.30(a)	Purpose of processing donated foods. Donated foods are most commonly provided to processors to process into approved end products for use in school lunch programs or other food services provided by recipient agencies. The ability to divert donated foods for processing provides recipient agencies with more options for using donated foods in their programs. For example, a whole chicken or chicken parts may be processed into precooked grilled chicken strips for use in the National School Lunch Program. In some cases, donated foods are provided to processors to prepare meals, or for repackaging. A processor's use of a commercial facility to repackage donated foods, or to use donated foods in the preparation of meals, is considered processing in this part.	Says that repackaging and use of DF in vended meals is considered processing.
250.30(c)(3); 250.30(c) (4)(ix)	The contract shall be signed for the processor by the owner, a partner, or a corporate officer duly authorized to sign the contract, as follows: (i) In a sole proprietorship, the owner shall sign the contract; (ii) In a partnership, a partner shall sign the contract; (iii) In a corporation, a duly authorized corporate officer shall sign the contract... A provision that approval of the contract by distributing agency shall not obligate that agency or the Department to deliver donated foods for processing;	250.30(b)	Agreement requirement. The processing of donated foods must be performed in accordance with an agreement between the processor and FNS, between the processor and the distributing agency, or, if allowed by the distributing agency, between the processor and a recipient agency or subdistributing agency. However, a processing agreement will not obligate any party to provide donated foods to a processor for processing. The agreements described below are required in addition to, not in lieu of, competitively procured contracts required in accordance with § 250.31 of this part. The processing agreement must be signed by an authorized individual in the processing enterprise. The different types of processing agreements are described in this section.	Shifts to use of agreements from contracts and simplifies authorized signatory language
250.30(c)(1)	Contracts with processors shall be in a standard written form and shall be reviewed by the appropriate FNSRO.	250.30	No proposed inclusion	Removes requirement in favor of the use of agreements.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30	No current requirement	250.30(c)	National Processing Agreement. A multi-State processor must enter into a National Processing Agreement with FNS in order to process donated foods into end products in accordance with end product data schedules approved by FNS. FNS also holds and manages such processor's performance bond or letter of credit under its National Processing Agreement, in accordance with § 250.32. FNS does not itself procure or purchase end products under a National Processing Agreement. A multi-State processor must also enter into a State Participation Agreement with the distributing agency in order to sell nationally approved end products in the State, in accordance with paragraph (d) of this section.	Imposes NPAs as opposed to individual contracts; used in demonstration project
250.30	No current requirement	250.30(d)	State Participation Agreement. The distributing agency must enter into a State Participation Agreement with a multi-State processor to permit the sale of end products produced under the processor's National Processing Agreement to eligible recipient agencies in the State or to directly purchase such end products. The distributing agency may include other State-specific processing requirements in its State Participation Agreement, such as the methods of end product sales permitted, in accordance with § 250.36, or the use of labels attesting to fulfillment of meal pattern requirements in child nutrition programs. The distributing agency must utilize the following criteria in its selection of processors with which it enters into agreements: (1) The nutritional contribution provided by end products; (2) The marketability or acceptability of end products; (3) The means by which end products will be distributed; (4) Prices of end products and processing yields of donated foods; (5) Any applicable labeling requirements; and (6) The processor's record of ethics and integrity, and capacity to meet regulatory requirements.	Imposes State Participation Agreements for DAs to enter into with processors to allow DAs to supplement requirements in NPA; used in demonstration project

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(c)(1)	<p>Contracts with processors shall be in a standard written form and shall be reviewed by the appropriate FNSRO. Processing contracts shall terminate on June 30 of each year. However, processing contracts may give contracting agencies the option of extending contracts for two 1-year periods, provided that any changed information must be updated before any contract extension is granted, including the information in paragraphs (c)(3), (c)(4)(ii), and (c)(4)(viii)(B) of this section. The processor must have performed to the satisfaction of the contracting agency during the previous contract year, submitted all required reports and any corrections to such reports up to the time that contract extension occurs, and submitted its certified public accountant report as required under paragraph (c)(4)(xi) of this section before the contract may be extended. Distributing agencies shall develop criteria for use in evaluating and selecting processing contracts. The selection criteria shall be used in selecting or rejecting processors in a manner that ensures equitable treatment of processors. The selection criteria shall, at a minimum, include: (i) The nutritional contribution which the end product will provide; (ii) The marketability of the end product; (iii) The distribution method which the processor intends to utilize; (iv) Price and yield schedule data; (v) Any applicable labeling requirements; and (vi) The ability of the processor to meet the terms and conditions set forth in the regulations.</p>	250.30(e)	<p>(e) In-State Processing Agreement. A distributing agency must enter into a State Processing Agreement with an in-State processor to process donated foods into finished end products, unless it permits recipient agencies to enter into Recipient Processing Agreements for such purpose, in accordance with paragraph (f) of this section. Under a State Processing Agreement, the distributing agency approves end product data schedules, except red meat and poultry, submitted by the processor, holds and manages the processor's performance bond or letter of credit, in accordance with § 250.32, and assures compliance with other processing requirements. The distributing agency may also purchase the finished end products for distribution to eligible recipient agencies in the State under a State Processing Agreement, or may permit recipient agencies to purchase such end products, in accordance with applicable procurement requirements. In the latter case, the State Processing Agreement is often called a "master agreement". A distributing agency that procures end products on behalf of recipient agencies, or that limits recipient agencies' access to the procurement of specific end products through its master agreements, must utilize the following criteria in its selection of processors with which it enters into agreements: (1) The nutritional contribution provided by end products; (2) The marketability or acceptability of end products; (3) The means by which end products will be distributed; (4) Prices of end products and processing yields of donated foods; (5) Any applicable labeling requirements; and (6) The processor's record of ethics and integrity, and capacity to meet regulatory requirements.</p>	<p>Clarifies distinction between In-State processing agreement and master agreement; also removes RO review component in favor of use of agreements.</p>

