# POLICY ALERT

**Date:** December 11, 2006  
**Reference:** # FDP 2007-3  
**To:** Food Distribution Program (FDP) Contractors  
**Subject:** Eligibility of Private Adult Correctional Institutions to Receive and Use United States Department of Agriculture (USDA) Donated Commodities  
**Effective Date:** Immediately

## Purpose

This Policy Alert provides new information for your Food Distribution Handbook concerning the eligibility of privately owned or managed adult correctional institutions to receive donated foods for their own use as charitable institutions, or to receive and use donated foods to provide meals for another charitable institution’s food service.

## Definitions

**Charitable Institution** - (1) A nonpenal, noneducational, public (such as federal, state, or local) institution; (2) A nonprofit, tax-exempt, private hospital; or (3) Any other nonprofit, noneducational, tax-exempt private institution (including hospitals and facilities caring for needy infants and children) organized to provide charitable or public welfare services in the same place without marked changes and, approved by a public welfare agency as meeting a definite need in the community by administering to needy persons, and provides a meal service on a regular basis.

**Food Service Management Company (FSMC)** - A commercial enterprise or a nonprofit organization which is or may be contracted with by a recipient agency to manage any aspect of the recipient agency’s food service.

**Processor** - Any commercial facility that processes or repackages donated foods.

## Implementation

Immediately

## Procedure

Adult correctional institutions that are public institutions or private nonprofit organizations with tax-exempt status may receive donated foods as charitable institutions if they conduct rehabilitation programs that:

- Are available to either a majority of the total inmate population (including inmates awaiting trial or sentencing) or to a majority of sentenced inmates;
- Are of sufficient scope to permit participation of a minimum of 10 hours per week per inmate by either a majority of the total inmate population or a majority of sentenced inmates; and
- Have a signed agreement with the Health and Human Services Commission (HHSC).

continued

This Policy Remains in Effect Until Further Notice
Procedure continued

Note: Private for-profit correctional institutions do not meet the USDA definition of charitable institution and therefore are not eligible to receive USDA donated foods.

Charitable institutions may contract with a FSMC or a private nonprofit or for-profit correctional institution to conduct its food service including the use of donated foods, provided the agreement between the charitable institution and the FSMC and/or correctional institution:

- Meets all FSMC contract requirements;
- Meets the definition of “Adult correctional institution”; and
- Ensures that donated foods provided to the FSMC and/or the correctional institution is used solely for the purpose of the charitable institution’s food service.

Note: A for-profit correctional institution that repackages donated foods, or converts them into a different end product, at its commercial facility (including the preparation of meals) is considered a “processor”, and subject to the requirements for the processing of donated foods.

Authority

United States Department of Agriculture FD-059 Memorandum

Contact

If you have any questions please contact your Contract Manager.