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USDA-Donated- Commodities

The United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) is charged with administering the Food Distribution Program (FDP). Through the FDP, USDA purchases food through direct appropriations from Congress and under surplus removal and price support activities. The foods are distributed to state agencies for use by eligible organizations. Organizations participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Summer Food Service Program (SFSP) and Child and Adult Care Food Program (CACFP) may receive USDA-donated commodity meats, vegetables, fruits, grains and dairy products.

Administered by Texas Department of Agriculture

The Texas Department of Agriculture (TDA) administers the FDP in Texas. Contact the FDP at:

Texas Department of Agriculture
Commodity Distribution Unit
P.O. Box 12847
Austin, TX 78711
(877)-TEX-MEAL
Commodity Complaint Hotline 1-800-446-6991 or
E-mail at usda-fns-commoditycomplaints@fns.usda.gov

School food authorities (SFAs) participating in the NSLP/SBP are required to enter into an agreement with TDA Food and Nutrition Division (FND) to receive USDA-donated commodities.

Except for bonus foods, USDA-donated commodities are allocated to schools based on participation in the NSLP and, whenever practical, should be used to prepare those meals. USDA-donated commodities may be used in the preparation of school breakfasts as part of the nonprofit school food service. However, the SBP participation is not included when determining the amount of commodities received.

If an SFA operates the Afterschool Care Program (ASCP), they may use commodities to prepare snacks. However, SFAs will not earn additional entitlement commodities as a result of serving Afterschool Snacks.

SFAs may order designated bonus commodities, with no charge against entitlements, if they can use them without waste. SFAs may use these bonus commodities in any meal service activities that meet the guidance for use of USDA-donated commodities.

Using USDA-Donated Commodities

SFAs may use USDA-donated commodities to prepare required food items or side dishes for reimbursable meals and other meal service activities (a la carte sales and suppers and snacks in RCCIs). SFAs may sell commodity foods in their original form or as ingredients in a la carte items if the same food or end products are also available during the school day/year as components of the reimbursable lunch. SFAs may also use USDA-donated commodities in the preparation for any school-related functions where the primary beneficiaries of the meals/food products are the students.

SFAs are prohibited from increasing their order for commodities for the purpose of supporting school-related functions other than the NSLP and SBP. SFAs must ensure that commodities are being used to benefit the intended recipients, who are the students participating in the NSLP and SBP. Further, SFAs must monitor the use of commodity foods.

The price of any catered or vended meals/food products that include one or more commodities sold outside the food service area or inside the food service area at times other than the lunch period, such as for football banquets and the selling of baked goods in the teachers' lounge, must be sufficient to cover the total cost of preparing the meals/food products.

The total cost of preparing meals/food products that include commodities must include the USDA value of the commodities and other related expenses such as labor, facility operation costs and transportation costs.

All funds derived from the sale of these meals/food products that include commodities must be deposited into the nonprofit Child Nutrition Program account and be used for the operation or improvement of such service. Do not deposit any of the funds into separate accounts, such as accounts for funds derived from catering or vending events. Recovering only the value of commodities used would not be in compliance with this requirement.

Teachers and staff who usually eat at the school may eat meals containing commodities if the food is:

- Prepared with the students' food;
- Served with the students' food; and
- Eaten on school premises.

Note: Administrative staff, parents, volunteers and other officials who occasionally eat at the school may eat meals prepared with commodities if the above criteria are met. Also, teachers and administrative staff must go through the serving line where children/students receive their

meals. They may eat their meals in another location provided that it is located on the school premises.

Available Commodity Food Items

USDA's Web site at www.fns.usda.gov provides a list and estimate for commodities expected to be available for schools during the applicable school/fiscal year. The availability of these commodities depends on market conditions. Each SFA should check with TDA to ensure the availability of a certain commodity.

Commodity Specifications and Purchasing Information

Agricultural Marketing Service (AMS) purchases meats, poultry, fish, fruit, vegetables, egg products, dry beans, and tree nuts for distribution in the NSLP. Products are purchased through competitive bids or negotiated contracts. These purchase programs assist farmers, commodity producers, and processors by helping to maintain stable commodity prices. Product specifications can be found on the AMS Web site at www.ams.usda.gov.

Use and Sale of USDA-Donated Commodities

There are restrictions on the use and sale of commodities and products containing USDA-donated commodities. An SFA may use USDA-donated commodities across all programs as long as the income accrues to the nonprofit Child Nutrition Program account.

Acceptable uses of USDA-Donated Commodities are:

- Repackaging and selling commodity peanuts in the a la carte sales line;
- Serving commodity beef patties at a football banquet. The price paid for the meals must recover the total cost of food preparation; and
- Using commodity products in baking items that are sold in the teachers' lounge as long as they are also sold/served to students.

SFAs may use commodities received for the NSLP and SBP to train students in home economics and in teaching nutrition and health-related activities. High schools may also use these foods to train college home economic students if the same facilities and instructors are used for training both high school and college students.

Any leftover foods from class may be given to children for consumption on school premises. Food items made in class using commodities can be served to non-students as part of a class learning activity. Fees can be charged for the class activity provided that all money collected accrues to the Child Nutrition Program account. Commodities must never be used in fund-raising activities.

SFAs may use commodities for workshops, demonstrations and tests, if they:

- Obtain approval from TDA; and
- Keep the following records:
 - Recipes tested;
 - List of people testing the items; and
 - The test results.

