

<b>F</b> ood & <b>N</b> utrition <b>S</b> ervice	<b>FNS INSTRUCTION</b>	NUMBER
	U.S. DEPARTMENT OF AGRICULTURE 3101 PARK CENTER DRIVE ALEXANDRIA, VA 22302-1500	709-5 Rev 3

ACTION BY: Food and Nutrition Service National Office  
 Food and Nutrition Service Regional Offices  
 Agricultural Marketing Service

INFORMATION FOR: State Distributing Agencies

**SHIPMENT AND RECEIPT OF USDA FOODS**

I PURPOSE

The purpose of this Instruction is to establish the general standards and procedures that the State distributing agency (SDA), Indian Tribal Organization (ITO) or other consignee must follow in receiving shipments of USDA Foods (i.e., donated foods) in Department of Agriculture (USDA) food assistance programs, including the Commodity Supplemental Food Program (CSFP); the Food Distribution Program on Indian Reservations (FDPIR); The Emergency Food Assistance Program (TEFAP); the National School Lunch Program (NSLP); the Nutrition Services Incentive Program (NSIP), which is administered by the Department of Health and Human Services; and in other outlets; and to convey established responsibilities for other entities such as USDA Foods vendors and carriers. The standards and procedures established in this Instruction are necessary in determining if shipments of USDA Foods are received in optimal condition and in the quantities ordered, and ensuring the proper disposition and replacement of USDA Foods when circumstances warrant.

II AUTHORITY

This Instruction is based on Federal regulations in 7 CFR Part 250.

III FORMS

FSA-21, *Public Voucher – Commodity Programs*

IV RECORDS MANAGEMENT REQUIREMENTS

A Required records. The consignee must maintain documentation of:

- 1 The serial number of the high security seal(s).
- 2 The temperature of a freezer or refrigerated truck or trailer upon arrival.

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3 The result of any inspections by State or local health authorities or a USDA certification agent to determine the condition of USDA Foods.

4 The disposition of USDA Foods received out-of-condition, including, as applicable, the destruction of such foods, or a signed salvage receipt from the vendor or carrier.

B Retention of records. All records must be retained for a period of three years from the close of the Federal fiscal year or school year to which they pertain.

## V RESPONSIBILITIES

Not applicable

## VI DEFINITIONS

A The definitions in 7 CFR 250 are applicable to this Instruction.

B The following definitions are also applicable to this Instruction:

1 Bill of lading (BOL). Documentation of the contents of a shipment and other pertinent information as required in the contract of carriage.

2 Carrier. A commercial enterprise that transports USDA Foods from one location to another, but does not store such foods.

3 Consignee. An entity (e.g., SDA, ITO, recipient agency, commercial storage facility, or processor) that receives a shipment of USDA Foods from a vendor or Federal storage facility.

4 Contracting Office. The USDA office (e.g., Agricultural Marketing Service's Commodity Procurement Program) that awards or executes a contract for supplies or services.

5 Demurrage. A charge assessed by the carrier for intermodal containers held beyond the specified free time.

6 Detention charge. A penalty charge assessed by carriers for shipments held beyond the specified free time.

7 Dunnage. The material used to protect or support freight during transit.

8 Free time. The amount of time established by carriers for the unloading of freight before penalty charges apply.

9 Goods receipt. The process of receipting for a delivery in the Web-Based Supply Chain Management system (WBSCM).

10 Household Programs. Programs which provide USDA Foods to participants for home consumption, including CSFP, FDPIR, and TEFAP.

11 In-kind replacement. The replacement of a loss of USDA Foods with the same type of food of U.S. origin, of equal or better quality as the USDA Food, and at least equal in value to the lost USDA Food.

12 Intermodal Container. A standardized shipping container used across different modes of transport from ship or rail to truck without unloading and reloading cargo.

13 Lumper fee. A fee assessed by a carrier to the consignee or vice versa for unloading a shipment. Lumper fees are not permitted when receiving USDA Foods.

14 Multi-food shipment. A shipment from a Federal storage facility that usually includes more than one type of USDA Food.

