



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION

JUL 8 1983

B-212153



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The Honorable Tony P. Hall
House of Representatives

Dear Mr. Hall:

Subject: Implementation of Section 191 of the Omnibus
Budget Reconciliation Act of 1982
(GAO/RCED-83-190)

In your letter of January 12, 1983, and subsequent discussions with your office, you requested us to review the implementation of section 191(b)(1) and (2) of the Omnibus Budget Reconciliation Act of 1982 which was enacted on September 8, 1982. The act states that it is the sense of the Congress that:

- (b)(1): Federal departments and agencies should take the steps needed to distribute to hungry people surplus food or food which would otherwise be discarded.
- (b)(2): State and local governments which have not yet enacted Good Samaritan or donor liability laws to encourage private cooperative efforts to provide food for hungry people, should do so as quickly as possible.

On June 2, 1983, we briefed you and members of your staff on the results of our work. This report confirms (and in certain cases, updates) what we discussed during that briefing. As you requested, we did not obtain agency comments on this report.

In summary, the results of our work showed that:

- Generally, the officials we talked with were unaware of the provisions of section 191. However, even before enactment of section 191, a number of Federal departments and agencies had taken steps to distribute to hungry people surplus food or food that would otherwise be discarded. Such distributions have continued.
- The vast majority of States have enacted donor liability laws that encourage private cooperative efforts to feed hungry people. As of June 10, 1983, 46 of the 50 States had such laws. Of the four States--Alaska, Connecticut, New Hampshire, and Vermont--that did not, only Connecticut is considering such legislation.

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More detailed discussions of the results of our work relating to Federal actions to distribute surplus foods or foods that would otherwise be discarded are contained in enclosure I. Enclosure II provides the status, by State, of donor liability laws.

During our June 2, 1983, meeting, you and your staff expressed interest in whether we had plans to update the food waste estimates cited in our report on "Food Waste: An Opportunity To Improve Resource Use" (CED-77-118, Sept. 10, 1977). We told you that we had no plans to do so and pointed out that our 1977 report contained a recommendation that the Secretary of Agriculture "undertake a comprehensive study of both the magnitude and causes of [food] loss." Although the Department of Agriculture concurred in the recommendation, inquiries we recently made at the Department disclosed that little had been done since in response to the recommendation.

As we stated in our recent report to Congressman Dennis E. Eckart on efforts to feed the poor,¹ one of the issues we believe warrants further examination has to do with the need for updated estimates of food waste in the United States. We believe that updated estimates by the Department could increase awareness of the food waste problem and, perhaps, result in identifying more ways in which the food needs of the poor might be met through use of edible food that would otherwise be discarded. More broadly, as we stated in our 1977 report, reducing food loss is a way to improve the productivity and efficiency of the food system.

OBJECTIVES, SCOPE, AND METHODOLOGY

To determine the steps that have been taken regarding implementation of section 191, we held discussions with officials in those principal departments and agencies we agreed to contact during a meeting with your office. The departments and agencies were selected because (1) we believed they were most likely to be involved in such activities or (2) we were referred to them during discussions with other officials. The departments and agencies contacted were the Departments of Agriculture, Health and Human Services, Defense, and Commerce; the U.S. Coast Guard, Department of Transportation; and the General Services Administration. In addition, some of the information included in enclosure I is based on our report to Congressman Eckart.

¹"Public and Private Efforts To Feed America's Poor" (GAO/RCED-83-164, June 23, 1983).

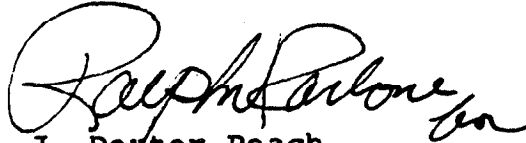
Our work on donor liability laws included examining relevant food industry reports, contacting knowledgeable food bank representatives for corroborating information, and contacting State legislative officials in those States where we had questions as to the status of Good Samaritan legislation.

We did our work in accordance with generally accepted government auditing standards except that, as noted above, we did not obtain agency comments. Our contacts were made between April and June 1983.

