

Revised 10/07

## **I. Commodity Complaints, Holds, Recalls and Alerts**

### **I. INTRODUCTION**

The commodities hold and recall process is used when a food safety issue is raised about a U.S. Department of Agriculture (USDA) purchased commodity. The new process pertains exclusively to USDA-purchased commodities delivered to approved entities (recipient agencies and processors). It changes the existing recall process in the following ways:

- institutionalizes USDA's commodity food recall/hold process;
- streamlines and clarifies communications among USDA agencies – Agricultural Marketing Service (AMS), Food Safety and Inspection Service (FSIS), Farm Service Agency (FSA) and Food and Nutrition Service (FNS) - and with the U.S. Department of Health and Human Services' Food and Drug Administration (FDA) and the Department of Defense's Defense Supply Center Philadelphia (DOD);
- streamlines and expedites communications between USDA and State distributing agencies (SDAs) and local recipient agencies (RAs);
- removes adulterated product from RAs as soon as possible, but not later than 30 days after recall;
- defines reimbursable costs and expedites product replacement and reimbursement to SDAs and RAs;

The process does not relieve vendors of their responsibility for replacement and reimbursement of recalled products.

To make it easier to explain the new process, the information below is divided into three primary areas: 1) Decision and Notification, 2) Product Disposition, and 3) Reimbursement/Replacement Process. The appropriate responsibilities among the Federal, State and local levels are discussed for each area. Attached are appendices providing acronyms and a description of allowable reimbursable costs.

### **II. DECISION AND NOTIFICATION PROCESS**

**As a reminder, if you suspect a food safety issue, immediately contact your local or State Health department.**

#### **A. Federal Responsibilities**

The responsible regulatory agencies, FSIS or FDA, receive food safety concerns from many sources including hotlines, sampling and testing programs, vendor notification, and State and local agencies including health departments. When the product involved is a USDA purchased commodity the following actions will take place:

1. FSIS immediately alerts FNS and, depending on the product, the appropriate Procurement Agency – AMS, FSA, or DOD - that there is a potential recall. The procurement agency identifies the potential destinations and amount of product involved. (Note: FSIS is responsible for regulating meat, poultry and egg products. FDA regulates the remaining products including fruits, vegetables, dairy, fish, grains and nuts. FSIS will act as a liaison between FNS and the procuring agency, on all recalls, including those regulated by FDA.)
2. FSIS/FDA begins its investigation, including product testing and within **10 calendar days** makes a recommendation on the disposition of the product.
3. In the event initial testing is inconclusive, FSIS or the Under Secretary of Food Safety in conjunction with the procurement agency and FNS staff, makes a recommendation to FNS as to whether to put the product on hold. FNS will communicate hold decisions to SDAs, who will then inform the affected RAs. The hold is to provide time for additional testing and data collection and may result in a recommendation to the company for a recall
4. When a firm recalls a product, FSIS or the Under Secretary of Food Safety communicates the recall decision to FNS and the appropriate Procurement Agency. FSIS prepares a recall notice and recommended press release and supporting information and supplies it to FNS within 24 hours of the recall decision. **FNS notifies SDAs within 24 hours of the recall and provides them with the recall notification, press release and other information needed to track the product and document reimbursable costs.** Commercial processors, where applicable, will be notified immediately if a recalled commodity has been shipped to their plant. At the same time, the Procurement Agency begins discussions with the vendor for pick-up and replacement of recalled product.

## **B. SDA Responsibilities**

1. The SDA shall assign a State Food Safety Coordinator and alternate, and provide the names, titles, email addresses, phone and fax numbers to FNS. Contact information must be provided for contacts during and after normal work hours. The SDA shall have a similar contact list for its RAs.
2. Upon receipt of a recall notification, SDAs must contact each affected RA as soon as possible, but **no later than 24 hours** after receiving the recall notification. SDAs will disseminate the recall notification, press information and other information needed to track the product and document reimbursable costs to affected RAs.

3. SDAs should contact the appropriate distributor/warehouse, directing them to place the commodity on hold and to determine: a) the amount of recalled product still in storage at the State level, and b) the location and amount of product delivered to RAs.

### **C. RA Responsibilities**

1. Each RA is responsible for appointing a Food Safety Coordinator and providing the name, title, email address, phone and fax numbers to the SDA.
2. In the event of a food recall, affected RAs will receive from the SDA a recall notification, press release, and request for information to be returned.
  - The recall notification will provide the name of the product, affected lot numbers and other product information.
  - Additional information will be included to assist RAs to respond to requests from media, parents, school district officials and others.
  - RAs must provide the location and quantity of product in storage, amount of product already consumed and document reimbursable costs.
3. RAs must **immediately** notify their sites of the recall, identify the location of the affected products (verify that the food items bear the product identification codes), isolate the commodities to avoid accidental use and take an accurate inventory by location. The quantity and location of the product must be submitted to the SDA within **10 calendar days** of the recall. This quick turnaround is important for the following reasons:
  - When a recall occurs, USDA contracting officers work with the vendor to expedite removal of the product and replacement of the product. During these discussions, it is important for both USDA and the vendor to know the scope (locations and quantity) of the recall;
  - USDA needs the cost data as soon as possible in order to expedite the reimbursement.

