Section 14

USDA Foods

Section 14, USDA Foods

Section 14, USDA Foods Update Guide

June 8, 2026	Replaced references to *ARM Section 14a, USDA Foods Processing*. This section has been removed from the ARM and renamed to the "USDA Foods Processor Handbook." The handbook is located under *Policy/Handbook* on the *Food Distribution Program for Child Nutrition Programs* landing page on SquareMeals.
March 11, 2026	Clarified guidance on the following topics: - Online contract management system terminology - Monthly inventory usage
February 14, 2025	Clarified guidance on the following topics: - Using USDA Foods in CACFP. - Inspection of USDA Foods on Delivery (security seals). - Food Safety Resources (updated name of Temperature Recording Form) - Food Storage Temperatures
May 31, 2024	Updated Section 14, USDA Foods - Removed references to outdated forms and resources. - Replaced references to TX-UNPS with updated WBSCM information. - Updated guidance on *Transferring USDA Foods to Another CE*. - Removed unnecessary reference to CACFP cash in lieu.
May 19, 2023	Clarified guidance on the following topics: - Using USDA Foods Created new *Definitions* and *Contact Information* sections, located at the beginning of the *Administrator's Reference Manual (ARM)*. Removed definitions and contact information from this section.
September 29, 2022	Clarified guidance on the following topics: - Case minimums - Using USDA Foods
January 4, 2022	Updated *Section 14, USDA Foods* to clarify information on the following topic: - Food recalls

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USDA Foods

The United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) is charged with administering the Food Distribution Program (FDP). Depending on market conditions, the Agricultural Marketing Service (AMS) purchases the following products for the FDP: meats, poultry, fish, fruit, vegetables, egg products, dry beans, and tree nuts. These purchases assist farmers and commodity processors (1) to maintain stable prices for United States agricultural products and (2) to support school nutrition programs (SNPs) in providing meals to students.[1] The agricultural commodities purchased through this program are called USDA Foods (formerly USDA-donated commodities).

USDA Foods are distributed to state agencies for use by eligible organizations, including contracting entities (CEs) that operate National School Lunch Program (NSLP). Each CE with a *USDA Foods Agreement Between Contracting Entity and Texas Department of Agriculture* is awarded an amount of funds—entitlement—that is used to obtain USDA Foods products. TDA, then, allocates specific USDA Foods products to CEs based on periodic surveys of available USDA Foods.

USDA Foods in Child Nutrition Programs

An NSLP CE may use its allocated USDA Foods in the following programs:

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Fresh Fruit and Vegetable Program (FFVP)
  - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)
- Summer Food Service Program (SFSP)

USDA Foods for Other Food Service Activities

An NSLP CE may also use its allocated USDA Foods in the following:

- Other nonprofit school food service activities

  This includes a la carte foods sold to children; meals served to adults directly involved in the operation and administration of the nonprofit school food service, and other school staff; and training in nutrition, health, food service, or general home economics instruction for student.

- Child and Adult Care Food Program (CACFP) if excess USDA Foods are available

  Under CACFP At-Risk, NSLP CEs will automatically receive cash in lieu of USDA Foods as part of their reimbursement for suppers (and CACFP At-Risk breakfast and lunch if applicable). While CEs must not proactively allocate USDA Foods received for NSLP to the CACFP At-Risk programs, any excess USDA Foods remaining after NSLP/SBP service may be used in the CACFP At-Risk meal and/or snack services.

However, the CE's allocation of USDA Foods is based solely on its participation in the National School Lunch Program.

USDA Foods Agreement Between Contracting Entity and Texas Department of Agriculture

CEs are required to enter into a *USDA Foods Agreement Between Contracting Entity and Texas Department of Agriculture* with the Texas Department of Agriculture (TDA) in order to receive USDA Foods. The documents necessary to enter into this agreement for a contracting entity (CE) are included in the application packet for NSLP.

[1] Additional information on FDP is available at *www.ams.usda.gov*.

USDA Foods received by CEs must be used as required by federal regulations and cannot be sold, exchanged, or disposed of in any manner not allowed by regulation. CEs may charge for paid and reduced-price meals and a la carte[2] items which contain USDA Foods.

Roles and Responsibilities

The *Summary of USDA Foods Distribution Process Roles and Responsibilities Chart* outlines the roles and responsibilities in awarding USDA Foods entitlement and allocation of USDA Foods products.

Summary of USDA Foods Distribution Process Roles and Responsibilities Chart
USDA
• Announces each state's USDA Foods entitlement. • Works with agriculture to obtain suitable food products. • Provides USDA Foods product information to states. • Works with states to ship allocated USDA Foods.
TDA
• Surveys districts to assist USDA in determining what food items are needed by CEs. • Distributes each CE's USDA Foods entitlement and posts the amounts in the Web-Based Supply Chain Management System (WBSCM). • Creates WBSCM catalogs to offer USDA Foods to CEs. • Orders specific USDA Foods items in response to the CE requisitions placed in WBSCM. • Contracts with companies to receive, store, and deliver USDA Foods to CEs. • Monitors USDA Foods shipment and inventory to state-contracted warehouses. • Monitors CE usage of entitlement and USDA Foods inventory.
CE
• Completes requisitions in WBSCM to order USDA Foods based on the allocated entitlement. • Indicates participation in USDA Foods through the SNP application packet within the SNP Module in TDA's online contract management system. • Annually indicates participation in the DoD Fresh program through the DoD survey administered by TDA. • Takes possession of (receives) USDA Foods. • Utilizes allocated USDA Foods products. • Completes appropriate online forms to ship USDA Foods to properly procured processors. • Monitors its allocation of USDA Foods products and entitlement in WBSCM. • Monitors contracts to ensure the CE receives full credit for all USDA Food values. • Monitor's inventory and usage at the processor through processor tracking systems. • Monitor's inventory at warehouse through the warehouse's tracking system.

[2] While CEs may incorporate USDA Foods in a la carte items or may sell leftover breakfast or lunch food items as a la carte sales, TDA recommends that CEs use their USDA Foods in student meals to the greatest extent possible.

Processor
• Enters into an agreement with USDA and/or TDA to process USDA Foods as defined by USDA. • Ensures that there is an agreement with all distributors the processor uses as defined by USDA and/or TDA. • Secures performance bonds and surety bonds as required. • Provides Summary End Product Data Schedule (SEPDS) and provides updated SEPDS upon USDA approval to TDA as required. • Provides detailed product information to assist CEs in meeting menu and production requirements. • Delivers finished end products as described in the processing contract. • Takes possession of (receives) USDA Foods to make finished end products. • Invoices CEs for processing USDA Foods as described in the contract, including crediting the CE for the value of the use of its USDA Foods in the finished end products. • Maintains an accurate inventory and tracking system for USDA Foods received and delivered. • Provides routine (monthly) performance, inventory, and production reports to TDA and USDA 30 days after the reporting period. • Adheres to all applicable USDA, state, and local food safety regulations for the receipt, storage, and production of USDA Foods into finished end products. • Takes action in response to food product recalls as required by USDA. • Notifies TDA and CEs of prolonged production issues that will cause delivery delays and excess inventories.
Distributor
• Enters into an agreement, as defined by USDA, with USDA, TDA, processors, or CEs for the delivery of USDA Foods finished end products. • Stores and delivers USDA foods as stipulated in CE contracts and processor agreements. • Takes possession of (receives) USDA Foods. • Maintains an accurate inventory and tracking system for USDA Foods received and delivered. • Takes action in response to food product recalls as required by USDA.

Web-Based Supply Chain Management System (WBSCM)

TDA has transitioned the Ordering, Entitlement Management, and Receipting of USDA Foods to USDA's Web-Based Supply Chain Management System (WBSCM).

Through this system, CEs can do the following:

- Order USDA Foods.
- Monitor CE entitlement balances and shipments to warehouses.
- Monitor the CE's USDA Foods allocation.
- Access messages and announcements related to USDA Foods.

CEs will use TDA's online contract management system to indicate participation in USDA Foods program.

Allocation of USDA Foods

Except for bonus foods, USDA Foods are allocated to schools based on participation in NSLP and, whenever practical, should be used to prepare meals for NSLP. USDA Foods may also be used in the preparation of school breakfasts and other nonprofit school food services as described in the *Using*

USDA Foods subsection in this section. Revenues received from the use of USDA Foods must accrue to the CE's nonprofit school food service account.

