

# Proposed Rules

Federal Register

Vol. 62, No. 50

Friday, March 14, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Consumer Service

#### 7 CFR Parts 250, 251, and 253

RIN 0584-AB27

#### Food Distribution Programs— Reduction of the Paperwork Burden

**AGENCY:** Food and Consumer Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the Food Distribution Program regulations, the Emergency Food Assistance Program regulations, and the Food Distribution Program for Households on Indian Reservations regulations to implement the provisions of the Child Nutrition and WIC Reauthorization Act of 1989 regarding paperwork reduction for food distribution programs. The proposals contained in this rule would extend the maximum effective periods for agreements between Federal, distributing, and recipient agencies, contracts of distributing and subdistributing agencies with storage facilities, contracts between recipient agencies and food service management companies, and State plans of operation; remove the requirement that commodity acceptability information be submitted for the following program categories: charitable institutions, nonprofit summer camps, the Summer Food Service Program for Children, and the Emergency Food Assistance Program; relax monitoring requirements for distributing agencies with regard to charitable institutions and nonprofit summer camps, and the food service management companies under contract with them; and, amend regulatory language to reflect modified information collection requirements. The proposals would, in short, effect a substantial reduction in the information collection requirements imposed on distributing and recipient agencies, and the paperwork generated in fulfilling these

requirements, in administering food distribution programs.

**DATES:** To be assured of consideration, comments must be postmarked on or before May 13, 1997.

**ADDRESSES:** Comments should be sent to: Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, Park Office Center, Room 502, 3101 Park Center Drive, Alexandria VA 22302-1594. Comments in response to this rule may be inspected at 3101 Park Center Drive, Room 502, Alexandria VA, during normal business hours (8:30 a.m. to 5 p.m., Mondays through Fridays).

**FOR FURTHER INFORMATION CONTACT:** Lillie Ragan at the above address or telephone (703) 305-2662.

#### SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget for any purpose other than approval of the changes in the information collection burden proposed in the rule.

#### Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). The Administrator of the Food and Consumer Service (FCS) has certified that this action will not have a significant economic impact on a substantial number of small entities. The procedures in this rulemaking would primarily affect FCS Regional Offices, and the distributing and recipient agencies that administer food distribution programs. Private enterprises that enter into agreements for the storage of donated food or meal service management would also be affected. While some of these entities constitute small entities, a substantial number will not be affected. Further, any economic impact will not be significant.

#### Executive Order 12372

These programs are listed in the Catalog of Federal Domestic Assistance under 10.550, 10.568, and 10.569, respectively, and are subject to the provisions of Executive Order 12372,

which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Food and Consumer Service is submitting for public comment the changes in the information collection burden that would result from the adoption of the proposals in the rule.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. To be assured of consideration, comments must be postmarked on or before May 13, 1997. Comments may be sent to Wendy Taylor, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington DC 20503. All comments will be summarized and included in the request for OMB approval of the proposed changes in the information collection burden. All comments will become a matter of public record. For further information, or for copies of the information collections discussed below, please contact Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, Park Office Center, Room 502, 3101 Park Center Drive, Alexandria, Virginia 22302-1594, or telephone (703)305-2662.

**Title:** Food Distribution Regulations and Forms.

**OMB Number:** 0584-0293.

**Expiration Date:** 9/30/97.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* Agreements, contracts, and plans of operation. The rule proposes to: (1) make agreements between distributing agencies and recipient agencies (food banks, soup kitchens, charitable institutions, emergency feeding organizations, etc.) to operate food distribution programs permanent, with amendments made as necessary, instead of annual; (2) allow distributing or subdistributing agencies to sign contracts with storage facilities for the storage of donated foods for a maximum duration of five years, instead of the present one year, with options for two additional years; (3) allow recipient agencies (charitable institutions, summer camps, and nutrition programs for the elderly) to sign contracts with food service management companies for one year, with four additional one-year options, instead of one year with two additional one-year options; and, (4) make the plan submitted by State agencies and Indian Tribal Organizations to operate the Food Distribution Program on Indian Reservations (FDPIR) ongoing, instead of annual, with amendments made as necessary.

*Submission of Inventory Reports.* The rule proposes to require semiannual submission of the recently revised form FCS-155, the Inventory Management Register (the revised form has been approved by OMB). This form is a report of excessive commodity inventories—

i.e., inventories exceeding a six-month supply—that helps to ensure that commodities will be utilized before going out of condition. Regulations presently require monthly submission of form FCS-155.

*Collection of Commodity Acceptability Information.* The rule proposes to exclude certain food distribution program categories from those for which distributing agencies must submit commodity acceptability information, because of the substantial reduction in surplus commodities now available to these programs. The exempted program categories would be charitable institutions, summer camps, the Summer Food Service Program for Children (SFSP), and the Emergency Food Assistance Program (TEFAP). Commodity acceptability information is collected for other food distribution programs to ensure that commodities distributed are of the types and forms most acceptable to program recipients.

*Respondents:* Respondents include State agencies and Indian Tribal Organizations administering food distribution programs, and, in some cases, recipient agencies responsible for local administration and distribution of donated commodities.

*Estimated Number of Respondents:* State agencies and Indian Tribal Organizations administering food distribution programs number 171; recipient agencies number approximately 11,200.

*Estimated Number of Responses per Respondent:* Frequency of response for

the inventory reports would be semiannual, or 2 per year. Frequency of response for agreements between distributing and recipient agencies, the State plans, and the distributing and recipient agency contracts with storage facilities and food service management companies would vary, depending on necessary amendments to the agreements and plans, and the length of the contracts. It is estimated that, on average, both amendments and contracts would be completed every four years, or at a frequency of 0.25 per year. Frequency of response for the commodity acceptability reports would continue to be annual, but distributing agencies would not be required to submit commodity acceptability information for charitable institutions, summer camps, SFSP, and TEFAP, thus reducing the number of responses to be submitted.

*Estimate of Burden:* The present and proposed estimates of the reporting burden for the information collections affected by this rule are detailed below. These estimates are based on information obtained from distributing and recipient agencies administering food distribution programs through various vehicles such as meetings and the review of information submitted in State plans. The information includes the number of respondents, frequency of responses per year for each respondent, number of hours per response, and the total burden hours for each information collection.

