

ODE USDA Food Distribution Program

Processing/Diversion Guidance
Manual

July 2019



Overview

This guide's intent is to give a simple overview of how the USDA Foods processing/diversion program works in Oregon. USDA Foods processing/diversion works slightly different in each state and this guide is not meant to be all-inclusive.

(a) Processor approval

Processors wishing to sell products in Oregon must have both a National Processing agreement and an active State Participation Agreement to process in a state. It is the policy of ODE Food Distribution to sign a State Participation Agreement with any USDA approved multi-State processor wishing to do business in Oregon unless there is a problem with any of the following criteria:

- (1) The nutritional contribution provided by end products;
- (2) The marketability or acceptability of end products;
- (3) The means by which end products will be distributed;
- (4) Price competitiveness of end products and processing yields of donated foods;
- (5) Any applicable labeling requirements; and
- (6) The processor's record of ethics and integrity, and capacity to meet regulatory requirements.

(b) Monitoring and review of processing activities.

ODE monitors processor sales of USDA Foods processed end products through Monthly Performance Reports provided by the processor. These sales are periodically checked against processor SEPDS. ODE and sponsors should verify Monthly Performance Report information by use of information in processor reporting databases such as K12 and Processor Link.

(c) Recordkeeping and reporting requirements.

All parties involved in donated food (DF) processing are required to retain their records relating to transactions and requirements for donated foods for a period of three years from the close of the fiscal or school year to which they pertain. However, records pertaining to claims or audits that remain unresolved during this period must be retained until such actions have been resolved. The processor must submit a performance report to ODE on a monthly basis.

Performance reports must be submitted not later than 30 days after the end of the reporting period. The performance report must include the following information for the reporting period, with year-to-date totals:

- (1) A list of all recipient agencies purchasing end products;
- (2) The quantity of donated foods in inventory at the beginning of the reporting period;
- (3) The quantity of donated foods received;
- (4) The quantity of donated foods transferred to the processor from another entity, or transferred by the processor to another entity;
- (5) The quantity of donated foods losses;
- (6) The quantity of end products delivered to each eligible recipient agency;
- (7) The quantity of donated foods remaining at the end of the reporting period;
- (8) A certification statement that sufficient donated foods are in inventory or on order to account for the quantities needed for production of end products;
- (9) Grading certificates, as applicable; and
- (10) Other supporting documentation, as required by the distributing agency or recipient agency

(d) Inventory controls

Processors must notify ODE and schools, as appropriate, when donated food inventories

exceed a six-month supply. ODE may transfer donated food inventory to help alleviate inventory excesses or shortages.

(e) Refund applications.

If utilizing the Rebate or Refund value pass through system, schools should request the refund for the value of donated foods from the processor within 30 days from the close of the month in which the sales were made. This may be done via email or other written correspondence.

(f) Net off invoice (NOI) sales.

Individual schools are responsible for ensuring that they are receiving the NOI value pass through discount off their invoices from the distributor.

(g) Information needed in procurement documents.

Schools are required to conduct competitive procurements for all processed end products. However, when donated foods are involved, the following information needs to be contained in formal procurement documents (i.e., the bid or proposal or the school's solicitation).

(1) *The price to be charged for the end product or other processing service;*

This is self-explanatory. The bid or proposal must have the prices to be charged.

(2) *The method of end product sales that will be utilized and assurance that crediting for donated food will be performed in accordance with the applicable requirements for such method of sales in 7CFR§250.36;*

If a distributor sells via NOI, the method of end product sales is Indirect Discount. The distributor must assure in its bid or proposal, crediting for donated food will be performed in accordance with 7CFR§250.36(d). The value of donated food is deducted from the price on the distributor invoice.

If a processor utilizes any other method of sales, the processor must assure that schools will receive credit for the value of donated foods either through discount in the sales price, refund or rebate after a sale or by providing end products on a fee for service basis.

(i) Direct Sale – The price charged is reduced by the value of donated food in the end product.

(ii) Rebate or Refund – The price charged is not reduced. Schools must apply for a rebate or refund from the processor after the sale occurs.

(iii) Fee-for-Service – The price charged includes all costs to produce and deliver the end product to the school or the school's agent not including the value of donated food used in its production. Under Fee-for-Service, the following billing and shipping arrangements could apply:

- Bill to school, ship to school. Title transfers to school upon delivery to the school.
- Bill to school, ship to agent. Agent bills distribution fee to school. Title transfers to school upon delivery to the agent.
- Bill to agent, ship to agent. Agent bills processing and distribution fees to school if authorized by the school. Title transfers to school upon delivery to the agent. A school may choose to assign an agent to bill them for the total case price when distribution services have been procured separately from processing services. This agent assignment must be in writing. When a processor bills to the school or an agent under Fee-for-Service, it does not include the value of donated food used in its production. Therefore, title to the end product transfers to the school upon delivery to the agent, consistent with 7CFR§250.11(e).