Timeline for USDA Foods Allocation

The ordering process for USDA Foods begins in the first quarter of the calendar year,[3] so CEs are able to plan and place orders for meals during the upcoming school year.[4]

First Quarter of Calendar Year	– TDA sets an estimated price for each USDA Food product using the best USDA pricing information available. – TDA provides each CE with its estimated entitlement to spend on USDA Foods for the upcoming school year. – CEs request USDA Foods to be used in the following school year by submitting orders in WBSCM.
Second Quarter of Calendar Year	– CEs submit USDA Food orders into the USDA system called Web-based Supply Chain Management System (WBSCM).
Throughout School Year	– TDA allocates USDA Foods to CEs using a weighted average price. The weighted average price is different from the estimated price used during the first quarter of the year. – TDA alerts CEs to order additional USDA Foods as they become available. – CEs monitor their USDA Foods inventory to ensure that USDA Foods are being effectively incorporated into menus. – TDA monitors CE inventories for excessive carryover.

Allocation Information

CEs will use the reporting features in WBSCM to obtain information on:

- Billing Entitlement
- Allocated USDA Foods
- Department of Defense Fresh Fruit and Vegetable Program (DoD Fresh)[5] Allocations
- Unfilled Requests
- Available Entitlement
- Bonus Foods

USDA Bonus Foods

A CE may order designated USDA bonus foods if the CE can use them without waste. Bonus foods do not displace USDA Foods that have been ordered on behalf of the CE or displace food products that have been properly procured.

If a CE orders USDA bonus foods and then wants to modify its regular USDA Foods order, TDA may be able to adjust the CE's entitlement if the CE's regular USDA Foods order has not already been submitted to USDA. However, TDA cannot adjust a CE's entitlement order after a CE's regular USDA Foods order has been submitted to USDA.

When bonus foods are available, TDA will notify eligible CEs and provide ordering instructions.

[3] January 1 to December 31
[4] July 1 to June 30
[5] This program is not the same program as the NSLP Fresh Fruit and Vegetable Program (FFVP).

Available USDA Foods Items
CEs should periodically consult the food catalog in WBSCM to find available food items.

Bulk USDA Foods
A CE may choose to have USDA Foods delivered in bulk packaging. These products are packaged in large quantities and sizes suitable for making finished end products and are shipped to a processor designated by the CE to create the finished end products.[6] Bulk USDA Foods[7] are not intended to be prepared and served after delivery—instead, these products are intended to be turned into finished end products.

Regular USDA Foods
A CE may choose to receive regular USDA Foods (previously called Brown Box). Regular USDA Foods are ready for the CE to prepare and serve without further processing.[8]

United States Department of Defense Fresh Fruit and Vegetable Program (DoD Fresh)
CEs may request to allocate some or all of their USDA Foods entitlement to purchase produce through the United States Department of Defense Fresh Fruit and Vegetable Program (DoD Fresh).

[NOTE: The United States Department of Defense Fresh Fruit and Vegetable Program or DoD Fresh is not the same program as the NSLP Fresh Fruit and Vegetable Program (FFVP).]

Once the CE's USDA Foods entitlement is spent, the CE cannot purchase (or piggyback) additional DoD Fresh produce directly from the DoD Fresh vendor through the DoD Fresh Fruit and Vegetable Order Receipt System (FFAVORS). Instead, the CE must procure additional produce through an appropriate procurement method. A DoD Fresh vendor may be awarded the contract.

Finished End Products
CEs may procure processors to create finished end products made from USDA Foods. If a CE chooses to use a processor, contractors that create finished end products must be properly procured.[9] In all cases, CEs must maintain proper oversight for all contracts to ensure compliance with all program requirements.

Processor Contracts
Even though regulations require that all companies that process USDA Foods have an agreement with TDA, the services of these processors must still be properly procured[10] by the CE before the CE can use one of the approved processors. See the *USDA Foods Processor Handbook* (located under the *Food Distribution Program for Child Nutrition Programs* landing page on SquareMeals) for detailed guidance on processor contracts, including, but not limited to, the following:

- Contract specifications, technical requirements, and terms and conditions
- Involvement of food service management companies (FSMCs) in processor contracts

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6 Some products more commonly shipped as regular USDA Foods may be bulk shipped if the products are intended to be turned into finished end products.
For Example: Grain-based product which incorporates canned fruit.

7 Bulk USDA Foods include, but are not limited to, cheese in barrels as well as boxes of coarse cut ground beef.

8 Some products more commonly shipped as regular USDA Foods may be bulk shipped if the products are intended to be turned into finished end products.
For Example: Grain-based product which incorporates canned fruit.

9 See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on procuring processors.

10 See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on procurement requirements.

- Use of purchasing cooperatives
- Credit for sale of by-products
- Finished end product data schedules
- Finished end product labeling[11]

Food Service Management Contract (FSMC) and Processor Contracts

If a CE has contracted with an FSMC to operate the program, the following guidance must be used:

- FSMCs may assist the CE in procuring processors for finished end product contracts, but the CE must award and sign the contract. Moreover, CEs must ensure that there is no conflict of interest or duplication of services between the CE's FSMC and the company or agency awarded the contract. There is a conflict of interest and possible duplication of services if the contract is awarded to FSMC-owned or affiliated vendor.
- Finished end products must be properly procured.
- FSMC contracts must ensure that the CE receives credit, rebates, or discounts for the value of USDA Foods.

Distributor Contracts

If a CE uses a distributor for USDA Foods, the distributor must be properly procured. See the *USDA Foods Processor Handbook* on SquareMeals for detailed guidance on distributor contracts.

Purchasing Cooperatives (Cooperatives)

CEs participating in NSLP commonly procure finished end products made from USDA Foods through purchasing cooperatives (cooperatives).[12] These cooperatives may be interlocal/governmental, nonprofit, or for profit. See *Administrator's Reference Manual (ARM), Section 17, Procurement* for more detailed information on types of cooperatives and requirements related to procurement of and by cooperatives and third-party entity.

CEs that participate in purchasing cooperatives must ensure that their cooperative has a written agreement (or contract) that defines the roles and responsibilities and terms and conditions for membership.

When the CE has procured a contractor, such as an agent or third party, to act on its behalf, the CE is still responsible to oversee the use of USDA Foods and ensure that the services provided under the contract are in compliance with USDA requirements.

When the cooperative procures on behalf of the CE, the CE must ensure that the following procurement guidance is implemented:

- Proper procurement processes for all purchases, including proper procurement of processors to provide finished end products from USDA Foods, including, but not limited to, avoiding conflicts of interest when contracts are awarded to FSMC-owned or affiliated vendors.
- Application of credits, rebates, discounts as required, including any vendor fees or other types of fees collected by cooperative on behalf of the CE.

[11] Also see *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional guidance on labeling.

[12] Purchasing cooperatives may also act on behalf of member CEs to purchase commercial products.

[NOTE: If a cooperative collects a vendor fee or other type of fee as a method of covering the cost of cooperative services, USDA guidance states that these fees are credits owed to the CE. Therefore, the fees must be paid to the CEs. On receipt of the fees, the CE will, then, pay the cooperative the amount owed to the cooperative for services provided.]

- Accurate submission of Bulk USDA Foods USDA Foods.
- Monitoring USDA Foods inventory to ensure the CE uses its inventory in a timely manner.
- Proper storage USDA Foods which includes obtaining the services of a commercial processor, storage facility, food service management company (FSMC), or other commercial entities.
- Retention of inventory records for USDA Foods and making records available that demonstrate compliance with all regulations.
- Recodes provided to the CE that demonstrate compliance with all regulations.

Title to USDA Foods

The CE is responsible for the care and use of USDA Foods when the products are received by the CE, the cooperative storage facility, or the CE's distributor. The CE has received the USDA Foods products, i.e., title to the USDA Foods, when the products are delivered to the direct ship storage facility or the CE's distributor.

For distributors and processors, title to USDA Foods transfers as follows:

Processor

When a processor delivers USDA Foods, title to the USDA Foods transfers to the CE on acceptance of the finished end products at the time and place of the delivery.

Distributor Acting on Behalf of the CE

When a CE contracts with a distributor to act as an authorized agent, title to finished end products transfers from a processor to the CE at the time and place the contracted distributor accepts the delivery of the food products.

In all cases, the processor and/or distributor is responsible for the quality of the USDA Foods while the USDA Foods are in their possession. See the *Loss of USDA Foods* and *Inspection of USDA Foods on Delivery or Pickup* subsections in this section for additional information on this topic.

Receiving USDA Foods

A CE is the agency or organization that receives USDA Foods through a contract with TDA or another CE. CEs may receive USDA Foods through direct shipping (direct delivery) or from a state-contracted warehouse.

Direct Ship (or Direct Delivery)

A CE may choose to have its USDA Foods delivered to a CE or cooperative storage facility if the storage facility is able to receive and store large quantities of USDA Foods—a truckload of about 40,000 pounds.[13] Direct ship storage facilities must be approved by TDA.