15 National Multi-Food Warehouse. A Federally-contracted storage facility that includes more than one type of USDA Food.

16 Out-of-condition USDA Foods. USDA Foods that are no longer fit for human consumption as a result of spoilage, contamination, infestation, adulteration, or damage.

17 Pallet. A platform for the placement of material for storage or transportation.

18 Pinwheeling. A process of arranging pallets on a truck with varied positioning when handling items of different sizes. Pinwheeling is not permitted for shipments originating from the National Multi-Food Warehouse.

19 Purchase order. The contract awarded to the vendor.

20 Refused Shipment Request. An SDA or ITO request to FNS to refuse all or part of a shipment due to out-of-condition USDA Foods. FNS in turn notifies the appropriate Contracting Office. In cases of issues relating to the integrity of high security seals (see Section IX, Inspecting the Shipment), shipments must be refused by the consignee.

21 Rejected Shipment. Official Contracting Office designation, upon consideration of an SDA or ITO refused shipment request with regard to out-of-condition USDA Foods.

22 Sales order. An order for a specific USDA Food that includes the material description, quantity, delivery period, and destination, and that is identified by a specific code.

23 Similar replacement. The replacement of a loss of USDA Foods with another type of food from the same food category (e.g., dairy, grain, meat/meat alternative, vegetable, fruit, etc.) that is of U.S. origin, of equal or better quality than that type of USDA Food, and at least equal in value to the lost USDA Food.

- 24     Slip sheet. A piece of cardboard used in place of a pallet.
- 25     Split shipment. A shipment of USDA Foods from a vendor that is split between two or more SDAs, ITOs, or recipient agencies, and that usually includes more than one stop-off or delivery location.
- 26     Tailgate. To move freight to the back end of a trailer for unloading.
- 27     Vendor. A commercial food company from which USDA purchases foods for donation.
- 28     WBSCM. Web-Based Supply Chain Management, an integrated food purchasing, tracking, and ordering system used by USDA and its customers, vendors, suppliers, and transportation personnel.

## VII    OBJECTIVES

A       This Instruction is applicable to shipments of USDA Foods received by an SDA, ITO, a recipient agency, or other consignee from a USDA-approved vendor or from a Federally-contracted storage facility, including a National Multi-Food Warehouse. This includes USDA Foods received at each delivery location in a split shipment, which is a type of direct delivery shipment from a vendor. Requirements specific to shipments from a National Multi-Food Warehouse are provided as applicable. Shipments of USDA Foods from a vendor may be delivered in the vendor’s truck or trailer, or in a truck or intermodal container belonging to a contracted commercial shipping company which, in this Instruction, is referred to as a carrier. A trailer or container may be transported to a specific location on a railcar, ship, or barge before delivery of its shipment of USDA Foods to the designated consignee. This method of delivery is sometimes referred to as an “intermodal” or “piggyback” shipment. This Instruction does not address issues related to Best-if-Used-By (BIUB) dates or equivalent. BIUB dates are addressed separately in Policy Memorandum FD-107, “Donated Food Storage, Distribution, and Product Dating (Revised)”.

B       The Instruction is not applicable to USDA Foods received by a recipient agency or other consignee from an SDA, ITO, or recipient agency storage facility; to end products received from a commercial processor or distributor; or to products ordered through the USDA Department of Defense Fresh Fruit and Vegetable Program (USDA DoD Fresh).

## VIII   ARRANGING FOR SHIPMENT AND DELIVERY

A       Delivery appointment. Vendors must comply with all provisions of the AMS Master Solicitation for Commodity Procurements, including delivery appointment requirements. For shipments originating from a vendor (i.e., any shipment not originating from a National Multi-Food Warehouse), the vendor or carrier must arrange for a delivery appointment with the consignee as far in advance of the expected delivery as possible, but not less than 72 hours prior to delivery. All parties are highly encouraged to address any non-federal shipment or delivery requirements in advance of the delivery (e.g., additional paperwork required by the warehouse).

For split shipments (i.e., shipments that are split between two or more consignees), the vendor or carrier must arrange for a delivery appointment with each consignee. The vendor or carrier may make an earlier delivery than scheduled only if a new delivery date is arranged that is acceptable to the consignee and USDA personnel are available, as necessary, to perform any required inspections; otherwise, the original delivery date must be honored.

