

equal to the NCP contract value of donated foods contained in an end product sold by the distributor to a recipient agency at a discounted price or (2) a check issued to a recipient agency in an amount equal to the NCP contract value of donated foods contained in an end product sold to the recipient agency under a refund system.

Substitution means (1) the replacement of donated food with like quantities of domestically produced commercial food of the same generic identity and of equal or better quality (i.e., cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.); or (2) in the case of donated nonfat dry milk, substitution as defined under (1) of this paragraph or replacement with an equivalent amount, based on milk solids content, of domestically produced concentrated skim milk.

[51 FR 23518, June 30, 1986, as amended at 52 FR 24977, July 2, 1987; 53 FR 34014, Sept. 2, 1988]

§ 252.3 Administration.

(a) *Role of FNS.* The Secretary will designate those commodities which will be available under the NCP Program. Only commodities made available without charge or credit under any nutrition program administered by USDA will be available under NCP. FNS will act as the distributing agency and the contracting agency under the NCP Program. The Department will pay costs for delivering donated commodities to participating NCP Program processors.

(b) *Food orders.* When NCP Program processors request donated food, FNS will determine whether the quantities ordered are consistent with the processor's ability to sell end products and/or the processor's past demonstrated performance under the Program. If the quantities are appropriate, FNS will request from CCC the donated food for transfer of title to FNS and delivery to a mutually agreed upon location for use by the NCP Program processor. The title to these commodities transfers to FNS upon their acceptance by the processor. FNS retains title to such commodities until:

(1) They are distributed to eligible recipient agencies in processed form, at

which time the recipient agency takes title;

(2) They are disposed of because they are damaged or out-of-condition; or

(3) Title is transferred to the NCP Program processor upon termination of the agreement.

(c) *Substituted food.* When the processor substitutes commercial food for donated food in accordance with § 252.4(c)(7) of this part, title to the substituted food shall transfer to FNS upon the initiation of the processing of the end product containing the substituted food. Title to the equivalent amount of donated food shall transfer to the processor at the same time (except when the substitution is necessary to meet the 100 percent yield requirement or to otherwise replace missing or out-of-condition donated food). Once title has transferred, the processor shall use the substituted food in accordance with the terms and conditions of this part.

(d) *Inventory levels.* FNS will monitor the inventory of each food processor to ensure that the quantity of donated food for which a processor is accountable is at the lowest cost-efficient level. In no event shall a processor hold in inventory more than a six-month supply, based on average monthly usage under the NCP Program, unless a higher level has been specifically approved by FNS on the basis of justification submitted by the processor. Under no circumstances should the amount of donated food requested by the processor be more than the processor can accept and store at any one time. FNS will make no further distribution to a processor whose inventory exceeds these limits until such time as the inventory is reduced.

(e) *Recipient agency registration.* FNS will register, upon request, eligible recipient agencies. FNS will make available to food processors a listing of registered eligible recipient agencies for marketing purposes. Any processor desiring additional listings will be charged a fee for the listing which is commensurate with the Department's policy on user fees.

[51 FR 23518, June 30, 1986, as amended at 52 FR 24978, July 2, 1987; 59 FR 62986, Dec. 7, 1994]