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(b)(3); 250.30(L)	Distributing agencies shall permit subdistributing agencies and recipient agencies to enter into processing contracts with a processor under arrangements similar to those described in paragraph (b) (1) or (2) of this section. Contract approvals. Distributing agencies shall review and approve processing contracts entered into or renewed by subdistributing and recipient agencies prior to the delivery of commodities for processing under such contracts. The distributing agency which enters into or approves a processing contract shall provide a copy of the contract and of these regulations to the processors, forward a copy of the contract to the appropriate FNSRO, and retain a copy for its files.	250.30(f)	Recipient Agency Processing Agreement. The distributing agency may permit a recipient agency to enter into an agreement with an in-State processor to process donated foods and to purchase the finished end products in accordance with a Recipient Agency Processing Agreement. A recipient agency may also enter into a Recipient Agency Processing Agreement on behalf of other recipient agencies, in accordance with an agreement between the parties. The distributing agency may also delegate a recipient agency to approve end product data schedules or select nationally approved end product data schedules, review in-State processor performance reports, manage the performance bond or letter of credit of an in-State processor, and monitor other processing activities under a Recipient Agency Processing Agreement. All such activities must be performed in accordance with the requirements of this part. All Recipient Agency Processing Agreements must be reviewed and approved by the distributing agency. All recipient agencies must utilize the following criteria in its selection of processors with which it enters into agreements: (1) The nutritional contribution provided by end products; (2) The marketability or acceptability of end products; (3) The means by which end products will be distributed; (4) Prices of end products and processing yields of donated foods; (5) Any applicable labeling requirements; and (6) The processor's record of ethics and integrity, and capacity to meet regulatory requirements.	Adds term Recipient Agency Processing Agreement; Allows DA to delegate authority to recipient agency for oversight and monitoring; continues requirement that DA must approve all recipient agency processing agreements

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(b)(1)	A distributing agency, subdistributing agency, or recipient agency may contract for processing, pay the processing fee, and deliver the end products to eligible recipient agencies through its own distribution system. Distributing agencies shall assure that the acceptability of processed end products is tested with recipient agencies eligible to receive them prior to entering into a processing contract and shall develop a system for monitoring product acceptability. Distributing agencies may exempt end products from testing if they have been used previously, have been determined by the distributing agency to be acceptable by recipient agencies, and have had no changes in specifications.	250.30(g)	Ensuring acceptability of end products. A distributing agency that procures end products on behalf of recipient agencies, or that otherwise limits recipient agencies' access to the procurement of specific end products, must provide for testing of end products to ensure their acceptability by recipient agencies, prior to entering into processing agreements. End products that have previously been tested, or that are otherwise determined to be acceptable, need not be tested. However, such a distributing agency must monitor product acceptability on an ongoing basis.	Clarifies that requirements only apply to DAs that procure on recipient's behalf and that recipient agencies can test products themselves; changes acceptability monitoring requirement to "ongoing" as opposed to "periodically"
250.30(c)(4)(xvi)	A provision that the processor shall not assign the processing contract or delegate any aspect of processing under a subcontract or other arrangement without the written consent of the contracting agency and the distributing agency.	250.30(h)	Prohibition against subcontracting. A processor may not assign any processing activities under its processing agreement, or subcontract with another entity to perform any aspect of processing, without the specific written consent of the other party to the agreement (i.e., distributing, subdistributing, or recipient agency, or FNS, as appropriate). The distributing agency may, for example, provide the required consent as part of its State Participation Agreement with the processor.	Changes language to accommodate using a processing agreement instead of a contract

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30	No inclusion	250.30(i)	Agreements between Processors and Distributors. A processor providing end products containing donated foods to a distributor must enter into a written agreement with the distributor. The agreement must reference, at a minimum, the financial liability for the replacement value of donated foods, not less than monthly end product sales reporting frequency, requirements in § 250.11, and applicable value pass through system to ensure that the value of donated foods and finished end products are properly credited to recipient agencies. Distributing agencies can set additional requirements.	Requires that processors have agreements with distributors to ensure that value is properly credited to RAs. Added in response to ACDA 2015 Issue paper
250.30(c)(1)	Processing contracts shall terminate on June 30 of each year. However, processing contracts may give contracting agencies the option of extending contracts for two 1-year periods	250.30(j)	Duration of agreements. An agreement between a distributing, subdistributing, or recipient agency and a processor may be up to five years in duration. National Processing Agreements are permanent. Amendments to any agreements may be made, as needed, with the concurrence of both parties to the agreement. Such amendments will be effective for the duration of the agreement, unless otherwise indicated.	Agreement duration extended to five years
250.30(c)(2)	Standard form contracts shall be prepared or reviewed by the appropriate State legal staff to assure conformity with the requirements of these regulations and of applicable Federal, State and local laws.	250.30	No proposed inclusion	Removes requirement.
250.30(L)	...The distributing agency which enters into or approves a processing contract shall provide a copy of the contract and of these regulations to the processors, forward a copy of the contract to the appropriate FNSRO...	250.30	No proposed inclusion	Removes requirement.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(c)(1)	In addition to utilizing these selection criteria, when a contracting agency enters into a contract both for the processing of donated food and the purchase of the end products produced from the donated food, the procurement standards set forth in Attachment O to OMB Circular A-102 must be followed. Recipient agencies which purchase end products produced under Statewide agreements are also required to comply with Attachment O of OMB Circular A-102.	250.31(a)	Applicability of Federal procurement requirements. Distributing and recipient agencies must comply with the requirements in 2 CFR Part 200 and Part 400, as applicable, in purchasing end products, distribution, or other processing services from processors. Distributing and recipient agencies may use procurement procedures that conform to applicable State or local laws and regulations, but must ensure compliance with the requirements in 2 CFR Part 200 and Part 400, as applicable.	Updates procurement regulation cites
250.30(c)(i-vi)	The nutritional contribution which the end product will provide; (ii) The marketability of the end product; (iii) The distribution method which the processor intends to utilize; (iv) Price and yield schedule data; (v) Any applicable labeling requirements; and (vi) The ability of the processor to meet the terms and conditions set forth in the regulations	250.31(b)	Required information in procurement documents. In all procurements of processed end products containing USDA donated foods, procurement documents must include the following information: (1) The price to be charged for the end product or other processing service ; (2) The method of end product sales that will be utilized, and assurance that crediting for donated foods will be performed in accordance with the applicable requirements for such method of sales in § 250.36; (3) The value of the donated food in the end products; and (4) The location for the delivery of the end products.	Includes requirements as opposed to evaluation criteria; also shifts pricing information from epds to contract