[13] Processors must be procured as described in *Administrator's Reference Manual (ARM), Section 17, Procurement*. When a CE plans to procure a larger quantity of products than its USDA Foods allocation, it may combine the procurement for the USDA Foods finished end products and commercial products in the same procurement and contract. In these cases, the CE is responsible for tracking all values credited for the USDA Foods as well as the credits, rebates, and discounts

These facilities must also be capable of meeting the criteria for safe storage of USDA Foods.[14]

State-Contracted Warehouse

TDA has divided the state into regions to more efficiently manage the delivery of USDA Foods.[15] For each region, TDA has procured a state-contracted warehouse to receive, store, and distribute USDA Foods to CEs.[16] If the CE chooses to use a state-contracted warehouse, the CE must indicate this choice during the annual program agreement[17] renewal period. CEs are responsible for paying for the services of state-contracted warehouses.

When a CE's USDA Foods are delivered to a state-contracted warehouse initially, the CE assumes responsibility for the care and use of the foods when they are delivered to or picked up by the CE.

The following requirements apply to a CEs' inventory at state-contracted warehouses:

Free Storage

The state-contracted warehouse provides CEs with free storage for 45 days after the date of allocation.

Short-Term and Long-Term Storage (Sometimes Called Private Storage)

Short-Term or Short-Term Private Storage

Starting on the 46th day, but before the 181st day, after the date of allocation, the CE has the following options:

1. Have the USDA Foods delivered to a CE storage facility—If the CE has USDA Foods delivered to a CE storage facility, the CE does not incur additional storage fees from the state-contracted warehouse.
2. Leave the USDA Foods in the state-contracted warehouse—If the CE leaves the USDA Foods in the state-contracted warehouse, the CE must pay storage fees since the storage is now short-term storage or short-term private storage.

Long-Term or Long-Term Private Storage

After six (6) months (181 days) from the date of allocation, if the CE continues to leave USDA Foods in state-contracted warehouse storage, the state-contracted warehouse may double the short-term storage rate. After six (6) months, the storage is long-term storage or long-term private storage.

Information Box 1

State-Contracted Warehouse Storage of USDA Foods

Short-Term Storage begins with the 46th day of storage from the date of allocation.

Long-Term Storage begins at six months (or 181 days) from the date of allocation. For products in long-term storage, the state-contracted warehouse may charge double the short-term storage rate.

applied to commercial products. See the *USDA Foods Processor Handbook* (located on SquareMeals under the *Food Distribution Program for Child Nutrition Programs* landing page) for additional information on processors.

14 See the *Storage of USDA Foods* subtopic in this section for additional information on safe storage.

15 Every five years, TDA selects state-contracted warehouses through competitive bid. TDA posts information on the TDA contracted warehouses at *www.SquareMeals.org/Programs/FoodDistributionProgramforCNPrograms/TDAContractedWarehouses.aspx*.

16 For some regions, the state-contracted warehouse is not physically located inside the region. For this reason, TDA has also designated an Ideal City for each region.

17 *USDA Foods Agreement Between Contracting Entity and Texas Department of Agriculture* with the Texas Department of Agriculture (TDA)

In all cases, CEs should plan to use USDA Foods within 6 months of being allocated the food items to avoid food loss due to damage or spoilage. Short shelf-life items should be utilized immediately after allocation to avoid spoilage.

CEs are expected to use approximately 10% of their USDA Foods inventories each month, including items for processing and DoD Fresh entitlement balances. Annually, TDA performs a usage analysis of each CE's inventory. If TDA determines there is excessive inventory of any food items, TDA may remove those food items from the CE's control and may limit future ordering of those items. TDA may also reduce a CE's DoD Fresh entitlement balance if the CE does not regularly use its full allotted amount.

Delivery or Pickup of Products at the State-Contracted Warehouse

CEs may have products delivered to the CE or may pick up products stored at the state-contracted warehouse:

- Delivery—State-contracted warehouses deliver USDA Foods to the CE. State-contracted warehouses schedule deliveries between 6:30 a.m. and 2:30 p.m. State-contracted warehouses must notify CEs of a delivery schedule change at least 30 days in advance of the schedule change.
- Pickup—A CE may pick up inventory from the state-contracted warehouse between 8:00 a.m. and 3:00 p.m. Pickups must be scheduled in advance.

The state-contracted warehouse receipts for the USDA Foods shipments in WBSCM.

First Delivery or Pickup of the Month

For any calendar month, the state-contracted warehouse may charge the CE up to the contracted rate for the first delivery or pickup of USDA Foods regardless of the number of cases of food. This includes finished end products.

Minimum Number of Case Delivered (Case Minimum)

TDA is not establishing pre-determined case minimums, or a 100-mile rule as has been done in the past. Contracted warehouses determine any case minimums or distance requirements as a part of their contract with TDA. CEs may find this information, including the contracted warehouse's fees, at SquareMeals.org under the Food Distribution Program for NSLP.

State-Contracted Warehouse Delivery Charge

CEs are charged delivery fees and fuel surcharges for deliveries of USDA Foods. The delivery fees are approved by TDA each year and are updated annually. A fuel surcharge is added to the delivery costs of USDA Foods. The fuel surcharge appears on the delivery invoice and fluctuates based on fuel prices.

Information Box 3

Explanation of Delivery Charges

The delivery charge is calculated by adding the per case charge for the number of cases delivered (or minimum number if applicable) plus the fuel charge, if applicable, for each actual case delivered.

[NOTE: If the number of cases delivered is less than the minimum, the per case charge is calculating using the minimum number. The fuel charge is calculated using the actual number of cases delivered, not the minimum.]

Number of Cases Delivered	x	Per Case Fee	+	Fuel Charge (if applicable)	x	Number Actual Cases Delivered	=	Delivery Charge

Inspection of USDA Foods on Delivery or Pickup

Before taking possession of and signing for USDA Foods (whether delivered or picked up), the CE must inspect the bill of lading (BOL) or invoice to ensure that the following requirements are met:

- Security seal is intact.
- Temperature of product is acceptable for frozen and refrigerated foods.
- Delivered product belongs to the CE.
- Quantity is correct.
- Products are in good condition.

Products That Are Not in Good Condition

When the CE discovers that USDA Foods are not in good condition (commonly called *out-of-condition*) at the time of delivery or pickup, the CE must use the following guidance based on whether the CE accepts or refuses the delivery of the USDA Foods products.

Accept the USDA Foods

The CE may accept the USDA Foods products delivered if

1. some, but not a major portion, of the delivered products are out-of-condition and
2. the delivered products have only minor quantity discrepancies from quantity ordered.

In this case, the CE must take the following actions:

- Segregate the out-of-condition foods.
- Notify[18] TDA about the out-of-condition foods.

Refuse to Accept the USDA Foods

The CE may refuse some of or all SDA Foods products delivered in the following conditions:

- Unsafe for consumption based on evidence of odors.
- Signs of infestation (dead insects or nesting materials).
- Damage to the inner or outer containers.

[18] See the Contact Information for the TDA page at the beginning of this manual.

- Damage to actual products.
- Unsafe storage or transportation temperatures.

When a CE refuses to accept out-of-condition products, the actions the CE will take is based on the cause for the out-of-condition food products.

Is the out-of-condition issue caused by the warehouse or the manufacturer?		
	Identified on Delivery	**Identified after Delivery**
Warehouse	1. Refuse all or a portion of the affected products as appropriate to the condition of the products. 2. Contact and work with the warehouse to resolve the issue. **If unable to resolve the issue,** 3. Contact TDA for further assistance.	1. Contact and work with the warehouse to resolve the issue. **If unable to resolve the issue,** 2. Contact TDA[19] for further assistance.
Manufacturer	1. Refuse all or a portion of affected products as appropriate to the condition of the products. 2. Take pictures of out-of-condition food items and packaging to demonstrate condition. 3. Complete the TDA complaint form. 4. Send completed complaint form and pictures to TDA.	1. Take pictures of out-of-condition food items and packaging to demonstrate condition. 2. Complete the TDA complaint form. 3. Send completed complaint form and pictures to TDA.

Replacement for Out-of-Condition USDA Foods

In all cases, the processor, distributor, or vendor is responsible for replacement of USDA Foods or finished end products when delivered out-of-condition. This includes entitlement and bonus foods. The processor, distributor, or vendor may reimburse the CE for the value of the USDA Foods at the time of delivery (or another value as determined by USDA) or credit the CE's entitlement. See the *Loss of USDA Foods* subsection in this section for additional guidance on this topic.

Buy American

All finished end products must meet the requirements for the Buy American provisions.[20] CEs are required to verify that all products received as USDA Foods finished end products have a label that indicates the product meets the Buy American provisions. [21]

The Buy American requirements are also applicable to food purchases made with cash-in lieu-of-donated-foods received for the Child and Adult Care Food Program (CACFP). To meet this requirement, CEs are required to verify that all food products purchased with cash-in-lieu funds must have a label that indicates the product meets the Buy American provisions.

Receipt of Non-U.S. Food Products

If the CE receives USDA Foods or finished end products made from USDA Foods that are not marked as U.S. products[22] the product cannot be accepted. This incidence needs to be reported to TDA immediately.