(3) The value of donated food contained in the end products;

This is documented on processors' Summary End Product Data Schedules (SEPDS). These documents are available to schools and processors on the ODE website. The bid or proposal a school obtains from processors or a distributor must have these values listed for each end product that is bid or the school may include the values in their solicitation. The discounts or rebates obtained should be reviewed by the school and compared to the values on the SEPDS to ensure they are receiving the correct credit.

(4) The location for the delivery of the end products.

This is self-explanatory. This information must be on the bid or proposal provided to schools or otherwise documented within the procurement process.

(5) Food Recall procedures and points of contact.

According to the USDA Foods recall guidance manual, schools must have a provision in the bid/response for food recall procedures and contact information for a point and backup person for handling food recalls.

(h) Donated food banks.

In order to receive a discount or rebate or to be able to buy end products on a Fee-for-Service basis, there must be a bank of donated food at a processor to withdraw from. When schools request rebates or buy directly from processors, they establish a bank exclusive to them. This is known as a Sponsor bank. Sponsor banks are requested via the WBSCM. If there are enough requests, ODE will be able to divert donated foods to a processor. There will be times when less than full truckloads are requested in aggregate and the ODE may not be able to fill the request.

(i) Methods of sale (value pass through systems).

Pass through system:	Rebate or Refund	Direct Discount	Indirect Discount (NOI)	Fee for Service
Schools buy from:	Processor or any commercial distributor	Processor	Commercial Distributor	Processor
Pass through performed by:	Processor	Processor	Commercial Distributor	Processor
How pass through is performed:	Processor cuts a check to the school.	Discounted invoice	Discounted invoice	DF value is not included in fee.

(j) Methods of procurement.

When non-Federal entities other than the State distributing agency buy products or services using Federal funds, there are procurement standards (2CFR§200.318-.326) they are required to follow. These standards apply to school procurements using Federal funding even if donated foods are not involved. Procurement standards are published by the Office of Management and Budget (OMB) and referenced throughout USDA program regulations. According to the OMB, the methods of procurement to be followed are listed below, unless State or local laws and regulations are more restrictive (2 CFR 200.318(a) and 7 CFR § 250.31):

(1) Informal-

- Micro Purchase (2 CFR 200.320(a)) – Up to \$10,000.00, spread equitably among

Total cost	\$140.00/case	\$125.00/case	\$145.00/case
CN servings per case	120	110	100
\$ per serving	\$1.167 (\$140/120)	\$1.136 (\$125/110)	\$1.45 (\$145/100)

Processor B has the lowest price per serving in this example

(L) Shipping/Ordering

In Oregon, RA’s divert pounds to the processor in WBSCM. RA’s are responsible for arranging all orders and delivery with the processor after the procurement process has been completed. Many processors have planners and ordering tools available for use to place orders; some have online applications. ODE currently has all processor commodity calculators available on the [ODE processing webpage](#).

Shipping method and delivery locations must be outlined in the RA’s procurement documents.* Possible ship-to options in Oregon include the following:

- Direct ship to RA location
- Through a broadline distributor of the RA/processor’s choosing
- Through the state distributing warehouse contractor. If RA/processor chooses this method, processor must arrange shipping terms with contractor. Warehouse contractor will bill processor directly. Processor can then either absorb shipping cost or charge separately to RA (based on whatever was agreed upon in procurement documents).

*If using Oregon statewide processing price agreements, shipping costs are outlined in agreements.

(m) Timeline.

In the fall prior to the next school year, schools should decide which donated food products would be most beneficial to their food service programs. In general, schools may choose any combination of USDA Direct Delivery items, diversions/end products, or they may allocate entitlement to the Department of Defense Fresh Fruit and Vegetable Program.

Timeline	Processing diversions/end products	DoD FFAVORS
August to October	Determine what kinds of food to buy next school year, including commercial products and donated foods. Attend food shows, etc.	
November	Write bid specifications (formal procurement)	
December	Obtain quotes. (informal procurement) Solicit bids. (formal procurement) Publish RFP. (formal procurement)	
January to March	Evaluate quotes/bids/proposals. Award contracts. (formal procurement)	
March to April	Request direct delivery products and processing pounds to load into sponsor banks through WBSCM.	Request \$ transfer via e-mail, ODE enters into WBSCM.

April to May	ODE Food Distribution orders products from USDA and splits as many loads as possible with other states.	Establish user ID and password for FFAVORS
May to June	Schools communicate with brokers, processors and distributors. Place orders and arrange delivery.	
July	Issue PO pursuant to a quote, bid or proposal or conduct micro-purchases if allowed by school policy and procedure.	Can start placing orders in FFAVORS.
Ongoing	Request refund(s) from processor(s) if Rebate or Refund is the pass through system used and others continue to monitor correct balance drawdowns.	

(n) [USDA foods expected to be available.](#)

(o) List of [USDA approved processors.](#)

(p) [ODE processing web page.](#)

(q) Civil rights.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through Federal Relay Services at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](#), (AD-3027) found online at: [How to File a Complaint](#), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: program.intake@usda.gov

This institution is an equal opportunity provider.