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(c)(4)(viii)(B)	Furnish to the contracting agency prior to the delivery of any donated foods for processing documentation that a performance supply and surety bond from a surety company listed in the most recent U.S. Department of Treasury Circular 570, an irrevocable letter of credit or an escrow account has been obtained in an amount that is sufficient to protect the contract value of all donated foods. Since the distributing agency is held liable by FNS for any donated foods provided to a processor the distributing agency shall determine the dollar value of the performance supply and surety bond, irrevocable letter of credit or the escrow account taking into consideration the (1) Value of donated foods on hand;(2) Value of donated foods on order and (3) Anticipated usage rate during the contract period;	250.32(a)	Performance bond or irrevocable letter of credit. The processor must obtain a performance bond or an irrevocable letter of credit to protect the value of donated foods to be received for processing prior to the delivery of the donated foods to the processor. The processor must provide the performance bond or letter of credit to the distributing or recipient agency, in accordance with its In-State or Recipient Agency Processing Agreement. However, a multi-State processor must provide the performance bond or letter of credit to FNS, in accordance with its National Processing Agreement. The amount of the performance bond or letter of credit must be sufficient to cover the maximum value of donated foods in the processor's physical or book inventory that remain undelivered to the intended recipient. Such amount must be determined by the distributing or recipient agency or by FNS, as appropriate. The surety company from which a bond is obtained must be listed in the most current Department of Treasury Circular 570.	Requires processors to furnish a surety bond to DA or FNS for In-State and multi-State processors, respectively. Removes escrow account option as it is rarely used.
250.30(c)(4)(viii)(B)	Furnish to the contracting agency prior to the delivery of any donated foods for processing documentation that a performance supply and surety bond from a surety company listed in the most recent U.S. Department of Treasury Circular 570, an irrevocable letter of credit or an escrow account has been obtained in an amount that is sufficient to protect the contract value of all donated foods. Since the distributing agency is held liable by FNS for any donated foods provided to a processor the distributing agency shall determine the dollar value of the performance supply and surety bond, irrevocable letter of credit or the escrow account taking into consideration the (1) Value of donated foods on hand;(2) Value of donated foods on order and (3) Anticipated usage rate during the contract period;	250.32(b)	Calling in the performance bond or letter of credit. The distributing or recipient agency must call in the performance bond or letter of credit whenever a processor's lack of compliance with this part, or with the terms of the In-State or Recipient Agency Processing Agreement, results in a loss of donated foods to a distributing or recipient agency, and the processor fails to make restitution or respond to a claim action initiated to recover the loss. FNS will call in the performance bond or letter of credit in the same circumstances, in accordance with National Processing Agreements, and will ensure that any monies recovered are reimbursed to distributing agencies for losses of entitlement foods.	Adds detail respectively for DA and FNS calling in bonds.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(c) (4)(ii)	<p>) A description of each end product, the quantity of each donated food and the identification of any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), the total weight of all ingredients in the batch formula, the yield factor for each donated food, and any pricing information provided by the processor in addition to that required in paragraph (c)(4)(iii) of this section as requested by the contracting agency and a thorough explanation of what this additional pricing information represents. The yield factor is the percentage of the donated food which must be returned in the end product to be distributed to eligible recipient agencies. For substitutable donated foods, at least 100 percent of the donated food provided to the processor must be physically contained in the end products with no allowable tolerance;</p>	250.33(a)	<p>End product data schedules. The processor must submit an end product data schedule for approval before it may process donated foods into end products. For In-State Processing Agreements, the end product data schedule must be approved by the distributing agency and, for products containing donated red meat and poultry, the end product data schedule must also be approved by the Department. For National Processing Agreements, the end product data schedule must be approved by the Department. On the end product data schedule, the processor must describe its processing of donated food into an end product, including the information indicated in this paragraph (a). An end product data schedule must be submitted, and approved, for each new end product that a processor wishes to provide, or for a previously approved end product in which the ingredients (or other pertinent information) have been altered. In submitting the end product data schedule, the processor may use its own format, as long as all of the required information is included. The end product data schedule must include the following information:</p> <ol style="list-style-type: none"> (1) A description of the end product; (2) The types and quantities of donated foods included; (3) The types and quantities of other ingredients included; (4) The quantity of end product produced; and (5) The processing yield of donated food, which may be expressed as the quantity (pounds or cases) of donated food needed to produce a specific quantity of end product, or as the percentage of raw donated food versus the quantity returned in the finished end product. 	<p>Strengthens the information requirements of the epds and the DA review of the same; removes the inclusion of pricing info on epds as it may be misleading</p>

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(c) (4)(ii)	<p>) A description of each end product, the quantity of each donated food and the identification of any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), the total weight of all ingredients in the batch formula, the yield factor for each donated food, and any pricing information provided by the processor in addition to that required in paragraph (c)(4)(iii) of this section as requested by the contracting agency and a thorough explanation of what this additional pricing information represents. The yield factor is the percentage of the donated food which must be returned in the end product to be distributed to eligible recipient agencies. For substitutable donated foods, at least 100 percent of the donated food provided to the processor must be physically contained in the end products with no allowable tolerance;</p>	250.33(b)	<p>Processing yields of donated foods. All end products must have a processing yield of donated foods associated with its production and this processing yield must be indicated on its end product data schedule. The processing yield options are limited to 100 percent yield, guaranteed yield, and standard yield.</p> <p>(1) Under 100 percent yield, the processor must ensure that 100 percent of the raw donated food is returned in the finished end product. The processor must replace any processing loss of donated food with commercially purchased food of the same generic identity, of U.S. origin, and equal or better in all USDA procurement specifications than the donated food. The processor must demonstrate such replacement by reporting reductions in donated food inventories on performance reports by the amount of donated food contained in the finished end product rather than the amount that went into production. The Department may approve an exception if a processor experiences a significant manufacturing loss.</p>	<p>Adds plain-language clarity on the options for processing yields in addition to the 100% yield</p>

Current		Proposed		
Reg	Text	Reg	Text	Change
			<p>(2) Under guaranteed yield, the processor must ensure that a specific quantity of end product (i.e., number of cases) will be produced from a specific quantity of donated food, as determined by the parties to the processing agreement, and, for In-State Processing Agreements, approved by the Department. If necessary, the processor must use commercially purchased food of the same generic identity, of U.S. origin, and equal or better in all USDA procurement specifications than the donated food to provide the guaranteed number of cases of end product to the distributing or recipient agency, as appropriate. The guaranteed yield must be indicated on the end product data schedule.</p> <p>(3) Under standard yield, the processor must ensure that a specific quantity of end product (i.e., number of cases), as determined by the Department, will be produced from a specific quantity of donated food. The established standard yield is higher than the yield the processor could achieve under normal commercial production and serves to reward those processors that can process donated foods most efficiently. If necessary, the processor must use commercially purchased food of the same generic identity, of U.S. origin, and equal or better in all USDA procurement specifications than the donated food to provide the number of cases required to meet the standard yield to the distributing or recipient agency, as appropriate. The standard yield must be indicated on the end product data schedule.</p>	

