

CHAPTER 73
COMMODITY DISTRIBUTION PROGRAMS

[Prior to 7/1/83, Social Services[770] Ch 73]
[Prior to 2/11/87, Human Services[498]]

PREAMBLE

The department of human services has been designated by the governor as the agency responsible for administration of the commodity distribution programs. The department is responsible for receiving, storing, distributing and accounting for United States Department of Agriculture donated foods. This chapter sets forth the rules governing the federal surplus food program, which primarily provides commodities to needy households; the soup kitchen program, which provides commodities to emergency feeding organizations such as soup kitchens and food banks; and the institutional food program which provides commodities to eligible institutions.

The federal surplus food program is authorized by the Emergency Food Assistance Act of 1983, Public Law 98-8, as amended by Section 104 of the Hunger Prevention Act of 1988, Public Law 100-435. The soup kitchen program is authorized by Section 110 of the Hunger Prevention Act of 1988. The institutional food program is authorized by the Agricultural Act of 1949, Public Law 81-439, as amended.

Inquiries about the programs may be made by contacting the Food Distribution Unit, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, telephone (515)281-5410.

FEDERAL SURPLUS FOOD PROGRAM

441—73.1(234) Definitions.

“*Charitable institution*” means a facility that is:

1. Public or private, nonprofit, and tax-exempt under the Internal Revenue Code as documented by a letter of exemption; and
2. Organized for charitable or public welfare purposes, and has provided and will continue to provide services at the same address without marked change; and
3. A provider of regular meal services at least once a week on a regular basis. An institution must serve meals rather than redistribute foods in the form donated, or allow clients to prepare their meals individually.

“*Emergency feeding organization*” means an agency which provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons including low-income and unemployed persons under an agreement with the department. This definition can include local distribution agencies, cooperative emergency feeding organizations, soup kitchens, temporary shelters, hunger centers for indigent persons and food banks.

“*Federal surplus food*” means surplus food commodities acquired through price support operations of the Federal Commodity Credit Corporation and made available to Iowa by the USDA for distribution to needy persons. Federal surplus food shall include commodities made available to Iowa under Title II of the Emergency Food Assistance Act of 1983.

“*Household*” means a single individual or group of related or nonrelated individuals, exclusive of boarders, who are not residents of an institution, who prepare food for home consumption.

“*Local distribution agency*” means local agencies and organizations operating or serving facilities distributing federal surplus food to needy persons for consumption in the home to an agreement with the department of human services.

“*Potentially hazardous food*” means any food of the type or in a condition that it may spoil and which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting rapid and progressive growth of infectious or toxicogenic microorganisms.

“*Storage and distribution costs*” means expenses incurred by the department of human services, local distribution agencies and emergency feeding organizations for intrastate storage and transportation of federal surplus foods. Costs include those to rent, lease, operate and maintain storage facilities and transportation equipment, and to load, unload, distribute, and otherwise handle, account for and manage the distribution of federal surplus foods.

Department of human services, local distribution organization and emergency feeding organization salary and support expenses of employees and operations engaged in the management, coordination and accomplishment of federal surplus foods distribution shall be defined as storage and transportation costs to the extent that expenses are directly attributed to the storage and distribution of federal surplus foods.

441—73.2(234) Priority of distribution. When federal surplus food is available, it shall be provided to local distribution agencies for distribution to eligible needy households residing in the state, and then to emergency feeding organizations. Any excess food available after distribution to households and emergency feeding organizations shall be offered to adult corrections facilities without rehabilitation programs and to other charitable institutions.

441—73.3(234) Agreements. In accord with the current agreement between the state of Iowa and the United States Department of Agriculture, Food and Nutrition Service, federal surplus food shall be provided to local distribution agencies and emergency feeding organizations upon entering a distribution agreement with the department of human services.

73.3(1) Local distribution agencies distributing surplus commodities to households must complete Form FP-1104, Local Distribution Agency Agreement, authorizing distribution within specific areas to eligible households.

73.3(2) Emergency feeding organizations must complete Form FP-1109, Emergency Feeding Organization Agreement, to be eligible to receive and distribute surplus foods remaining locally available after each distribution to households.

73.3(3) Charitable institutions, adult corrections, and juvenile detention facilities must complete Form FP-1101, Application and Review Report, to be eligible to receive surplus foods remaining locally following distribution to households.

441—73.4(234) Household eligibility. Household eligibility is determined by household size, income, and residence.

73.4(1) Residence. Household members shall be residing in the state of Iowa.

73.4(2) Household size. Household size is determined by the number of people living in a dwelling, excluding boarders.

73.4(3) Income eligibility. All earned and unearned income of the household shall be counted in determining eligibility.

a. Income defined. Income means all income received by an individual from sources identified by the U.S. Census Bureau in computing median income and includes money wages or salary, net income from nonfarm self-employment, net income from farm self-employment, dividends, interest, income from estates or trusts, net rental income and royalties, public assistance or welfare payments, pensions and annuities, workers' compensation, alimony, child support, veterans' pensions, social security, railroad retirement, supplemental security income, state or federal assistance, veterans' benefits, black lung benefits, all disability pensions, state supplementary assistance, unemployment compensation benefits, and income from minors under 16 years of age.

b. Determination of income. Earned or unearned income shall be the gross annual, monthly, or weekly income. Biweekly income is to be multiplied by 2.15 to determine monthly income. Adjusted gross self-employment income is to be averaged over a 12-month period. Income received from interest and dividends shall be averaged over a 12-month period. The amount of income which stops or starts during the month shall be estimated on the basis of the best information available.

c. Income exclusions. Income from the following programs shall not be counted when figuring total household income for this program:

(1) Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646, Section 216).

