

**SUBJECT:** Complaints Alleging Illegal Sale of USDA Commodities

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**A. Purpose.** To outline the procedures to be followed in situations where improper use of USDA donated foods is alleged.

**B. Scope.** This policy applies to all persons and institutions that are directly or indirectly involved in the distribution or receipt of USDA donated foods.

**C. Authority.** 7 CFR 250.13 (i).

**D. Illegal Uses of USDA Commodities, Funds and Assets.**

1. Whoever embezzles, willfully misapplies, steals, or obtains by fraud donated foods, funds, assets or property derived from donated foods is subject to Federal criminal prosecution.
2. Whoever receives, conceals, or retains donated foods, funds, assets, or property for his/her own use or gain, knowing such items have been embezzled, willfully misapplied, stolen or obtained by fraud is subject to Federal criminal prosecution.

**E. Commodities Rejected by USDA Before Delivery to the State.**

1. Occasionally, program foods are rejected by USDA prior to shipping to the State. The commodity may be rejected because the vendor failed to meet the commodity specifications, the commodity was damaged in shipment or for other reasons. Also, a vendor may have an overrun of food, containers, or cartons bearing USDA markings. To avoid a loss on these overruns, the vendor may use the product, containers or cartons in selling to commercial customers. Federal funds are not being expended in any of these situations. Contractually, USDA requires the vendors to obliterate all USDA markings on production overruns before selling them to commercial outlets. Accordingly, vendors are supposed to do one of the following:
  - (a) Remove all USDA markings or completely obliterate them with a permanent opaque paint, and overlay the removal area with commercial labeling.
  - (b) Place a transparent pressure-sensitive decal over the USDA phrase, "NOT TO BE SOLD OR EXCHANGED" on all containers and container materials that states, "SALVAGED BY (insert vendor's name)."
  - (c) Draw one or more Xs completely through the USDA markings and replace them with a permanent stamp that states: "This container has not been used and shall not be used for shipment of Government commodities."

2. Occasionally, rejected and damaged commodities with USDA labels intact are seen in commercial channels for sale to the public. Complaints are received sometimes from concerned individuals about the sale of such commodities by salvage firms, restaurants, bars, etc. The Bureau, along with the Southeastern Regional Office (SERO), USDA, is obligated to investigate such complaints to ensure that donated foods are not diverted illegally from the program and to ensure that vendors and carriers meet their obligations.

**F. Complaints After Delivery to the State.** If complaints are received about the commodities that have been delivered by the vendor and accepted by the State, it may be that the commodities are being diverted from RAs or warehouses in the State. In those cases, the Bureau must initiate an investigation to find out if the commodities are being diverted from program use. Initiation of the investigation must be reported immediately to SERO, USDA.

**G. Fraud, Theft and Other Illegal Activities.** Reports of fraud, theft or other illegal activities may be submitted to the Bureau by telephone or in writing immediately. The person receiving the call or report should get the following information: (1) name, address, and telephone number of the person reporting the alleged misuse of donated commodities if he or she is willing to provide this information, (2) names of persons and organizations allegedly involved in the improper use of the donated commodities, and (3) a brief explanation of how the food is being misused. These complaints must be reported immediately to SERO, USDA via telephone with subsequent written confirmation. Based on the information received, the Bureau and SERO, USDA will decide if an investigation is warranted and the process to use. All parties concerned will be notified, in writing, as to the disposition of the case.

**H. Confrontation Interviews.** If the Bureau field representative is denied information concerning the alleged misuse of USDA donated foods or is denied access to the premises of the alleged sale, the field representative **must not** challenge such denials. Where such refusal of information or access is made, the Bureau will submit a full report to SERO, USDA.