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[19] See the *Contact Information for the Texas Department of Agriculture* page at the beginning of this manual for email and phone contact information.

[20] For more information on the Buy American provisions, see *Administrator's Reference Manual (ARM), Section 17, Procurement*.

[21] See *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional information on the requirements for product labeling.

[22] See the *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional information on food product labeling requirements and *Section 17, Procurement* for more information on Buy American.

Loss of USDA Foods

Processor Responsibility

The processor must compensate the CE, as appropriate, for the loss of USDA Foods, or for the loss of commercially purchased foods substituted for USDA Foods. Such loss may occur (1) if the processor fails to meet the required processing yield of USDA Foods or fails to produce finished end products that meet required specifications; (2) if USDA Foods are spoiled, damaged, or otherwise adulterated at a processing facility; or (3) if finished end products are improperly distributed. For detailed guidance on the processor's response in these situations, see the *USDA Foods Processor Handbook* on SquareMeals.

Distributor Responsibility

Distributors must also compensate CEs for substandard, lost, or damaged finished end products made from USDA Foods when the USDA Foods are in the control of the distributor. For detailed guidance on the methods for compensating the CE in these situations, see the *USDA Foods Processor Handbook* on SquareMeals.

CE Responsibility

When the CE receives the delivery of USDA Foods, the CE is responsible for ensuring that products are safeguarded. If a loss is caused by embezzlement, theft, or fraud, the CE must report the loss to TDA. Documentation must include the date, product description, and reason for loss.

Using USDA Foods

USDA Foods are intended to be used in meals and activities that primarily benefit school children. In all cases, any income (revenue) received from meal service which includes USDA Foods must accrue to the CE's nonprofit school food service account.

CEs may use USDA Foods for the following purposes:

A La Carte Food Items

A CE may sell USDA Foods as a la carte food items. Income from the sale of a la carte items must accrue to the CE's nonprofit food service account.

Adult Meals

A CE may include USDA Foods in meals or food items for adults. Income from the sale of adult meals must accrue to the CE's nonprofit food service account.

Classroom Instruction

A CE may use USDA Foods to train students in home economics, in teaching nutrition, and for health-related activities. This includes training college home economic students if the same facilities and instructors are used for training both high school and college students.

Food items made in class using USDA Foods can be served to non-students as part of a class learning activity. Any leftover foods from class may be given to children for consumption on school premises.

[NOTE: The SNP may charge fees for these types of class activities as long as all funds collected from the fees accrue to the SNP account.]

Other School-Related Functions

A CE may also use USDA Foods in the preparation for any school-related functions where the primary beneficiaries of the meals/food products are the students if the following conditions are met:

1. CEs must ensure that USDA Foods are being used to benefit the

intended recipients: the students participating in NSLP.

2. The CE must ensure that the SNP is reimbursed for all costs related to the use of USDA Foods for meals/food products served at other school-related functions.[23]

Student Meals

CEs may use USDA Foods to prepare reimbursable meals and other meal service activities (a la carte sales and suppers and snacks in RCCIs).

State-Contracted Warehouse Storage Beyond 45 Days

TDA contacts each CE periodically while inventory is in short-term storage (46 to 180 days) to raise awareness that the CE has USDA Foods products that have not been used (still in private storage). When excess USDA Foods inventory is in short-term storage, the CE has two choices:

- Take immediate delivery of the inventory.
- Transfer the inventory to a different NSLP operator.[24]

When excess USDA Foods inventory goes into long-term private storage, TDA may also reallocate the inventory to a CE that can use food items more quickly. If this occurs, the first CE loses its entitlement, and TDA will not replace it.

CEs that wish to transfer USDA Foods to another CE must contact TDA for assistance.

Unacceptable Use of USDA Foods

USDA Foods awarded to NSLP operators are intended to be used in meals for students. While there are other appropriate uses as described in the explanation under the *Using USDA Foods* in the subsection above, there are also uses that are not acceptable. Examples of unacceptable uses of USDA Foods include, but are not limited to, the following:

- Catering or special functions conducted outside of the nonprofit school food service operation.
- Catering operations for schools not participating in NSLP.
- Catering for childcare centers not participating in the Child and Adult Care Food Program (CACFP).
- USDA Foods beef patties served at a football banquet where the total cost of preparing the meals and USDA Foods value is not returned to the nonprofit school food service account.
- USDA Foods products used in baking items that are given or sold exclusively to adults (i.e., faculty and parent teacher associations) or the public.
- Catering banquets for the chamber of commerce, partisan political functions, or other community organizations.
- Supplying refreshments for any other non-student related event.

[23] See *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on this topic.
[24] See the *Transferring USDA Foods to Another CE* subsection in this section for additional information on this topic.

Storage of USDA Foods

CEs must maintain an inventory of USDA Foods but are not required to maintain a separate USDA Foods inventory from its commercial purchased product inventory as long as the CE has a method to track products from both sources.

The CE's inventory management system[25] must be able to report the following information:

- Whether a food product is sourced from USDA Foods, a commercial source, or a local source as well as an indication that a commercial product was substituted for a USDA Foods product.
- Location of USDA Foods product (including, but not limited to, CE facility, processor, or state-contracted warehouse).
- Value of each USDA Foods product through one of three methods—
  - TDA value.
  - Net cost of the product.
  - Combined weighted average of TDA value and net cost for the USDA Foods product.
- Quantity for USDA Foods products and commercial food products which includes amount received by date and amount used by date. If the food product is sourced from both USDA Foods and another source, the system must be able to report the quantity for each source.
- Tracking information for any USDA Foods used during a disaster and the replacement of those foods.
- Tracking system to assist the CE in managing the timely use of USDA Foods in order to
  - limit additional costs associated with short-term storage or long-term storage and
  - avoid exceeding the 180-day limit for storage.
- Documentation demonstrating that all inventoried foods are stored in a manner that meets all state and local health and safety requirements.

TDA has created the *Physical Inventory of Food Purchased Form*[26] for maintaining general information on a CE's inventory. If this form or another method is used, the CE must ensure that all requirements listed above are met.

Commingling USDA Foods and Commercially Purchased Foods

The processor may commingle USDA Foods and commercially purchased foods, unless the processing agreement/contract specifically stipulates that the USDA Foods must be used in processing, and not substituted, or the USDA Foods have been backhauled from a CE. However, if commingling is used, it must be performed in a manner that ensures the safe and efficient use of USDA Foods, as well as in compliance with substitution requirements or the reporting information about USDA Foods inventories. The processor must also ensure that commingling of finished end products and other food products, either at its facility or at the facility of a commercial distributor, ensures the sale and

[25] The use of USDA Foods products in the CE's inventory should be reflected in the CE's food production records.
[26] Available at *www.SquareMeals.org*.

delivery of end products that meet the processing requirements, including affixing the applicable USDA certification stamp to the exterior shipping containers of end products.

Distributors

Distributors may also commingle USDA Foods and commercially purchased foods when the net off invoice method of crediting for USDA Foods is used.[27] The processor requirements for commingling apply to distributor commingling.

CE with an FSMC Contract

If a CE uses an FSMC, the CE's FSMC solicitation and contract may specifically prohibit the commingling of USDA Foods with commercially purchased foods. If the contract, however, does not prohibit commingling, the FSMC may store the CE's USDA Foods inventory together with commercial foods it has purchased for the CE's use.[28]

Commingling does not eliminate the requirement that FSMC's inventory system have a method for identifying USDA Foods (or approved substitutes) that have been used and/or inventory that remains in its storage facility.

Excess Carryover Inventory at the Processors

Beginning in School Year (SY) 2019-2020, TDA will review and evaluate each CE's USDA Foods inventory management to ensure that each CE uses its allocated USDA Foods in a timely manner. Any USDA Foods balance remaining in the processor's inventory at the end of the school year (June 30) is excess carryover inventory.

On July 1, any USDA Foods excess carryover remaining in a CE's inventory will be transferred to the state agency's (TDA's) account for redistribution. When excess carryover is transferred to the state, processors will also update their tracking systems to indicate the transfers.[29] Excess carryover inventory for each CE is calculated using the following formula:

USDA Foods Carryover Inventory as of June 30	-	USDA Foods Inventory Used as of July 1	=	Unused USDA Foods Carryover Inventory (If this number is zero or negative, the CE does not have carryover inventory. A positive number is excess carryover inventory.)
$10,000		$5,000		$5,000

Care and Storage of USDA Foods

CEs receiving USDA Foods must implement procedures to ensure that the safety[30] and quality of the USDA Foods are maintained. All USDA Foods, and substitutions if applicable, must be stored in a manner that meets local and state health and safety standards.

Food Delivery or Pickup

Check each delivery or pickup of USDA Foods for possible shortages and damage before the foods are accepted.