(2) Domestic Volunteers Services Act of 1973 (Public Law 93-113) as amended.

(3) Vista, University Year for Action.

(4) Payments derived from certain submarginal land of the United States which is held in trust for certain Indian Tribes (Public Law 94-114, Section 6).

(5) Payments from Crisis Intervention Program.

(6) CETA Youth Programs (Public Law 95-524) which include:

Youth Incentive Entitlement Pilot Project.

Youth Community Conservation and Improvement Project.

Youth Employment and Training Program.

(7) Indian Claims Commission Payments (Public Law 95-433).

(8) Job Training Partnership Act (Public Law 97-300) including salaries paid by employers to JTPA participants in an on-the-job training component.

(9) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Public Law 94-540).

(10) Alaska Native Claims Settlement Act (Public Law 92-203).

(11) Low Income Home Energy Assistance Program.

(12) Financial assistance received from any program funded under Title IV of the Higher Education Act for students attending an institution of postsecondary education at least half-time which is used by the students for tuition and mandatory fees or as an allowance for books, supplies, transportation and miscellaneous personal expenses.

d. Income guidelines. Persons are financially eligible for this program when they are in one of the following categories:

(1) *Income maintenance status.* All members of the household are recipients of the family investment program, recipients of supplemental security income, or recipients of the food stamp program.

(2) *Income eligible status.* The gross income according to family size is no more than the following amounts:

<u>Household Size</u>	<u>Yearly Income</u>	<u>Monthly Income</u>	<u>Weekly Income</u>
1	\$14,893	\$1,242	\$287
2	20,073	1,673	387
3	25,253	2,105	486
4	30,433	2,537	586
5	35,613	2,968	685
6	40,793	3,400	785
7	45,973	3,832	885
8	51,153	4,263	984
For each additional household member add:	\$ 5,180	\$ 432	\$100

441—73.5(234) Notification of available food. The public shall be informed of the availability of food, the type of food available and the location and times of distribution by announcements through local media.

441—73.6(234) Household certification procedure. A responsible member of the household or designated proxy shall complete and sign a Declaratory Statement of Eligibility, FP-1102-0, prior to receiving food. The Declaratory Statement of Eligibility declares household residency, size, and income; that the household is not receiving food under this program as part of another household or at another distribution site; acknowledges an understanding of possible prosecution, under current law, for accepting food for which the household may not be eligible; agrees to cooperate with a quality control review; and indicates an understanding that the food received through this program is not to be sold or exchanged. The household member or proxy may be asked to show some official identification before receiving the food.

73.6(1) Proxy designation. When a member of the household cannot be present to complete the Declaratory Statement of Eligibility due to disability, employment, or lack of transportation, the member may authorize a proxy to act on behalf of the household by completing an application in advance and having a proxy pick up the food at the distribution site, or by sending a signed note of authorization with the person acting as a proxy.

73.6(2) Reserved.

441—73.7(234) Distribution to households. The amount and type of federal surplus food distributed to each needy household shall be based upon the amount and type of food timely available and the individual household size. The schedule of distribution shall also be based upon the amount and type of food timely available and upon the availability of distribution and storage resources. A household may request less than the amount of food it is entitled to receive.

441—73.8(234) Emergency feeding operations, charitable institutions and corrections facilities eligibility. Eligibility to receive federal surplus foods remaining available after distribution to needy households shall be determined as follows:

73.8(1) Emergency feeding organizations are eligible upon entering an agreement pursuant to 73.3(234).

73.8(2) Charitable institutions are eligible when they meet the eligibility requirements of CFR Title 7, Part 250 "Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction," except that adult or juvenile correctional or detention facilities otherwise eligible do not need to have a rehabilitation program.

441—73.9(234) Distribution requirements. Federal surplus foods shall be distributed in communities through local distribution agencies which are adequately equipped to handle, store, transport and distribute the type and quantity of food available. Reasonable safeguards shall be provided by the local distribution agency against theft, spoilage and other loss.

441—73.10(234) Quality control and recoupment. A sample of households receiving food shall be pulled on regular basis for verification of residency, household size, income, and actual receipt of the surplus food. The department may seek restitution in cash or in kind or may deny future eligibility for up to six months from date of denial when a household that receives surplus food is ineligible, has a duplicate issuance, or otherwise improperly receives food, or refuses to cooperate in the verification process.

441—73.11(234) Administrative review of denial of eligibility. A household may request an administrative review when its claim for surplus food was denied based on income, residency, receipt of a duplicate issuance, refusal to cooperate in the quality control verification process or other improper receipt of federal surplus food. Nonavailability of food is not subject to administrative review.

73.11(1) When a household wishes review of a denial, it will be referred to the site manager. The site manager will affirm or reverse the denial.