Current		Proposed		
Reg	Text	Reg	Text	Change
250.3	No existing section	250.33(c)	<p>Compensation for loss of donated foods. The processor must compensate the distributing or recipient agency, as appropriate, for the loss of donated foods, or for the loss of commercially purchased foods substituted for donated foods. Such loss may occur, for example, if the processor fails to meet the required processing yield of donated food or fails to produce end products that meet required specifications, if donated foods are spoiled, damaged, or otherwise adulterated at a processing facility, or if end products are improperly distributed. To compensate for such loss, the processor must:</p> <p>(1) Replace the lost donated food or commercial substitute with commercially purchased food of the same generic identity, of U.S. origin, and equal or better in all USDA procurement specifications than the donated food; or (2) Return end products that are wholesome but do not meet required specifications to production for processing into the requisite quantity of end products that meet the required specifications (commonly called rework products); or (3) If the purchase of replacement foods or the reprocessing of products that do not meet the required specifications is not feasible, the processor may, with FNS approval, pay the distributing or recipient agency, as appropriate, for the replacement value of the donated food or commercial substitute.</p>	Adds plain language that ensures that RAs are compensated for loss of DF and adds "cash out" option as last resort.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(c)(4)(viii)(D)	(D) Apply as credit against the processing fee or return to the contracting agency and identify: (1) Any funds received from the sale of containers, and (2) The market value or the price received from the sale of any by-products of donated foods or commercial foods which have been substituted for donated foods;	250.33(d)	Credit for sale of by-products. The processor must credit the distributing or recipient agency, as appropriate, for the sale of any by-products produced in the processing of donated foods. The processor must credit for the net value of such sale, or the market value of the by-products, after subtraction of any documented expenses incurred in preparing the by-product for sale. Crediting must be achieved through invoice reduction or by another means of crediting.	Delineates by-product crediting methods by new yeild structures in proposed rule
250.30(c)(4)(viii)(D)(1)	(D) Apply as credit against the processing fee or return to the contracting agency and identify: (1) Any funds received from the sale of containers, and	250.33	No inclusion	Removes requirement to credit for containers
250.30(i)	Same	250.33(e)	Labeling requirements. The processor must ensure that all end product labels meet Federal labeling requirements. A processor that claims end products fulfill meal pattern requirements in child nutrition programs must comply with the procedures required for approval of labels of such end products.	No change

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(f)(1)	Substitution of donated foods with commercial foods. (1) The processing contract may provide for substitution of donated foods as defined in §250.3 except that donated beef and donated pork shall not be substitutable. Any substitution of commercial product for commodities other than beef, pork, or poultry is subject to a 100-percent yield requirement. Under the 100-percent yield requirement, the processor is responsible for any manufacturing losses.	250.34(a)	Substitution of commercially purchased foods for donated foods. Unless its agreement specifically stipulates that the donated foods must be used in processing, the processor may substitute commercially purchased foods for donated foods that are delivered to it from a USDA vendor. The commercially purchased food must be of the same generic identity, of U.S. origin, and equal or better in all USDA procurement specifications than the donated food. Commercially purchased beef, pork, or poultry must meet the same specifications as donated product, including inspection, grading, testing, and humane handling standards, and must be approved by the Department in advance of substitution. The processor may choose to make the substitution before the actual receipt of the donated food. However, the processor assumes all risk and liability if, due to changing market conditions or other reasons, the Department's purchase of donated foods and their delivery to the processor is not feasible. Commercially purchased food substituted for donated food must meet the same processing yield requirements in § 250.33 that would be required for the donated food.	Adds option for substituting donated beef and pork if an approved substitution plan is in place.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.3	Not included	250.34(b)	Prohibition against substitution and other requirements for backhauled donated foods. The processor may not substitute or commingle donated foods that are backhauled to it from a recipient agency's storage facility. The processor must process backhauled donated foods into end products for sale and delivery to the recipient agency that provided them, and not to any other recipient agency. Recipient agencies must purchase end products utilizing donated foods backhauled to their contracted processor. The processor may not provide payment for backhauled donated foods in lieu of processing.	Prohibits substitution or commingling of all backhauled donated foods, and to require that the processor process them into end products for sale and delivery to the recipient agency that provided them
250.30(g) & (f)(1)	Same	250.34(c)	Grading requirements. The processing of donated beef, pork, and poultry must occur under Federal acceptance service grading, which is conducted by the Agricultural Marketing Service. Federal acceptance service grading ensures that processing is conducted in compliance with substitution and yield requirements, and in conformance with the end product data schedule. The processor is responsible for paying the cost of acceptance service grading. The processor must maintain grading certificates and other records necessary to document compliance with requirements for substitution of donated foods and with other requirements of this subpart.	Consolidates requirements

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(g)	...Exemptions in the use of acceptance service graders will be authorized on the basis of each order to be processed provided the processor can demonstrate:	250.34(d)	Waiver of grading requirements. The distributing agency may waive the grading requirement for donated beef, pork, or poultry in accordance with one of the conditions listed in this paragraph (d). However, grading may only be waived on a case by case basis (e.g., for a particular production run); the distributing agency may not approve a blanket waiver of the requirement. Additionally, a waiver may only be granted if a processor's past performance indicates that the quality of the end product will not be adversely affected. The conditions for granting a waiver include: (1) The processor has insufficient time to secure the services of a grader; (2) The cost of the grader's service in relation to the value of donated beef, pork, or poultry being processed would be excessive; or (3) The distributing or recipient agency's urgent need for the product leaves insufficient time to secure the services of a grader.	Prohibits blanket waivers; must be done on case-by-case basis for single production runs.
250.30(f)(1)(ii)(A)	Substitution of commercial poultry may occur in advance of the actual receipt of the donated poultry by the processor. Should a processor choose to use the substitution option prior to the commodity being purchased by the USDA, the processor shall assume all risks. Any donated poultry not used in end products because of substitution shall only be used by the processor at one of its facilities in other commercially processed products and cannot be sold as an intact unit. However, in lieu of processing the donated poultry, the processor may use the commodity product to fulfill other USDA contracts awarded for delivery to another processor provided all terms of the other contract are met. Any variation between the amount of commercial poultry substituted and the amount of donated poultry received by the processor shall be adjusted according to guidelines furnished by USDA.	250.34(e)	Use of substituted donated foods. The processor may use donated foods that have been substituted with commercially purchased foods in other processing activities conducted at its facilities.	Permits the processor to sell any substituted donated food. Also removes the stipulation, in current § 250.30(f)(4), that title to the substituted donated food passes to the processor upon the initiation of processing of the end product with the commercial substitute

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(f)(1)(ii)	Processors shall maintain documentation that they have not reduced their level of commercial production because of participation in the State processing program.	250.34	Not included	Requirement removed
250.30(f)(2) & (f)(3)	in the case of concentrated skim milk replacing donated nonfat dry milk, determine if the concentrated skim milk contains....When concentrated skim milk is used to replace donated nonfat dry milk, the contract shall also specify (in addition to the requirements in paragraph (c) of this section):	250.34	Not included	Concentrated skim milk can no longer be replaced with donated nonfat dry milk
250.30(c)(4)(xi)	A description of the processor's quality control system and assurance that an effective quality control system will be maintained for the duration of the contract;	250.35(a)	Storage and quality control. The processor must ensure the safe and effective storage of donated foods, including compliance with the general storage requirements in § 250.12, and must maintain an effective quality control system at its processing facilities. The processor must maintain documentation to verify the effectiveness of its quality control system, and must provide such documentation upon request.	Rewords in plain language and requires the processor to maintain documentation to verify the effectiveness of its quality control system.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(g)	Meat and poultry inspection programs. When donated meat or poultry products are processed or when any commercial meat or poultry products are incorporated into an end product containing one or more donated foods, all of the processing shall be performed in plants under continuous Federal meat or poultry inspection, or continuous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection programs. In addition to FSIS inspection, all donated meat and poultry processing shall be performed under AMS acceptance service grading. The cost of this service shall be borne by the processor. In the event the processor can demonstrate that grading is impractical, exemptions in the use of acceptance services shall be approved by the distributing agency prior to processing each order. Exemptions in the use of acceptance service graders will be authorized on the basis of each order to be processed provided the processor can demonstrate:	250.35(b)	Food safety requirements. The processor must ensure that all processing of donated foods is conducted in compliance with all Federal, State or local requirements relative to food safety.	Simplifies rules