Local policies should address type and quantities that can be released without affecting the financial accountability and quality of the NSLP and SBP. Good management practices ensure that usage be carefully monitored.

Unacceptable Use of USDA-Donated Commodities

Examples of unacceptable use of commodities include:

- Catering operations for schools not participating in the NSLP;
- Catering for child care centers not participating in the Child and Adult Care Food Program (CACFP);
- Commodity beef patties served at a football banquet where the total cost of preparing the meals/food products is not returned to the nonprofit Child Nutrition Program account;
- Commodity products used in baking that are given or sold exclusively to faculty, Parent's Teacher's Association (PTA) or the public; or
- Catering banquets for the Chamber of Commerce, partisan political functions, supplying refreshments for the PTA or any other non-student related event.

Monies from Sales Containing Commodity Ingredients

Funds derived from sales of food items using any USDA-donated commodities must accrue to the Child Nutrition Program.

Use of Commodities in Disaster Feeding

The SFA must make commodities available to designated agencies, including the Red Cross, Civil Defense, and Salvation Army, if the agency requests them for disaster feeding and has the facilities to prepare and serve these foods. Donated commodities are made available by USDA in emergency situations whether they are stored in schools, school warehouses, or area warehouses. Proper receipts should be on file for all commodities released to one of the designated agencies from a warehouse or school. All commodities must be accounted for that are used in schools operating as shelters. This is very important in assuring that the foods are replaced or replaced in value.

SFAs will receive commodity entitlement credit for commercially labeled or USDA labeled commodities that are used during nationally declared disasters. The credit may not exceed the lesser of the actual commodities supplied or the amount of the commodity that the SFA received during the past 12 months.

Refer to the “Other Operational Issues—Disaster Feeding” section for additional information.

Use of Commodities in the Summer Food Service Program

SFAs that operate the Summer Food Service Program (SFSP) are required to report the disposition of commodities allocated to the SFSP at the end of the SFSP operations.

Commodity Fact Sheets

On USDA’s Web site at www.fns.usda.gov, there are more than 100 fact sheets about commodity food items. Each sheet provides basic information that will help Child Nutrition Program personnel make the best use of USDA-donated commodities. Additionally, this information can simplify ordering and serve as a ready reference for the nutrient content of USDA’s commodities. Each fact sheet includes the following information:

- *Product description* lists the contents as well as the USDA grade, variety, cut, packing medium and other applicable information.
- *Pack size* describes the packaging of the commodity such as case weight, number and weight of individual bags, can size, and number of cans per case.
- *Yield* tells the number of servings per pound/portion or per can, as well as additional information.
- *Uses* provides a variety of menu ideas and serving suggestions for the commodity.
- *Storage* suggests where, how, and how long to store the commodity.
- *Nutritional Values* are included for a specified portion of each commodity. Values are listed for calories, protein, carbohydrate, fat, saturated fat, cholesterol, vitamin A, vitamin C, iron, calcium, sodium and dietary fiber.

Commodity Recipes

A recipe archive has been established and can be found at www.fns.usda.gov. Recipes can be researched by either food groups or menu category.

“Best If Used By” Dates

Pack dates will be lost, since they are not required on commercial labels. Pack dates were the basis for USDA’s “Best if Used By Dates” Guidance; therefore, this guidance will no longer be available. SFAs should use good inventory practices.

Inventory Requirements

SFAs are no longer required to maintain a separate inventory of USDA-donated commodities. The SFA may maintain a single inventory that includes both USDA-donated commodities and purchased food products. As always, an SFA must maintain good inventory management and control practices.

SFAs will need to value their inventory for three different situations.

- Purchased products for which the SFA receives no USDA-donated commodity equivalent. An example of products that a school would purchase commercially but would not receive as a USDA-donated commodity would be condiments, such as catsup and mustard. It is suggested that the SFA base the inventory value for such items on the net purchase price for that item.
- USDA commodity products for which the SFA purchases no commercial equivalent. Examples of USDA-donated commodities that schools receive but usually do not purchase commercially include pouched salmon, frozen diced chicken, and prune puree. TDA will continue to provide the SFA with the value of USDA-donated commodities, which is based on the actual cost per pound.
- Products that the SFA purchases as well as receives as commodities. Canned fruits and vegetables are examples of such products. Base the value of these products on the net cost to purchase such products, on the commodity value provided by TDA, or the SFA could also use an average or weighted average of the two values.

SFAs are no longer required to take an annual physical inventory for TDA. SFAs wishing to take an annual physical inventory can use the optional Physical Inventory Worksheet located at the end of this section.

Care and Storage of Commodities

SFAs receiving USDA-donated commodities should take prudent and reasonable care of these commodities. This would include but is not limited to the following:

1. Check each delivery of food for possible shortages and damage before the foods are accepted.
 - Refrigerated products must be examined to ensure the temperature of the product is adequate and they are in good condition. This is especially essential for frozen foods.
 - Canned foods must be examined to determine if there are any damaged, disfigured, or discolored cases or cans, which might indicate spoilage or deterioration.
 - Foods subject to insect infestation must be thoroughly inspected.
 - Foods found to be out of condition must be segregated from other foods and handled in accordance with the procedures outlined in your contract.
2. Adequate safeguards must be taken to protect donated foods from infestation in your facility.
 - There must be no external openings in the structure of the building where foods are stored, which would allow rodent and insect infestation.
 - Extermination must be performed at a minimum of once a month. Extermination may not be an adequate safeguard against infestation; therefore, fumigation should be instituted when extermination is inadequate. A record of extermination/fumigation must be kept.