73.11(2) When the site manager affirms the denial, the household may request further review by sending a letter requesting review and the site manager's denial to the contracting agency within five days of the denial. When more information is needed, the contracting agency shall request the information within five days. The contracting agency shall review the denial and issue a decision within ten days of the request for the review or the receipt of additional information, whichever is later. When the denial is reversed, the household may take the decision to the distribution site on the next distribution date and receive the food to which it was entitled.

441—73.12(234) Payment of storage and distribution costs. Federal funds allocated to Iowa and state funds appropriated for payment of program costs shall be obligated in accord with the following provisions:

73.12(1) Statewide intrastate costs of storage and distribution prior to receipt of food by agencies and organizations under agreement with the department shall be paid from federal and state program funds only when incurred by the department of human services.

73.12(2) Local costs shall be paid by the department of human services to local distribution agencies and emergency feeding organizations as reimbursement for their salary and support expenses attributable to the program to the extent funds are available for payment. Distributing agencies must complete Form FP-1205, Federal Surplus Food Distribution Report/Reimbursement Request, in order to file for reimbursement. The department of human services shall pay purchased local transportation and storage costs directly to vendors provided prior authorization to purchase is obtained from the department of human services.

73.12(3) Payments from federal program funds administered by the department are subject to the provisions of CFR Title 7, Part 251 published April 26, 1983.

441—73.13(234) Food losses. All food losses regardless of the dollar amount shall be reported to the food distribution unit by the entity (subdistribution agency, warehouse, or food processor) responsible for the food. The food distribution unit shall log in each loss by entity. Losses shall accumulate by entity from October 1 to September 30 of each year.

73.13(1) Definition of lost foods. Lost foods means those foods which, for any reason, cannot be demonstrated by appropriate records or other satisfactory evidence to have been delivered to, or to be available in good condition for delivery to, eligible recipient agencies or eligible recipients for whom they were intended. Commodities may be lost through one or more of the following means:

- a. Theft, damage, spoilage, or infestation in transit or in storage.
- b. Improper distribution to institutions, families or individuals or distributing above authorized rates.
- c. Sale or exchange of commodities or diversion to an improper use.
- d. Failure to deliver end products according to contracted yields under a processing agreement.
- e. Other similar causes.

73.13(2) Determination of fault. The food distribution unit shall investigate the food loss and determine who is at fault.

73.13(3) Claim action. If the entity is at fault a claim action shall be initiated if the value of the accumulated food loss exceeds \$100 unless there is evidence of violation of a federal or state statute. A claim action must be initiated regardless of the value of the food losses if the food losses occur when in transit for delivery.

73.13(4) Processing of claims.

- a. Up to three demand letters will be sent to the entity determined responsible for the loss.
- b. Interest (late charge) shall be assessed against an entity beginning on the thirty-first day following the date of the first demand letter at the rate determined by the U.S. Treasury Department at the beginning of each fiscal quarter.
- c. Failure to make restitution when requested is cause for cancellation of the agreement.
- d. When an entity accumulates losses totaling \$2,500 in a federal fiscal year, the food distribution unit shall refer the loss to the USDA Food and Nutrition Service regional office.

73.13(5) Claim payment.

- a. The claim shall be paid to the food distribution unit.
- b. Replacement-in-kind with generically like items in lieu of cash payment may be used for losses with the approval of the food distribution unit if the replacement-in-kind would not result in further losses and the inventory is not already in excess.

c. If replacement-in-kind is not practicable, similar replacement may be used in lieu of cash payment with the approval of the food distribution unit and the Food and Nutrition Service regional office. Similar replacement means replacement of lost foods with a like quantity of similar domestically produced foods from the same food group.

d. The loss of bonus items may not be paid with replacement-in-kind or similar replacement items. Bonus items are those so designated by USDA and offered by USDA to the states as a one-time offer.

73.13(6) Administrative review of claim. An entity may request an administrative review of its claim in writing within 20 days of receipt of its first demand letter.

a. The request for review will be referred to the program manager of the food distribution unit. The program manager will affirm or reverse the claim within ten days.

b. When the program manager affirms the claim, the entity may request further review by sending a letter requesting review and the program manager's denial to the administrator of the division of support services within five days of the denial. When more information is needed, the administrator shall request the information within five days. The administrator shall review the denial and issue a decision within ten days of the request for the review or the receipt of additional information, whichever is later.

73.13(7) Penalties. Suspected case instances of embezzlement, misapplication, theft or fraud of any funds or commodities from the program shall be referred to federal authorities.

441—73.14(234) State monitoring system. The department of human services shall annually review 25 distribution sites and a sampling of emergency feeding organizations under contract agreements with the department to distribute commodities in accordance with the Emergency Food Assistance Program (EFAP) guidelines.

73.14(1) The department shall include a description of the monitoring system in its annual distribution plan.

73.14(2) Reviews of emergency feeding organizations and distribution sites shall include a review of eligibility determination, food ordering procedures, storage and warehousing practices, inventory control, approval of distribution sites, reporting and record-keeping compliance.

73.14(3) Reviews of the distribution sites shall be conducted simultaneously with actual food distribution or eligibility determination. The first 25 sites reviewed will be selected based on which sites have the highest number of households participating. The remaining 25 households will be selected at the department's discretion.