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(i)	Labeling end products. (1) Except when end products contain donated foods that are substituted under paragraph (f) of this section, the exterior shipping containers of end products and, where practicable, the individual wrappings or containers of end products, shall be clearly labeled “Contains Commodities Donated by the United States Department of Agriculture. This Product Shall Be Sold Only to Eligible Recipient Agencies.”	250.35(c)	Commingling of donated foods and commercially purchased foods. The processor may commingle donated foods and commercially purchased foods, unless the processing agreement specifically stipulates that the donated foods must be used in processing, and not substituted, or the donated foods have been backhauled from a recipient agency. However, such commingling must be performed in a manner that ensures the safe and efficient use of donated foods, as well as compliance with substitution requirements in § 250.34, and with reporting of donated food inventories on performance reports, as required in § 250.37. The processor must also ensure that commingling of processed end products and other food products, either at its facility, or at the facility of a commercial distributor, ensures the sale and delivery of end products that meet the processing requirements in this subpart—e.g., by affixing the applicable USDA certification stamp to the exterior shipping containers of such end products.	Adds some minor clarification to commingling rules and removes requirement to affix labels on the shipping containers of nonsubstitutable items

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(n)(1)	(1) Distributing agencies shall monitor processor inventories to ensure that the quantity of donated foods for which a processor is accountable is the lowest cost-efficient level but in no event more than a six-month supply based on the processor's average monthly usage, unless a higher level has been specifically approved by the distributing agency on the basis of a written justification submitted by the processor. Under no circumstances should the amount of donated foods ordered by the contracting agency for processing purposes be in excess of anticipated usage or beyond the processor's ability to accept and store the donated foods at any one time. Distributing agencies shall make no further distribution to processors whose inventories exceed these limits until such inventories have been reduced.	250.35(d)	Limitation on donated food inventories. Inventories of donated food at processors may not be in excess of a six-month supply, based on an average amount of donated foods utilized for that period, unless a higher level has been specifically approved by the distributing agency on the basis of a written justification submitted by the processor. Distributing agencies shall not submit food requisitions for processors reporting no sales activity during the prior year's contract period unless documentation is submitted by the processor which outlines specific plans for product promotion or sales expansion. When inventories are determined to be excessive for a State or processor, i.e. than 6 months or grossly exceeding the established protection, FNS may transfer inventory to another State or processor to ensure utilization prior to the end of the school year.	Adds requirement for FNS approval of excess inventories at processors along with DA assessment of the processor's ability to efficiently handle the added inventory. Also adds options for FNS to sweep inventories deemed excessive.
250.30(n)(3)	The last monthly performance report for the contract period, as required in paragraph (m)(1) of this section, shall serve as the annual reconciliation report. As a part of the annual reconciliation, a processor which has entered into a contract with the contracting agency for the next year shall pay the distributing agency, at the contract value, for any donated food inventory held which is in excess of the inventory level which has been approved by the State distributing agency. A processor whose contract has been completed or terminated shall return or pay for commodities as required by subsection (j).	250.35(e)	Reconciliation of excess donated food inventories. If, at the end of the school year, the processor has donated food inventories in excess of a six-month supply, the distributing agency may, in accordance with paragraph (d) of this section, permit the processor to carry over such excess inventory into the next year of its agreement, if it determines that the processor may efficiently store and process such quantity of donated foods. The distributing agency may also direct the processor to transfer such donated foods to other recipient agencies, or to redonate them to other distributing agencies, in accordance with § 250.12(e). However, if these actions are not practical, the distributing agency must require the processor to pay it for the donated foods held in excess of allowed levels, at the replacement value of the donated foods.	Allows for carryover or transfer of excess inventory at the end of the year as opposed to only mentioning reimbursement to DA for excess inventory.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(j)	Termination of processing contracts. (1) When contracts are terminated or completed and the processor has commodities remaining in inventory, the processor shall be directed, at the option of the distributing agency and the FNSRO, to do the following:	250.35(f)	Disposition of donated food inventories upon agreement termination. When an agreement terminates, and is not extended or renewed, the processor must take one of the actions indicated in this paragraph (f) with respect to remaining donated food inventories, as directed by the distributing agency or recipient agency, as appropriate. The processor must pay the cost of transporting any donated foods when the agreement is terminated at the processor's request or as a result of the processor's failure to comply with the requirements of this part. The processor must: (1) Return the donated foods, or commercially purchased foods that meet the substitution requirements in § 250.34, to the distributing or recipient agency, as appropriate; or (2) Transfer the donated foods, or commercially purchased foods that meet the substitution requirements in § 250.34, to another distributing or recipient agency with which it has a processing agreement; or (3) If returning or transferring the donated foods, or commercially purchased foods that meet the substitution requirements in § 250.34, is not feasible, the processor may, with FNS approval, pay the distributing or recipient agency, as appropriate, for the donated foods, at the contract value or replacement value of the donated foods, whichever is higher.	Expands disposition options when agreements are terminated at processors. Adds "cash out" option as last resort.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(d)(1)	When recipient agencies pay the processor for end products, such sales shall be under: ...	250.36(a)	Methods of end product sales. To ensure that the distributing or recipient agency, as appropriate, receives credit for the value of donated foods contained in end products, the sale of end products must be performed using one of the systems of end product sales described in this section. All systems of sales utilized must provide clear documentation of crediting for the value of the donated foods contained in the end products.	Clarifies that methods of crediting are contained within this section and adds detail to the options available.
250.30(d)(1)(i)	A refund system as defined in §250.3 and in accordance with paragraph (k) of this section; or	250.36(b)	Refund or rebate. Under this system, the processor sells end products to the distributing or recipient agency, as appropriate, at the commercial, or gross, price, and must provide a refund or rebate for the value of the donated food contained in the end products. The processor may also deliver end products to a commercial distributor for sale to distributing or recipient agencies under this system. In both cases, the processor must provide a refund to the appropriate agency within 30 days of receiving a request for a refund from that agency. The refund request must be in writing, which may be transmitted via e-mail or other electronic submission.	Removes refund application and 30day submission requirements and allows refund to be submitted to the distributor or recipient agency.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(d)(1)(ii)	A discount system which provides the price of each unit of end product purchased by eligible recipient agencies to be discounted by the stated contract value of the donated foods contained therein; or	250.36(c)	Direct discount. Under this system, the processor must sell end products to the distributing or recipient agency, as appropriate, at a net price that provides a discount from the commercial case price for the value of donated food contained in the end products.	Rewords in plain language.
250.30(e)(1)(ii)	A hybrid system which provides a refund for the contract value of the donated food shall be provided to the distributor in accordance with paragraph (k) of this section and the price of each unit of end product purchased by eligible recipient agencies through a distributor shall be discounted by the contract value of the donated foods contained therein;	250.36(d)	Indirect discount. Under this system, the processor delivers end products to a commercial distributor, which must sell the end products to an eligible distributing or recipient agency, as appropriate, at a net price that provides a discount from the commercial case price for the value of donated food contained in the end products. The processor must require the distributor to notify it of such sales, at least on a monthly basis, through automated sales reports or other electronic or written submission. The processor then compensates the distributor for the discount provided for the value of the donated food in its sale of end products.	Formalizes indirect discount and rewords in plain language, also removes the requirement, in current § 250.30(k)(2), that the distributor apply to the processor for a refund under this system