3. Freezer/cooler checks. It is recommended that SFA personnel be assigned to make freezer/cooler checks every other day as a minimum and maintain a log of checks. The log should contain:
 - The exact date of the check.
 - The exact time of the check.
 - The recorded temperature.
 - The signature of the person conducting the check.

This practice should be continued during the summer vacation or any other vacation period. If it is not possible to make these checks on weekends, then they should be made late Friday afternoons and early Monday mornings. Refer to the end of this section for a sample temperature recording chart.

4. Secure locks should be placed on freezer/coolers and all doors of buildings where commodities are stored. This will help prevent theft and vandalism.
5. Commodities must be stored off the floor on pallets or shelving and away from the wall for proper ventilation.
6. The following temperatures should be maintained:

Items	Examples	Recommended Temperatures
Frozen Foods	Meat and Poultry	0° F or below
Cooler Foods	Cheese	32 to 35° F
Grain Products	Flour, Cornmeal	50° F or below
Dry Storage	Canned Goods	70° F or below

7. Only order quantities that can be properly stored and utilized without waste. Except in unusual circumstances, an inventory of no more than a six-month supply of commodities on hand should be maintained.

Storage of Perishable Foods During the Summer

All USDA-donated commodities should be utilized during the school year. If foods cannot be used or transferred, it becomes necessary to store foods in schools during the summer months. Prudent management requires proper storage practices be followed. Infestation, spoilage, deterioration, and contamination of foods usually occur because of refrigeration/freezer malfunction and improper storage practices. Listed below are desirable storage practices to follow when storing perishable foods during the summer:

1. Store foods in refrigerators/freezers that are thoroughly cleaned and dried, operating properly, and in good repair.

2. Place foods on shelves with a one- or two-inch space left between the walls and food containers to ensure proper air circulation. In walk-in units, place foods on dunnage platforms rather than directly on the floor and stack foods properly to prevent falling and possible damage.
3. It is recommended that temperatures in the refrigerators and freezers should be taken and recorded daily. The cooler/freezer should be checked every other day, and a temperature log maintained (optional). At a minimum the temperature log should include the following information: date, time, temperature, and the signature of the person making the check.

Thermometers and other refrigeration equipment should be checked periodically to ensure they are operating properly. It is desirable that this be done at least twice each week. Malfunctioning equipment should be repaired immediately.

Refrigerators and freezers should be equipped with an alarm system for easy detection of high temperatures and power failures. Refrigerators and freezers should be checked immediately after a power failure to make sure they are operating properly and stored foods are still in good condition.

4. Grain products should be stored between 36 degrees Fahrenheit and 50 degrees Fahrenheit. Higher temperatures may increase the likelihood of insect infestation. Grain products stored at temperatures between 60 degrees Fahrenheit and 90 degrees Fahrenheit are especially attractive to insects and thus provide an excellent environment for insect egg hatching and development. Since these and even higher temperatures are common in the dry storage facilities in our state, insect infestation has been a major cause in the loss of grain products stored in dry storage over the summer months. All USDA-donated grain products held over summer months from May through September should be kept in refrigerated storage.
5. All refrigerators and freezers should be locked during the summer months. The keys should be left with the individual in charge of the school. Only authorized personnel should be allowed to check the refrigerators and freezers to take the temperatures.
6. An effective insect and rodent control program should be maintained in all schools that store foods during the summer. Maintain Material Safety Data Sheets (MSDS) in a central location for all insect and rodent control products used in food storage areas.

Refusal of Commodity Delivery

If the warehouse delivers requested commodities and the SFA decides later that the entire order is not needed, the SFA is still responsible for the delivery charges of the original request. If the warehouse is responsible for delivering excess commodities, the SFA is not responsible for those delivery charges.

Transferring USDA-Donated Commodities

TDA will no longer be involved with arranging or accounting for commodities that an SFA wishes to transfer to another SFA. An SFA may transfer USDA-donated commodities to other participating SFAs without TDA approval. However, if commodities are transferred to another organization participating in a USDA Child Nutrition Program, the SFA is not due any additional entitlement and a record of transfer should be maintained.

Food Alert

All SFAs must be notified when there is an urgent concern about the safety, wholesomeness, and condition of donated foods or Child Nutrition (CN) label products. Notification will be made expeditiously either verbally or in writing stating “This is a Food Alert” — a potential hazard has been discovered. An immediate “hold” must be placed on all products covered by this alert until advice on proper disposition is received. After instructions are received from the USDA, notification will be provided either releasing the foods for program use or providing instructions for the disposition of unsafe products.

Commodity Losses

A SFA will no longer report commodity losses to TDA and TDA will not require an SFA to replace lost commodities or pay TDA for the loss of commodities. An SFA will be responsible for ensuring commodities are safeguarded.

Direct Ship Storage Facilities

Monitoring Direct Ship Storage Facilities

Food safety and defense concerns are leading to new measures in protecting the food supply. In response to these concerns, TDA will review storage facilities run by SFAs on a regular basis.

TDA will inspect storage facilities at least annually. TDA will schedule inspection visits with the SFAs and contact the Child Nutrition Program director at least one week in advance by telephone or e-mail and notify the appropriate Education Service Center (ESC). TDA staff will monitor how the SFA receives, handles and stores USDA-donated commodities at the storage facilities. Additionally, TDA will check facilities for cleanliness, potential safety hazards, proper storage practices and temperatures.