	Respdnts.	Freq.	Hrs./Resp.	Total Hrs.
Distributing and Recipient Agency Agreement:				
Present .....	11,211	1	0.33	3,700
Proposed .....	11,211	0.25	0.20	561
Distributing or Subdistributing Agency Contracts w/Storage Facilities:				
Present .....	250	1	0.33	83
Proposed .....	250	0.25	0.33	21
Contracts w/Food Service Management Companies:				
Present .....	300	1	0.33	99
Proposed .....	300	0.25	0.33	25
Inventory Reports (FCS-155):				
Present .....	80	12	1.75	1,680
Proposed .....	80	2	0.25	40
Commodity Acceptability Reports:				
Present .....	466	1	50	23,300
Proposed .....	252	1	50	12,600
FDPIR State Plan:				
Present .....	97	1	10	970
Proposed .....	97	0.25	3	73

*Estimated Total Annual Burden on Respondents:* The total annual burden under OMB Control Number 0584-0293 would be reduced from 1,190,971 hours to 1,174,459 hours: a difference of 16,512 hours.

*Title:* Federal-State Agreement, FCS-74

*OMB Number:* 0584-0067

*Expiration Date:* 6/30/98

*Type of Request:* Revision of a currently approved collection.

*Abstract:* The Federal-State Agreement, form FCS-74, is used to ensure that distributing agencies administering child nutrition and food distribution programs comply with Federal regulations applicable to the programs. This rule proposes to make

permanent, instead of annual, the agreement that distributing agencies administering food distribution programs (and not child nutrition programs) sign with the Food and Consumer Service (FCS). Amendments would be made as necessary, at the request of FCS.

*Respondents:* State agencies and Indian Tribal Organizations administering food distribution programs.

*Estimated Number of Respondents:* 147 State agencies and Indian Tribal Organizations would be affected.

*Estimated Number of Responses per Respondent:* The agreements would be permanent for the affected State agencies, with amendments to the agreement submitted as necessary. It is estimated that such amendments would be required, on average, every four years. Thus, the annual number of responses per respondent would be 0.25.

*Estimate of Burden:* The following estimates are based on the anticipated frequency of need for changes. For each of the 147 affected State agencies and Indian Tribal Organizations, the agreement would take approximately 0.25 hours to complete, and would be completed, on average, 0.25 times per year. Thus, the annual reporting burden for these agencies would be 9.2 hours.

*Estimated Total Annual Burden on Respondents:* The total annual burden under OMB Number 0584-0067 would be reduced from 34,494 hours to 34,466 hours: a difference of 28 hours.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions, or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of the preamble of the final rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

#### Background

The Child Nutrition and WIC Reauthorization Act of 1989, Pub. L. 101-147, (hereinafter referred to as "the Act"), was enacted on November 10, 1989. Section 108 of the Act amended what was then Section 19 of the National School Lunch Act (NSLA), 42 U.S.C 1769a, to include a requirement that the Secretary endeavor to reduce

the paperwork burden for State and local educational agencies, schools, and other agencies participating in nutrition assistance programs. The Act required that, in determining ways to reduce the paperwork burden, the Secretary (1) consult with State and local administrators of nutrition assistance programs; (2) convene at least one meeting with the program administrators; and (3) solicit suggestions from the general public. (Section 710 of Pub. L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, repealed Section 49 of the NSLA.)

Accordingly, on April 9, 1990, a Notice was published in the Federal Register (55 FR 13156) soliciting comments regarding the reduction of the paperwork burden associated with the administration of the child nutrition and food distribution programs. One hundred and sixty-five comments addressing issues associated with paperwork reduction for food distribution programs were received. Comments were received from 105 schools, 49 State agencies, five food processors, four professional associations (including the American Commodity Distribution Association and the American School Food Service Association), one Indian Tribal Organization, and one consultant. Following the receipt of comments, on July 30, 1990, a Paperwork Reduction Task Force (hereinafter referred to as the "Task Force"), comprised of representatives from two commodity distribution associations, 13 school or food distribution program administrators, and two FCS Regional Office directors, was convened to review the comments received in response to the Notice. The actions taken to date by the Department in response to Congress' directive in Section 108 of Pub. L. 101-147 are discussed in detail below.

Five commenters recommended that the amount of information a State is required to submit to the Department before a commodity complaint can be investigated be reduced. In response to these recommendations, through consultation with FCS Regional Office and State agency representatives, a list of data that must be provided prior to FCS taking any action regarding a complaint was developed and made available to all Regional Offices for dissemination to State agencies. While other information may subsequently be requested, submission of all required basic data at the time the complaint is reported permits FCS to begin taking appropriate action in a much more timely manner.

FCS has also taken steps to simplify the process of transmitting the data needed to act on commodity complaints by revising the Special Nutrition Programs Integrated Information System (SNPIIS) to allow FCS Regional Offices to submit complaint data electronically. An informational booklet containing instructions as to how to input complaint data into the system has been disseminated to all FCS Regional Offices.

In order to streamline the process of reporting commodity complaints, FCS has set up a telephone "hot line" for use on a pilot basis. Under the pilot project, selected distributing or recipient agencies within certain States may report commodity complaints to FCS Headquarters directly, via a toll-free 800 number or facsimile machine. All FDIPIR State agencies, including all Indian Tribal Organizations acting as State agencies pursuant to 7 CFR 253.2(h), may report commodity complaints to FCS Headquarters directly via the hot line also. While those agencies utilizing the hot line must still provide certain basic information before the problem can be resolved, they have more flexibility in the format used to report the information than those agencies reporting commodity complaints through State and FCS Regional offices, and receive a more immediate response to their concerns. If the pilot project, the initial phase of which concluded on September 30, 1996, indicates that direct reporting of commodity complaints to the national office provides better service to the recipients utilizing USDA commodities, by reducing the amount of time required to resolve complaints, then access to the hot line will be extended to all States.