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(e)(1)(i)v)	When a processor arranges for delivery of processed end products produced under fee-for-service contracts by distributors, the products shall be delivered and invoiced using one of the following procedures	250.36(e)	Fee-for-service. Under this system, the processor must sell end products to the distributing or recipient agency, as appropriate, at a fee-for-service, which includes all costs to produce the end products not including the value of the donated food used in production. The processor must identify any charge for delivery of end products separately from the fee-for-service on its invoice. If the processor provides end products sold under fee-for-service to a distributor for delivery to the distributing or recipient agency, the processor must identify the distributor's delivery charge separately from the fee-for-service on its invoice, or may permit the distributor to bill the appropriate agency separately for the delivery of end products. When the recipient agency procures storage and distribution of processed end products separate from processing of donated foods, the recipient agency may provide the distributor written approval to act as the recipient agency's authorized agent for the total case price (i.e., including the fee-for-service and the delivery charge). The processor must require that the distributor notify it of such sales, at least on a monthly basis, through automated sales reports, e-mail, or other electronic or written submission.	Formalizes fee-for-service and adds some clarifying rules on notification and allows for electronic notification of sale

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(d)(1)(ii) i)	(iii) An alternative value pass-through system under which the value of the donated food contained in each unit of end product shall be passed to the recipient agency and which has been approved by FNS at the request of the distributing agency. Any alternative value pass-through system approved under this paragraph must comply with the sales verification requirements specified in §250.19(b) of this part, or an alternative verification system approved by FNS. The Department retains the authority to inspect and review all pertinent records including records pertaining to the verification of a statistically valid sample of sales. FNS may consider the paperwork and resource burden associated with alternative value pass-through systems when considering approval and reserves the right to deny the approval of systems which are labor-intensive and provide no greater accountability than those systems permitted under paragraphs (d) and (e) of this section.	250.36(f)	Approved alternate method. The processor or distributor may sell end products under an alternative method approved by FNS and the distributing agency that ensures crediting for the value of donated foods contained in the end products.	Removes some of the mentions of requirements stated elsewhere.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30	Not included	250.36(g)	Donated food value used in crediting. In crediting for the value of donated foods in end product sales, the contract value of the donated foods, as defined in § 250.2 must be used.	Adds additional clarification and includes contract value terminology.
250.30	Not included	250.36(h)	Ensuring sale and delivery of end products to eligible recipient agencies. In order to ensure the sale of end products to eligible recipient agencies, the distributing agency must provide the processor with a list of recipient agencies eligible to purchase end products, along with the quantity of raw donated food that is to be delivered to the processor for processing on behalf of each recipient agency. In order to ensure that the distributor sells end products only to eligible recipient agencies, the processor must provide the distributor with a list of eligible recipient agencies and either: (1) The quantities of approved end products that each recipient agency is eligible to receive; or (2) The quantity of donated food allocated to each recipient agency and the raw donated food (pounds or cases) needed per case of each approved end product.	Adds requirement that the distributing agency provide the processor with a list of recipient agencies eligible to purchase end products, along with the quantity of raw donated food that is to be delivered to the processor

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(m)	Processors shall be required to submit to distributing agencies monthly reports of performance under each processing contract with year-to-date totals. Processors contracting with agencies other than a distributing agency shall submit such reports to the distributing agency having authority over that particular contracting agency. Performance reports shall be postmarked no later than the final day of the month following the reporting period; however, the final performance report for the contract period shall be postmarked no later than 60 postmarked days from the close of the contract year. The report shall include:...	250.37(a)	Performance reports. The processor must submit a performance report to the distributing agency (or to the recipient agency, in accordance with a Recipient Agency Processing Agreement) on a monthly basis, which must include the information listed in this paragraph (a). Performance reports must be submitted not later than 30 days after the end of the reporting period; however, the final (June) performance report must be submitted within 60 days of the end of the reporting period. The performance report must include the following information for the reporting period, with year-to-date totals: (1) A list of all recipient agencies purchasing end products; (2) The quantity of donated foods in inventory at the beginning of the reporting period; (3) The quantity of donated foods received; (4) The quantity of donated foods transferred to the processor from another entity, or transferred by the processor to another entity; (5) The quantity of donated food losses; (6) The quantity of end products delivered to each eligible recipient agency; (7) The quantity of donated foods remaining at the end of the reporting period; (8) A certification statement that sufficient donated foods are in inventory or on order to account for the quantities needed for production of end products; (9) Grading certificates, as applicable; and (10) Other supporting documentation, as required by the distributing agency or recipient agency.	Removes the requirement in current § 250.30(c)(4)(viii)(I) that the processor submit annual reconciliation reports. The June performance report serves to reconcile data that may have been submitted erroneously earlier in the year. Adds a certification statement to ensure that sufficient inventory is on hand.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30	Not included	250.37(b)	Reporting reductions in donated food inventories. The processor must report reductions in donated food inventories on performance reports only after sales of end products have been made, or after sales of end products through distributors have been documented. Documentation of distributor sales must be through the distributing or recipient agency's request for a refund (under a refund or rebate system), or through receipt of the distributor's automated sales reports or other electronic or written reports submitted to the processor (under an indirect discount system or under fee-for-service system).	Adds requirement that processor must report reductions in donated food inventories on performance reports only after sales of end products have been made, or after sales of end products through distributors have been documented.
250.30	Not included	250.37(c)	Summary performance report. Along with the submission of performance reports to the distributing agency, a multi-State processor must submit a summary performance report to FNS, on a monthly basis and in a format established by FNS, in accordance with its National Processing Agreement. The summary report must include an accounting of the processor's national inventory of donated foods, including the information listed in this paragraph (c). The report must be submitted not later than 30 days after the end of the reporting period; however, the final performance report must be submitted within 60 days of the end of the reporting period. The summary performance report must include the following information for the reporting period: (1) The total donated food inventory by State and the national total at the beginning of the reporting period; (2) The total quantity of donated food received by State, with year-to-date totals, and the national total of donated food received; (3) The total quantity of donated food reduced from inventory by State, with year-to-date totals, and the national total of donated foods reduced from inventory; and (4) The total quantity of donated foods remaining in inventory by State, and the national total, at the end of the reporting period.	Adds requirement that a multi-State processor submit a summary performance report to FNS, on a monthly basis, containing information from the performance report that would allow FNS to track the processor's total and State-by-State donated food inventories