73.14(4) The department shall submit a review of finding to each emergency feeding organization which shall include:

- a. A description of each deficiency found and contributing factors.
- b. Any requirements for corrective action.
- c. A timetable for completion of corrective action.

73.14(5) The department shall monitor each emergency feeding organization's corrective action requirements identified.

441—73.15(234) Limitations on unrelated activities.

73.15(1) Activities unrelated to the distribution of foods may be conducted at distribution sites as long as:

a. The person(s) conducting the activity makes clear that the activity is not part of commodity distribution and is not endorsed by the department (impermissible activities include information not related to commodity distribution placed in or printed on bags, boxes, or other containers in which commodities are distributed). Recipes or information about commodities, dates of future distributions, hours of operations, or other federal, state, or local government programs or services for the needy may be distributed without a clarification that the information is not endorsed by the department.

b. The person(s) conducting the activity makes clear that cooperation is not a condition of the receipt of the commodities (cooperation includes contributing money, signing petitions, or conversing with the person(s)).

c. The activity is not conducted in a manner that disrupts the distribution of the commodities.

73.15(2) Emergency feeding organizations and distribution sites shall ensure that activities unrelated to the distribution of foods are conducted in a manner consistent with subrule 73.15(1).

73.15(3) Except as provided in subrule 73.15(4) the department shall immediately terminate from further participation in commodity distribution any emergency feeding organization or distribution site that distributes or permits distribution of materials in a manner inconsistent with the provisions of subrule 73.15(1).

73.15(4) The department may withhold termination of an emergency feeding organization's or distribution site's participation if the department cannot find another emergency feeding organization or distribution site to operate the distribution in the area served by the violating organization. In these circumstances, the department shall monitor the distribution of commodities by the violating organization to ensure that no further violations occur.

441—73.16 to 73.20 Reserved.

SOUP KITCHEN PROGRAM

441—73.21(234) Definitions.

“Emergency food” means commodities made available for distribution in Iowa under Section 110 of Public Law 100-435, the Hunger Prevention Act of 1988.

“Food bank” means public and charitable institutions that maintain an established operation involving the provision of food or edible commodities or the products thereof, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that provide meals or food to needy persons on a regular basis or as an integral part of their normal activities.

“Qualified emergency feeding organization” means an emergency services organization which provides prepared food on a regular basis, without charge, primarily to needy persons as an integral part of their normal activities. This definition shall include organizations such as soup kitchens, missions, emergency and temporary shelters for victims of domestic violence, temporary shelters for youth and other organizations which, as part of a broader array of services, provide meals to homeless persons and families.

“Soup kitchen” means public and charitable institutions that maintain an established feeding operation to provide food to needy homeless persons on a regular basis as an integral part of their normal activities.

441—73.22(234) Distribution of food. When emergency food is available, it shall first be provided to qualified emergency feeding organizations for distribution to needy persons in Iowa. Any remaining inventory available after distribution to qualified emergency feeding organizations shall be allocated to food banks in Iowa.

The amount and type of food distributed to emergency feeding organizations shall be based upon the amount and type of food available and the number of meals being served or projected to be served by the organization.

The amount and type of food distributed to each food bank shall be based upon the amount and type of food available and the number of persons being served by the food bank.

441—73.23(234) Application.

73.23(1) All qualified emergency feeding organizations which contact the department by telephone or by letter expressing an interest in receiving foods under this program shall be forwarded an application, Form 470-2554. The department shall review returned applications and make a determination of eligibility considering the criteria set forth in subrule 73.24(1). All applicants shall be promptly notified of the determination in writing. Those organizations determined eligible shall be forwarded an agreement form and food order form.

73.23(2) Food banks interested in participating in this program shall contact the department.

441—73.24(234) Eligibility.

73.24(1) Qualified emergency feeding organizations shall be eligible to receive emergency foods upon signing an agreement, Form 470-2544, with the department and consenting to:

a. Serve without restriction all needy persons presenting themselves at the organization's feeding facility at the time the meals are served if the organization's primary purpose is feeding needy persons.

b. Provide meals without charge to all persons provided services if the feeding of needy persons is a part of other services offered by an organization, such as providing emergency services to victims of domestic violence.

c. Take reasonable measures to ensure that only persons in need of emergency services are served.

d. Take reasonable measures to ensure against theft, spoilage or other loss of emergency food.

e. Offer meals to needy persons on a regular schedule.

f. Provide, in any information publicizing its services, notification of the availability of meals without charge.

g. Require no payment from needy persons for meals served. A qualified emergency feeding organization may solicit donations at times when meals are served, provided the solicitation is clearly and explicitly portrayed as unrelated to the meals served.

73.24(2) Food banks shall be deemed eligible to participate in the program upon completion of Form 470-2559, Memorandum of Understanding for Special Food Bank Offering.

441—73.25(234) Notification of available food. The public shall be informed of the availability of food and the type of food available through local media.

441—73.26(234) Ordering and delivery. The amount, type, and schedule of distribution of emergency food to qualified emergency feeding organizations shall be based upon the amount and type of emergency food received from the United States Department of Agriculture and dates of delivery. Organizations that are certified eligible following a review of their application and the submission of a signed agreement form will receive a food order form, Form 470-2555, to be filled out and returned to the department for processing.