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As arranged with your office, unless you announce its contents earlier, we plan no further distribution of this report until 2 days after its issue date. At that time, we will send copies to the departments and agencies we contacted. We will also make copies available to others on request.

Sincerely yours,



J. Dexter Peach
Director

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ABBREVIATIONS

DOD	Department of Defense
DOT	Department of Transportation
FNS	Food and Nutrition Service
GSA	General Services Administration
HHS	Department of Health and Human Services
USDA	U.S. Department of Agriculture

FEDERAL ACTIVITIES TO DISTRIBUTE
SURPLUS FOOD TO HUNGRY PEOPLE

Section 191(b)(1) of the Omnibus Budget Reconciliation Act of 1982 (96 Stat. 788) states that it is the sense of the Congress that Federal departments and agencies should take the steps needed to distribute to hungry people of the United States surplus food or food which would otherwise be discarded. Generally, the officials we talked with were unaware of this provision. A number of them, however, were knowledgeable of activities in their respective departments or agencies concerning the distribution to hungry people of surplus food or food that would otherwise be discarded. The information we obtained from these officials is presented below.

DEPARTMENT OF AGRICULTURE (USDA)

In a meeting with USDA's Food and Nutrition Service (FNS) officials, the Director of the Food Distribution Division told us that FNS is spending \$17 billion annually for domestic food assistance and that most of this assistance is for needy Americans. As we stated in our report to Congressman Eckart (GAO/RCED-83-164), these funds pay for a variety of programs designed to provide a more nutritious diet for low-income families and to encourage better eating patterns among the Nation's children. Assistance includes food stamps; school lunches; food for women, infants, and children; and a variety of commodities furnished to various kinds of institutions, including charitable institutions and, most recently, individual households. Regarding the latter, the Director said that during fiscal year 1982, USDA/FNS had provided 200 million pounds of surplus commodities to 10,000 institutions. These commodities (20 different kinds, both dairy and nondairy, including such things as flour, peanut butter, spaghetti, and turkey) were valued at over \$100 million and provided one to three meals per day for 1.7 million needy people in such institutions as hospitals, sanitariums, and correctional institutions or at charitable places such as soup kitchens or food pantries. The commodities are in USDA's possession as a result of its emergency surplus removal or agricultural price support programs.

Since December 1981 USDA has been engaged in a special program to distribute federally owned cheese and butter to needy households throughout the Nation. USDA purchases these products under its dairy price support program. The special distribution program was initiated, at least in part, to help reduce the surplus quantities of cheese and butter.

In December 1981 USDA began providing States with surplus cheese for distribution to needy people. In the spring of 1982 surplus butter was added to the program. Through April 1983, 355 million pounds of cheese and 106 million pounds of butter had been distributed, far exceeding the 30 million pounds of cheese that USDA had initially allocated for what was expected to be a one-time distribution. The program has been extended by the Secretary of Agriculture through December 1983 and, most recently, was affected by passage of the emergency jobs appropriations legislation (Public Law 98-8) on March 24, 1983.

This legislation requires emergency food assistance programs to address, through the end of fiscal year 1983, immediate problems among unemployed and low-income persons. Title I of the law appropriates \$75 million for the purchase and distribution of perishable surplus agricultural commodities such as meat, poultry, fruits, and vegetables to States for use in areas of high unemployment. These commodities are to be distributed to cooperative emergency feeding facilities that provide nutrition services to indigent persons.

Title II of the law requires the Secretary of Agriculture to determine the availability of price support program (Commodity Credit Corporation) commodities that exceed the amounts needed to (1) carry out the payment-in-kind (PIK) program, (2) maintain the U.S. share of world markets, and (3) meet international market development and food aid commitments. The Secretary determines the types and amounts of available commodities and FNS notifies the State agencies of the allocation of these commodities. The State agencies then inform FNS of the amount of commodities requested and their arrangements for distribution.