Current		Proposed		
Reg	Text	Reg	Text	Change
250.16(a)(4)	<p>Each processor, food service management company, warehouse, or other entity which contracts with a distributing agency, subdistributing agency or recipient agency shall be required to keep accurate and complete records with respect to the receipt, distribution/disposal, storage and inventory of such foods similar to those required of distributing agencies under this paragraph. Where donated foods have been commingled with commercial foods, the processor shall maintain records which permit an accurate determination of the donated-food inventory. The processor shall also be required to keep formula, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use made of such foods and their subsequent redelivery, in whatever form, to any distributing agency, subdistributing agency or recipient agency. Processors must maintain records which will permit a determination regarding compliance with the contracting provisions required by §250.30(f) (3) and (4) as well as maintain records used as the basis for compiling the processor performance reports required by §250.30(m).</p>	250.37	Not included	Removes requirement

Current		Proposed		
Reg	Text	Reg	Text	Change
250.3	Not included	250.37(d)	<p>Recordkeeping requirements for processors. The processor must maintain the following records relating to the processing of donated foods:</p> <p>(1) End product data schedules and summary end product data schedules, as applicable; (2) Receipt of donated food shipments; (3) Production, sale, and delivery of end products, including sales through distributors; (4) All agreements with distributors; (5) Remittance of refunds, invoices, or other records that assure crediting for donated foods in end products and for sale of byproducts; (6) Documentation of Federal or State inspection of processing facilities, as appropriate, and of the maintenance of an effective quality control system; (7) Documentation of substitution of commercial foods for donated foods, including grading certificates, as applicable; (8) Waivers of grading requirements, as applicable; and (9) Required reports.</p>	<p>Adds requirement for processors to maintain specific records to demonstrate compliance with processing requirements in 7 CFR Part 250, including, for example, assurance of receipt of donated food shipments, production, sale, and delivery of end products, and crediting for donated foods contained in end products.</p>

Current		Proposed		
Reg	Text	Reg	Text	Change
250.16(a)(1)(i)	i) End products processed from donated foods and	250.37(e)	Recordkeeping requirements for the distributing agency. The distributing agency must maintain the following records relating to the processing of donated foods: (1) In-State Processing Agreements and State Participation Agreements; (2) End product data schedules or summary end product data schedules, as applicable; (3) Performance reports; (4) Grading certificates, as applicable; (5) Documentation that supports information on the performance report, as required by the distributing agency (e.g., sales invoices or copies of refund payments); (6) Copies of audits of in-State processors and documentation of the correction of any deficiencies identified in such audits; (7) The receipt of end products, as applicable; and (8) Procurement documents, as applicable.	Adds requirement for distributing agencies to maintain specific records to demonstrate compliance with processing requirements in 7 CFR Part 250, including, for example, end product data schedules, performance reports, copies of audits, and documentation of the correction of any deficiencies identified in such audits.
250.30	Not included	250.37(f)	Recordkeeping requirements for the recipient agency. The recipient agency must maintain the following records relating to the processing of donated foods: (1) The receipt of end products purchased from processors or distributors; (2) Crediting for the value of donated foods contained in end products; (3) Recipient Agency Processing Agreements, as applicable, and, in accordance with such agreements, other records included in paragraph (e) of this section, if not retained by the distributing agency; and (4) Procurement documents, as applicable.	Adds requirement for recipient agencies to maintain specific records to demonstrate compliance with processing requirements in 7 CFR Part 250, including, for example, the receipt of end products purchased from processors or distributors, crediting for the value of donated foods included in end products, and procurement documents.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(m)(3)	Distributing agencies shall review and analyze reports submitted by processors to ensure that performance under each contract is in accordance with the provisions set forth in this section.	250.37(g)	The distributing agency must review performance reports and other records that it must maintain, in accordance with the requirements in paragraph (e) of this section, to ensure that the processor: (1) Receives donated food shipments; (2) Delivers end products to eligible recipient agencies, in the types and quantities for which they are eligible; (3) Meets the required processing yields for donated foods; and (4) Accurately reports donated food inventory activity and maintains inventories within approved levels.	Clarifies review requirements for distributing agencies and adds requirements for reporting donated food inventory activity and maintaining inventories within approved levels.
250.30(m)(1)(ix)	A certification statement that sufficient donated foods are in inventory or on order to account for the quantities needed for production of end products for State processing contracts and that the processor has on hand or on order adequate quantities of foods purchased commercially to meet the processor's production requirements for commercial sales.	250.37	Not included	Removes requirement
250.30(n)(5)	Distributing agencies shall not submit food requisitions for processors reporting no sales activity during the prior year's contract period unless documentation is submitted by the processor which outlines specific plans for product promotion or sales expansion.	250.37	Not included	Removes requirement
250.30	Not included	250.38(a)	National Processing Agreement. A National Processing Agreement includes provisions to ensure that a multi-State processor complies with all of the applicable requirements in this part relating to the processing of donated foods.	Adds requirement that the National Processing Agreement includes provisions to ensure that a multi-State processor complies with all applicable requirements.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30	Not included	250.38(b)	A State Participation Agreement with a multi-State processor must include the following provisions: (1) Contact information for all appropriate parties to the agreement; (2) The effective dates of the agreement; (3) A list of recipient agencies eligible to receive end products; (4) Summary end product data schedules, with end products that may be sold in the State; (5) Assurance that the processor will not substitute or commingle backhauled donated foods and will provide end products processed from such donated foods only to the distributing or recipient agency from which the foods were received; (6) Any applicable labeling requirements; (7) Other processing requirements implemented by the distributing agency, such as the specific method(s) of end product sales permitted; (8) A statement that the agreement may be terminated by either party upon 30 days' written notice; (9) A statement that the agreement may be terminated immediately if the processor has not complied with its terms and conditions; and (10) A statement requiring the processor to enter into an agreement with any and all distributors delivering processed end products to recipient agencies that ensures adequate data sharing, reporting, and crediting of donated foods, in accordance with § 250.30(i) of this part.	Adds requirement that the State Participation Agreement with a multi-State processor contain specific provisions that are not included in the multi-State processor's National Processing Agreement. Adds statement requiring the processor to enter into an agreement with distributors.