- The product and the quantity in the delivery or pickup must be the same as described on the delivery document (such as the bill of lading or the

[27] See the Crediting for USDA Foods Values subsection in this section for additional information on this topic.
[28] The FSMC must use all finished end products as well as all USDA Foods in the CE's food service. This includes USDA donated ground beef and ground pork. If the FSMC substitutes commercially purchased foods, the foods must be of the same generic identity, of U.S. origin, and of equal or better quality than the USDA Foods.
[29] There is no longer an exception which allows a CE to retain an excess carryover balance.
[30] USDA Foods, as with all other food used in the SNP, must comply with the school food safety program. Refer to *Administrator's Reference Manual (ARM), Section 26, Food Safety*, for information regarding the school food safety program and Hazard Analysis Critical Control Point (HACCP) requirements.

invoice) unless exceptions are noted.[31]

- Refrigerated products must be examined to ensure the temperature of the product is acceptable by the applicable food safety standards, and the products are in good condition. This action is 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 CE's Hazard Analysis and Critical Control Points (HACCP) procedures for managing unsafe or infested food.[32]

Protecting USDA Foods from Infestation

Safeguards must be taken to protect USDA Foods from infestation in the storage facility.

- Facilities must be inspected routinely to ensure that there are no external openings in the structure of the building where foods are stored, which would allow rodent and insect infestation. TDA recommends that USDA Foods be inspected monthly.
- Facilities must use a proactive method to prevent infestation. This may include pesticide, traps, or other food safe method of eradication. Because some pesticides and extermination chemicals may not be safe for foods, CEs should ensure that food safe products are used.

The United States Environmental Protection Agency (EPA) has developed the following resources about protecting foods from infestation that provide information specific to school food service operations as well as general food service operations:

- *Keeping Rodents Out of Your School* available at *www.epa.gov/managing-pests-schools/keeping-rodents-out-your-school*
- *The Basics of School IPM (Integrated Pest Management)* available at *https://www.epa.gov/managing-pests-schools/basics-school-ipm*
- *Integrated Pest Management in Child Care Centers: Protecting our Children from Pests and Pesticides* available at *www.epa.gov/childcare/integrated-pest-management-child-care-centers-protecting-our-children-pests-and-pesticides*

Food Safety

Whether the food storage facilities are controlled by the CE or an entity (i.e., cooperative) acting on behalf of the CE outside of the state-contracted warehouse system, the USDA Foods must be stored in safe and secure conditions. The CE is responsible for (1) determining which regulations apply no matter whether the storage is controlled by the CE or not and (2) ensuring that the facility has an adequate plan and all necessary permits.[33]

- *Hazard Analysis Critical Control Point (HACCP)*—Apply the procedures described in the storage facility's Hazard Analysis Critical Control Point (HACCP) plan to ensure that food

[31] See the *Inspection of USDA Foods on Delivery or Pickup* subsection in this section for additional information on this topic.
[32] See *Administrator's Reference Manual (ARM), Section 26, Food Safety* for additional information on HACCP procedures.
[33] For additional information on food safety, see the *Administrator's Reference Manual (ARM), Section 26, Food Safety*. Insuring safe and secure storage of USDA Foods at state-contracted warehouse is the responsibility of TDA.

is kept at a safe temperature, in safe conditions, and other applicable requirements year-round. This includes, but is not limited to, the following safety practices:

  - Store foods in freezers and coolers that are thoroughly cleaned and dried, operating properly, and in good repair.
  - Monitor the temperature of freezers and coolers routinely. Temperatures in the refrigerators and freezers should be taken and recorded daily and recorded in a temperature log. Equipping freezers and coolers with an alarm system for easy detection of high temperatures and power failures may also help to prevent food spoilage.
  - Check freezers and coolers after a power failure to make sure the units are operating properly, and stored foods are still in good condition.
  - Place foods on shelves with a one- or two-inch space left between the walls and other food containers to ensure proper air circulation. In walk-in units, place foods on dunnage[34] platforms rather than directly on the floor and stack foods properly to prevent falling and possible damage.
  - Repair or replace malfunctioning equipment.

Information Box 4

Food Safety Resources

The following resources provide useful information on methods to ensure food safety.

[NOTE: Some of the resources are not specific to USDA Foods, but the information they provide is still applicable. SNP programs are also required to use retail food safety standards, not home food safety standards.]

Texas Department of State Health Services

- Regulations related to food establishments for the state of Texas at *https://dshs.texas.gov/foodestablishments/laws-rules.aspx*

Texas Department of Agriculture

- *Temperature Recording Form* available at *www.SquareMeals.org*
- *Administrator's Reference Manual, Section 26, Food Safety* available at *www.SquareMeals.org*

United States Department of Agriculture

- *USDA Foods Product Information Sheets* available at *https://www.fns.usda.gov/fdd/nslp-usda-foods-product-information-sheets*

United States Food and Drug Administration (FDA)

- *Are You Storing Food Safely* available at *www.fda.gov/ForConsumers/ConsumerUpdates/ucm093704.htm*
- *Refrigerator & Freezer Storage Chart* available at *https://www.fda.gov/media/74435/download*
- *Refrigerator Thermometers: Cold Facts about Food Safety* available at *www.fda.gov/Food/ResourcesForYou/Consumers/ucm253954.htm*
- *Food and Drug Administration (FDA) HACCP Guidance* available at *https://www.fda.gov/food/hazard-analysis-critical-control-point-haccp/retail-food-service-haccp*

- *Security*—Place locks on freezers and coolers and all building doors where USDA Foods are stored. This will help prevent theft and vandalism.
- *Forecasting*—Limit ordering to quantities that can be properly stored and utilized without waste.

[34] Structures that allow users to store food off the floor, away from walls, and at different height levels which increases ventilation and helps prevent spoilage and contamination.

Maintaining the Quality of Grains and Grain Products

As with all foods, use first in, first out (FIFO) principles when storing whole-grain items. Because whole-grain ingredients (e.g., whole-wheat flour, brown rice) retain the bran and the oil-rich germ, these food items may turn rancid when stored in warm areas and have a shorter shelf life than their refined counterparts.

To increase shelf life, store these products in a cool, dry place in airtight containers. From May through September, grain products must be refrigerated. At other times of the year, if products will not be used within a short period of time, they should be stored in the refrigerator or freezer.

Transferring USDA Foods to Another CE

CEs may transfer USDA Foods to other entities or organizations operating a USDA Child Nutrition Program (CNP) in the following situations:

Type of Transfer	CE Actions
• CEs may transfer USDA Foods to other participating NSLP CEs with TDA approval. • CEs may transfer USDA Foods to a CE operating a different child nutrition program (CNP) with TDA approval.[35]	For a CE-to-CE transfer, • CEs must use the updated electronic ***Authorization to Transfer USDA Foods, Form H4529***[36] to transfer USDA Foods. Both the transferring and receiving CEs must sign the form. • CEs must also attach a processor commodity calculator[37] to justify the need and ability of the receiving CE to use the additional pounds. • The request form and commodity calculator must be submitted to TDA in order for the transfer to be approved.[38]
• CEs may transfer USDA Foods to the state agency (TDA) account for redistribution.	• The CE must contact TDA to make arrangements for this transfer.[39] TDA will provide instructions at the time of the request.
• CEs may transfer USDA Foods as described in the ***USDA Food Used During a Presidentially Declared Disaster*** subsection in this section.	• TDA will contact CEs and provide instructions if this occurs.

When a CE transfers USDA Foods to another School Nutrition Program (SNP) CE, a CE operating a different Child Nutrition Program (CNP), or TDA, the CE transferring the USDA Foods will not be given additional entitlement to replace the transferred USDA Foods. If the transfer is made for a presidentially declared disaster or emergency, the CE may receive replacement USDA Foods or substituted USDA Foods. In all cases, the transferring and receiving CE must retain documentation of what food items were transferred and when.

[35] Such programs include, but are not limited to, The Emergency Food Assistance Program (TEFAP), Child and Adult Care Food Program (CACFP), and the Summer Food Service Program (SFSP). TDA will forward to requests to USDA as appropriate.
[36] Electronic form and instructions are available at *SquareMeals.org*, Food Distribution Program Forms tab.
[37] Each processor uses its own processor commodity calculator for ordering. CEs must use the individual processor tool when submitting a request to transfer USDA Foods to another CE.
[38] See the Contract Information for TDA at the beginning of this manual for contact information.
[39] See the Contract Information for TDA at the beginning of this manual for contact information.

Warehouse Delivery Errors
If the warehouse delivers USDA Foods that have been requested by the CE, and the CE decides later that the entire order is not needed, the CE is responsible for the delivery charges of the original request. However, if the warehouse is responsible for delivering excess USDA Foods, the CE is not responsible for those delivery charges.