Food Service Management Companies Utilization of Commodities

All USDA-donated commodities made available to a food service management company (FSMC) by a school must continue to accrue to the benefit of the nonprofit Child Nutrition Program. If a FSMC is being used in the SFA, the SFA should use the existing method for ensuring the value of any donated commodities and purchased products used by the FSMC accrues to the benefit of the nonprofit Child Nutrition account. SFAs must monitor the FSMC’s compliance with the use of USDA-donated commodities.

Questions and Answers Regarding Management of USDA-Donated Commodities and Food Service Management Companies (FSMCs)

Questions and Answers Regarding Management of USDA-Donated Commodities and Food Service Management Companies (FSMCs)

Implementation

1. **Question:** If food service management company (FSMC) contracts were just re-bid for school year (SY) 2009, in accordance with the implementation schedule in the “Procurement Questions and Answers” on page 17.31-17.33 of the ARM, must schools re-bid again for SY 2010 to comply with the implementation schedule in the FSMC final rule? Refer to Policy Alert FDP 2009-1, *Publication of Final Rule – Management of Donated Foods*.

Answer: School food authorities (SFAs) must re-bid contracts expiring at the end of SY 2009 (i.e., in June 2009), except in the following cases:

- a. The contract already includes provisions relating to crediting for and use of USDA-donated commodities, the method of determining the value of donated commodities used in crediting and recordkeeping requirements that ensure compliance with the requirements of the final rule; or
- b. The contract has an annual renewal provision that would permit it, with TDA – approval, to extend the contract for one more 12-month period (i.e., through SY 2010).

Crediting for the Value of USDA-Donated Foods

2. **Question:** May the FSMC choose to credit the SFA for USDA-donated foods as they are used, or must it credit for all USDA-donated foods received?

Answer: The FSMC must credit the SFA for the value of all USDA-donated foods received in the school year, whether the USDA-donated foods are used in that school year or not.

3. **Question:** Are USDA-donated foods considered “received” when they arrive at the school kitchen or storage facility, or when they arrive at a TDA storage facility, or at a processor facility, and are credited to the SFA entitlement?

Answer: USDA-donated foods are considered “received” when they arrive at the school kitchen, or SFA or FSMC storage facility, in either raw form or in processed end products. The fact that TDA may credit the SFA entitlement at a different time – e.g., upon delivery of the USDA-donated foods to a processor’s facility – is not directly related to the crediting requirement imposed on the FSMC.

4. **Question:** Must the FSMC credit the SFA for the value of USDA-donated foods used in activities outside of the meal service – e.g., for USDA-donated foods used in training or educational activities?

Answer: The FSMC must credit the SFA for the value of USDA-donated foods used in activities outside of the meal service if its contract with the SFA requires such crediting, or if the contract requires the FSMC to perform such activities as part of its management of the food service.

5. **Question:** What are the requirements for the FSMC in crediting the SFA for the value of USDA-donated commodities in the following situations:

- a. When the FSMC procures end products from a processor, who has an approved State Participation Agreement with TDA on behalf of the SFA on a fee-for-service basis.

The FSMC must credit the SFA for the value of USDA-donated commodities contained in end products that the FSMC procures from a processor on behalf of the SFA, regardless of the method of sales used in its procurement. The specific method of crediting utilized, which may be by invoice, reductions, discounts, refunds or another means must be indicated in the SFA's contract with the FSMC. The method utilized may depend on the type of contract (i.e., in a cost-reimbursable contract, the FSMC may simply bill the SFA for its food purchases and disclose, in its billing, the savings resulting from USDA-donated commodities contained in its purchased processed end products). If such purchase was made on a fee-for-service basis, indication of such method of purchase in its billing would provide the required disclosure, since, by definition, the fee-for-service excludes the donated food value in the fee charged. Crediting for USDA-donated commodities in processed end products must be at the processing agreement value in accordance with the State Participation Agreement or State Processing Agreement with the processor. All methods of crediting must provide clear documentation of the value received by the SFA for the USDA-donated commodities in such end products.

- b. When the FSMC procures end products from a processor on behalf of the SFA under a rebate system.

Same as a) above. However, it should be noted that in a cost-reimbursable contract, as described above, the FSMC must remit the rebate or refund to the SFA, or otherwise credit the SFA for the value of USDA-donated commodities in end products it purchases from the processor and charges to the SFA at the commercial, or gross, price.

- c. When the SFA procures end products from the processor and provides them to the FSMC for use in the school food service.

Answer: The FSMC is not required to credit the SFA for the value of USDA-donated commodities in end products that the SFA procures from the processor and provides to the FSMC for use in the school food service – unless, in accordance with its contract, the FSMC acts as an intermediary between the processor and SFA in passing along the donated food value (e.g., in receiving refunds from the processor and remitting them to the SFA). The processor must credit the SFA for the USDA-donated commodity value in end products procured by the SFA. The SFA must ensure that the FSMC uses such end products in the school food service. The SFA must also ensure that the FSMC does not charge it for such end products used. The SFA may choose to include a provision in its contract to assure that the FSMC does not charge for the use of end products.

5. **Question:** Is it correct that under cost-reimbursable contracts, the SFA can specify the frequency with which they will receive credit for commodities and that frequency can be as little as one time per year?

Answer: Yes, that is correct for both cost-reimbursable contracts and fixed-price contracts.

