

SUBJECT: State Processing of Donated Food

---

**A. Purpose.** This policy and procedures sets forth the terms and conditions under which the Bureau or recipient agencies (RAs) may enter into agreements for the processing of donated foods and prescribes the minimum requirements to be included in such agreements.

**B. Scope.** This policy applies to all RAs.

**C. Authority.** Title 7 CFR, 250.30 (s), State Processing of Donated Foods, directs the Bureau to provide a processing manual or similar procedural material for guidance to contracting agencies, recipient agencies and processors. The Bureau must revise this manual as necessary to reflect policy and regulatory changes.

**D. Permissible Contracts.** The Bureau and RAs may enter into an agreement with a commercial company for processing USDA donated commodities.

**E. Types and Terms of Agreements.**

1. State Agreement. Agreements with processors will be in standard written form. The standard agreement will be reviewed by the Bureau's legal staff to assure conformity with the requirements of all applicable Federal regulations. The Bureau will mail agreements to the processors for completion not later than March 31 of each year. The processors must complete and return the agreements not later than the last week in April of each year.
2. NPA. Under the National Processing Agreements (NPA), USDA, Food and Nutrition Services, arranges for national processing of federally donated foods (DF). Pursuant to FD-030, FD-038 and FD-039: State Processing, USDA has assumed the responsibility for approving all commodity processing end product data schedules (EPDS) as well as establishing and holding one surety instrument to protect the total value of all affected DF at any particular processor.
3. Terms of Agreement. Processing agreements with the state will be for one year and end on June 30 of each year. Agreements may be extended for two 1-year periods. For Companies participating under the National Processing Agreement (NPA) and the State Participation Agreements (SPA's) the period of agreement shall not exceed five (5) years.
4. Signatures. The agreement must be signed by the owner in a sole proprietorship, a partner in a partnership, and a duly authorized corporate officer in a corporation.

**F. Selecting Processors.**

1. The Bureau will develop criteria for use in evaluating and selecting processors. The selection criteria will be used in a manner that ensures equitable treatment of prospective processors. The selection criteria will, at a minimum, include:
  - (a) The nutritional benefit that the end product will provide.
  - (b) The marketability of the end product.
  - (c) The distribution method that the processor intends to use.
  - (d) Commodity value and yield schedule data.
  - (e) Any applicable labeling requirements.
  - (f) The ability of the processor to comply with the terms and conditions of USDA regulations and the agreement with the Bureau.
2. A list of tentative “Approved State Processors” will be sent to RAs not later than March 1 of each year. Because this is a tentative list, it is subject to change.

**G. Minimum Agreement Provisions and Required Documentation.**

1. At a minimum, each processing agreement must include the following information and requirements:
  - (a) The name and telephone number of the processor.
  - (b) Agreement or State Participation Agreement.
  - (c) An approved Summary End Product Data Schedule. (For Multi-State Processors) The processor will submit a Summary End Product Data Schedule (SEPDS) to the DA with the completed SPA. The SEPDS contains a summary of information obtained from an approved EPDS and a master SEPDS approved by USDA. Processor may select specific EPDS for processing in a given state. The DA has the option to accept or reject individual products listed in the SEPDS, and in the event of multiple commodities available for processing, may accept or reject certain commodities for processing. Note: The case weight listed in the SEPDS must match the label on the finished case.
  - (d) The contract value of each donated commodity to be processed.
  - (e) A provision for:

- (1) Cancellation of the agreement upon thirty days written notice by the Bureau or the processor.
    - (2) Immediate cancellation for non-compliance with the terms and conditions of the agreement by the Bureau or the processor.
    - (3) If the agreement is cancelled, a provision for disposition of donated commodities and end products in the processor's inventories or payment of funds according to Paragraph R.
  - (f) Where applicable, a provision for inspection and certification during processing by the appropriate acceptance service according to Paragraphs L and M.
  - (g) A provision that end products containing donated commodities that are not substitutable under Paragraph K will be delivered only to RAs eligible to receive such foods.
2. For In-state Processors. Provide the Bureau with one of the following surety instruments in an amount sufficient to protect the contract value of donated commodities on hand and on order. The Bureau will determine the dollar value required.
- (a) A performance and supply bond from a surety company listed in the most recent U.S. Department of Treasury Circular 570.
  - (b) An irrevocable letter of credit.
3. The following documentation must be submitted to the Bureau along with the contract. The agreement must be signed by an authorized official of the Florida Department of Agriculture and Consumer Service before execution of any part of the agreement.
- (a) A Performance Bond or Letter of Credit in the amount indicated in Article 19 of the contract. (In-State processors only)
  - (b) Exact geographical location of each plant(s), what commodity goes to each plant, name of contact person and telephone number, USDA plant number and FDA registration number.
  - (c) A subcontractor's agreement, if applicable. (In-State processor only)
  - (d) A description of the Processor's Quality Control Program. (In-State processor

only)

- (e) Summary End Product Data Schedules for all products to be fabricated.
- (f) Sample copy of Rebate Form, if applicable.
- (g) Proof of Marketability (copies of bid awards and/or letters of intent to purchase from eligible RAs).