If the vendor or carrier arrives without a delivery appointment or is late for an appointment, the consignee should accept the shipment, if able, or work with the vendor or carrier to schedule delivery at a later time. When a carrier does not make a delivery appointment in advance, it is recommended that the consignee report the issue and identify the carrier in the comment section of WBSCM when receipting for the delivery.

For shipments originating from a National Multi-Food Warehouse, the National Multi-Food Warehouse must arrange regular delivery dates with each consignee. If an order includes multiple truck loads, every effort must be made to arrange for all deliveries on the same day. The consignee must negotiate any tailgating by the National Multi-Food Warehouse when setting the delivery date(s). The consignee is responsible for accepting shipments on the prearranged delivery date. If the regularly scheduled delivery must be postponed (e.g., as a result of inclement weather or equipment failure), the National Multi-Food Warehouse will immediately contact the consignee to determine a revised delivery date that is agreeable to both parties.

B Advanced shipment notification. For shipments originating from a vendor (i.e., any shipment not originating from a National Multi-Food Warehouse), the vendor will create the Advance Shipping Notification (ASN) in WBSCM in advance of delivery of the USDA Foods shipment so as to provide the consignee sufficient advance notice of the delivery. The ordering organization and receiving destination designated in WBSCM will receive the ASN by email. It is recommended that the delivery appointment be arranged with the consignee before entering the ASN in WBSCM. The ASN will include the following information:

- 1 Required delivery date.
- 2 Expected delivery date.
- 3 Delivery ship-to business partner.
- 4 Nutrition program acronym (e.g., CSFP, NSLP).
- 5 USDA Food product material number and description (e.g., material code).
- 6 Sales order number (not applicable to shipments to a National Multi-Food Warehouse).
- 7 Sales order item number.
- 8 Quantity (e.g., cases, number of units) in shipment.

- 9 Purchase order item number.
- 10 Purchase order number.
- 11 Product vendor information.

For shipments originating from a National Multi-Food Warehouse, the consignee will not receive an ASN notification. Specific delivery dates are pre-arranged between the consignee and the National Multi-Food Warehouse and reflected in WBSCM.

C Destination changes. For shipments originating from a vendor (i.e., any shipment not originating from a National Multi-Food Warehouse), consignees wishing to change the shipment destination after the order is in “purchased” status in WBSCM must submit a request to the appropriate SDA or ITO, if applicable (e.g., the consignee is a recipient agency which has an agreement with an SDA or ITO), which must in turn submit the request to the FNS Regional Office (FNSRO) for Household Programs or to the FNS National Office (FNSNO) Food Distribution Division (FDD) for Child Nutrition Programs at least 45 days in advance of the start of the delivery period.

For shipments originating from a National Multi-Food Warehouse, consignees wishing to change shipment destinations must notify the SDA or ITO, as applicable, which must in turn notify the National Multi-Food Warehouse.

D Vendor or carrier unable to deliver USDA Foods. If a vendor or carrier arrives at the delivery location at the appointed time and is unable to unload USDA Foods as a result of action or inaction by the consignee, the vendor or carrier may place the USDA Foods in storage or move them to another location which may subject the consignee to additional charges. Any disputes between the consignee and the vendor or carrier regarding liability for such charges that are not resolved at the SDA or ITO level must be referred to the FNSRO, or FNSNO FDD in the case of Child Nutrition Programs, for resolution by FNS and the Contracting Office, as applicable.

E Pallet exchange. For shipments originating from a vendor (i.e., any shipment not originating from a National Multi-Food Warehouse), pallet exchange (i.e., trading pallets of equal quantity and quality for those delivered with a shipment) is not required but may occur at the discretion of the consignee and should be arranged in advance of delivery.

For shipments originating from a National Multi-Food Warehouse, carriers do not exchange pallets.

## IX INSPECTING THE SHIPMENT

A General requirements. The consignee must inspect each shipment and commercial delivery receipt (e.g., BOL) carefully prior to unloading to ensure that the high security seal(s) is/are intact, to determine the overall condition of the USDA Foods and the number of units in the shipment, and to ensure the accuracy of the receipt.