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(c)(4)	At a minimum, each processing contract shall include:(i) The names and telephone numbers of the contracting agency and processor; (ii) A description of each end product, the quantity of each donated food and the identification of any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), the total weight of all ingredients in the batch formula, the yield factor for each donated food, and any pricing information provided by the processor in addition to that required in paragraph (c)(4)(iii) of this section as requested by the contracting agency and a thorough explanation of what this additional pricing information represents. The yield factor is the percentage of the donated food which must be returned in the end product to be distributed to eligible recipient agencies.	250.38(c)	An In-State Processing Agreement must include the following provisions or attachments: (1) Contact information for all appropriate parties to the agreement; (2) The effective dates of the agreement; (3) A list of recipient agencies eligible to receive end products, as applicable; (4) In the event that subcontracting is allowed, the specific activities that will be performed under subcontracts; (5) Assurance that the processor will provide a performance bond or irrevocable letter of credit to protect the value of donated foods it is expected to maintain in inventory, in accordance with § 250.32; (6) End product data schedules for all end products, with all required information, in accordance with § 250.33(a); (7) Assurance that the processor will meet processing yields for donated foods, in accordance with § 250.33; (8) Assurance that the processor will compensate the distributing or recipient agency, as appropriate, for any loss of donated foods, in accordance with § 250.33(c); (9) Any applicable labeling requirements;	Adds requirement that the State Processing Agreement contain specific provisions or attachments to assure compliance with requirements, most are included in current § 250.30(c)(4). Adds statement requiring the processor to enter into an agreement with distributors.

Current		Proposed		
Reg	Text	Reg	Text	Change
	For substitutable donated foods, at least 100 percent of the donated food provided to the processor must be physically contained in the end products with no allowable tolerance;		(10) Assurance that the processor will meet requirements for the substitution of commercially purchased foods for donated foods, including grading requirements, in accordance with §250.34; (11) Assurance that the processor will not substitute or commingle backhauled donated foods and will provide end products processed from such donated foods only to the recipient agency from which the foods were received, as applicable; (12) Assurance that the processor will provide for the safe and effective storage of donated foods, meet inspection requirements, and maintain an effective quality control system at its processing facilities; (13) Assurance that the processor will report donated food inventory activity and maintain inventories within approved levels; (14) Assurance that the processor will return, transfer, or pay for, donated food inventories remaining upon termination of the agreement, in accordance with § 250.35(f); (15) The specific method(s) of end product sales permitted, in accordance with § 250.36; (16) Assurance that the processor will credit recipient agencies for the value of all donated foods, in accordance with § 250.36;	

Current		Proposed		
Reg	Text	Reg	Text	Change
			<p>(17) Assurance that the processor will submit performance reports and meet other reporting and recordkeeping requirements, in accordance with § 250.37; (18) Assurance that the processor will obtain independent CPA audits and will correct any deficiencies identified in such audits, in accordance with § 250.20; (19) A statement that the distributing agency, subdistributing agency, or recipient agency, the Comptroller General, the Department of Agriculture, or their duly authorized representatives, may perform on-site reviews of the processor's operation to ensure that all activities relating to donated foods are performed in accordance with the requirements in 7 CFR Part 250; (20) A statement that the agreement may be terminated by either party upon 30 days' written notice; (21) A statement that the agreement may be terminated immediately if the processor has not complied with its terms and conditions; (22) A statement that extensions or renewals of the agreement, if applicable, are contingent upon the fulfillment of all agreement provisions; and (23) A statement requiring the processor to enter into an agreement with any and all distributors delivering processed end products to recipient agencies that ensures adequate data sharing, reporting, and crediting of donated foods, in accordance with § 250.30(i) of this part.</p>	

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30	Not included	250.38(d)	Required provisions for Recipient Agency Processing Agreement. The Recipient Agency Processing Agreement must contain the same provisions as a In-State Processing Agreement, to the extent that the distributing agency permits the recipient agency to perform activities normally performed by the distributing agency under a In-State Processing Agreement (e.g., approval of end product data schedules, review of performance reports, or management of the performance bond). However, a list of recipient agencies eligible to receive end products need not be included.	Adds requirement that the Recipient Agency Processing Agreement contain the same provisions as a In-State Processing Agreement, to the extent that the distributing agency permits the recipient to perform activities normally performed by the distributing agency under a In-State Processing Agreement
250.30	Not included	250.38(e)	Noncompliance with processing requirements. If the processor has not complied with processing requirements, the distributing or recipient agency, as appropriate, must not extend or renew the agreement, and may immediately terminate it.	Adds requirement that distributing and/or recipient agency must terminate processor agreements if they do not comply with other requirements.
250.30(t)	Waiver authority. The Food and Nutrition Service may waive any of the requirements contained in this part for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods.	250.39(a)	Waiver of processing requirements. The Department may waive any of the requirements of this part for the purpose of conducting demonstration projects to determine if processing of donated foods may be performed more efficiently or effectively by other means.	No change

Current		Proposed		
Reg	Text	Reg	Text	Change
250.30(s)	Processing activity guidance. Distributing agencies shall develop and provide a processing manual or similar procedural material for guidance to contracting agencies, recipient agencies, and processors. Distributing agencies must revise these materials as necessary to reflect policy and regulatory changes. This guidance material shall be provided to contracting agencies, recipient agencies and processors at the time of the approval of the initial agreement by the distributing agency, when there have been regulatory or policy changes which necessitate changes in the guidance materials, and upon request. The manual shall include, at a minimum, statements of the distributing agency's policies and procedures on...	250.39(b)	Distributing agencies must develop and provide a processing manual or similar procedural material for guidance to contracting agencies, recipient agencies, and processors. Distributing agencies must revise these materials as necessary to reflect policy and regulatory changes. This guidance material must be provided to contracting agencies, recipient agencies, and processors at the time of the approval of the initial agreement by the distributing agency, when there have been regulatory or policy changes which necessitate changes in the guidance materials, and upon request. The manual must include, at a minimum, statements of the distributing agency's policies and procedures regarding: (1) Contract approval; (2) Monitoring and review of processing activities; (3) Recordkeeping and reporting requirements; (4) Inventory controls; and (5) Refund applications.	No change
250.30	Not included	250.39(c)	Guidance or information. Guidance or information relating to the processing of donated foods is included on the FNS web site, or may otherwise be obtained from FNS. Such guidance or information includes, for example, program regulations and policies, the processing handbook, and the FNS Audit Guide, National Processing Agreement prototypes, and summary end product data schedule prototypes.	Adds mention of the website as a source of these requirements and guidance