Food Recall/Food Alert

When there is an urgent concern about the safety, wholesomeness, and condition of USDA Foods or Child Nutrition (CN) label products, all CEs must take appropriate action. Each CE has the responsibility to:

- Have recall procedures in place.
- Implement the recall procedures upon notification of a recall of USDA Foods.
- Assign a food safety coordinator and alternate who will be contacted in the event of a recall.

While communication for each food recall or food alert may vary based on the specific recall situation, USDA has established the following protocol:

- Processors and distributors must include information on food recall and food alert procedures in agreements/contracts.
- Processors and distributors must notify TDA about the affected food items.
- TDA notifies all CEs that may have received the affected food items based on information provided by the processor and/or distributors. Initial notification will be made by an email blast containing information on the affected food products, including batch numbers, and the action the CE must take related to the affected food item.
- CE reports identification and quantity of affected food items to TDA, including quantity remaining in inventory and quantity already served.
- CE takes appropriate action as directed for the affected food item.
  - **Hold**—If the USDA Foods are on hold, the CE must segregate the product until USDA either releases the hold or provides further information.
  - **Dispose**—If the USDA Foods are recalled, TDA will instruct CEs ways to dispose of the product.
- TDA reports quantity of affected food items in inventory and quantity already served to USDA.

Information Box 5

Food Storage Temperatures

Cooler/Refrigerator Temperature	36º to 40º
Freezer Temperature	0º or below
Dry Storage	50º to 70º recommended, 76º maximum, less than 70% humidity

See *Administrator's Reference Manual (ARM), Section 26, Food Safety* for additional information on this topic.

Detailed information on food alerts is provided by USDA on the USDA Food Safety website at *https://www.fsis.usda.gov/wps/portal/fsis/topics/recalls-and-public-health-alerts*.

Substitutions

Unless the processor agreement/contract specifically stipulates that the USDA Foods only must be used in processing, the processor may substitute commercially purchased foods for USDA Foods. The commercially purchased food must be of the same generic identity, of U.S. origin, and equal or better in all USDA procurement specifications than the USDA Foods.

Commercially purchased beef, pork, or poultry (1) must meet the same specifications as donated product, including inspection, grading, testing, and humane handling standards and (2) must be approved by USDA in advance of substitution if the items are processed by a multi-state processor and by TDA in advance of substitution if an in-state processor.

Commercially purchased food substituted for USDA Foods must meet the same processing yield requirements as the USDA Foods.

The processor may also choose to make the substitution before the actual receipt of the USDA Foods. This is referred to as *front loading*. However, the processor assumes all risk and liability if, due to changing market conditions or other reasons, the USDA's purchase of USDA Foods and their delivery to the processor does not occur.

Substitution for Backhauled USDA Foods

The processor cannot substitute or commingle USDA Foods that are backhauled from a distributors or CE's storage facility, including a state-contracted warehouse. The processor must process backhauled USDA Foods into finished end products for sale and delivery to the distributor or CE using the USDA Foods that have been backhauled to the processor. The processor cannot substitute food products that have been provided by any other agency for the backhauled USDA Foods.

Distributors or CEs must purchase the finished end products utilizing USDA Foods backhauled to their contracted processor. The processor also cannot provide payment for backhauled USDA Foods in lieu of processing.

USDA Foods Used During a Presidentially Declared Disaster

When there is a presidentially declared disaster, USDA Foods are made available to those in need whether the USDA Foods are stored on CE property, CE-managed properties, or state-contracted warehouses. At the request of TDA,[40] CEs must make USDA Foods available to designated agencies, including, but not limited to, the Red Cross, Civil Defense, and Salvation Army.

When transferring USDA Foods to other entities during a presidentially declared disaster, the CE must retain proper receipts for all USDA Foods released to one of the designated agencies from a state-contracted warehouse or school even if the USDA Foods are not stored at facilities controlled by the CE.

If one of the CE's schools is operating as an emergency shelter during a presidentially declared disaster, the CE must also account for the use of all USDA Foods. Because commercial food items may not be replaced, CEs should use their USDA Foods before using commercial food items.

Replacement of USDA Foods Used During a Presidentially Declared Disaster

USDA will replace the value of USDA Foods used during a presidentially declared disaster from congregate feeding at approved shelters. USDA will determine if the value replacement will be in the form of entitlement or food. If USDA decides to replace the value as food, the food items are unlikely to be the same items used in the presidentially declared disaster.

USDA will not replace the value of USDA Foods damaged during a presidentially declared disaster. The CE may request reimbursement through their insurance policy. If an insurance policy does not cover food losses caused by a presidentially declared disaster, CEs may request financial assistance from the Federal Emergency Management Agency (FEMA) for lost food not covered by insurance.

[40] TDA will make these requests in coordination with USDA.

If finished end products are used, CEs will only receive credit for the value of the USDA Foods in the finished end products. In this situation, the CE may request reimbursement for the additional cost under an insurance policy or from FEMA.

In all cases, the credit may not exceed the lesser of the actual USDA Foods supplied or the amount of the USDA Foods that the CE received during the past 12 months.

USDA Foods Used During a Situation of Distress or Other Disaster

When there is a natural disaster or other disaster situation that is specific to a geographic area and is not a presidentially declared disaster, these events are called situations of distress. It is possible that USDA Foods may be requested. In these cases, the state or local emergency authority will coordinate with TDA to request USDA Foods. TDA will obtain USDA approvals as needed. When using USDA Foods for other disaster situations, the CE must retain proper documentation of how USDA Foods were used.

Replacement of USDA Foods Used During a Situation of Distress or Other Disaster

USDA may replace the value of USDA Foods used during other disaster situations (situations of distress) if sufficient resources are available. USDA will determine if the value replacement will be in the form of entitlement or food. If USDA decides to replace the value as food, the food items are unlikely to be the same items used in the other disaster. In these situations, there is no guarantee of replacement.

Contracts, Food Service Management Company (FSMC)

A CE must enter into a contract[41] with an FSMC before USDA Foods are made available to the FSMC. The solicitation and contract must include the following:

1. **Scope of Work**—Description that details specific activities that an FSMC will perform with USDA Foods and assurance that all described activities will be performed in accordance with USDA and state requirements.[42] This includes whether the FSMC will order USDA Foods for the CE.
2. **Use of USDA Foods**—Statement that indicates that the FSMC must use all USDA Foods allocation in the CE's food service or may use commercial substitutes in place of such USDA Foods when a processor has provided an appropriate substitution for the USDA Foods.[43]

   [Note: An FSMC cannot refuse to incorporate USDA Foods into a CE's menu/s. In all situations, when an FSMC is awarded a contract, the FSMC is required to use USDA Foods allocations for the CE's meals even if the USDA Foods were ordered before the FSMC contract was awarded.]
3. **Credit USDA Foods Values**— Statement that the FSMC must credit the CE for the value of all USDA Foods and the number of pounds of each food product received for use in the CE's meal service according to all TDA and USDA requirements. See the *Crediting for USDA Foods Values* subsection in this section for more information on crediting methods.

   - The method and frequency must be determined before the terms and conditions of the contract take effect. The method and frequency cannot be stipulated after the contract has taken effect.

[41] CEs may enter into either a fixed-price or a cost-reimbursable contract with an FSMC. Under a fixed-price contract, the CE pays either a fixed cost per meal provided or a fixed cost for a certain time period. Under a cost-reimbursable contract, the FSMC charges the CE for food service operating costs and also charges fixed fees for management or services.

[42] Activities may include, but are not limited to, preparing and serving meals in coordination with the CE; ordering or selecting USDA Foods to incorporate into the menu; and storing and managing the USDA Foods inventory.

[43] See the *Substitutions* subsection in this section for additional information on this topic.

- Credit must be given for the purchased value of the food products as assigned by TDA for all USDA Foods products: (1) entitlement foods, (2) bonus foods, and (3) finished end products. The negotiation of USDA Foods values is not permitted.
- The credit must occur in the school year or fiscal year in which the foods were received for use.
- For crediting purposes, the FSMC must update this price at least semi-annually to reflect the most recent purchase prices. TDA recommends crediting monthly or quarter for the CE to effectively manage and monitor the crediting of USDA Foods values.
- An FSMC may also pre-credit the CE for the use of USDA Foods. However, if pre-crediting is used, there must be a periodic reconciliation of all credits or yearly reconciliation of all credits to ensure the accuracy of the crediting.
- An FSMC may also credit by disclosure, i.e., the FSMC discloses in its billing for food costs the savings that result from the receipt of USDA Foods for the billing period. The CE must ensure that there is at yearly reconciliation of all credits received. However, TDA recommends that reconciliation occurs more frequently.

4. **USDA Foods Beef and Pork Products**— Type of crediting method for the USDA Foods. [44] After the CE receives USDA Foods finished end products, the CE submits a rebate form to the processor, and the processor credits or sends a payment to the CE for the credit value.