**B** Seal. The consignee must ensure that the high security seal(s) on the door or other point of entry of the truck or trailer is/are intact and must make a record of the serial number of the seal(s). If the high security seal is broken or lacking, or the serial number on the seal does not match the number on supporting documentation (e.g., BOL), the consignee must refuse the shipment, including split shipments, and immediately notify the SDA or ITO, as applicable, which must in turn notify the FNSRO, or FNSNO FDD in the case of Child Nutrition programs. FNS will notify the appropriate Contracting Office or the National Multi-Food Warehouse, as applicable.

For shipments originating from a vendor (i.e., any shipment not originating from a National Multi-Food Warehouse), including split shipments, a previously refused shipment may only be accepted by the consignee after a Condition of Container Inspection has been performed by a USDA representative, as designated by the Contracting Office, and a Certificate of Quality and Condition has been issued which documents that the Condition of Container meets the applicable U.S. Standards for Condition of Food Containers. Any inspection costs must be paid by the vendor or carrier.

**C** Removal of seal. The consignee is responsible for the removal of the high security seal(s), which must be done with bolt cutters or a similar tool.

**D** Temperature check. For frozen or refrigerated foods, at a minimum, the consignee must check the thermometer, which is usually located outside of the truck, to ensure that the temperature in the freezer or refrigeration unit is at an acceptable level, in accordance with USDA guidance, and must ensure that the unit is switched on and working.

**E** Quantity of USDA Foods. The consignee must determine if there is any obvious discrepancy from the quantity of USDA Foods ordered (e.g., an overage or shortage). A more careful count must be conducted as the shipment is unloaded and prior to the vendor or carrier departing.

**F** Observing Condition of USDA Foods. The consignee must inspect the shipment to determine if the USDA Foods have been delivered in good condition and with no evidence of product tampering. The consignee should take note of any odors, infestation (e.g., dead insects or nesting materials), or damage to inner or outer containers. For frozen foods, the consignee should look for signs of defrosting or signs of thawing and re-freezing of the foods that could have occurred prior to the arrival of the shipment. For USDA Foods that are not intended to be frozen (e.g., canned products), it is recommended that the consignee also check to ensure that such foods do not arrive in such manner.

Fresh fruit or vegetable shipments, with the exception of fresh apples, must be inspected by a USDA representative prior to unloading in accordance with contract specifications. The vendor must arrange for the inspection at each delivery destination and pay any costs associated with inspection.

**G** Out-of-condition USDA Foods and required notification. For shipments originating from a vendor (i.e., any shipment not originating from the National Multi-Food Warehouse), if consignee inspection indicates that all, or a major portion, of the USDA Foods in

a shipment are out-of-condition, the consignee must immediately notify the SDA or ITO, as applicable, which must in turn notify the FNSRO, or FNSNO FDD in the case of Child Nutrition Programs.

FNS will consult with the Contracting Office, as applicable, to determine if the shipment is to be rejected, or if an inspection by State or local health authorities or an authorized USDA agent must first be obtained to determine the condition of the USDA Foods. If an inspection is required, the SDA or ITO, as applicable, must inform the FNSRO or FNSNO of the consignee's inspection results so that FNS and the appropriate Contracting Office can determine if the shipment should be rejected. The SDA, ITO, or consignee must also ensure that the vendor or carrier is aware of the results of the consignee's inspection, subsequent inspection by health authorities, as applicable, and the FNS/Contracting Office decision to accept or reject the shipment. The vendor or carrier is responsible for the prompt removal of a rejected shipment. The cost of the inspection must be paid by the consignee if it is determined that the USDA Foods are not out-of-condition. Inspection costs must otherwise be paid by the vendor or carrier.

For shipments originating from a National Multi-Food Warehouse, if consignee inspection indicates that all, or a major portion, of the USDA Foods in the shipment are out-of-condition, the consignee must immediately notify the SDA or ITO, as applicable, which must in turn notify the FNSRO. FNS will work with the National Multi-Food Warehouse to address the issue.