**H. End Products Sold by Processors.** Recipient agencies are expected to follow federal, state and/or local government procurement rules for obtaining processed end products. No procurement or bidding of processed end products occurs at the State or Federal level with NPA. The purchasing agency of the RA continues to be responsible for competitive purchase of commodity processed products and processing services. When RAs pay the processor for end products, the processor will ensure that: (1) Discount System - the price of each unit of end product purchased by RAs will be discounted by the stated contract value of the donated commodities contained therein. Processors will retain invoices from RAs when end products are sold through a discount system; or (2) Refund System - a refund equal of the donated commodities contained therein will be made upon presentation of proof of purchase by an RA; or (3) Net-Off Invoice (NOI) – an alternate value pass through system approved by FNS that requires a sales verification. USDA and the DA retain authority to inspect and review all pertinent records including records pertaining to the verification of a statistically valid sample of sales.

**I. End Products Sold by Distributors.** When a processor transfers end products to a distributor for sale and delivery to the RAs, such sales will be under either the refund system under which an RA purchases a processor's end products and receives a payment from the processor equivalent to the contract value of the donated commodities contained therein, or a system that provides refunds to distributors and discounts to RAs unless another value pass through system has been approved by USDA. Processors will ensure that distributors maintain invoices from RAs when end products are sold through a discount system and that such invoices will be provided to the processor upon request. Processors will fully account for all donated commodities received and the appropriate number of end product units delivered to eligible RAs. The processor remains fully accountable for the donated commodities until refunds or other credits equal to their contacted value have been made to the RAs.

**J. Refund Payments.** Each RA will submit refund applications to the processor within 30 days from the close of the month in which the sales were made to receive benefits, unless the amount is less than \$25.00. If less than stated amount, RA may submit application quarterly. In instances when refunds are to be provided to distributors that sold end products to RAs at a discount, distributors will submit refund applications to processors within 30 days from the close of the month in which the sales were made to RAs to receive benefits. Within 30 days after the receipt of the application by the processor, the processor will make payment to the

RA or distributor equal to the stated contract value of donated foods contained in the purchased end products covered by the application. Copies of requests for refunds and payments to RAs and/or distributors will be sent to the Bureau with the Monthly Performance Report.

**K. Substitution of Commercial Commodities for Donated Commodities.**

1. The processing agreement may provide for substitution of donated food as defined in 250.3 except that donated beef and donated pork shall not be substituted.
  - (a) Any substitution of commercial product for commodities other than beef, pork, or poultry is subject to a 100% yield requirement. Under the 100% yield requirement, the processor is responsible for any manufacturing loss. Substitution of meat and poultry is not allowed unless specifically approved by USDA.
  - (b) Poultry shall be eligible for limited substitution. Any processor that wishes to substitute poultry must have a plan approved by both FNS and AMS. Only bulk pack chickens, chicken parts and bulk pack turkey delivered by USDA vendors to the processor are eligible for substitution. No backhauled poultry products may be substituted.
  - (c) All commercial commodities substituted for those donated must be of U.S. origin and identical to or superior in every aspect to the donated commodity specification as verified by certification done by, or acceptable to, the applicable Federal acceptance service.
2. Except as specified below, processors must receive approval from the Bureau before any substitution. The Bureau will approve a processor's request for substitution only when the Bureau cannot supply the necessary inventory to prevent disruption of production. **The Bureau must contact the SERO, USDA to ensure that the commodity in question is available for purchase by USDA.** Substitution is allowed without advance approval by the Bureau only when:
  - (a) It is necessary to replace donated commodities with commercial commodities to meet the 100% yield requirement.
  - (b) The donated and commercial commodities have been intermingled through usage of joint storage tanks or bins.
  - (c) The processing contract allows the use of concentrated skim milk purchased or manufactured by the processor for donated dry milk.