Five commenters suggested that the Department allow distributing agencies to waive commodity losses of \$100 or less. Since this was already the Department's policy, the Department has considered how to provide clarification of the policy. In addition, FCS has consulted with Regional Offices to resolve various issues relating to losses resulting from the improper storage or distribution of commodities, including the responsibility for initiating claims, and the cost efficiency of the claims process. This consultation has resulted in the development of draft guidance material which was disseminated to FCS Regional Offices for comment on April 15, 1994. The guidance material establishes the Department's position on issues relative to: (1) what entity is responsible for pursuing the various types of claims; (2) conditions under which storage facilities can offset shortages with

overages; (3) allowable uses of funds derived from salvage and recycling; (4) what funds should be deposited into the distributing agency's general salvage account and the allowable uses of such funds; (5) the handling of losses of "bonus" commodities; and (6) the thresholds that have been established for use in determining what entity has the authority to make a claim determination, and to compromise, waive, or suspend claims. Several of the changes discussed in the guidance material have been implemented through policy memoranda. However, some changes can only be effectuated by revising "Non-Audit Claims—Food Distribution Program," FCS Instruction 410-1, and/or through the rulemaking process. The issue of increasing the limit under which State agencies can waive a claim is one that must be addressed through the rulemaking process for the Emergency Food Assistance Program (TEFAP) and by revision of the FCS instruction for all other food distribution programs.

Twenty-one commenters suggested that forms FCS-155 (Monthly Report of Receipt and Distribution of Donated Foods) and FCS-155A (Shipment of Commodities by Delivery Order) be eliminated, or that these inventory reports be required less frequently. After a review of the usefulness of the forms in 1991 and 1992, FCS concluded that it would not be feasible to eliminate them, but that they could be modified to reduce the paperwork burden for State agencies. Accordingly, forms FCS-155 and FCS-155A were modified by removing some columns that collected duplicate information.

With full implementation of the Processed Commodities Inventory Management System (PCIMS), FCS decided to reexplore the usefulness of forms FCS-155 and FCS-155A, and initiated a pilot project in 1994 to determine if information entered in PCIMS would make the collection of information in the reports redundant. After identifying relevant information that can be accessed through this system, an alternate, less time-consuming inventory reporting form was developed for use by those State agencies participating in the pilot project. After evaluating the results of the pilot project, this form—the revised FCS-155—was further refined to collect information on excessive commodity inventories only, and not the detailed information on receipt and distribution of commodities currently reported. Excessive commodity inventories are defined in 7 CFR 250.14(f) as those that exceed a six-month supply. The revised FCS-155—renamed the Inventory

Management Register—was submitted for approval to the Office of Management and Budget (OMB), and was approved by OMB on September 13, 1995, as part of OMB #0584-0293. Also resulting from the pilot project, submittal of form FCS-155A, which served to verify receipt of shipments of commodity delivery orders, was found to be unnecessary. Distributing agencies report receipts for foods delivered to the Kansas City Commodity Office, utilizing form KC-269A, the Distributing Agency Consignee Receipt, as directed in FCS Instruction 709-5, Shipment and Receipt of Foods. Thus, distributing agencies administering child nutrition and food distribution programs—except for FDPIR and the Commodity Supplemental Food Program (CSFP)—now submit the revised FCS-155, the Inventory Management Register, to FCS regional offices, and no longer submit form FCS-155A. State agencies and Indian Tribal Organizations administering FDPIR and CSFP submit more detailed information on program participation, inventories of donated foods, and distribution of donated foods to households, on a monthly basis, utilizing forms FCS-152 (for FDPIR) and FCS-153 (for CSFP). Unlike other programs, the information reported on these inventory forms is not currently available through automated systems. Thus, State agencies and Indian Tribal Organizations must continue to submit forms FCS-152 and FCS-153 for FDPIR and CSFP, respectively. As with other programs, however, the submittal of form FCS-155A to verify the shipment of commodities by delivery order is no longer required. This form was discontinued in October 1995 for FDPIR, and in November 1995 for CSFP.

Twenty-eight commenters to the 1990 Notice suggested that commodity acceptability reports be submitted annually, rather than semi-annually, as was then required by law. Subsequent to the publication of the Notice, however, Section 1773(d) of Pub. L. 101-624, the Food, Agriculture, Conservation, and Trade Act of 1990, subsequently amended Section 3(f)(2) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100-237; 7 U.S.C. 612c note) to require the collection of commodity acceptability information annually. In order to further reduce the paperwork burden, however, we are proposing to amend regulations to exempt certain program categories from the annual reporting requirement, while still conforming to the mandate of Pub. L. 100-237. This proposal is described below, in the section of this preamble

entitled "Food Distribution Program Regulations (7 CFR Part 250)."

Additionally, a revision of form FCS-663, Commodity Acceptability Report, has been developed with input from FCS Regional Offices and State agencies. This revised form will substantially decrease the paperwork burden for distributing and recipient agencies in reporting commodity acceptability information, while still providing valuable information on the commodity preferences of program recipients. The revised form FCS-663 was approved by OMB on September 13, 1995, as part of OMB #0584-0293.

Five commenters recommended that the State plan describing the operation and administration of TEFAP, presently submitted annually, be considered permanent, with amendments submitted as specific changes in the administration of the program are made. However, on August 22, 1996, President Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, which, in Section 871(b) amended Section 202A of the Emergency Food Assistance Act of 1983, Pub. L. 98-8 (7 U.S.C. 7503(a)), to require State agencies to submit a TEFAP State plan every four years, with amendments submitted as necessary, for the Department's approval. The four-year requirement for submission of the TEFAP State Plan, instead of annual submission, became effective on August 22, 1996. The Department will address these, as well as other changes in the administration of TEFAP resulting from passage of Pub. L. 104-193, through a separate rulemaking.

Four commenters recommended that the distributing agency evaluation of the cost efficiency of storage facilities be discontinued, or required less frequently. The requirement that distributing agencies periodically evaluate the cost-effectiveness of their current storage systems (7 CFR 250.14) will be addressed in a separate rule.

Comments relative to commodity processing have been addressed in a final rule which was published in the Federal Register on December 7, 1994 (59 FR 62973).

In addition to the policy and regulatory changes discussed above, the Department is proposing to amend several regulatory requirements contained in Parts 250, 251, and 253, based on comments received in response to the Notice. The proposed regulatory amendments contained in this rule are discussed in detail below.