6. **Question:** Please clarify and provide examples of the requirement for the recipient agency (RA) to ensure that the specified methods of valuation of USDA-donated commodities permit crediting to be achieved in the required time period.

Answer: For example, since crediting for USDA-donated commodity value must be achieved at least annually, the method of valuation may not use an average price for that food for a period of time extending beyond the current school year.

7. **Question:** Can an RA determine their own method for determining the value of USDA-donated commodities?

Answer: No. RAs are required to use the USDA-donated commodity values as provided by TDA through the Texas Commodity System (TCS) and not an alternate means of the RA's choosing.

8. **Question:** Will an FSMC be able to substitute USDA-donated ground beef and USDA-donated ground pork with commercial ground beef and ground pork after the new Processing Regulations are approved?

Answer: No, because unlike processors, FSMCs cannot substitute USDA-donated ground beef and USDA-donated ground pork with commercial ground beef and ground pork because the FSMC is not subject to grading requirements which ensures the substitution is equal or of better quality than the USDA-donated commodities.

10. **Question:** If the FSMC procures end products from a processor on behalf of the SFA with a deduction for the value of USDA-donated foods in such end products, must it provide such credit to the SFA by the same means?

Answer: No, the FSMC's contract with the SFA may stipulate that crediting for the value of USDA-donated foods in such end products be provided to the SFA by another means.

Cost-Reimbursable Contracts

11. **Question:** How must the FSMC credit the SFA for the value of USDA-donated foods in a cost-reimbursable contract?

Answer: In a cost-reimbursable contract, the FSMC charges the SFA for certain specified net costs of conducting the food service, including the cost of food purchases. Under such a contract, the FSMC may credit the SFA for the value of USDA-donated foods. The FSMC may provide such "crediting by disclosure" by detailing on its invoice the total value of foods drawn from inventory for the billing period, and show a charge for all such foods except the value of USDA-donated foods received for that period. For example, if the FSMC uses 6 cases of string beans from inventory in a billing period, and received 4 cases of USDA-donated string beans from inventory in a billing period, it would show a charge for only 2 cases of string beans on its invoice. An example of such "crediting by disclosure" on the invoice is below:

Beginning Inventory	8 cases of string beans (\$2,000 value)
USDA-Donated Food Received	4 cases of string beans (\$1,000 value)
Foods Used	6 cases of string beans (\$1,500 value)
Ending Inventory	6 cases of string beans (\$1,500 value)
<hr/>	
Amount Billed	2 cases of string beans (\$500 value)

The FSMC would not be required to credit the SFA for the USDA-donated food value in the month or quarter in which the USDA-donated food is received (unless the contract specifies that it must). For example, it would be difficult for the FSMC to credit the SFA for the value of USDA-donated string beans received, in accordance with the above example, if strings beans were not drawn from inventory in that billing period. However, the FSMC must credit the SFA for the value of all USDA-donated foods received in the school year on at least an annual basis, and the SFA must ensure, at the required annual reconciliation, that the FSMC has credited it for the value of all such USDA-donated foods. If, during this reconciliation, the SFA determines that the FSMC has not provided a credit for all such USDA-donated foods by the method indicated above, it must ensure that the FSMC makes a payment to it for the value of those USDA-donated foods for which it has not been credited.

12. **Question:** If the FSMC bills the SFA for foods as they are purchased, rather than as they are drawn from inventory, can it provide credit by disclosure for USDA-donated foods in its billing?

Answer: Yes. In such case, the FSMC must show the total value of foods purchased and the total value of USDA-donated foods received for the billing period, and show a charge for all such foods except the value of USDA-donated foods received for that period. The FSMC must credit the SFA for the value of all USDA-donated foods received in the school year on at least an annual basis, and the SFA must ensure, at the required annual reconciliation, that the FSMC has credited it for the value of all such USDA-donated foods. If, during this reconciliation, the SFA determines that the FSMC has not provided a credit for all such USDA-donated foods by the method indicated above, it must ensure that the FSMC makes a payment to it for the value of those USDA-donated foods for which it has not been credited. In this method of crediting, it is also important for the SFA to ensure that the total value of foods purchased and value of USDA-donated foods received align closely with the total value of foods used in the food service, in order to ensure that the FSMC's charge for food costs is not excessive, and that the SFA is receiving the full value of USDA-donated foods.

13. **Question:** Can the SFA specify the frequency with which it will receive credit for donated food value in a cost-reimbursable contract? Can that frequency be as little as one time per year?

Answer: Yes, the SFA may specify the frequency at which the FSMC must credit it for the USDA-donated food value in its contract with the FSMC. The SFA may specify that such crediting be provided one time per year (i.e., at the end of the year), as long as credit is provided for the value of all USDA-donated foods received for the school year.

14. **Question:** Is there a specific value that must be used in crediting for the value of USDA-donated foods in processed end products?

Answer: Yes, the FSMC must use the processing agreement value in crediting for USDA-donated foods in processed end products.

Use of USDA-Donated Foods

15. **Question:** Does the SFA retain title to USDA-donated commodities that are provided to the FSMC for use in the school food service?

Answer: Yes, the SFA retains title to USDA-donated commodities provided to the FSMC for use in the school food service.

16. **Question:** Does provision of credit for the value of USDA-donated foods mean that the FSMC owns the USDA-donated foods?