**A processor may not go into a negative balance except with the prior approval of**

**the Bureau. If the processor goes into a negative balance without the approval of the Bureau, the processor is liable for replacement of any donated commodities used that are not purchased by USDA.**

3. When concentrated skim milk is used to replace donated nonfat dry milk, the contract must specify the following:
  - (a) The percent of milk solids that, at a minimum, must be contained in the concentrated skim milk.
  - (b) The weight ratio of concentrated skim milk to donated nonfat dry milk. The weight ratio is the weight of concentrated skim milk that equals one pound of donated dry milk, based on milk solids. In calculating this weight, nonfat dry milk must be considered as containing 96.5% milk solids. If more than one concentration of skim milk is to be used, a separate weight ratio must be specified for each concentration.
  - (c) The processor's method of verifying that the skim milk solids content of the concentrated skim milk is as stated in the contract.
  - (d) A requirement that the use of donated nonfat dry milk inventory will be limited to an amount equal to the amount of concentrated skim milk, based on the weight ratio used to produce the end product.
  - (e) A requirement that the contract value of donated commodities for a given amount of concentrated skim milk used to produce an end product is the value of the equivalent amount of nonfat dry milk, based on the weight ratio of the two commodities.
  - (f) A requirement that the concentrated skim milk will be produced in a USDA approved plant or in a plant approved by the appropriate regulatory authority for the processing of Grade A milk products.
  - (g) When there is substitution, the donated commodities must be used by the processor and will not be sold or disposed of in bulk form.
- L. **Meat and Poultry Inspection Program.** When donated meat or poultry products are processed or when any commercial meat or poultry products are combined into an end product containing a donated commodity(s), all of the processing must be done in plants under continuous Federal or State meat or poultry inspection.
- M. **Agriculture Marketing Service (AMS) Inspection.** Additionally, all donated meat or poultry processing will be done under AMS acceptance service grading. The cost of this service will be borne by the processor. If the processor can show that grading is impractical,

an exemption may be granted by USDA before processing each order. Before approving a processor's request to waive the acceptance requirement, USDA will ensure that, based on the processor's past performance, the quality of the end product produced will in no way be adversely affected because of waiving the requirement. Exemptions will be authorized based on each order to be processed if the processor can show:

1. That even with ample notification time, the processor cannot secure the services of a grader.
2. That the cost for a grader would be unduly excessive compared with the value of the commodities being processed and runs cannot be combined or scheduled to enable prorating of the costs of services among the purchasers of the end product.
3. The documented urgency of the recipient agency's need for the end product precludes the use of acceptance services.

#### **N. Performance Reports.**

1. Processors are required to submit to the Bureau monthly reports of performance under each processing contract **with year-to-date totals.** Performance reports must be postmarked not later than the final day of the month following the reporting period; however, the final performance report for the contract period must be postmarked not later than 60 days from the close of the contract period. The report will include:
  - (a) A list of all RAs purchasing end products under the contract.
  - (b) Donated commodity inventory at the beginning of the period.
  - (c) Quantity of donated commodities received during the reporting period.
  - (d) Quantity of donated commodities transferred to and/or from existing inventory.
  - (e) Quantity of end product units delivered to each RA during the reporting period, the number of pounds of each donated commodity contained in the delivered end products and copies of the invoices submitted to the RAs that include the agreed fee-for-service and any delivery costs as separate identifiable charges.
  - (f) Donated commodity inventory at the end of the reporting period.
  - (g) A certification statement that sufficient quantities of donated commodities are in inventory, or on order, to fulfill the quantities needed for the production of

end products for State processing contracts; and, the processor has on hand or on order adequate quantities of commercially purchased foods to fulfill the processor's production requirements for commercial sales.

2. Processors who substitute concentrated skim milk for donated nonfat dry milk must also report the following for the reporting period:
  - (a) The number of pounds of concentrated nonfat dry milk used in commercial products sold to customers that are not RAs.
  - (b) The number of pounds of concentrated skim milk, and the percent of milk solids contained therein, used in end products sold to RAs.
3. The Bureau will review and analyze the reports submitted by processors to ensure that performance under each contract is according to the provisions set forth in this manual.

**O. Form Used in Receiving USDA Donated Commodities.** When a commodity is shipped to the processor by the Bureau, the processor will complete "Receive Shipment", under the shipment notification tab in the Electronic Commodity Ordering System (ECOS) promptly.

1. Forwarding Notice. The Forwarding Notice, Form KC 269 (Exhibit L), provides advance notice to the Bureau that the commodity is being prepared for shipment by the Kansas City Commodity Office (KCCO). A copy of the Forwarding Notice (also known as Notice to Deliver, ND) is sent to the Bureau electronically. The Bureau will provide the processor with one copy of the notice advising it of the impending shipment. Upon receiving the required documentation from the warehouse as described in Paragraph 2 below, the Bureau will complete Section III, Distributing Agency Consignee Receipt, of the KC 269 and return to KCCO.
2. Form FNS-57, Report of Shipment Over, Short and/or Damaged. (Exhibit M, if needed) If commodities received from USDA are over or short of the anticipated case amount or if any of the cases are damaged at time of delivery, warehouse/processors must complete and forward to the Bureau an FNS-57 within 3 days of the commodities' delivery.