If there is a doubt as to the condition of the USDA Foods, or a disagreement with the vendor or carrier regarding their condition, the consignee must immediately notify the SDA or ITO, as applicable, which must in turn notify the FNSRO, or FNSNO FDD in the case of Child Nutrition Programs. FNS will consult with the Contracting Office or the National Multi-Food Warehouse, as applicable, to determine a course of action.

Any fresh fruit or vegetable delivery which fails to meet USDA specifications will be rejected by the USDA representative and Contracting Office. If any lot of fresh fruits or vegetables fails to meet the product or packaging requirements, the vendor may request in writing that USDA accept delivery of the lot. USDA, with agreement from the consignee, may, at its option, accept delivery.

## X ACCEPTING AND RECEIPTING FOR THE SHIPMENT

A Acceptance of shipment. For shipments originating from a vendor (i.e., any shipment not originating from a National Multi-Food Warehouse), if the consignee inspection indicates that some, but not a major portion, of the USDA Foods in the shipment are out-of-condition, or that there is only a minor discrepancy from the quantity of USDA Foods ordered, the consignee may accept the entire shipment and segregate any out-of-condition USDA Foods. The consignee must in turn notify the SDA or ITO of the out-of-condition foods, as applicable, which must in turn notify the FNSRO, or FNSNO FDD in the case of Child Nutrition Programs, and file a complaint in WBSCM. FNS will consult with the appropriate Contracting Office to determine a course of action.

Alternatively, when the consignee inspection indicates that some, but not a major portion, of the USDA Foods are out-of-condition, the consignee has the option to immediately notify the SDA



or ITO, as applicable, of the out-of-condition foods upon receipt, requesting refusal of that part of the shipment. The SDA or ITO must in turn notify the FNSRO, or FNSNO FDD in the case of Child Nutrition Programs, and file a complaint in WBSCM when a goods receipt is entered in WBSCM. FNS will consult with the appropriate Contracting Office to determine a course of action. This course of action may lead to part of the shipment being rejected.

For shipments originating from a National Multi-Food Warehouse that include out-of-condition USDA Foods or that do not have the quantity of USDA Foods ordered, the consignee must accept the entire shipment, segregate unusable products, and report the loss or shortage to the SDA or ITO, as applicable, which must in turn inform the FNSRO and request guidance on disposing of any out-of-condition foods in accordance with Section XII of this Instruction, and file a complaint in WBSCM when the order is receipted for issue tracking purposes.

For latent product defects observed by the consignee after acceptance of the shipment, the consignee must notify the SDA or ITO of the out-of-condition foods, as applicable, which must in turn notify the FNSRO, or FNSNO FDD in the case of Child Nutrition Programs, and file a complaint in WBSCM when the order has been receipted.

See Section XII of this Instruction for details on the disposition and replacement of out-of-condition USDA Foods.

B Delivery receipt. The consignee must ensure that the delivery receipt (e.g., BOL) indicates the quantity of USDA Foods received, including product that is rejected at the time of receipt for being out-of-condition and the quantity received in good condition, before signing and dating such receipt and returning it to the vendor or carrier. The carrier, and not the consignee, is responsible for providing the vendor with the signed delivery receipt, with the exception of select bulk products for further processing (e.g. chicken), where grading certificates are provided by the consignee to the vendor. The signed delivery receipt must match the Goods Receipt quantity entered into WBSCM.

C WBSCM Goods Receipt. The consignee is responsible for entering the Goods Receipt into WBSCM within two (2) calendar days of receipt of the product. Electronic receipting within two (2) calendar days permits expeditious notification to FNS and other parties of the receipt of the shipment and allows payment to vendors in a timely manner. The Goods Receipt must indicate the quantity received in good condition and, if applicable, the quantity received damaged or rejected.

If the consignee has not entered a Goods Receipt within two (2) calendar days of delivery and the Contracting Office has received an invoice for the shipment, the Contracting Office will enter a Goods Receipt into WBSCM in order to meet prompt payment requirements. The Goods Receipt entry will be based on vendor- or carrier-provided proof of delivery documentation such as a signed BOL.