Answer: No, the FSMC does not "own" such USDA-donated foods, since ownership implies that the FSMC is free to use them as they please. The FSMC must "manage" the USDA-donated foods to ensure that they are used in the SFA's food service-or that commercial substitutes, of the same generic identity, of U.S. origin, and of equal or better quality are used. If commercial substitutes are used in place of USDA-donated foods, then the FSMC may be considered the "owner" of such replaced USDA-donated foods, and may use them without restriction.

17. **Question:** The requirement for the contract to "ensure that all USDA-donated foods received for use by the RA for the school or fiscal year *are used in* the RA's food service" (emphasis added) doesn't acknowledge that the regulations provide for substitution of USDA-donated foods.

Answer: That is correct. The regulations will be amended to clarify that the contract must ensure the use of USDA-donated foods or the use of commercial substitutes of the same generic identity, of U.S. origin, and of equal or better quality in place of USDA-donated foods.

18. **Question:** May the FSMC sell on the open market USDA-donated foods that have been substituted with commercially purchased foods?

Answer: The FSMC is not prohibited from selling on the open market USDA-donated foods that have been substituted with commercially purchased foods. However, the FSMC must credit the SFA for the value of all USDA-donated foods received, including those that are substituted with commercially purchased foods.

19. **Question:** According to regulations, the FSMC must use all "processed end products" in the school food service without substitution. Does this requirement include only end products processed from USDA-donated foods by processors or does it also include processed items made available to SFAs by USDA, such as chicken fajita strips and turkey taco filling?

Answer: In accordance with the definitions of "end product" and "processing" in regulations, "processed end product" refers to a product containing USDA-donated food processed by a commercial processor and does not include a USDA-donated food provided by USDA in a processed form (which would simply be another type of USDA-donated food).

20. **Question:** Why must the contract provide that the FSMC ensure that USDA-donated ground beef and ground pork, and all processed end products, are used without substitution?

Answer: The contract must ensure that USDA-donated ground beef and ground pork are used without substitution because USDA specifications for those products include more stringent standards for exclusion of microbial pathogens than like commercial products. The

contract must ensure that all processed end products are used without substitution because the SFA should receive the turkey sausage (for example) procured and not another product that may be of inferior quality. The contract must ensure use of all other USDA-donated foods or commercial substitutes of the same generic identity, of U.S. origin, and of equal or better quality than the USDA-donated foods.

21. **Question:** May the FSMC use USDA-donated foods in a la carte food sales, as a self-operating SFA may?

Answer: Yes, unless the SFA specifies in its contract with the FSMC that USDA-donated foods must only be used in the reimbursable meals. The FSMC must credit the SFA for the value of USDA-donated foods in a la carte sales, just as they must for USDA-donated foods in the reimbursable meals.

Storage and Inventory Management

22. **Question:** Is TDA required to initiate a claim against the SFA, or against the FSMC managing the SFA's food service, for USDA-donated foods that go out-of-condition as a result of inadequate storage procedures?

Answer: No. The FSMC must credit the SFA for the value of all USDA-donated foods received for use in the SFA's food service in a school year. In this manner, the value of all USDA-donated foods accrues to the nonprofit school food service, even if such foods go out-of-condition and are not used. The FSMC must, in effect, replace out-of-condition USDA-donated foods in the course of meeting its contractual obligation to provide the meal service. The SFA must ensure that the FSMC's storage procedures meet applicable State and local regulations.

23. **Question:** Must the SFA provide reimbursement to the FSMC for the value of USDA-donated foods that go out-of-condition, or for USDA-donated foods that are subject to a recall and are not replaced?

Answer: No. In most cases, inventory management will be the responsibility of the FSMC. However, if the contract indicates that the SFA is responsible for storage and inventory management, the contract may also provide for reimbursement to the FSMC for USDA-donated foods that go out-of-condition and for which the FSMC has already credited the SFA. This would also apply to USDA-donated foods that are subject to a recall and are not replaced, and for which the FSMC has already credited the SFA.

24. **Question:** May the FSMC choose to manage USDA-donated food inventories separate from other foods, in accordance with its contract with the SFA? Must the FSMC still credit the SFA for the value of USDA-donated foods received under such a system?

Answer: Yes, the FSMC may manage USDA-donated food inventories separate from other foods, in accordance with its contract with the SFA. However, the FSMC must credit the SFA for the value of all USDA-donated foods received in the school year, regardless of the system of inventory management utilized.

25. **Question:** The FSMC must use all USDA-donated ground beef, ground pork, and all processed end products, in the school food service, and may not use like commercial substitutes in their place. How would this work in a single inventory management system?

Answer: The FSMC must have a means of separately identifying such USDA-donated foods and end products, through their inventory recordkeeping system, or through markings on the cases or packages of the USDA-donated foods, in order to ensure their use in the school food service.

26. **Question:** In a cost-reimbursable contract, must the SFA ensure that the FSMC does not charge it for commercially purchased foods substituted for USDA-donated foods?

Answer: Yes. The FSMC, under a cost-reimbursable contract, must ensure that its system of inventory management does not result in the SFA being charged for USDA-donated foods. This requirement also applies to commercially purchased foods substituted for USDA-donated foods. The SFA must ensure FSMC compliance with this requirement in the course of its required monitoring of the FSMC food service and in the required annual reconciliation.

27. **Question:** May USDA-donated foods be transferred from one SFA to another SFA? Must crediting for the value of such USDA-donated foods also be transferred?

Answer: Yes, USDA-donated foods may be transferred from one SFA to another SFA, whether the SFA is self-operating or has an FSMC contract. FNS approval is not required for such a transfer. However, the FSMC must credit the SFA that originally ordered and received the USDA-donated foods, even if they end up being used by another SFA. The SFA receiving the transferred foods need not be credited.