Following the initial order, the department will routinely mail out the food order forms on a quarterly basis to program participants. Delivery will be made once each quarter. Participating agencies will not be charged for storage or delivery services for commodities provided under this program. Participating organizations should not order quantities of food in excess of a three-month's supply.

441—73.27(234) Variations in food distribution. The food distribution unit may withhold or reduce the delivery of food items ordered by organizations under the following circumstances:

73.27(1) When food is not available or has not been transported to the state in time for delivery.

73.27(2) When the food inventory is not sufficient to meet all requests.

73.27(3) When the organization orders food in excess of the amount which could be used without waste in providing meals for the number of needy persons served.

73.27(4) When the state's supply is depleted or the department or USDA has issued orders restricting distribution of certain food items.

441—73.28(234) Quality control. Qualified emergency feeding organizations and food banks receiving emergency food shall, upon request, make their records and operations open to the department and to the federal government for verification of compliance with state and federal requirements governing the program.

441—73.29(234) Administrative review of denial of eligibility. An organization may request an administrative review when its claim for USDA commodities was denied based on eligibility requirements. Nonavailability of food is not subject to administrative review.

73.29(1) When an organization wishes a review of a denial, it will be referred to the program manager of the food distribution unit. The program manager will affirm or reverse the denial within ten days.

73.29(2) When the program manager affirms the denial, the organization may request further review by sending a letter requesting review and the program manager's denial to the administrator of the division of support services within five days of the denial. When more information is needed, the administrator shall request the information within five days. The administrator shall review the denial and issue a decision within ten days of the request for the review or the receipt of additional information, whichever is later. When the denial is reversed, the organization will be reestablished in the program.

441—73.30(234) Limitations on unrelated activities.

73.30(1) Activities unrelated to the distribution of foods may be conducted at distribution sites as long as:

a. The person(s) conducting the activity makes clear that the activity is not part of commodity distribution and is not endorsed by the department (impermissible activities include information not related to commodity distribution placed in or printed on bags, boxes, or other containers in which commodities are distributed). Recipes or information about commodities, dates of future distributions, hours of operations, or other federal, state, or local government programs or services for the needy may be distributed without a clarification that the information is not endorsed by the department.

b. The person(s) conducting the activity makes clear that cooperation is not a condition of the receipt of the commodities (cooperation includes contributing money, signing petitions, or conversing with the person(s)).

c. The activity is not conducted in a manner that disrupts the distribution of the commodities.

73.30(2) Emergency feeding organizations and distribution sites shall ensure that activities unrelated to the distribution of foods are conducted in a manner consistent with subrule 73.30(1).

73.30(3) Except as provided in subrule 73.30(4) the department shall immediately terminate from further participation in commodity distribution any emergency feeding organization or distribution site that distributes or permits distribution of materials in a manner inconsistent with the provisions of subrule 73.30(1).

73.30(4) The department may withhold termination of an emergency feeding organization's or distribution site's participation if the department cannot find another emergency feeding organization or distribution site to operate the distribution in the area served by the violating organization. In these circumstances, the department shall monitor the distribution of commodities by the violating organization to ensure that no further violations occur.

441—73.31 to 73.40 Reserved.

INSTITUTIONAL FOOD PROGRAM
[Formerly rules 441—74.1 to 441—74.22, IAB 5/3/89]

441—73.41(234) Definitions.

“Adult correctional institution” means a public, tax-supported, residential entity for the confinement and rehabilitation of adult offenders or a public or private, nonprofit residential halfway house or prerelease center which provides rehabilitative services to adult offenders or exoffenders.

“Charitable institution” means a public or private nonprofit, tax-exempt entity organized for charitable or public welfare purposes. It includes schools, service institutions and nonresidential child care institutions which meet the criteria of 441—73.45(234) and includes adult correctional institutions meeting the criteria of 441—73.46(234). It does not include schools which participate in the national school lunch program or receive commodities or cash refunds.

“Commodities” means food donated, or available for donation, by USDA through 7 CFR Part 250, revised as of January 1, 1983.

“Educational institution” means an entity which is recognized as a school by the department of education or which issues academic credits or equivalency certificates.

“*Needy person*” is a person served by a charitable institution, who, because of economic status, is in need of food assistance as defined in 73.47(1).

“*Private institution*” means an entity which is nonprofit and exempt from income tax under the Internal Revenue Code, as amended.

“*Public institution*” means an entity which is supported by a governmental agency at the state, county, or local level.

“*Rehabilitative program*” means any continuing activity conducted or approved by authorities of correctional institutions for the purposes of restoring inmates usefully to society through education, vocational training, employment, counseling services, and health therapy.

“*Sentenced inmates*” means persons who have been committed by a court to an adult correctional institution as the result of conviction in formal criminal proceedings.

“*Storage, distribution and administrative cost*” means the expense incurred for storage, handling, delivery and administration of the USDA donated foods.

“*USDA*” means the United States Department of Agriculture.

441—73.42(234) Administration. Administration of the program shall be the responsibility of the division of support services, food distribution unit. Any interested parties shall be referred directly to the food distribution unit.

441—73.43(234) Purpose. The purpose of the program is to provide food assistance to improve nutrition for needy persons in or served by eligible institutions or organizations.