# Food Distribution Program Regulations (7 CFR Part 250)

## *Duration Requirements for Agreements and Contracts*

Currently, Section 250.12(a) of the regulations requires that distributing agencies enter into agreements with the Department that are effective for only one year. In addition, Section 250.12(b) limits agreements between State and recipient entities to only one year, with the possibility of two one-year extensions. Sections 250.12(b) and 250.14(d) limit the length of contracts of distributing and subdistributing agencies with storage facilities to only one year, with the possibility of two one-year extensions. These regulations also restrict the length of contracts between distributing agencies and carriers to the same duration limits. Agreements between State agencies and subdistributing or recipient agencies must establish (1) the conditions under which donated foods will be made available, and (2) responsibility for loss, damage, or improper use of donated foods. Agreements of State or subdistributing agencies with storage facilities must contain provisions designed to ensure that storage facilities properly identify, store, and account for donated commodities.

Numerous commenters suggested that the one-year limit on agreements be removed. Thirty-one commenters suggested that agreements between State and recipient agencies be made permanent with provision for amendments as necessary. Eleven commenters also suggested that the annual agreement between the Department and State agencies be made permanent. Eighteen commenters also recommended extending the duration of contracts between distributing and subdistributing agencies and storage facilities for the storage of donated foods.

The Department agrees that requiring Federal-State agreements to be completed anew each year is burdensome and unnecessary. Accordingly, this rule proposes to amend § 250.12(a) to provide for permanent agreements between the Department and State agencies, with amendments to be made at the request of FCS. In addition, distributing agencies would be required to notify FCS of the information as the agreement changes. The Department's authority under §§ 3015.124(a) and 3016.43 to terminate agreements for cause would not be affected by this proposed change. Furthermore, the availability of funds and commodities beyond those amounts available at the time the "permanent"

agreements are signed is dependent upon future Congressional appropriations and FCS's annual decision to continue the agreement.

With regard to annual agreements between distributing and recipient agencies, the Department recognizes the need for a relaxation of the paperwork burden, and proposes to amend § 250.12(b) to provide for permanent agreements between distributing agencies and recipient agencies, with amendments to be made as necessary. Distributing agencies must ensure that recipient agencies provide, on a timely basis, by amendment to the agreement, any information on changes in program administration, including, but not limited to, changes in site locations, number of meals or needy persons to be served, or changes resulting from amendments to Federal regulatory requirements and policy. Because of the nature of, and volatility in costs of, services provided by carriers, and by subdistributing agencies that are not recipient agencies (i.e., do not distribute donated foods to eligible recipients or utilize foods to provide services to those eligible), the Department believes that agreements between distributing agencies and these entities should remain one year, with an option for two one-year extensions. The proposed restructuring of § 250.12 to detail the different duration requirements for agreements between distributing agencies and the various types of local entities is described below.

The Department agrees that contracts of longer duration between State agencies and storage facilities would reduce the paperwork burden. Such contracts would also be attractive to storage facilities, as they would not have to bid so frequently for a new contract. Furthermore, longer contracts would provide more time to amortize expenses incurred in ensuring a high quality of service. Therefore, to provide distributing agencies with maximum flexibility in contracting for storage facilities, the Department proposes to amend § 250.14(d) to extend the contract period to be effective for no longer than five years, including option years. Thus, distributing agencies may choose to negotiate contracts for a five-year, or three-year, period, or for one year with option years not exceeding four, etc. This flexibility will enable State agencies to enter into contracts of whatever duration in their estimation will yield the best combination of quality service and cost, subject only to the five-year maximum. This rule also proposes to make some technical changes in paragraphs (d) and (e) of

§ 250.14 by revising some incorrect references.

Under current regulations, food service management companies may be employed to conduct the food service operations of charitable institutions, nonprofit summer camps for children, nutrition programs for the elderly, schools, nonresidential child care institutions, and service institutions receiving donated foods. The duration of contracts between these companies and charitable institutions, nonprofit summer camps for children, and nutrition programs for the elderly is limited, in § 250.12(c), to one year, with an option for two additional one-year periods. Section 210.16(d) sets the duration of contracts between school food authorities, which administer school nutrition programs, and food service management companies at one year, with an option for four additional one-year periods. Although the commenters to the 1990 Notice did not address agreements with food service management companies, this rule proposes, in the interest of reducing the paperwork burden, to revise § 250.12(c) to make contracts between these companies and charitable institutions, nonprofit summer camps for children, and nutrition programs for the elderly, of the same maximum duration as those between food service management companies and school food authorities. As part of the proposed revision of this section, paragraph (2), addressing the length of time that records shall remain available, would be removed, as recordkeeping requirements will be established for all entities contracting with distributing, subdistributing, or recipient agencies in § 250.16.

This rule proposes to restructure § 250.12 so as to more clearly state the duration requirements for all food distribution program agreements, as described above. The restructuring entails the revision of § 250.12(b) to describe the terms and conditions of distributing agency agreements with recipient agencies, subdistributing agencies, carriers, and other entities, and the creation of a new § 250.12(c) to address the duration of such agreements. §§ 250.12(c), 250.12(d), and 250.12(e) would be redesignated as §§ 250.12(d), 250.12(e), and 250.12(f), respectively. In conformance with the restructuring of § 250.12, this rule proposes to delete reference to § 250.12(c) and insert instead reference to § 250.12(d) in the following §§ 250.3, in the definition of "food service management company"; 250.19(b)(1)(iv); 250.40(a)(4); 250.41(a)(3); 250.42(a); 250.48(a)(1); and, 250.49(a). Additionally, this rule

proposes to make a technical change in the redesignated § 250.12(e), which addresses storage facility contracts, by replacing the incorrect reference to § 250.14(c) ("Reviews") with a reference to § 250.14(d) ("Contracts").

#### *Collection and Submission of Commodity Acceptability Information*

7 CFR 250.13(k)(1) currently requires that State agencies obtain information from recipient agencies which reflects: (1) The types and forms of donated foods that are most useful to recipients; (2) commodity specification recommendations; and (3) requests for options regarding package sizes and forms of commodities. Paragraph (k)(2) of this Section lists the categories of recipient agencies from which State agencies are to obtain this information; paragraph (k)(3) stipulates that this information be submitted to FCS on an annual basis, utilizing form FCS-663.