The Director of FNS' Food Distribution Division said that title II has resulted in the distribution not only of cheese and butter, but of other commodities such as nonfat dry milk, rice, honey, corn meal, and flour, as well. Under title II, \$50 million was made available to the States by the Secretary for food storage and distribution costs. Of this amount, not less than \$10 million is to be made available for paying the actual costs incurred by emergency food centers which provide food to needy persons.

The following table provides information relating to the type, quantity, and dollar value of commodities distributed under the special cheese and butter distribution program to distribute federally owned commodities. The table also reflects the impact of the emergency jobs appropriations legislation on this program in fiscal year 1983, and it indicates USDA's plans to continue the program--at least for cheese and butter--in fiscal year 1984.

Special Food Distributions

<u>Period</u>	<u>Items</u>	<u>Pounds</u> (millions)	<u>Value</u> (millions of \$)
FY 1982	Cheese & Butter	<u>116</u>	<u>180</u>
	Total:	116	\$ 180
*FY 1983	Cheese & Butter (Oct. thru Apr.)	345	542
	Jobs Bill Title I (May thru. Sept.)	99	75
	Jobs Bill Title II (May thru Sept.)	293	380
	Total:	<u>737</u>	\$ <u>997</u>
*FY 1984	Cheese & Butter	420	658
	Total:	<u>420</u>	\$ <u>658</u>
**Grand Total:		1,273,000	\$1,835,000

*Estimated

**Does not include \$50 million in distribution/transportation funds provided under the Jobs Bill.

Source: USDA Food and Nutrition Service.

In a related activity, USDA is testing the feasibility of providing federally owned agricultural commodities and other foods to community food banks for emergency distribution to needy individuals and families. This project is in addition to the distribution of commodities as discussed above. The project began in December 1981 pursuant to a mandate in section 211 of the Agricultural Act of 1980. Seven food banks were selected to receive and distribute cheese, butter, and nonfat dry milk. The operations of nine other food banks are being studied in depth, and a nationwide survey of other food banks is being made. Ultimately, USDA hopes to determine such things as the (1) capability of food banks to administer such a program on

an ongoing basis, (2) costs of the program to various government levels and food banks, and (3) food recipient characteristics.

A progress report from USDA to the Congress on the above project is planned for July 1983. USDA is required to submit its final report by January 1984.

In our meeting with the Director of FNS' Food Distribution Division, we were told that USDA is working with a number of private manufacturers to arrange for the processing of certain of its raw commodities for subsequent distribution to schools; institutions; and emergency food centers, including food banks and soup kitchens.

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

In our report to Congressman Eckart, we described a recent agreement between HHS and the Department of Defense (DOD) to expand the amount of surplus food available to the poor. This agreement, signed by the Secretaries of HHS and DOD in February 1983, makes available to specified food banks nonmarketable food from DOD commissaries. HHS, in proposing the arrangement, believed that to use such food in this way could provide a significant increase nationwide in the numbers of people reached by the food banks and other food centers.

HHS' Office of Community Services was designated in the proposal as the coordinating office which will bring together any surplus food and the food banks which will then dispense the surplus food to the poor. In a May 1983 meeting, the Chief of the Office of Community Services' Office of Intergovernmental Affairs told us that HHS was in the process of certifying food banks for participation in the program. About 200 food banks had applied. HHS was considering each applicant from the standpoint of such things as the adequacy of the food bank's storage space; the possession of a health certificate which certifies that the food bank meets certain standards for storing and distributing food; and the possession of a certificate of the food bank's tax-exempt, nonprofit status. The program is to become fully operational once the food banks have been certified and each food bank has been matched with a DOD commissary. This is expected to take place by the end of July 1983.

The Deputy Director of HHS' Office of Public/Private Sector Initiative told us that, in addition to the above, HHS provided \$148,000 of its discretionary funds during fiscal year 1982 to a food bank in Dallas, Texas. This money was provided under HHS' Office of Human Development Services' volunteers program. During the current fiscal year, HHS is providing \$200,000 in funds

to Second Harvest--an organization that feeds hungry people by soliciting surplus food from the national food industry and distributing these donations through its nationwide food bank network.