441—73.44(234) Cost of the program. All charges for storage, handling, delivery and administrative cost shall be billed to recipient institutions. Billings will be made to the institutions by the department of human services. Failure by the institution to make payment within 60 days following the date of the billing statement shall result in immediate suspension from the program until full payment is made.

441—73.45(234) General eligibility requirements. To be eligible, each charitable institution must meet all of the following criteria:

73.45(1) It must be public or, if private, nonprofit, and tax-exempt.

73.45(2) An adult correctional institution must meet the criteria outlined in 441—73.46(234).

73.45(3) Its primary purpose must be noneducational. A charitable institution shall be considered “noneducational” even though educational courses are given, where the courses are incidental to the primary purpose of the charitable institution.

73.45(4) It must be an established entity organized for charitable or public welfare services and must provide continuing or ongoing services.

73.45(5) It must provide regular meal service. Sporadic or infrequent service shall not be considered regular. The institution must serve meals. It may not redistribute foods in the forms donated or allow residents to prepare their meals individually.

73.45(6) It must provide service either at no charge or at less than the actual cost of providing the service.

73.45(7) It must not participate in any other government commodity program.

441—73.46(234) Eligibility requirements for adult correctional institutions. Adult correctional institutions are eligible to receive donated foods as charitable institutions, to the extent of needy persons served, if they conduct rehabilitation programs meeting the standards of the American Correctional Association which are available to a majority of the total inmate population for a minimum of ten hours per week per inmate.

441—73.47(234) Extent of eligibility. The extent of an institution's eligibility shall be based on the number of needy persons served.

73.47(1) In charitable institutions, persons may be considered needy if they do not participate in any USDA child nutrition program conducted within the institution and meet one of the following criteria:

a. They are eligible to receive a grant under aid to dependent children, food stamps, Medicaid, state supplementary assistance, or county general relief.

b. They would be eligible to receive such a grant or would be eligible to participate in either USDA food assistance program for needy households (food stamps or food distribution programs) if they were not a resident of the institution.

c. They are otherwise in need of food assistance because of inability to pay for the actual cost of services received.

73.47(2) In adult correctional institutions, inmates may be considered to be in need of food assistance.

73.47(3) The receipt of food stamps by an individual does not exempt the individual from being defined as a needy person eligible to receive donated foods as a resident of a charitable institution.

73.47(4) The number of needy persons for which a charitable institution is eligible to receive donated foods shall be determined on the basis of the criteria set forth in paragraphs "a" or "b":

a. In institutions where services are provided to each person either at no charge or at a charge which is less than the actual cost of providing the services, it may be assumed that all persons served have already been determined to be needy by the institution's admission policies. The extent of eligibility in these institutions shall be based on the average daily number of persons served during a period of not less than six months.

b. In institutions where persons who are financially able are required to pay the full amount of charges which equal or exceed the cost of the service provided, the extent of eligibility shall be based on the actual number of persons served during a period of six months or more who have been determined unable by institutional authorities to pay the full amount of charges or who have been determined to be economically needy by a state or local public or private welfare agency which makes payments on their behalf; or the extent of eligibility shall be based on the number of persons computed by multiplying the average number of persons served over a period of six months or more by the percentage of the institution's operating funds which were derived during that period from public tax, private welfare sources, or tax-exempt contributions. Medicare payments, food stamps received by the institution in payment for meals, and reimbursement for meals or other financial assistance provided under the National School Act or Child Nutrition Act of 1966 shall not be considered to be derived from such sources.

73.47(5) For institutions serving three meals daily to each person, allocations will be made to the extent of the number of eligible persons served. For institutions serving less than three meals daily per person, the number of eligible persons will be computed by dividing the total number of meals served to eligible persons by 90. Hospitals shall use the number of free patient days multiplied by three to determine the number of meals served and dividing the number of meals by 90 to determine the number of eligibles.

441—73.48(234) Distribution.

73.48(1) Distribution shall be on a quarterly basis. Institutions shall use the Order Form, Form FP-1106-0, to request donated foods at three-month intervals.

73.48(2) The amount and type of donated foods shall depend on the availability of foods from USDA.

73.48(3) Donated foods shall be allocated only in amounts that can be used without waste in providing meals for the number of needy persons served.

73.48(4) Delivery shall be to a point within a 25-mile radius from each institution.

441—73.49(234) Administrative reviews. Recipient institutions shall receive an on-site review, training session, and inspection upon approval of application and every four years thereafter, and whenever there is a change in administrators, or a possibility of noncompliance with USDA guidelines. Where there is a substantial fluctuation of the needy population, an on-site review may be done every six months.

441—73.50(234) Responsibilities of recipient institutions.

73.50(1) Each institution shall complete the Application and Review Report, Form FP-1101-0, annually and the Institution Food Distribution Agreement, Form FP-1105-0, at time of application, whenever there is a change in administration and every three years thereafter. Either the department or recipient institution may cancel the agreement with a 30-day written notice.

73.50(2) Each institution shall meet civil rights requirements as evidenced by completion of the Civil Rights Compliance Review, Form FP-1206-0.

73.50(3) Each institution shall permit authorized federal and state personnel to inspect donated foods in storage and all records and reports and shall permit the personnel to review or audit all procedures and methods used in distributing the donated foods at any reasonable time.