Historically, USDA has donated a steady, dependable supply of foods acquired under the Commodity Credit Corporation's price-support operations to a variety of outlets, including charitable institutions and nonprofit summer camps for children. These donated foods have included cereal and grain products such as flour, cornmeal, rice, rolled wheat and oats, bulgur, macaroni, and spaghetti; peanut and oil products, such as roasted peanuts, peanut butter, peanut granules, soybean oil, and soybean shortening; and dairy products. However, due to the significant amounts of these foods that were distributed to recipient agencies in the past, changes in price-support legislation, and changes in agricultural market conditions, the inventories of available donated foods have been greatly reduced. At the present time, Federal inventories of surplus commodities are insufficient to supply food distribution programs on a regular basis.

While donated foods may also become available to charitable institutions and nonprofit summer camps for children through surplus-removal actions, their availability cannot be assured, and the types of commodities available can be expected to vary significantly over time.

Because of the variety in the types and forms of donated foods previously available on an ongoing basis to charitable institutions and nonprofit summer camps for children, the Department applied to these institutions the regulatory requirement for annual collection and reporting of commodity acceptability information. However, since surplus commodities are not currently available to these institutions on a regular basis, the Department has

determined that collection of commodity acceptability information from them no longer serves a useful purpose.

For the same reasons, surplus commodities are also no longer available in TEFAP on a regular basis. Although, since 1989, commodities have been purchased, under authority of the Emergency Food Assistance Act of 1983 (Pub. L. 98-8; 7 U.S.C. 7501-16), to supplement the distribution of the dwindling surplus foods to needy households, the amount of funds appropriated for commodity purchases in TEFAP has been greatly reduced in recent years. Since the foods from which States may select for distribution to TEFAP households are the same as those available for distribution to eligible households in CSFP or FDPIR, the Department believes that it is not necessary to require State agencies to submit separate commodity acceptability reports for TEFAP.

USDA regulations (7 CFR 250.13(k)) also presently require that commodity acceptability information for SFSP be submitted. However, because the target group is the same as that for the National School Lunch and School Breakfast Programs (which are included in the legislative requirement), and because the donated foods provided are the same, or similar, to donated foods provided in those programs, the Department considers the collection and submission of commodity acceptability information for recipient agencies participating in SFSP to be redundant.

The Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100-237; 7 U.S.C. 612c note) provides the basis for the Department's regulations requiring the collection of commodity acceptability information from recipient agencies. Section 3(a)(1)(B) of Pub. L. 100-237 provides that this data must be utilized by the Department in determining the types and forms of foods to be purchased for certain food distribution programs. The law does not, however, specifically include SFSP or nonprofit summer camps for children among those recipient agencies from which such information must be obtained. Additionally, the law requires the collection and use of commodity acceptability information only to the extent practicable for TEFAP, and for the donation of foods to charitable institutions. Therefore, as part of the Department's effort to reduce the paperwork burden, and for the reasons discussed above, this rule proposes to revise § 250.13(k)(2) to exclude SFSP, summer camp, TEFAP, and charitable institution recipient agencies from those

for which distributing agencies are required to submit commodity acceptability information. Such distributing agencies may still choose to collect and submit to FCS information on commodity acceptability from these categories of recipient agencies, and all such submissions would be carefully reviewed by FCS.

In conformance with the above proposals, this rule also proposes to amend § 250.13(k)(3) to delete reference to the annual submission by November 30th of commodity acceptability reports for summer camps and SFSP (for which reports would not be required), and to clarify that distributing agencies must submit commodity acceptability reports (for those programs for which reports would be required, as stipulated in § 250.13(k)(2)) to FCS Regional Offices by April 30th each year. Additionally, this rule proposes to make a technical change to § 250.24(d)(1) by removing the word "semi-annual" to reflect the current requirement contained in section 3(f)(2) of Pub. L. 100-237, as amended, which mandates the annual collection of commodity acceptability information. This statutory change was addressed in a final rule published in the Federal Register on July 22, 1993 (58 CFR 39113).

#### *Submission of Inventory Reports*

As previously described in this Preamble, most distributing agencies report excessive inventories of donated foods on the revised FCS-155, the Inventory Management Register, while distributing agencies administering FDPIR and CSFP use the more detailed inventory reports, forms FCS-152 (FDPIR) and FCS-153 (CSFP), to submit data on program participation, commodity distribution to households, and inventory levels. This rule proposes to revise the language in § 250.17(a) to accurately describe the reporting function of FCS-155, which now requires reporting of excessive inventories only, and to require semiannual submission of this form, instead of monthly submissions, unless FCS determines that (a) more frequent reporting is necessary to maintain program accountability, or (b) less frequent reporting is sufficient to meet program needs. Reference would continue to be made to the submission of the FCS-155, or "other format approved by FCS"—the other currently approved formats being, of course, forms FCS-152 and FCS-153, utilized in FDPIR and CSFP, respectively. Lastly, we propose to delete reference to a list of individual food orders received for each food item delivered (the function

of the FCS-155A, which has been found to be unnecessary, as discussed above).

*Monitoring Requirements for Charitable Institutions and Summer Camps*

7 CFR 250.19(b) requires State agencies to establish review procedures to ensure compliance with Federal regulations addressing household eligibility, food ordering and storage, inventory controls, reporting and recordkeeping requirements, and civil rights provisions. Section 250.19(b)(1)(i) presently requires State agencies to conduct on-site reviews of each participating charitable institution, nonprofit summer camp for children, and nutrition program for the elderly at least once every four years, with at least 25 percent of the total number of such institutions reviewed each year. Section 250.19(b)(1)(iv) requires biennial reviews of all food service management companies under contract with recipient agencies that have agreements with distributing agencies. Because of the reduced availability of USDA commodities for charitable institutions and nonprofit summer camps for children, as discussed in detail above, the Department believes that the requirements governing monitoring reviews for these recipient agencies, as well as the food service management companies under contract with them, are excessive. Thus, the Department proposes in this rule to revise § 250.19(b)(1)(i) to require that State agencies perform on-site reviews of charitable institutions, nonprofit summer camps for children, and the food service management companies under contract with them, at a minimum: (1) whenever the State agency identifies actual or probable deficiencies in program administration through audits, investigations of complaints, reports submitted by recipient agencies, or any other information available to the State agency which, at the discretion of the State agency, warrants an on-site review; or, (2) at the request of FCS. State agencies are encouraged to conduct more frequent reviews as resources and work schedules permit. Section 250.19(b)(1)(iv) is proposed to be revised to note the exception of food service management companies under contract with charitable institutions and nonprofit summer camps for children from the biennial review requirement for food service management companies under contract with other types of recipient agencies.