Note that if the entire shipment is rejected by the Contracting Office, no information is required or should be entered into WBSCM.

## XI UNLOADING THE SHIPMENT

A Consignee responsibilities. The consignee is responsible for unloading the shipment of USDA Foods and for removing and disposing of dunnage and other debris. The consignee may request reimbursement for costs associated with restacking items that arrive unpalletized or pallets that arrive poorly stacked if appropriate documentation, including photographs, is provided via the SDA or ITO, as applicable, to the FNSRO, or FNSNO FDD in the case of Child Nutrition Programs, within a reasonable timeframe. A complaint should be entered in WBSCM documenting the issue. Fees levied on the vendor or carrier (e.g., gate fees or lumper fees) are not permissible. For shipments of frozen or refrigerated foods, the consignee must ensure that the freezer or refrigeration unit remains on during unloading.

For shipments originating from a National Multi-Food Warehouse, the consignee is responsible for unloading their entire order, including items that may be segregated (e.g., frozen under bulkhead), and ensuring that proper temperature is maintained.

B Vendor or carrier responsibilities. The vendor or carrier is responsible for shipping product on pallets or equivalent (e.g., slip sheets) that are in acceptable condition, in accordance with applicable contract specifications. If pallet exchange is desired, the vendor or carrier must arrange for pallet exchange with the consignee prior to delivery. Fees levied on the consignee (e.g., lumper fees) are not permissible.

All shipments originating from a National Multi-Food Warehouse will arrive on pallets that must be positioned to facilitate timely unloading of USDA Foods (e.g., no pinwheeling). The National Multi-Food Warehouse Carrier is responsible for tailgating if previously arranged with the consignee.

C Free time. The consignee must complete the unloading of the shipment, and the removal of dunnage and other debris, within the period of free time. For palletized loads, free time is up to two (2) hours. For non-palletized loads, free time is up to six (6) hours. Failure to complete the unloading within the free time may incur a demurrage or detention charge, which the consignee may be obligated to pay.

D Segregating out-of-condition USDA Foods. As provided in Section X, if the consignee inspection indicates that some, but not a major portion, of the USDA Foods in the shipment are out-of-condition, or that there is only a minor discrepancy from the quantity of USDA Foods ordered, the consignee may accept the entire shipment and segregate any out-of-condition USDA Foods. In such circumstances, the consignee must identify cases or other units of USDA Foods, or those USDA Foods within a case or other unit, that are out-of-condition and segregate such foods from those that are in good condition, making note on the delivery documentation (e.g., BOL) as applicable. USDA Foods with cosmetic damage (e.g., small dents) should be retained for use as feasible.

E Verifying quantity of USDA Foods, overages, and shortages. The consignee must confirm the quantity of USDA Foods received when unloading to determine if the quantity of foods delivered is the quantity ordered or if there is an overage or shortage of the quantity ordered. Any overages or shortages must be noted on the signed delivery receipt and reflected

on the WBSCM Goods Receipt. Directions for entering quantities in WBSCM are found in the WBSCM Work Instructions under “Help”. See Section X for further details on receipting.

For shipments originating from a vendor (i.e., any shipment not originating from the National Multi-Food Warehouse), when there is a shortage of the quantity ordered, the SDA or ITO, as applicable, should notify the FNSRO, or FNSNO FDD in the case of Child Nutrition Programs, to address any need for additional USDA Foods or to credit entitlement for Child Nutrition Programs and TEFAP. As applicable, the FNSRO will work with FNSNO FDD to address the issue. For split shipments between two or more destinations, it is the responsibility of the consignee to unload the correct quantity at each delivery location in accordance with the Sales Orders. It is the responsibility of the SDA or ITO to make the necessary corrections in the event of an unloading error for split shipments.

For shipments originating from a National Multi-Food Warehouse that have less than the quantity of foods ordered, the consignee must notify the SDA or ITO, as applicable, which must in turn notify the FNSRO and make arrangements to receive the missing product as appropriate.