   And, If Applicable

   Statement that if substitutions are allowed, the FSMC will use the USDA Foods and, when not possible, will use commercially purchased foods of the same generic identity, of United States origin,[45] and of equal or better quality than the USDA Foods.

5. **Finished End Products**—Assurance statement that the procurement of finished end products on behalf of the CE[46] (1) will ensure compliance with all USDA requirements and with the provisions of the CE processing agreements and (2) will ensure crediting for any cost difference between the cost established in the processing agreement value and the actual cost as determined by USDA or TDA for the USDA Foods value contained in the products.

   The CE may require that no substitutions be made by the FSMC for USDA Foods.

6. **Processor**—Assurance statement that the FSMC itself will not enter into the processing agreement with the processor. The CE must establish the processing agreement with the processor even if the FSMC procures the processing agreement for the CE.

   The FSMC may pay the processing fees or may submit refund requests to a processor on behalf of the CE.

7. **Storage and Inventory**—Assurance that the FSMC will comply with the storage and inventory requirements for USDA Foods, including safe storage that meets all state and local health standards and safeguards against theft and spoilage or other loss.

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[44] This definition applies only to USDA Foods. *Rebate* is a common term used in contract services and procurement for other purposes.
[45] The requirement to purchase products of US origin comes from the Buy American provision.
[46] The appropriate assurance statement will be determined by the roles and responsibilities assigned to the FSMC in the solicitation and the terms and conditions of the contract.

The CE may require separate storage or may allow comingling of commercial USDA Foods inventories. However, in all cases, all USDA Foods must be accounted for in the inventory system.

8. **Monitoring**—Statement that USDA, TDA, the Inspector General, the CE, or their duly authorized representatives may perform onsite reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of USDA Foods.
9. **Records Retention**—Statement that the FSMC will maintain and retain the following records:
    - The USDA Food and finished end products received from, or on behalf of, the CE, for use in its food service.
    - Documentation that the FSMC has credited the CE for the value of all USDA Foods received for use in the CE's food service in the school or fiscal year.
    - Documentation of its procurement of finished end products on behalf of the CE, as applicable.
10. **Renewals**—Statement that extensions or renewals of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to USDA Foods.

This contract must also meet all of the requirements for procurement described in *Administrator's Reference Manual (ARM), Section 16, Financial System*; *Section 17, Procurement*; and *Section 18, Food Service Contracts* as well as all requirements included in this section.

Crediting for USDA Foods Values

The credit for the USDA Foods value in finished end products must be made using one of the following acceptable crediting methods:

Fee for Service

For the fee for service method,[47] the processor charges the CE a fee[48] for processing the bulk USDA Foods items into finished end products. Invoicing through a fee for service method includes all costs to produce the end products and excludes the value of the USDA Foods used in the finished end product. The following types of fee for service are used:

- Direct shipment and invoicing from the processor to the CE. This is commonly called *direct ship*.
- Multiple pallets of finished end products are shipped to the distributor with a list of which CE's own what products. This is commonly called *fee service through a distributor*.

The processor must identify any delivery charge for finished end products separately from the fee for service on invoicing. If the finished end products are delivered to a distributor, any delivery costs the distributor charges must also be identified separately on processor invoicing or billed separately by the distributor.

[NOTE: If delivery is made to state-contracted warehouse, CE orders finished end products from state-contracted warehouse. State-contracted warehouse charges CE storage and delivery fees.]

[47] This definition applies only to USDA Foods. *Fee for service* is also a term used in contract services and procurement for other purposes.

[48] This definition applies only to USDA Foods. *Fee for service* is also a term used in contract services and procurement for other purposes.

The following sequence of actions describes the fee for service process for crediting.

1. Processor delivers end products to either the CE, the distributor, or the state-contracted warehouse.
2. Processor invoices CE the fee for service.

Net Off Invoice (NOI, Also Called Indirect Discount).

With this method, the commercial distributor purchases the product from the processor at the commercial value. The value of the food product is credited when the commercial distributor invoices the CE for the net price—commercial price of the product minus the USDA Foods value equals the net price. The processor must require the distributor to notify the processor of these sales at least on a monthly basis. Notification may be made through automated sales reports or other electronic or written submission. With this

information, the processor compensates the distributor for the discount provided for the value of the USDA Foods. CEs must closely monitor invoices to ensure that the correct discounts are applied.

[Commercial Price] – [USDA Foods Value]	**=**	**[Net Off Invoice (NOI) Amount Owed to CE]**

The following sequence of actions describes the NOI process for crediting.

1. Distributor purchases end products for the commercial price.
2. Processor invoices the distributor the commercial price.
3. CE orders the end products from distributor.
4. Distributor invoices the CE the net price.
5. Distributor submits a rebate for the value of USDA Foods to the processor.

Rebate

When the rebate[49] method is used, the processor sells the finished end products containing USDA Foods to the CE, as appropriate, at the commercial or gross price. After the CE or distributor receives the finished end products, the CE submits a rebate[50] form to the processor. The processor credits or sends a payment to the CE for the credit value within 30 days of receiving a request. Refund requests must be in writing and may be transmitted by email or other electronic method.

[Value of USDA Foods Product]	**=**	**[Rebate Amount Owed to CE]**

The following sequence of actions describes the rebate process for crediting.

1. Distributor purchases end products for the commercial price.
2. Processor invoices the distributor the commercial price.
3. CE orders end products from distributor.
4. Distributor invoices the CE the commercial price.
5. CE submits rebate to processor for value of USDA Foods.
6. Processor either credits the rebate value or sends a payment to the CE.

[49] This definition applies only to USDA Foods. *Rebate* is a common term used in contract services and procurement for other purposes.

[50] This definition applies only to USDA Foods. *Rebate* is a common term used in contract services and procurement for other purposes.

The CE must routinely review all documentation related to the crediting of USDA Foods values and ensure that the CE has received full credit for all USDA Foods both in pounds and dollar amounts. CEs must use the value of USDA Foods established by TDA.

Food Service Management Company (FSMC) Crediting for USDA Foods

An FSMC is also required to credit the CE for the value of all USDA Foods received by the FSMC on behalf of the CE during the school year. This requirement applies whether the USDA Foods are used in that year or not.

At the end of the year, the CE must be able to reconcile the total pounds and dollar amount for all USDA Foods allocated to the CE and total pounds and dollar amount for all USDA Foods received, including products received by the FSMC. CEs must use the value of USDA Foods established by TDA using one of the three acceptable methods described earlier in this subsection: fee for service, net off invoice (NOI), or rebate.

However, if the CE procures a processor contract that is separate from the CE's FSMC contract and if the CE arranges for finished end products made from USDA Foods outside of the FSMC contract, the processor must credit the value of USDA Foods directly to the CE. In these cases, the CE (not the FSMC) will receive the invoice for the finished end products, and the CE will pay processor costs.

CEs with an FSMC must ensure the following guidance is applied based on the type of contract in place:

Fixed Price Contracts

- The amount of USDA Foods received during the invoice period must be indicated on the FSMC's invoice. A CE may require the FSMC to credit for all USDA Foods monthly or quarterly in order to more effectively manage and monitor the crediting of values for USDA Foods. If the CE chooses to exercise this option, it must include this requirement in the solicitation and contract for the FSMC.
- The FSMC must credit the CE for the value of all USDA Foods received[51] in the school year, whether the foods were used or not. The only exception is when the FSMC makes a commercial substitution of the same generic identity, of United States origin,[52] and equal/better quality. TDA recommends crediting monthly or quarterly for the CE to more effectively manage and monitor the crediting of USDA Foods values. Additionally, the contract solicitation must stipulate that the FSMC show the total value of USDA Foods used and received for the specific billing period.
- The CE retains ownership of all USDA Foods unless the FSMC makes an appropriate substitution for the product.[53]
- In all cases, the CE must require crediting to be given at least annually. TDA recommends crediting monthly or quarterly for the CE to more effectively manage and monitor the crediting of USDA Foods values. Additionally, the contract

[51] When the USDA Foods are received by the CE storage facility, the CE kitchen, or FSMC storage facility, in either raw from or in finished end products, the USDA foods are considered to be received.
[52] The requirement to purchase products of US origin comes from the Buy American provision.
[53] The substitution option may permit an FSMC to use acceptable commercial substitutes, during the same school year in which the USDA Foods must be credited. However, the CE must ensure that when a substitution is made that the substituted product is of the same generic identity and that the CE receives credit for the value of all USDA Foods received.

solicitation must stipulate that the FSMC show the total value of USDA Foods used and received for the specific billing period.

The FSMC may also pre-credit the value of USDA Foods by deducting the value for USDA Foods in the fixed-price contract; however, the CE must ensure that the FSMC provides additional credit for any USDA Foods unaccounted for in the fixed price per meal.

