



Food Distribution National Policy Memorandum

United States
Department of
Agriculture

DATE: MAY 30 2012

POLICY NO.: FD-122: Processing

Food and
Nutrition
Service

SUBJECT: Substitution of Donated Foods in Advance of Purchase and
Negative Inventories

3101 Park
Center Drive

In accordance with 7 CFR 250.30(f), a processor may, in most cases, substitute Department of Agriculture (USDA) donated foods with commercially purchased foods of U.S. origin, and of equal or better quality in all USDA purchase specifications than the donated food. The substitution option permits processors to conduct their business efficiently and provide finished end products to school food authorities (SFAs) and other recipient agencies in a timely manner. Substitution of donated foods usually occurs after USDA purchase and delivery of the donated food to the processor, or after USDA purchase but before actual receipt of the donated food shipment. In either case, the processor may sell commercial products or finished end products to any of its customers, while passing through the value of the donated food to SFAs.

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However, in some cases, a processor will “substitute” for the donated food in advance of USDA purchase, and provide commercial food products to SFAs with value pass-through for the donated food. Although not specifically prohibited in 7 CFR Part 250, such substitution in advance of purchase (also referred to as “front loading”) is not recommended, as USDA cannot guarantee the purchase and provision of donated foods for processing. In such case, the processor makes a business decision, and assumes the risk and attendant financial liability if USDA is unable to make the purchase.

Monthly Performance Reports and Negative Inventories

When a processor or distributor sells end products to SFAs before receipt of the donated food shipment (even if USDA has made the purchase), the processor must report the donated food inventory for such end products on monthly performance reports as “negative inventory”. Once donated food shipments are received, the processor must report the actual inventory level on the next monthly performance report. It is important for the processor to inform a distributor of inventory levels and timing of substitution for donated foods, and to ensure that the distributor provides notification of sale of end products in a timely manner, so that inventory levels may be correctly reported. Close collaboration between the processor and distributor will help to avoid any disputes arising from sale of end products to SFAs before receipt of donated food shipments.

The State distributing agency (SDA) must take special note of any negative inventories reported on a processor's monthly performance reports. If negative inventories are reported, the SDA must check to see if donated food orders are in place for shipment to the processor, or if SFAs are to place such orders later in the school year. The SDA must inform the processor and the SFA if, for any reason, donated foods cannot be shipped to the processor in the school year.

SFA Procurement of End Products

In soliciting bids from processors or distributors for procurement of end products, the SFA may include as a provision of the procurement that such end products be delivered early in the school year, irrespective of USDA purchase schedules. However, the SFA should be aware that such a provision may limit bids, as some processors or distributors may be unwilling to provide end products before USDA purchase of donated foods, and risk the potential financial liability if USDA cannot make such purchase. In including such a provision in the procurement, the SFA may also be held liable if it fails to order donated foods sufficient to permit the processor to balance its inventories, or if the SFA cancels such orders before delivery to the processor.

SDA Guidance for Processors and SFAs

The SDA must provide guidance to processors and SFAs, upon request, in order to facilitate compliance with regulations and policy relating to substitution, inventories, and other aspects of the processing of donated foods, or with specific procedures required by the SDA in their implementation.

Questions regarding substitution of donated foods and negative inventories should be directed to Sherry Thackeray at (703) 305-2652 or David Brothers at (703) 305-2668.



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