73.50(4) Each institution shall assume liability for all losses resulting from either of the following reasons:

a. Inadequate storage procedures resulting in spoilage or theft.

b. Improper use of any donated foods.

73.50(5) Each institution shall ensure that donated foods are not used in cooking for employees if separate preparation or dining areas are used. If common preparation, serving, or dining areas are shared, donated foods may be used.

441—73.51(234) Variations in food distribution. The food distribution unit may withhold or reduce the delivery of food items ordered by institutions under the following circumstances:

73.51(1) When food is not available or has not been transported to the state in time for delivery.

73.51(2) When the food inventory is not sufficient to meet all requests.

73.51(3) When the institution orders food in excess of the amount which could be used without waste in providing meals for the number of needy persons served.

73.51(4) When the state's supply is depleted or the department or USDA has issued orders restricting distribution of certain food items.

441—73.52(234) Food service companies. A charitable institution may employ a food service management company in the preparation of meals containing donated foods if the institution complies with the following criteria:

73.52(1) A contract must be completed between the institution and the food service company and a copy of the contract must be on file at the institution.

73.52(2) The contract must be approved by the food distribution unit to ensure the contract provides that:

a. Any commodities made available to the food service company by the institution shall only be used for the institution.

b. The books and records of the food service management company pertaining to the feeding operation of the charitable institution shall be available for a period of three years from the close of the federal fiscal year to which they pertain for inspection and audit by state and federal representatives at any reasonable time and place.

441—73.53(234) Notice of decision. The food distribution unit shall give written notice to an institution as follows:

73.53(1) Approval or rejection of an application within 60 days from the date of application.

73.53(2) Continued participation within 10 days from the date of an administrative review.

73.53(3) Probationary status to allow the institution to take corrective action to remove deficiencies noted on the corrective action form within 10 days from the date of an administrative review.

73.53(4) Cancellation of eligibility immediately after the expiration of the corrective action time frames when it is learned the institution failed to take the necessary corrective action.

73.53(5) Cancellation of eligibility immediately when a threat to health or safety is found.

441—73.54(234) Administrative review of denial of eligibility. An institution may request an administrative review when its claim for USDA commodities was denied based on eligibility requirements, extent of eligibility, noncompliance with institutional responsibilities, improper use of a food service company, failure to take necessary corrective action, or a health or safety threat. Nonavailability of food is not subject to administrative review.

73.54(1) When an institution wishes a review of a denial, it will be referred to the program manager of the food distribution unit. The program manager will affirm or reverse the denial within ten days.

73.54(2) When the program manager affirms the denial, the institution may request further review by sending a letter requesting review and the program manager's denial to the administrator of the division of support services within five days of the denial. When more information is needed, the administrator shall request the information within five days. The administrator shall review the denial and issue a decision within ten days of the request for the review or the receipt of additional information, whichever is later. When the denial is reversed, the institution will be reestablished in the program.

441—73.55(234) Refusal of commodities upon delivery. The recipient institution may refuse any part of the order at time of delivery if the item(s) is not usable. The recipient institution shall check the order for shortage or damage at the time of delivery. The delivering warehouse and the department shall not be responsible for loss or damage after delivery has been made if receipt for the food delivered is signed.

441—73.56(234) Storage of commodities.

73.56(1) Commodities must be stored at the institution unless the institution has a contract for storage with a local storage facility. Commodities shall not be stored in private homes.

73.56(2) Proper space for storage or warehousing of commodities shall be maintained to prevent losses from spoilage, rodent or insect infestation, water damage and theft.

73.56(3) Spoilage or out-of-condition food must be reported to the food distribution unit within one working day after discovery.

441—73.57(234) Records and reports.

73.57(1) All records shall be retained for a period of three years from the close of the federal fiscal year (October 1 through September 30) to which they pertain.

73.57(2) Each institution shall maintain a perpetual inventory. A monthly physical inventory shall be completed and reconciled with the perpetual inventory.

73.57(3) Each institution shall maintain accurate and complete records of the data method used to determine the number of needy persons and the number of meals served.

73.57(4) Reports and inventories shall be submitted to the food distribution unit upon request.

73.57(5) A copy of any contract the institution has entered into with a food service management company shall be maintained on file at the institution and a copy shall be submitted to the food distribution unit.

441—73.58(234) Containers. When containers in which donated foods are received are disposed of by sale, the proceeds of the sale shall be forwarded to the Food Distribution Unit, Hoover State Office Building, Des Moines, Iowa 50319-0114.

The recipient institution may use the containers, if so desired, unless otherwise instructed by the food distribution unit.

441—73.59(234) Improper use of USDA donated food.

73.59(1) USDA donated food may not be transferred from one institution to another without prior approval from the department.

73.59(2) Suspected case instances of embezzlement, misappropriation, theft or fraud of any funds or commodities from the program shall be referred to federal authorities.

441—73.60(234) Food demonstrations and training programs. USDA donated food for the institution program is available to bona fide experimental or testing agencies, or for use in workshops for demonstrations or tests relating to the utilization of these foods. The food may also be used in food education and information programs for needy persons.

441—73.61(234) Disaster feeding. Any donated food received in the institution food distribution program may be used for group disaster feeding purposes with approval from the food distribution unit.