For Example: Each program year, the CE gives the FSMC the quantity for its inventory of USDA Foods, and the FSMC includes these quantities in its pricing structure. However, there are occasions when USDA Foods are made available later in the year. The CE is responsible to ensure that the FSMC credits the value for these additional USDA Foods.

Cost Reimbursable Contracts

- The amount of USDA Foods used during the invoice period must be included as a separate line item on the invoice. A CE may require the FSMC to credit for all USDA Foods monthly or quarterly in order to more effectively manage and monitor the crediting of values for USDA Foods. If the CE chooses to exercise this option, it must include this requirement in the solicitation and contract for the FSMC.
- The FSMC must credit the CE for the value of all USDA Foods received[54] in the school year received, whether the foods were used or not. The only exception is when the FSMC makes a commercial substitution of the same generic identity, of United States origin,[55] and equal/better quality.
- The CE retains ownership of all USDA Foods unless the FSMC makes an appropriate substitution for the product.
- In all cases, the CE must require crediting to be given at least annually. TDA recommends crediting monthly or quarterly for the CE to more effectively manage and monitor the crediting of USDA Foods values. Additionally, the contract solicitation must stipulate that the FSMC show the total value of USDA Foods used and received for the specific billing period.
- In cost-reimbursable contracts, crediting may be performed by disclosure. In other words, the FSMC discloses in its billing for food costs submitted to the CE the savings that result from the receipt of USDA Foods for the billing period.

FSMC Contract Termination/Non-Renewal and Title to USDA Foods

When a contract is terminated or not renewed, the FSMC must return all unused donated ground beef, donated ground pork, and finished end products. At the CE's discretion, the FSMC must return other unused USDA Foods as well.

USDA Foods Reconciliation

The CE must conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the FSMC credited the CE for the value of all USDA Foods received for use in the CE's food service in the school or fiscal year, including the value of USDA Foods contained in finished end products. The reconciliation process is much easier to manage if conducted monthly. However, the contract and solicitation must stipulate that the FSMC show the total value of USDA Foods both purchased and received for the specific billing period.

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[54] When the USDA Foods are received by the CE storage facility, the CE kitchen, or FSMC storage facility, in either raw from or in finished end products, the USDA foods are considered to be received.

[55] The requirement to purchase products of US origin comes from the Buy American provision.

Resources for Using USDA Foods

USDA provides numerous resources to assist in the operation of USDA Foods at *www.fns.usda.gov/usda-fis/school*. Click on the Technical Assistance & Guidance tab on the left side of the page for additional resources not listed on this page.

- *USDA Foods Toolkit* is a collection of valuable resources to assist Child Nutrition Professionals in effectively using their USDA Food entitlement and to help them educate students, staff, and the community about the healthy contributions that USDA Foods provide to their meal programs. This toolkit includes recipes, fact sheets, training, and marketing tools.
- *Food Distribution Webinars and Training* provides detailed information on using USDA Foods, strategies to increase the effectiveness of using USDA Foods, and other general use topics.
- *USDA Foods Business Management* is a project that is intended to review and re-design business processes for domestic nutrition assistance programs that is co-sponsored by the USDA Agricultural Marketing Service and Food and Nutrition Service.
- *USDA Foods Product Information Sheets* provides extensive information for each product available at *https://www.fns.usda.gov/usda-fis/usda-foods-product-information-sheets*

  See the *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional information on the *Information Sheets* and other forms of documentation.

USDA Foods E-Letters are available at *www.fns.usda.gov/fdd/usda-foods-e-letters*.

Value of USDA Foods for Auditing Purposes

When accounting for the receipt of USDA Foods for required program audits as described in *Administrator's Reference Manual (ARM), Section 16, Financial System*, CEs must consider all USDA Foods received in a fiscal year as expended. CEs have the following options in assigning the value of the USDA Foods received:

- Fair market value of the USDA Foods at the time of their receipt; fair market value must exclude non-food items.
- One of the accepted USDA Foods valuation methods which can be found in WBSCM.[56]
  - Cost-per-pound USDA Foods prices posted annually by USDA. USDA provides this information on its Average Material Price tables[57] .
  - Most recent cost-per-pound price in the USDA Foods catalog which is found in the electronic USDA Foods ordering system.
  - Rolling average of USDA prices (average cost per pound), based on TDA's USDA Foods sales orders.

[56] USDA recommends using this method rather than checking fair market value as each product is received.
[57] https://www.fns.usda.gov/usda-fis/processor-material-prices

CEs must use one of these methods when valuing USDA Foods for the single audits. This includes single audits conducted under the administration of TEA.

Records Retention

Records retained for USDA Foods serve to demonstrate compliance with all regulations. Public and charter schools are required to keep documentation related to school nutrition programs for 5 years. Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

Documentation for record retention related to USDA Foods includes, but is not limited to, the following:

Crediting for USDA Foods

- Statement of actual USDA Foods values used in crediting.
- Documentation that demonstrates the CE has validated the credits provided by processors, distributors, and FSMCs.

General Financial

- Invoices, bills of lading, or other appropriate documentation demonstrating the amount of USDA Foods and finished end products received and provided to the FSMC for use in the CE's food service including dollar and pound totals.
- Invoices, bills of lading, or other appropriate documentation indicating USDA Foods and finished end products received from, or on behalf of, the CE for use in its food service.
- Invoices, bills of lading, or other appropriate documentation that demonstrate that the FSMC credited the CE for the value of all USDA Foods received for use in the CE's food service in the school or fiscal year, including the value of USDA Foods contained in finished end products.

Managing USDA Foods

- Contracts and agreements related to the use, storage, and processing of USDA Foods.
- Documentation demonstrating that all USDA Foods were stored under safe conditions.
- Inventory control sheets.
- Documentation for crediting for the value of USDA Foods contained in finished end products.
- Receipt of end products purchased from processors or distributors.
- Receipts of USDA Foods shipments and end products, reports, audits, and claim actions.
- Receipts and/or freight bills for USDA Foods deliveries.
- Records indicating the location of all USDA Foods allocated to the CE (inventory).

Information Box 6

Record Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

Processing Agreements and Contracts

- Location for the delivery of the finished end products.

- Method of end product sales that will be utilized and assurance that crediting for USDA Foods will be performed in accordance with the applicable requirements for such method of sales.
- Price to be charged for the end product or other processing service.
- Procurement documentation as applicable.
- Total value of the USDA Foods in the finished end products.

USDA Foods Used During a Presidentially Declared or Other Disaster

- Documentation of receipt of USDA Foods.
- Documentation of USDA Foods transferred because of disaster and reimbursement for transferred foods as appropriate.

For CEs that use an FSMC, the CE is responsible for ensuring the FSMC provides all documentation necessary to demonstrate compliance with all regulations.

Compliance

TDA will assess compliance with the use of USDA Foods and accounting and financial requirements for USDA Foods during onsite and/or offsite review processes.

Procurement

The cost of any products and/or services that were improperly procured are unallowable costs to the nonprofit school food service account. This includes any costs that the CE has incurred as a result of intentionally breaking up purchases into smaller amounts to qualify under the micro-purchase threshold or simplified purchase threshold as well as purchases made on behalf of the CE by a third party. For additional information on procurement, see *Administrator's Reference Manual (ARM), Section 17, Procurement*.

CEs must make available, upon request of the awarding agency (state or federal), any or all documentation described in the *Records Retention* subsection in this section. TDA may take appropriate fiscal action or terminate the USDA *Foods Agreement Between Contracting Entity and Texas Department of Agriculture* that is not in compliance with the requirements for USDA Foods.

Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations

CE's must report, in writing to TDA, all violations of federal criminal law—fraud, bribery, or gratuity.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200.113; 31 U.S.C. 3321).

Criminal Penalty

The maximum fine for embezzling, willfully misapplying, stealing, or obtaining by fraud, funds, assets, or property acquired under the National School Lunch Act or Child Nutrition Act is $25,000.

Fraud

Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk

Program] whether received directly or indirectly, shall, if such funds, assets or property are of a value of $100 or more, be fined no more than $25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

Termination of the Agreement for Financial Fraud or Misuse of Funds. If serious deficiencies, such as fraud or misuse of funds occur, and corrective action is not practical, TDA will terminate the CE's participation in all child nutrition programs administered by TDA, including the NSLP, SBP, SMP, CACFP, and SFSP.

- Processors and CEs have agreements with TDA, but distributors have agreements generally with a processor or CE; in the latter case, in the case of fraud or misuse of funds, the processor or CE would terminate the agreement;
- In the case of a distributor's fraud or misuse of funds, suspected misconduct would be reported to USDA, and USDA would take appropriate action. Distributors would be prohibited from entering contracts to service USDA Foods for either processors or CEs.

Suspected fraud or misuses by processors and distributors will be reported to USDA; USDA will take action as appropriate to the situation. In this case, TDA may also refer the matter to the appropriate local, state, and/or federal authorities.