F Re-sealing for subsequent delivery. It is the responsibility of the vendor or carrier to re-seal/rebrace the truck for subsequent deliveries, such as in split shipments, or shipments originating from a National Multi-Food Warehouse. In a split shipment, the consignee, at the next delivery location, must ensure that the high security seal(s) is/are intact and that the serial number on the seal matches the number on supporting documentation. Issues related to re-sealing, such as broken or lacking seals, should be referred to the SDA or ITO, as applicable, which must in turn refer such issues to the FNSRO, or FNSNO FDD in the case of Child Nutrition programs.

For questions or issues regarding re-sealing for subsequent deliveries originating from the National Multi-Food Warehouse, the consignee should contact the SDA or ITO, which must in turn contact the FNSRO. Refer to Section IX of this Instruction for requirements with regard to seals.

G Delivery service upgrade requests. When notified of shipments, the consignee may request upgraded delivery services or delivery to an alternate warehouse; for example, delivery within the consignee’s premises, direct delivery tailgating, or delivery to a specific room within a building. Note that such delivery terms are beyond USDA contractual requirements. Any negotiations to upgrade services are between the vendor or carrier and consignee and any additional charges for special delivery terms are between the consignee and vendor or carrier. Any charges invoiced to USDA for additional delivery services will be denied.

## XII DISPOSITION AND REPLACEMENT OF OUT-OF-CONDITION USDA FOODS

A Disposition of out-of-condition USDA Foods. For shipments originating from a vendor (i.e., any shipment not originating from a National Multi-Food Warehouse) that are found to contain out-of-condition USDA Foods, after taking the necessary steps provided in Sections IX through XI, as applicable, the consignee must provide the vendor or carrier with the opportunity to remove such out-of-condition USDA Foods for salvage. If the vendor or carrier

chooses to remove such USDA Foods, the consignee must obtain a signed salvage receipt or equivalent and provide it to FNS via the SDA or ITO, as applicable, upon request.

If the vendor's shipment has already been accepted and the vendor or carrier is unwilling to remove such foods, it is the responsibility of the consignee to destroy or otherwise dispose of the out-of-condition USDA Foods, in accordance with State or local requirements pertaining to food safety and health. Out-of-condition USDA Foods may not be used in any USDA food assistance programs. Any USDA markings must be obliterated if the product is salvaged for other use.

For shipments originating from a National Multi-Food Warehouse, if the shipment has already been accepted, the consignee must contact the SDA or ITO, as applicable, which must in turn contact the FNSRO for guidance in disposing of any out-of-condition foods.

**B**     Replacement. For shipments originating from a vendor (i.e., any shipment not originating from the National Multi-Food Warehouse), the vendor is responsible for replacing USDA Foods shipments that are rejected by the Contracting Office in full or those USDA Foods that are delivered out-of-condition in an accepted shipment. Such replacement must be in-kind, unless FNS approves similar replacement. In certain limited cases, FNS, working with the appropriate Contracting Office, may pursue a claim against the vendor for payment of the value of the USDA Foods in lieu of physical replacement of the USDA Foods. The consignee must contact the SDA or ITO, as applicable, which must in turn contact the FNSRO, or FNSNO FDD in the case of Child Nutrition Programs, to make arrangements to receive replacement product as appropriate.

For shipments originating from a National Multi-Food Warehouse that contain out-of-condition USDA Foods, the consignee must work with the SDA or ITO, as applicable, which must in turn work with the FNSRO to make arrangements to receive replacement product as appropriate.

**C**     Claims against vendor or carrier. As applicable, FNS, in coordination with the appropriate Contracting Office, will pursue claims against vendors or carriers, as necessary, to ensure replacement of USDA Foods delivered out-of-condition, in accordance with FNS Instruction 420-1, "Managing Agency Debts".

**D**     Reimbursement for expenses. The consignee may request, through the SDA or ITO, as applicable, from the FNSRO, or FNSNO FDD in the case of Child Nutrition Programs, reimbursement for expenses incurred in unloading, storing, inspecting, or disposing of USDA Foods that are delivered out-of-condition. In making such request for reimbursement, the consignee must use form FSA-21, "Public Voucher – Commodity Programs", which must be submitted to the FNSRO, or FNSNO FDD in the case of Child Nutrition Programs.

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