



United States
Department of
Agriculture

Food and
Nutrition
Service

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Alexandria, VA
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DATE: December 23, 2004
POLICY NO.: FD-039: State Processing
SUBJECT: Bonding in National Master Processing Agreements

Beginning in 2000, the Department of Agriculture (USDA) began conducting a demonstration project, known as the National Master Processing Agreements (NMPA), under which USDA Food and Nutrition Service arranges for national processing of federally donated foods (DF). DF processed under the NMPA is made available to State Distributing Agencies (DA) for distribution to eligible Recipient Agencies (RA). A participating DA signs a State Participation Agreement (SPA) with an approved processor and FNS then arranges delivery of the DF to the processor, ensuring that the respective DA receives its end product from that processor.

In general, USDA Food and Nutrition Service (FNS) regulations require that “[t]itle to donated foods shall pass to distributing agencies upon their acceptance of donated foods at time and place of delivery....” 7 CFR 250.13(c). A DA’s entitlement funds are committed when commodities (DF) are ordered from FNS for delivery to the processor. The DA becomes at that point solely responsible for ensuring the value of the DF. Thus, under Program regulations, once ordered, the DA is responsible for the DF and the end product. As a result, “[s]ince 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....” 7 CFR 250.30(c)(4)(viii)(B).

The NMPA demonstration project has effected changes to the traditional distribution and control of DF as outlined in FNS regulations. Traditionally, the delivery destination for DF has been the further processor’s plant as selected by the DA. However, under the NMPA, the delivery destination is selected by FNS because FNS selects the further processor and enters into an agreement for processing DF into desired end products on behalf of participating DA’s. In practice, then, FNS determines the delivery destination for that end product under the NMPA.

In recognition of this change to the traditional distribution and control structure, we are exercising our waiver authority under 7 CFR 250.30(t) to waive the application of 7 CFR 250.13(c) and 250.30(c)(4)(viii)(B) to accommodate “changes designed to improve the State processing of donated foods.” On behalf of DA’s participating in NMPA, FNS will be responsible for establishing and holding one surety instrument to protect the total value of all affected DF at any particular processor. Title for that DF will transfer from

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FNS to the DA when the commodity in the finished product reaches its final destination, whether that is a DA designated warehouse or a RA's designated destination. Because the waiver extends only to those further processing activities under the NMPA, non-participating DA's remain responsible for DF in accordance with Program regulations.

A handwritten signature in black ink, appearing to read "Cathie McCullough". The signature is fluid and cursive, with a long horizontal stroke at the end.

Cathie McCullough

Director

Food Distribution Division