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Kiley Larson, Program Analyst
Food and Nutrition Service
Food Distribution Division, Policy Branch
U.S. Department of Agriculture
3101 Park Center Drive, Room 500
Alexandria, VA 22302-1594

RE: RIN number 0584-AE38

Dear Mr. Larson:

The American Commodity Distribution Association (ACDA) appreciates the opportunity to submit the following comments in response to the proposed rule entitled “Part 250 – Donation of Foods for Use in the United States, its Territories and Possessions and Areas Under Its Jurisdiction” (the proposed rule) in the Federal Register on Thursday, January 5, 2017. ACDA agrees and supports the effort to revise and clarify requirements for the processing of USDA Foods. ACDA is committed to improving the USDA Distribution Food Program on behalf of all stakeholders and is the recognized leader and voice for continuation and improvement of USDA Food Distribution Programs.

ACDA is a non-profit professional trade association whose members include: state agencies that distribute USDA-purchased commodity foods; agricultural organizations; industry; associate members; recipient agencies, such as schools and soup kitchens; and allied organizations, such as anti-hunger groups. ACDA members are responsible for distributing over 1.5 billion pounds of USDA-purchased commodity foods annually through programs such as the National School Lunch and Breakfast Programs, the Emergency Food Assistance Program (TEFAP), Summer Food Service Program (SFSP), Commodity Supplemental Food Program (CSFP), Charitable Institution Program, and Food Distribution Program on Indian Reservations (FDPIR).

AGREEMENTS

In the proposed 250.30(i), ACDA applauds and supports the requirement for agreements between processors and distributors. We believe additional language is needed to further clarify who such agreements must be submitted to. ACDA recommends that processors file such agreements with FNS. We believe this is the more practical procedure as opposed to submission of agreements to a state agency that has no authority over commercial distributors or ability to monitor or enforce such agreements. Processors are now assigned a

Program Analyst in the Program Monitoring and Integrity Branch who can review such agreements as necessary when filed with FNS. Distributing agencies, as a best practice, may request copies of agreements between processors and distributors and can set additional requirements as desired.

In the proposed 250.30(j), all agreements between a distributing, sub-distributing, or recipient agency and a processor are renewable for up to five years in duration. We ask that all such agreements, similar to a processor’s National Processing Agreement, be made permanent.

ENSURING PROCESSING YIELDS OF DONATED FOODS

We agree with the revision to the proposed 250.33(a) and believe the removal of pricing (either the price charged for the end product or other pricing information,) on the End Product Data Schedule (EPDS) is warranted. We also agree, as outlined in the preamble, with a requirement to include the processing yield of donated food on the EPDS and the proposed limit to the processing yields to 100% yield, guaranteed yield, and standard yield. We ask that additional language is added to 250.33(b) (2) under guaranteed yield, to include that a specific quantity of end product can be tracked or reported by the USDA Foods donated pounds per case. While the preamble explains the processing yield may be expressed as “the quantity of donated food (e.g., pounds or cases) needed to produce a specific quantity of end product or as the percentage of donated food returned in the finished end product,” the verbiage in the actual rule does not specify pounds but rather cases.

INVENTORY MANAGEMENT

To assist in the ability of a processor to identify which inventory levels exceed six months, we urge FNS to include language in the proposed rule at 250.35(d) that clarifies the calculation of “six-month supply of donated foods, based on an average amount utilized for that period.” Such calculations should be based on a 10-month school year which excludes June and July. ACDA recommends that the calculation for the months of on-hand inventory be determined as follows:

$$\frac{\text{Processors' Liability (the total receipts for a USDA Foods code to date + carryover - shipments to date +/- transfers)}}{\text{Average monthly usage (Current number of months in the 10-month school year)}}$$

Example USDA Food Code:

Month	<u>February</u>	Product Received to Date	<u>546,000#</u>
Carryover	<u>459,000#</u>	Shipments to Date	<u>592,800#</u>
Transfers Out	<u>12,000#</u>	Average Monthly Usage	<u>84,686#</u>

$$\frac{\text{Feb Liability} = 400,200\# \text{ (} 546,000\# + 459,000\# - 592,800\# - 12,000 \# \text{ in transfers out)}}{\text{Average Use} = 84,686\# \text{ (} 592,800/7)}$$

Inventory Level = **4.73 months** (400,200#/84,686#)

ACDA feels strongly that the above calculation would enable a processor to use data from the current school year, enable fairly accurate calculations during the current year, and provide a best practice for monitoring levels throughout the year. This is particularly important as state agencies are able to order USDA Foods throughout the year as needed and entitlement dollars are available.

VALUE PASS THROUGH METHODS

With the intention of the proposed rule to present regulatory provisions in plain language, we believe section 250.36(d) needs to be revised slightly to include the commonly used term for indirect discount: Net Off Invoice, or NOI. Now that sales verification is no longer a requirement, adding a sentence encouraging recipient agencies, as a best practice, to monitor invoices to ensure correct discounts are applied is appropriate.

Similarly, section 250.36(e) Fee-for-service, needs to be revised to include common language. This paragraph is describing three variations of fee-for-service: (1) Direct shipment and invoicing from the processor to the recipient agency; (2) Fee-for-service through a distributor, where the processor ships multiple pallets of product to a distributor with a breakout of who owns what products; and (3) What is commonly known as Modified Fee-for-service, when the recipient agency has an authorized agent bill them for the total case price and is using the practice discussed in the preamble as pooled inventory. We understand the position of the Department to discourage pooled inventory but request that the practice is labeled as it is known, with additional language added instructing the processor to closely monitor distributor transactions and reporting practices.

MONTHLY PERFORMANCE REPORTS

To improve reporting practices, we suggest section 250.37 be revised to “state performance reports must be received by state agencies no later than 30 days after the end of the reporting period.” ACDA requests that the additional month for reporting year-end transactions be removed from the policy. The advanced tracking methods instituted with improved technology permits processors to complete the necessary tasks without additional time. This change will assist state agencies in expediting the analysis of processor inventory. Finally, to clarify when a processor can stop reporting on a given USDA Food to a state agency, we suggest adding language to indicate that reports are not required for products with a beginning balance of zero and by which there have been no receipts, adjustments or shipments of finished goods for that USDA Foods code.

ACDA greatly appreciates the opportunity to offer these comments and we look forward to continuing to work with the Department to improve processing policies and practices.

Sincerely,



Lena Wilson, President