441—73.62(234) Food losses. All food losses regardless of the dollar amount shall be reported to the food distribution unit by the entity (recipient institution, warehouse, or food processor) responsible for the food. The food distribution unit shall log in each loss by entity. Losses shall accumulate by entity from October 1 to September 30 of each year.

73.62(1) Definition of lost foods. Lost foods means those foods which, for any reason, cannot be demonstrated by appropriate records or other satisfactory evidence to have been delivered to, or to be available in good condition for delivery to eligible recipient agencies or eligible recipients for whom they were intended. Commodities may be lost through one or more of the following means:

- a. Theft, damage, spoilage, or infestation in transit or in storage.
- b. Improper distribution to institutions, families or individuals, distributing above authorized rates, and in the case of charitable institutions, on the basis of a greater population than the number of needy persons served.
- c. Sale or exchange of commodities or diversion to an improper use.
- d. Failure to deliver end products according to contracted yields under a processing agreement.
- e. Other similar causes.

73.62(2) Determination of fault. The food distribution unit shall investigate the food loss and determine who is at fault.

73.62(3) Claim action. If the entity is at fault a claim action shall be initiated if the value of the accumulated food loss exceeds \$100 unless there is evidence of violation of a federal or state statute. A claim action must be initiated regardless of the value of the food losses if the food losses occur when in transit for delivery.

73.62(4) Processing of claims.

- a. Up to three demand letters will be sent to the entity determined responsible for the loss.
- b. Interest (late charge) shall be assessed against an entity beginning on the thirty-first day following the date of the first demand letter at the rate determined by the U.S. Treasury Department at the beginning of each fiscal quarter.
- c. Failure to make restitution when requested is cause for cancellation of the agreement.
- d. When an entity accumulates losses totaling \$2,500 in a federal fiscal year, the bureau of food distribution shall refer the loss to the USDA Food and Nutrition Service regional office.

73.62(5) Claim payment.

- a. The claim shall be paid to the food distribution unit.
- b. Replacement-in-kind with generically like items in lieu of cash payment may be used for losses with the approval of the food distribution unit if the replacement-in-kind would not result in further losses and the inventory is not already in excess.
- c. If replacement-in-kind is not practicable, similar replacement may be used in lieu of cash payment with the approval of the food distribution unit and the Food and Nutrition Service regional office. Similar replacement means replacement of lost foods with a like quantity of similar domestically produced foods from the same food group.
- d. The loss of bonus items may not be paid with replacement-in-kind or similar replacement items. Bonus items are those so designated by USDA and offered by USDA to the states as a one-time offer.

73.62(6) *Administrative review of claim.* An entity may request an administrative review of its claim in writing within 20 days of receipt of its first demand letter. The procedures outlined in rule 441—73.54(234) shall be used.

These rules are intended to implement Iowa Code sections 234.6 and 234.12.

- [Filed 11/5/82, Notice 9/15/82—published 11/24/82, effective 1/1/83]
- [Filed emergency 6/17/83—published 7/6/83, effective 7/1/83]
- [Filed emergency 6/15/84—published 7/4/84, effective 6/14/84]
- [Filed 6/15/84, Notice 4/25/84—published 7/4/84, effective 9/1/84]
- [Filed 7/13/84, Notice 6/6/84—published 8/1/84, effective 10/1/84]
- [Filed emergency after Notice 6/14/85, Notice 5/8/85—published 7/3/85, effective 7/1/85]
- [Filed 11/15/85, Notice 9/25/85—published 12/4/85, effective 2/1/86]
- [Filed emergency 5/28/86—published 6/18/86, effective 7/1/86]
- [Filed 10/17/86, Notice 8/27/86—published 11/5/86, effective 1/1/87]
- [Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
- [Filed emergency 6/19/87—published 7/15/87, effective 7/1/87]
- [Filed emergency 6/10/88—published 6/29/88, effective 7/1/88]
- [Filed 4/13/89, Notice 2/22/89—published 5/3/89, effective 7/1/89]
- [Filed emergency 5/10/89—published 5/31/89, effective 7/1/89]
- [Filed emergency 6/14/90—published 7/11/90, effective 7/1/90]
- [Filed 12/13/90, Notice 10/31/90—published 1/9/91, effective 3/1/91]
- [Filed emergency 6/14/91—published 7/10/91, effective 7/1/91]
- [Filed emergency after Notice 6/11/92—published 7/8/92, effective 7/1/92]
- [Filed emergency 6/11/93 after Notice 4/28/93—published 7/7/93, effective 7/1/93]
- [Filed emergency 6/16/94 after Notice 4/27/94—published 7/6/94, effective 7/1/94]
- [Filed 7/15/94, Notice 6/8/94—published 8/3/94, effective 10/1/94]
- [Filed emergency 6/7/95 after Notice 4/26/95—published 7/5/95, effective 7/1/95]
- [Filed emergency 6/12/97 after Notice 5/7/97—published 7/2/97, effective 7/1/97]
- [Filed emergency 6/10/98 after Notice 5/6/98—published 7/1/98, effective 7/1/98]

CHAPTER 74

Transferred to Chapter 73 as rules 441—73.41 to 441—73.62, IAB 5/3/89