FCS Instruction 113-3, "Civil Rights Compliance and Enforcement—Food Distribution Programs," presently includes an on-site review requirement

of recipient agencies every five years to ensure compliance with civil rights regulations. In accordance with the above proposed change in on-site review requirements for charitable institutions and nonprofit summer camps for children, this provision of the instruction would be removed. The revised instruction would require that on-site reviews to ensure compliance with civil rights provisions be conducted under conditions, and at the frequency, established by Federal regulations for the various types of recipient agencies. While the proposed rule relaxes on-site review requirements, distributing, subdistributing, and recipient agencies would be required to continue to comply with all other provisions in Federal regulations and FCS Instruction 113-3, including the collection of racial/ethnic participation data, to ensure that discrimination because of race, color, national origin, age, sex, or handicap does not occur in the operation of food distribution programs.

This rule also proposes to restructure § 250.19(b)(1) to address in separate subparagraphs nutrition programs for the elderly, on the one hand, and charitable institutions and nonprofit summer camps for children, on the other, because of the different monitoring requirements that would result from adoption of the proposal described above. In addition, this rule proposes to make a technical change in § 250.19(b)(1)(i) by deleting the incorrect reference to § 250.14(a) ("Standards for Warehousing and Distribution Systems") and inserting instead reference to § 250.14(b) ("Standards for Storage Facilities").

The Emergency Food Assistance Program (7 CFR Part 251)

*Duration Requirements for Agreements with Distributing and Recipient Agencies*

Section 251.2(c) of the regulations requires that distributing agencies enter into an agreement with the Department for the receipt of TEFAP foods and Federal funds for administrative costs. In addition to entering into agreements with the Department, distributing agencies are also required to enter into agreements with eligible emergency feeding organizations (EFOs). As stated in § 251.4(a), Part 250 applies to the administration of TEFAP, to the extent that it is not inconsistent with Part 251. While the duration requirements for these types of agreements are not stipulated under this Part, 7 CFR 250.12(b) limits the length of such agreements to one year. The provisions

contained in § 251.2(c) also require that distributing agencies enter into agreements with EFOs that receive Federal funds and that such agreements be limited to one year, with an option for renewal for two one-year periods.

As discussed in detail above, commenters recommended that Federal-State agreements be made ongoing in order to reduce the paperwork burden. The Department concurs with this recommendation, and proposes to amend § 251.2(c) to make TEFAP Federal-State agreements permanent, with amendments to be made at the request of FCS, and to make agreements between distributing agencies and EFOs permanent, with amendments to be made as necessary. In addition, distributing agencies must ensure that EFOs provide, on a timely basis, by amendment to the agreement, any changed information, including any changes resulting from amendments to Federal regulations or policy. Such information must include, but not be limited to, changes in the number of distribution sites and their locations, number of needy persons to be served, frequency of distributions, household eligibility criteria to be used in certifying households, and allocation of TEFAP administrative funds.

*Submission of Inventory Reports*

This rule proposes to amend § 251.10(d)(2) to direct State agencies to adhere to the inventory reporting requirements stipulated in § 250.17(a), since State agencies administering TEFAP will also utilize the revised form FCS-155, the Inventory Management Register, to report excessive commodity inventories. Household participation data will also continue to be reported utilizing this form, at the same frequency that inventory information is reported. This rule proposes to include this requirement in the final sentence of § 251.10(d)(2), and to delete § 251.10(d)(3), which presently addresses this requirement, for both State agencies and EFOs. It will be up to each State agency to determine how best to collect the necessary information from the EFOs. Additionally, this rule proposes to amend § 251.10(a)(1) to remove reference to the obsolete § 250.6(r), and to refer to § 250.16 instead.

Food Distribution Program on Indian Reservations (7 CFR Part 253)

*Plan of Operation*

Section 253.5(a) of the regulations requires that the State agency (including Indian Tribal Organizations acting as the State agency) responsible for the



administration of the Food Distribution Program on Indian Reservations submit a plan of operation each year to FCS for approval. The provisions in this section require that such plans contain a description of the storage and distribution facilities to be utilized, the method of assuring that only eligible households receive benefits, and other information relative to the administration of the program.

Although the commenters did not recommend a change to the requirement that State agencies submit a plan of operation to FCS each year, the Department believes that, because the plan's contents do not change much from year to year, the plan should be permanent, with amendments added as changes in program administration are made. Thus, this rule proposes to amend § 253.5(a) to make the plan of operation permanent, with amendments to be added as: (a) changes in State agency administration of the program, as described in the plan, are made; or, (b) at the request of FCS, e.g., in response to changes in State agency plan requirements or guidance. The Department's authority under §§ 3015.124(a) and 3016.43 to terminate agreements for cause would not be affected by this proposed change.

#### *Application for Federal Assistance*

State agencies and Indian Tribal Organizations must continue to submit an application to receive Federal administrative funds on an annual basis, as required by § 253.9(c). However, this rule proposes to amend this section of the regulations to reflect the fact that this application is now made through completion of standard form SF-424, which is mandated by 7 CFR Part 3016 ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"), instead of form AD-623. This rule also proposes to delete the statement in this section encouraging Indian Tribal Organizations which act as State agencies to first submit applications through the State clearinghouse, as agencies of State government are required to do under 7 CFR Part 3015 (Uniform Federal Assistance Regulations), Subpart V. The Department does not believe that this statement is in the spirit of the Presidential directive of April 29, 1994 ("Government-to-Government Relations with Native American Tribal Governments," 59 FR 22951, May 4, 1994), which encourages agencies of the Federal government to work directly with Native American Tribal Governments.

#### List of Subjects

##### *7 CFR Part 250*

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Indians, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

##### *7 CFR Part 251*

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

##### *7 CFR Part 253*

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 250, 251, and 253 are proposed to be amended as follows.