After the receiving records have been entered, all arrival and allocation information can be retrieved from ECOS for each RA. Using the "Requisition by PCIMS" report in ECOS, processors can monitor RA requisitions for commodities scheduled to be processed at their site once the order has been placed by the DA and assigned a Delivery Order Number by USDA.

**P. Processor Inventory Controls and Reports.**

1. USDA and the Bureau will regularly monitor processor inventories to ensure that the quantity of donated foods is maintained at the lowest cost efficient quantity but never in excess of a six-month supply calculated on the processor's average monthly usage, unless a larger quantity has been specifically approved by the Bureau in response to a written justification submitted by the processor. The quantity of donated commodities must never exceed estimated usage or the processor's ability to store the food at any one time. Processors found to have inventory in excess of the six-month supply, may have further shipments declined by the Bureau or cancelled by USDA until inventory has been reduced. The Bureau will work with processors to identify RAs that are not utilizing their commodity inventory or who have more inventory than they can use in a timely manner. Excessive RA inventories will be transferred to another State or RA.
2. For those processors substituting concentrated skim milk for donated nonfat dry milk, the Bureau will review processor's monthly reports to ensure that:
  - (a) The donated nonfat dry milk inventory is being reduced based on the amount of milk solids contained in the concentrated skim milk used in the end products.
  - (b) The amount of milk solids in end products is equal to the amount in the donated nonfat dry milk.
  - (c) Donated nonfat dry milk is not being sold in bulk form.
3. The last monthly performance report serves as the annual reconciliation report. The State is required to certify the accuracy of this report and submit it to SERO, USDA. Unaccounted shortages in inventory will be handled as a commodity loss claim by the Bureau. A processor that has entered into a contract with the State for the next year must pay the State the contract value of any remaining donated food inventory that is in excess of the level approved by the Bureau.
4. In the forthcoming year, the Bureau will not requisition commodities for processors who reported no sales activity during the previous year, unless the processor submits a specific plan to the Bureau outlining what sales promotion action it will take for its end products.

**Q. State Processing Inventory Reports.**

1. The State is required to submit a summary of the monthly performance report, for each processor, to USDA covering the last month of each Federal fiscal quarter. The report must be postmarked not later than 60 days following the close of each fiscal quarter except for the last quarter report which may be postmarked not later than 90 days following the close of the contract year. The report will include the following:

- (a) The inventory quantity of each donated commodity at the beginning of the previous quarter.
  - (b) The quantity of each commodity received during the quarter.
  - (c) The quantity of each commodity transferred to and/or from existing inventory.
  - (d) The quantity of each commodity used during the quarter.
  - (e) The inventory quantity for each commodity at the end of the quarter.
  - (f) Each contracting agency and its location with which the processor has processing contracts.
2. For each processor that substitutes concentrated skim milk for donated nonfat dry milk, the following will be included in the report:
    - (a) The number of pounds of nonfat dry milk used in commercial products sold to non-program customers.
    - (b) The number of pounds of concentrated skim milk and the percent of milk solids contained therein used in the end products sold to RAs.

**R. Disposition of Inventory When Contracts are Completed or Cancelled.**

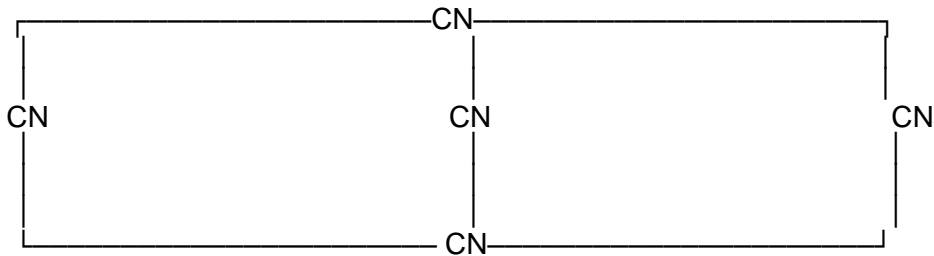
1. When contracts are completed or cancelled and the processor has commodities remaining in inventory, the processor will, at the option of the Bureau, be instructed to:
  - (a) Return the commodities to the Bureau or pay the Bureau for the commodities based on: (1) the USDA replacement costs using the most recent commodity values provided by USDA, (2) the value of the commodities as stated in the processor's contract, or (3) the Commodity Credit Corporation (CCC) unrestricted sale prices.
  - (b) Additionally, substitutable commodities may be transferred to another consenting state.
2. When a processor's contract is cancelled at the processor's request or due to noncompliance or negligence, and commodities are transported as described above, the processor will pay the transportation costs.