Termination of Contract

28. **Question:** Is the FSMC required to use donated foods carried over from a previous contract in the SFA's food service? Does this include USDA-donated foods that are out-of-condition, or that cannot be efficiently utilized in the food service?

Answer: The FSMC must use all USDA-donated foods and processed end products carried over from a previous contract in the school food service, unless the SFA determines that such foods are out-of-condition. Out-of-condition foods must not be used.

29. **Question:** Is the FSMC required to credit the SFA for existing USDA-donated food inventory carried over from a previous contract that operated under the old rules (i.e., in which the value of USDA-donated foods was usually credited as the foods were used rather than received)? If so, at what value must such USDA-donated foods be credited? What about such USDA-donated foods that are determined to be out-of-condition?

Answer: The FSMC must credit the SFA for the value of USDA-donated foods carried over from a previous contract if the value of such foods has not already accrued to the school food service (i.e., if the value was not credited to the SFA by the previous FSMC). The value used to credit the SFA for such USDA-donated foods must be the value determined in accordance with 250.51(c). However, the FSMC is not required to credit the SFA for the value of such USDA-donated foods that are determined to be out-of-condition, and the SFA must ensure that such out-of-condition foods are not used in the school food service.

30. **Question:** May the FSMC be credited back for USDA-donated foods that remain with the SFA when a contract terminates, and is not extended or renewed? If not, must the "successor" FSMC also credit the SFA for the value of such USDA-donated foods?

Answer: No, the SFA may not refund any credit to the FSMC for the value of any USDA-donated foods that remain unused when a contract terminates, and is not extended or renewed. The "successor" FSMC is not required to credit the SFA for the value of such USDA-donated foods (that value would already have accrued to the nonprofit school food service), but must ensure use of the USDA-donated foods in the SFA food service.

31. **Question:** Must the FSMC return other unused USDA-donated foods, in addition to unused USDA-donated ground beef, ground pork, and processed end products, when a contract terminates, and is not extended or renewed? If so, is the SFA required to refund any credit received to the FSMC for such returned USDA-donated foods?

Answer: When the contract terminates, and is not extended or renewed, the FSMC must return unused USDA-donated ground beef, ground pork, and all processed end products, and must return other unused USDA-donated foods at the discretion of the SFA (i.e., in accordance with the contract). The SFA may not provide credit back to the FSMC for the value of any USDA-donated foods that remain unused when the contract terminates and is not extended or renewed,

Records and Reviews

32. **Question:** What documentation would the SFA use to verify receipt of USDA-donated foods in the required annual reconciliation? In some situations, would it have to rely on FSMC records of receipt to ensure that the FSMC has credited it for the value of all USDA-donated foods received in the school year?

Answer: If the FSMC is responsible for receiving shipments on behalf of the SFA, and retaining records of receipt of USDA-donated foods and end products, the SFA should verify receipt of USDA-donated food shipments through its electronic records, or by contacting TDA or the processor, and should not rely solely on the FSMC records.

33. **Question:** Who is responsible for ensuring that commercially purchased foods used in the SFA's food service in place of USDA-donated foods are "of the same generic identify, of U.S. origin, and of equal or better quality" than the USDA-donated foods?

Answer: The SFA must ensure this in the course of its required monitoring of the FSMC food service.

34. **Question:** Is TDA responsible for ensuring compliance with requirements for crediting and use of USDA-donated foods under FSMC contracts?

Answer: TDA is responsible for ensuring compliance with all requirements relating to FSMC contracts, including crediting for, and use of, USDA-donated foods.

FSMCs and Processors

35. **Question:** Can the FSMC send USDA-donated foods to a processor for processing into end products for use in the SFA's food service?

Answer: The FSMC may send USDA-donated foods from the SFA's storage facility to a processor for processing into end products for use in the SFA's food service, in accordance with its contract with the SFA. The FSMC must credit the SFA for the value of such USDA-donated foods, at the value established in federal regulations. Such USDA-donated foods are not subject to the processing requirements in the federal regulations. The FSMC may also order USDA-donated foods, in coordination with the SFA, for delivery to a processor, and procure end products processed from such USDA-donated foods on behalf of the SFA, in accordance with its contract with the SFA. Such USDA-donated foods are subject to processing requirements, and the FSMC must credit the SFA for the value of such USDA-donated foods at the processing agreement value (i.e., in accordance with TDA's agreement with the processor).

36. **Question:** Is the FSMC required to use end products procured by the SFA from a processor in the SFA's school food service?

Answer: Yes, however, the FSMC would not be required to credit the SFA for the value of USDA-donated foods in such end products, unless its contract with the SFA requires it to act as an intermediary between the processor and SFA in passing along the USDA-donated food value.

37. **Question:** Can the SFA require the FSMC to procure end products from a processor on its behalf?

Answer: The SFA may require the FSMC to procure (i.e., purchase) end products from a processor only if it has included such activity in its solicitation of the FSMC's service, and its contract with the FSMC. This includes procurement of end products from a processor with inventories of USDA-donated foods that the SFA previously ordered for delivery to the processor's facility for processing into end products.

38. **Question:** If the SFA has not included provision for FSMC procurement of end products from a processor on its behalf in its solicitation and contract, what options does the SFA have if it has previously ordered USDA-donated foods for delivery to a processor's facility for processing into end products?