#### **PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION**

1. The authority citation for part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a-1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

##### **§§ 250.3, 250.19, 250.40, 250.41, 250.42, 250.48, 250.49 [Amended]**

2. In § 250.3, in the definition of *Food service management company*, and in §§ 250.19(b)(1)(iv), 250.40(a)(4), 250.41(a)(3), 250.42(a), 250.48(a)(1), and 250.49(a), the citation "250.12(c)" is removed wherever it appears, and the citation "250.12(d)" is added in its place.

3. In Section 250.12:

- a. The third and fourth sentences of paragraph (a) are revised;
- b. The concluding text of paragraph (b) is removed;
- c. Paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e) and (f), and a new paragraph (c) is added; and
- d. Newly redesignated paragraphs (d) and (e) are revised.

The revisions and addition read as follows:

##### **§ 250.12 Agreements and contracts.**

(a) *Agreements with Department.*  
\* \* \* The agreements shall be considered permanent, with amendments to be made at the request of FCS. In addition, agreements between the Department and State Agencies on Aging that elect to receive cash in lieu of commodities shall also be considered permanent, with amendments to be made at the request of FCS.

\* \* \* \* \*

(c) *Duration of distributing agency agreements.*—(1) *Recipient agencies.* Distributing agency agreements with recipient agencies shall be considered permanent, with amendments to be made as necessary. Distributing agencies shall ensure that recipient agencies provide, on a timely basis, by amendment to the agreement, any changed information, including, but not limited to, any changes resulting from amendments to Federal regulatory requirements and policy and changes in site locations, and number of meals or needy persons to be served.

(2) *Subdistributing agencies, carriers, and other entities.* Distributing agency agreements with subdistributing agencies that are not recipient agencies, carriers, and other entities shall be in effect for not longer than one year, and shall provide that they may be extended at the option of both parties for two additional one-year periods. The party contracting with the distributing agency shall update all pertinent information and demonstrate that all donated food received during the period of the previous agreement has been accounted for, before an agreement is extended.

(3) *Termination of agreements.* Agreements may be terminated for cause by either party upon 30 days notice.

(d) *Food service management company contracts.* Food service management companies may be employed to conduct the food service operations of nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, schools, nonresidential child care institutions, and service institutions. In instances when a food service management company is employed to provide such services, the recipient agency shall enter into a written contract with the food service management company. The contract shall expressly provide that any donated foods received by the recipient agency and made available to the food service management company shall be utilized



solely for the purpose of providing benefits for the employing agency's food service operation, and it shall be the responsibility of the recipient agency to demonstrate that the full value of all donated foods is used solely for the benefit of the recipient agency. All food service management companies shall be subject to review by the distributing agency for compliance with contractual requirements, in accordance with § 250.19(b)(1). In the case of nonprofit summer camps for children, charitable institutions, and nutrition programs for the elderly, the contract shall be in effect for no longer than one year, and may provide that it be extended at the option of both parties for not more than four additional one-year periods. Contracts shall provide that they may be terminated for cause by either party upon 30 days notice. Prior to extension of the contract, the nonprofit summer camp for children, charitable institution, or nutrition program for the elderly shall update all pertinent information and demonstrate that all donated food received during the previous contract period has been accounted for.

(e) *Storage facility contracts.* When contracting for storage facilities, distributing agencies and subdistributing agencies shall enter into a written contract, in accordance with § 250.14(d).

\* \* \* \* \*

4. In § 250.13:

a. Paragraph (k)(2) is amended by removing the words "the Summer Food Service Program", "charitable institutions, summer camps," and ", and the Emergency Food Assistance Program"; and by adding "and" before "the Food Distribution Program on Indian Reservations"; and

b. Paragraph (k)(3) is revised to read as follows:

**§ 250.13 Distribution and control of donated foods.**

\* \* \* \* \*

(k) \* \* \*

(3) *Timeframes for submission.*

Distributing agencies shall submit commodity acceptability reports to the appropriate FCSRO by April 30th of each year on form FCS-663.

5. In § 250.14:

a. The introductory text of paragraph (d) is amended by removing the first three sentences, and adding two new sentences in their place;

b. Paragraph (d)(1) is amended by removing the reference to "paragraph (a)" and adding in its place a reference to "paragraph (b)"; and

c. Paragraph (e) is amended by removing the citation "§ 250.14(b)" in

the first sentence, and adding in its place a reference to "paragraph (c) of this section"; and, by removing the reference to "paragraph (e)" in the fourth sentence, and adding in its place a reference to "paragraph (f)".

The additions read as follows:

**§ 250.14 Warehousing, distribution and storage of donated foods.**

\* \* \* \* \*

(d) *Contracts.* When contracting for storage facilities, distributing agencies and subdistributing agencies shall enter into written contracts to be effective for no longer than five years, including option years extending a contract. Before the exercise of option years, the storage facility shall update all pertinent information and demonstrate that all donated foods received during the previous contract period have been accounted for. \* \* \*

\* \* \* \* \*

6. Section 250.17 is amended by revising paragraph (a) to read as follows:

**§ 250.17 Reports.**

(a) *Inventory reports and receipt of donated foods.* Distributing agencies shall complete and submit to the FCSRO semiannual reports regarding excessive inventories (as defined in § 250.14(f) of donated foods, utilizing form FCS-155, the Inventory Management Register, except that distributing agencies shall submit monthly inventory information on form FCS-152, for the Food Distribution Program on Indian Reservations, and on form FCS-153, for the Commodity Supplemental Food Program. FCS may require the use of other reporting formats. FCS may also require that form FCS-155 be submitted more frequently than semiannually if necessary to maintain program accountability, and that any inventory report be submitted less frequently if sufficient to meet program needs. Reports shall be submitted not later than 30 calendar days after the last month in the reporting period as established by FCS.

\* \* \* \* \*

7. In § 250.19:

a. Paragraph (b)(1)(i) is revised;  
b. Paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) are redesignated as paragraphs (b)(1)(iii), b(1)(iv), and b(1)(v), respectively;

c. A new paragraph (b)(1)(ii) is added; and,

d. Newly redesignated paragraph (b)(1)(v) is revised.