**S. Child Nutrition Labeling Program.**

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service (FNS) in conjunction with the Food Safety and Inspection Service (FSIS) and Agriculture Marketing Service (AMS) of the U.S. Department of Agriculture (USDA), and the National Marine Fisheries Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. Essentially, the program involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this policy.
2. The following products are eligible for CN labels: (a) Commercially produced food products that contribute significantly to the meat/meat alternate component of meal pattern requirements of 7 CFR 210.10, Meal Components and Quantities; 225.16, Food Service Management Companies; and 226.20, Program Payment Procedures; and (b) juice drinks and juice drink products that contain a minimum of 50% full strength juice by volume.

#### T. The CN Label.

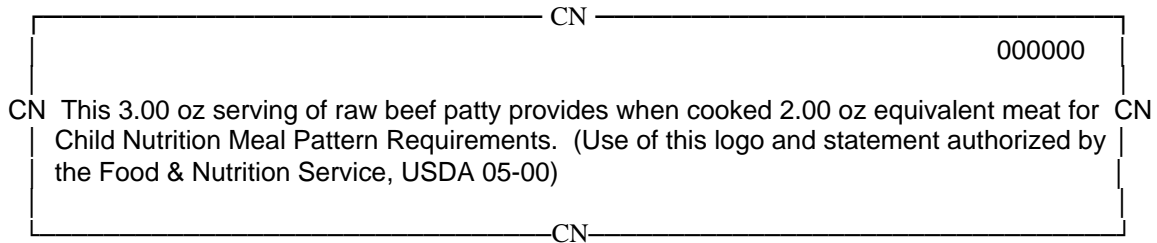
1. The *CN logo* (as shown below) is a distinct border which is used around the edges of a "CN label statement" as defined in Paragraph T.2 below.



2. The *CN label* statement includes the following:
  - (a) The product identification number (assigned by FNS).
  - (b) The statement of the product's contribution toward meal pattern requirements. The statement will identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, and/or vegetable/fruit component of the meal pattern requirements. For juice drinks and juice drink products, the statement will identify their contribution toward the vegetable/fruit component of the meal pattern requirements.
  - (c) Statement attesting that the use of the *CN logo* and CN statement is authorized

by FNS.

(d) The following is an example.



3. Food processors or manufacturers may use the CN label statement and *CN logo* under the following terms and conditions:

- (a) The CN label must be reviewed and approved at the national level by the Food and Nutrition Service and appropriate USDA or USDC Federal agency responsible for the inspection of the product.
- (b) The CN labeled product must be produced under Federal inspection by USDA or USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal Inspection Service.
- (c) The CN label statement must be printed as an integral part of the product along with the product name, ingredient listing, the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate and the manufacturer's or distributor's name and address.
- (d) The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products, with the exception of juice drinks and juice drink products, is established as follows:

INSPECTED BY THE  
U.S. DEPT OF AGRICULTURE  
IN ACCORDANCE WITH  
FNS REQUIREMENTS

- (e) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the Food Buying Guide for Child Nutrition Programs (Program Aid Number 1331).
4. If a company misuses the *CN Logo* and CN label statement, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

5. Products that bear the CN label statement carry a processor's warranty. This means that if a food service authority participating in child nutrition programs purchases a CN labeled product and uses it as directed by the manufacturer, the school or institution will not have an audit claim filed against it for the CN labeled product for noncompliance with the meal pattern requirements. If a Federal or State auditor finds that a CN labeled product does not meet the meal pattern requirements claimed on the label, the auditor will report the findings to the appropriate divisions of FSIS and AMS of USDA, National Marine fisheries Service of USDC, Food and Drug Administration, or the Department of Justice for action against the company. Any or all of the following actions may be taken:
  - (a) The company's CN label may be revoked for a specified period of time.
  - (b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product.
  - (c) The company's name will be circulated to regional FNS offices.
  - (d) FNS will require the food service program involved to notify the Bureau of the labeling violation.
6. FNS is authorized to issue operational policies, procedures and instructions for the CN Labeling Program. To apply for a CN label and to obtain additional information on CN label application procedures, write to: CN Labels, U.S. Department of Agriculture, Food and Nutrition, Child Nutrition Division, 3101 Park Center Drive - Room 632, Alexandria, VA 22302.