Answer: In such case, the SFA may take one or more of the following actions:

- 1) Reach an agreement with the FSMC to procure such end products, as an amendment to the contract. In such case, the FSMC would be required to credit the SFA for the value of USDA-donated foods in the end products, at the processing agreement value, and would be required to use such end products in the SFA's food service. If the SFA wishes to amend their contract with the FSMC, they must contact TDA prior to the amendment.
- 2) Work with TDA to have the USDA-donated foods (or commercially purchased foods that meet substitution requirements in Subpart C of Part 250) delivered, unprocessed, to the SFA or FSMC storage facility. The FSMC would be required to credit the SFA for the value of such USDA-donated foods or commercial substitutes (250.51), at the value established in accordance with federal regulations, and must use such foods in the SFA's food service.
- 3) Procure end products from the processor directly. The FSMC would be required to use such end products in the SFA's food service, but would not be required to credit the SFA for the value of the USDA-donated foods in the end products (the SFA would receive such credit from the processor). However, any procurement of end products (or other foods) by the SFA should also be included in the solicitation, so as to reduce the FSMC charge (i.e., in a fixed-price contract) for providing the food service.
- 4) Voluntarily give up its inventory of USDA-donated foods at the processor. TDA may approve processing of the USDA-donated foods for delivery to another SFA that has procured such service from the processor, and that may efficiently use such foods.

Food Safety Recall Process

The commodity hold and recall process is used when a food safety issue is raised about a USDA-donated commodity. The new process pertains exclusively to purchased commodities delivered to approved SFAs and processors.

If you suspect a food safety issue, immediately contact your local or state health department. In

addition, please contact the USDA Food and Nutrition Service (FNS) through their commodity hotline number at 1-800-446-6991.

USDA Commodity Complaint Hotline

USDA, as well as TDA, wants to hear SFA concerns regarding the Food Distribution Program. If, in the judgment of SFA personnel, the commodities received do not meet specifications or if there is a problem relating to the appearance, texture, odor, etc. of the foods, contact TDA as soon as possible. TDA and USDA take all complaints seriously and acts appropriately to correct the deficiencies.

The Commodity Complaint Form can be found on the Texas Commodity System Web site at <http://tcs.tda.state.tx.us/agency>. Complaints can also be sent to:

Texas Department of Agriculture
Commodity Distribution Unit
P.O. Box 12847
Austin, TX 78711
Fax: (888) 237-4958

Additional Resources

Federal Emergency Management Agency — www.fema.gov
U.S. Department of Agriculture — www.fns.usda.gov

Optional

Temperature Recording Chart

Name of Recipient Agency	Month/Year
Location of Freezer/Cooler	

Day of Month	Signature/Time	Freezer	Freezer	Cooler	Cooler
1					
2					
3					
4					
5					
6					
7					
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Instructions

Physical Inventory Worksheet

PURPOSE

To maintain an inventory of all purchased food. This form is optional.

PROCEDURE

When To Prepare

Complete at the end of each month to record the amount and cost of purchased food used each month.

Number of Copies

Complete an original only.

Transmittal

Keep in the SFA's files.

How to Obtain Copies

Make additional copies as needed.

Form Retention

Public and charter schools keep for five years and private schools and RCCIs keep for three years from the end of the school year. Exception: If audit findings, claims or litigation have not been resolved by the end of the retention period, all forms and records must be retained until all issues are resolved.

DETAILED INSTRUCTIONS

For ease in taking a physical count of items in storage, it is suggested that the items be arranged according to groups in the storage area. Each group should be arranged in alphabetical order: for example, canned fruits and fruit juices - apples, apricots. Store items in cases or boxes marked with the date received and cost for each unit to facilitate taking inventory.

Column 1— Enter the name of the item, such as asparagus, green beans, mayonnaise.

Column 2—Describe the item shown in Column 1. For example:

Column 1	Column 2
Peaches	Yellow cling halves
	Heavy syrup

or

Green Beans French cut or whole

Column 3—Enter the size, such as 6/#10 case, 50# bag, and 10#can. If different sized containers of the same item are on hand, use a separate line for each size and a separate line for each different unit value of the same sized pack. Case lots are recorded in terms of individual units. For example, a case of six number 10 (6/#10) units would not be shown as one case. An inventory of foods stored in the freezer, refrigerator and kitchen must be included in the inventory.

Column 4—Enter the number of units (by size of the unit shown in column 3).

Column 5— Enter the value of the unit for the size shown in column 3. Use the value of the unit written on the package or unit.

Note: In completing columns 3, 4 and 5, you may want to show more than one unit size if you have large amounts of some items on hand, such as 6 full cases + 3 cans. Columns 3, 4 and 5, for each line entry refer to the same unit whether it is full cases or number 10 cans.

Column 6— Obtain the total value by multiplying the number of units (column 4) by the unit value (column 5), and enter the total in column 6.

Add column 6 (total value) for all pages for the inventory.

How to Use the Inventory for Reporting Food Costs

Monthly Inventory

Beginning Inventory	_____
+ Monthly Food Purchases	_____
— Ending Inventory	_____
Cost of Food Used	_____

Yearly Inventory

1st Month

Beginning inventory is taken but not reported
Monthly food purchases are reported

2nd – 11th Month

Report monthly food purchases

12th Month

Beginning inventory from first month	_____
+ Food purchases for 1 st – 11 th months	_____
– Ending inventory	_____
Cost of food used	_____