The revisions and addition read as follows:

**§ 250.19 Reviews.**

\* \* \* \* \*

(b) *Responsibilities of distributing agencies.*

(1) \* \* \*

(i) An on-site review of all nutrition programs for the elderly under agreement in accordance with § 250.12(b), at least once every four years, with not fewer than 25 percent of these programs being reviewed each year. These reviews shall also include on-site reviews of the storage facilities of sites receiving donated foods to ensure compliance with § 250.14(b);

(ii) An on-site review of all charitable institutions and nonprofit summer camps for children under agreement in accordance with § 250.12(b), and the food service management companies under contract with these recipient agencies in accordance with § 250.12(d), at a minimum, whenever the distributing agency identifies actual or probable deficiencies in program administration, including compliance with civil rights provisions, through audits, investigations of complaints, reports submitted by recipient agencies, or any other information available to the State agency which, at the discretion of the State agency, warrants an on-site review, or at the request of FCS;

\* \* \* \* \*

(v) A biennial review of all food service management companies under contract with recipient agencies in accordance with § 250.12(d), except that:

(A) Food service management companies under contract with charitable institutions and nonprofit summer camps for children shall be reviewed in accordance with paragraph (b)(1)(ii) of this section; and,

(B) Food service management companies under contract with schools participating in the National School Lunch Program or commodity schools under part 210 of this chapter, or with schools participating in the School Breakfast Program under part 220 of this chapter, shall be reviewed in accordance with the provisions set forth in parts 210 and 220.

\* \* \* \* \*

**§ 250.24 [Amended]**

8. In § 250.24, paragraph (d)(1) is amended by removing the word "semi-annual".

**PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM**

1. The authority citation for part 251 is revised to read as follows:

Authority: 7 U.S.C. 7501-7516.

2. Section 251.2 is amended by revising paragraph (c) to read as follows:

**§ 251.2 Administration.**

\* \* \* \* \*

(c) Each State agency that distributes donated foods to emergency feeding organizations or receives payments for storage and distribution costs in accordance with § 251.8 shall perform those functions pursuant to an agreement entered into with the Department. This agreement shall be considered permanent, with amendments to be made at the request of FCS. Such State agencies shall enter into a written agreement with eligible emergency feeding organizations. This agreement shall provide that emergency feeding organizations agree to operate the program in accordance with the requirements of this part, and, as applicable, Part 250 of this chapter. The agreement shall be considered permanent, with amendments to be made as necessary. State agencies shall ensure that emergency feeding organizations provide, on a timely basis, by amendment to the agreement, any information on changes in program administration, including, but not limited to, any changes resulting from amendments to Federal regulations or policy.

**3. In § 251.10:**

a. Paragraph (a)(1) is amended by removing the citation “§ 250.6(r)” and adding in its place the citation “§ 250.16”;

b. Paragraph (d)(2) is revised to read as follows; and

c. Paragraph (d)(3) is removed.

**§ 251.10 Miscellaneous provisions.**

\* \* \* \* \*

**(d) Reports. \* \* \***

(2) Each State agency shall complete and submit to the FCSRO reports to ensure that excessive inventories of donated foods are not maintained, in accordance with the requirements of § 250.17(a) of this chapter. Such reports shall also include the total number of households served in the State since the previous report submittal, based upon current information received from emergency feeding organizations.

\* \* \* \* \*

## **PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS**

1. The authority citation for part 253 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027), unless otherwise noted.

2. Section 253.5 is amended by removing the first two sentences of the introductory text of paragraph (a)(1) and

adding, in their place, three new sentences to read as follows:

**§ 253.5 State agency requirements.**

(a) *Plan of operation.* (1) The State agency that assumes responsibility for the Food Distribution Program shall submit a plan of operation for approval by FCS. Approval of the plan shall be a prerequisite to the donation of commodities available for use by households under § 253.9. The approved plan shall be considered permanent, with amendments to be added as changes in State agency administration or management of the program, as described in the plan, are made, or at the request of FCS. \* \* \*

\* \* \* \* \*

3. Section 253.9 is amended by revising paragraph (c)(1) to read as follows:

**§ 253.9 Administrative funds for State agencies.**

\* \* \* \* \*

(c) *Application for funds.* (1) Any State agency administering a Food Distribution Program that desires to receive administrative funds under this section shall submit form SF-424, “Application for Federal Assistance,” to the appropriate FCS Regional Office at least three months prior to the beginning of a Federal fiscal year. The application shall include budget information, reflecting by category of expenditure the State agency’s best estimate of the total amount to be expended in the administration of the program during the fiscal year. FCS may require that detailed information be submitted by the State agency to support or explain the total estimated amounts shown for each budget cost category. As required by 7 CFR 3015, Subpart V, agencies of State government shall submit the application for Federal assistance to the State clearinghouse before submitting it to the FCSRO. ITOs shall not be subject to this requirement.

\* \* \* \* \*

Dated: March 10, 1997.

William E. Ludwig,

Administrator.

[FR Doc. 97-6427 Filed 3-13-97; 8:45 am]

BILLING CODE 3410-30-U

**Food Safety and Inspection Service****9 CFR Part 318**

[Docket No. 95–052P]

RIN 0583–AC02

**Use of Sorbitol in Cooked Roast Beef Products**

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to add cooked roast beef products to the list of products in which sorbitol is permitted. FSIS proposes this action in response to a petition requesting that FSIS allow the use of sorbitol, both to sweeten and to reduce charring in cooked roast beef products, at the level of up to 2 percent of the product formulation. The sorbitol would be added to a solution of ingredients that are pumped into the beef prior to cooking.

**DATES:** Comments must be received on or before May 13, 1997.

**ADDRESSES:** Send an original and two copies of written comments to: FSIS Docket Clerk, Docket 95–052P, Room 3806, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700. Reference material cited in this document and any comments received in response to this proposal will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 1:00 p.m., and from 2:00 p.m. to 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, (202) 418–8900.

**SUPPLEMENTARY INFORMATION:**

FSIS was petitioned to allow the use of sorbitol in cooked roast beef products in the amount currently approved for use in other meat and meat food products. The petitioner requested that FSIS amend § 318.7(c)(4) of the Federal meat inspection regulations to allow the use of sorbitol both to sweeten and to reduce charring in cooked roast beef products in an amount not to exceed two percent of the product formulation, excluding the formula weight of water or ice. The sorbitol would be added to a solution of ingredients that are pumped into the beef prior to cooking.

Sorbitol is a common sugar alcohol; it can be found in apples, pears, and other foods. About half as sweet as sucrose (i.e., sugar), it is often used as a