DEPARTMENT OF DEFENSE

In June 1983 we contacted a high-level official in the Office of the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics who was knowledgeable of the HHS/DOD arrangement to provide nonmarketable commissary food to food banks. This official stressed that the nonmarketable food to be made available to food banks is owned and will be donated by the commissary vendors. It is not food owned or donated by DOD. HHS and DOD have been working out the details with the American Logistics Association, a trade association of vendors. We were told that the association has been very receptive to the idea of making such food available.

DEPARTMENT OF TRANSPORTATION (DOT)

Within the U.S. Coast Guard, an agency of DOT, a plan has been proposed whereby nonmarketable food in two Coast Guard commissaries and four or five large Coast Guard stores would be donated to food banks in much the same manner as the HHS/DOD arrangement previously discussed. The Assistant Chief, Office of Non-Appropriated Funds Activities Management Division of the Coast Guard, told us that this plan had not yet received full approval and that details about how the program would work were unavailable.

DEPARTMENT OF COMMERCE

An attorney in Commerce's Office of General Counsel told us that the Department does not control, manage, or possess surplus food. Therefore, he did not believe any of the bureaus within the Department had taken any steps in response to section 191.

GENERAL SERVICES ADMINISTRATION (GSA)

The Federal Property and Administrative Services Act of 1949, as amended, provides for the transfer of surplus GSA property to State and local public agencies for certain public purpose uses. Over the years the list of government agencies and nonprofit organizations eligible to receive this surplus property has grown, and most recently, food banks certified by HHS to participate in the HHS/DOD program discussed earlier were declared eligible. Surplus property such as forklifts and other

warehouse and office equipment could aid food banks in their efforts to distribute surplus food to the poor.

A Property Utilization Specialist in GSA's Office of Property Management/Donation Division told us that surplus property is distributed on an equitable basis to various State agencies. The State agencies, after certifying the organizations requesting the surplus property, distribute the property. Distribution records are kept by the States, with no feedback to GSA. Therefore, GSA has no record of the type and amount of surplus property that has been donated to emergency food centers such as food banks.

STATES' DONOR LIABILITY LAWS

Section 191(b)(2) encourages State and local governments which have not enacted laws that limit the liability of food donors--commonly referred to as Good Samaritan laws--to do so as quickly as possible. Such legislation generally absolves the food donor of liability for civil damages or criminal penalties as long as any injury or illness is not the direct result of intentional misconduct or recklessness. Such legislation is expected to encourage private donors to provide food for hungry people.

The Food Marketing Institute reported in October 1982 that 34 States had adopted Good Samaritan laws. Our recent inquiries showed that 46 of the 50 States now have such laws. Of the four States that do not, one State--Connecticut--is considering such legislation. In Alaska, the legislature had passed legislation but the Governor vetoed it. The State's legislative information officer said that the veto appeared to have been based on an amendment which was to shift some of the duties among the various elements of the State's environmental protection agency. In New Hampshire a food bank representative told us that interest in food banks and in a Good Samaritan law was growing. In Vermont a food bank director told us that the State was not very far along in developing food banks. The table that follows shows the status of Good Samaritan laws in each of the 50 States.

Status of States' Good Samaritan LawsNo legislation

Alaska
New Hampshire
Vermont

Law enacted and dates

<u>1977-79</u>	<u>1980-81</u>	<u>1982-83</u>
California	Alabama	Arkansas
Oregon	Arizona	Delaware
Washington	Colorado	Indiana
	Florida	Iowa
	Georgia	Kansas
	Hawaii	Kentucky
	Idaho	Maryland
	Illinois	Massachusetts
	Louisiana	Michigan
	Maine	Minnesota
	Missouri	Mississippi
	Montana	New Jersey
	Nebraska	North Dakota
	Nevada	West Virginia
	New Mexico	Wisconsin
	New York	
	North Carolina	
	Ohio	
	Oklahoma	
	Pennsylvania	
	Rhode Island	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Utah	
	Virginia	
	Wyoming	

Legislation being considered

Connecticut