Food Distribution National Policy Memorandum

United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive

Alexandria, VA 22302-1500

DATE: January 25, 2011

POLICY NO.: FD-110: National School Lunch Program (NSLP), Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP)

SUBJECT: Clarification in Crediting for, and Use of, Donated Foods in Contracts with Food Service Management Companies—First and Final Contract Years

The purpose of this policy memorandum is to clarify requirements in crediting for, and use of, USDA donated foods in contracts with food service management companies (FSMCs), and to provide guidance to ensure compliance with such requirements in the first and final years of such contracts. Although the policy applies to recipient agencies in the National School Lunch Program (NSLP), the Child and Adult Care Food Program (CACFP), and the Summer Food Service Program (SFSP), this memorandum focuses on NSLP, as the vast majority of donated foods is provided in that program. This policy memorandum revises the previous FD-110, which was dated October 12, 2010.

Crediting for the Value of Donated Foods and Single Inventory Management

In accordance with 7 CFR 250.51(a), the FSMC, in its contract with a school food authority (SFA), must credit the SFA for the value of all donated foods received for use in the SFA's meal service in a school year. The FSMC must provide such credit whether or not the donated foods are used in the year of receipt. Such requirement ensures that the SFA/FSMC may utilize single inventory management, in which donated foods are stored and tracked together with purchased foods, rather than separately. The use of single inventory management reduces the time and labor burden for both self-operating SFAs and SFAs contracting with FSMCs.

The First Contract Year—Carry-Over Inventory of Donated Foods

In order to ensure compliance with 7 CFR 250.51(a), the FSMC must, in the first year of the contract, credit the SFA for the value of donated foods in inventory carried over from the previous year, if the SFA was self-operating in that year. However, under single inventory management, it is difficult to distinguish between donated foods and purchased foods in inventory, as all foods are commingled. Consequently, it is important for a previously self-operating SFA to include the payment or credit required for all carry-over inventory (i.e., donated and purchased foods together) in its procurement or solicitation documents, and resulting contract. In determining such payment or credit, the SFA may use the fair market value of foods in its carry-over inventory, or may use another means of valuing such foods.

If the SFA was operating under a contract with another FSMC in the previous year, the newly-contracted FSMC is not required to credit the SFA for the value of donated foods in inventory carried over from the previous year, as the value of such foods would have accrued to the nonprofit school food service in crediting by the previous FSMC. If the previous FSMC did not provide such credit, the State administering agency must determine if a claim is to be initiated to recover the value of the donated foods, or if the SFA must undertake corrective actions to ensure future compliance with regulatory requirements. However, the newly-contracted FSMC would not be held responsible for providing such credit.

As indicated in Policy Memorandum FD-080 (Q24), donated foods are subject to the same safeguards and effective management practices as other foods, and must be treated as other foods when safety is in question. Consequently, the SFA must ensure compliance with applicable State or local laws or regulations in determining the safety of foods. Donated foods (or other foods) must not be used if the SFA, or State or local health authorities, determine that they are not safe to eat. The FSMC is not required to credit a previously self-operating SFA for donated foods determined to be unsafe in inventories carried over from the previous year. If donated foods are determined to be safe, but are beyond the "best-if-used-by" or "use by" date, the SFA must ensure use or other disposition of such foods in accordance with the same procedures the SFA applies to other foods, and in accordance with applicable State or local laws or regulations. The FSMC must credit a previously self-operating SFA for all such donated foods carried over from the previous year that are used in the school food service.

The Final Contract Year

Although the FSMC must credit the SFA for the value of donated foods in the year that such foods are received by the SFA, and must use such foods in the school food service, it is not required that donated foods be used in the year of receipt. If donated foods are not received until late in the school year, for example, it may be more feasible to use them in the following school year. However, an FSMC in the final year of a contract may not be able to use all donated foods before termination of the contract. The SFA may not return credit to the FSMC for the value of unused donated foods, as such return of credit would not be compatible with single inventory management, and would make it more difficult for the SFA to document its receipt of credit for the value of donated foods from year to year. Additionally, the FSMC may not remove or retain unused donated foods at contract termination, except at the SFA's discretion—i.e., if the SFA has provided for such removal or retention of its inventory of commingled purchased and donated foods, in accordance with its contract. However, the FSMC must return all unused donated ground beef and ground pork, and all processed end products.

In the following paragraphs, we include options to help ensure that all donated foods can be used before contract termination, in order to avert the problems described above.

SFA and FSMC Coordination in Ordering Donated Foods

In accordance with 7 CFR 250.50(d), the FSMC may order or select donated foods, in coordination with the SFA, and in accordance with requirements in 7 CFR 250.58(a). Such coordination in ordering would help to ensure that only those donated foods that can be effectively utilized in the food service are ordered, and that such foods are ordered as early in the school year as possible, in order to ensure their use before the end of the year. Therefore, we encourage SFAs to involve FSMCs as much as possible in ordering donated foods.

Use of Commercial Substitutes in Management of the Food Service

In accordance with 7 CFR 250.51(d), the FSMC may, in most cases, use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality in place of donated foods. Exceptions are donated ground beef, donated ground pork, and all processed end products (i.e., containing donated foods), which may not be replaced with commercial substitutes. The "substitution option" applicable to most donated foods may permit an FSMC to ensure their use, or the use of acceptable commercial substitutes, during the same school year in which the donated foods must be credited. For example, if donated canned corn will not be received until late in the school year, the FSMC may use an acceptable commercial substitute before receipt of the donated corn; then, when the donated corn is received later in the year, the FSMC may, at the discretion of the SFA, retain such food when the contract terminates. However, the SFA must ensure that such substitution has been made, and that it has received credit for the value of all donated foods received, in accordance with review requirements in 7 CFR 250.54(c).

Conclusion

It is important for the SFA to identify at an early stage the procedures or activities that will be necessary to ensure compliance with requirements for crediting for, and use of donated foods in its FSMC contract, and to work in close coordination with the FSMC, as feasible, in the performance of such procedures or activities. By such means, the SFA may ensure that donated foods are used most effectively and efficiently in the school food service.

Cathie McCullough
Director
Food Distribution Division