## **III. PRODUCT DISPOSITION**

### **A. Federal Responsibilities**

As SDAs and RAs are compiling inventory information, the Procurement Agency will work with the vendor to determine the best course of action for collecting the recalled product at local or centralized locations. In certain circumstances, product may be destroyed on-site, if agreed by the vendor and approved by FSIS.

## **B. SDA Responsibilities**

SDAs will be in constant communication with RAs and affected warehouses/distributors. In the majority of situations, the recalled product will be returned to the vendor from central locations within each State. In those situations, SDAs will contact each affected distributor/warehouse to arrange for timely pick-up of the recalled product from each school. If the distributor delivers to a central location at the RA, it is normally the RA's responsibility (depending on their contract with the distributor/warehouse) to consolidate the product from affected schools to a central location within the RA's area of responsibility for pick-up. **The recalled product should be consolidated for pick-up as soon as possible, but no later than 30 days after the date of the recall notification.**

## **C. RA Responsibilities**

RAs will work with the SDA and the contracted warehouse/distributor to determine the appropriate method and timeframe for picking up the recalled product.

## **IV. REIMBURSEMENT/REPLACEMENT PROCESS**

On October 31, 1998, Congress enacted Public Law 105-336, the William F. Goodling Child Nutrition Reauthorization Act of 1998 (the Act). Section 15 of the Act authorized the Secretary to reimburse States for State and local costs associated with the removal of commodities if the Secretary determined that the commodities posed a health or safety risk. The law stipulates that reimbursable costs are limited to "storage, transportation, processing and distribution of the commodities."

When a recall occurs, in most cases the vendor/processor is responsible for replacing the affected product and reimbursing Federal, State and local agencies for allowable costs incurred as a result of the recall. USDA will request that vendors make restitution for those SDAs that have submitted timely documentation within **20 working days from the date of the recall notification**. Should payment from the vendor not occur, USDA may reimburse the State and local agencies for specified costs and seek reimbursement of those expenditures from the vendor/processor.

Described below are several types of recalls and holds and a discussion and corresponding replacement/reimbursement instructions:

### **A. Food Safety Recalls**

When a commodity is recalled, USDA will proceed according to the type of commodity product involved, as follows:

1. Commodity Delivered As Purchased by USDA (e.g.; frozen ground beef, bought and delivered to the SDA as frozen ground beef.)

- Vendor assumes responsibility for replacement and costs incurred by the SDA/RA. Should vendor default or delay restitution 20 days after notification, USDA will initiate action to replace the product and may reimburse SDA/RAs for certain costs as described in paragraph E below. USDA continues to seek reimbursement from the vendor.
2. Reprocessed Commodity Delivered to SDA/RA (e.g., bulk chicken into breaded, cooked chicken nuggets)
- USDA purchases bulk commodities for further processing at the request of SDA's. SDA's contract directly with processors to have the commodity made into a processed product. USDA is not a party to that contract. In some cases, the raw product may be the source of contamination resulting in a health or safety risk and in other situations the source of contamination may be the reprocessor's plant. In addition, in some cases the processor may be substituting equivalent commercial product for the commodity product (called Substitution). Each scenario is unique, and resolution will proceed in the following manner:
3. When Raw Product Is Recalled (With No Substitution)
- When bulk product that has already been further processed (end product) is determined to pose a health or safety risk, the commodity vendor is responsible for all costs incurred by the USDA, the SDA and/or RAs, including processing costs pursuant to the terms of the processing contract. Should vendor default or delay restitution 20 days after notification, USDA will initiate action to replace the raw product and reimburse SDAs/RAs for processing costs while seeking reimbursement from the vendor.
  - USDA is not a party to the processing contract and cannot make payments directly to processors – only to an SDA who in turn can pay processors. SDAs should submit copies of paid processor bills with their reimbursement package. In situations where a State has not paid a processor but the processor has incurred processing expenses, the SDA must work closely with USDA and the processor to come to an acceptable solution.
4. When Raw Product Is Recalled (With Substitution)
- With USDA approval, processors may substitute commercial product for donated commodities to produce finished end products for SDA/RAs. The processor may then the USDA commodity to produce commercial product for sale to commercial outlets.

This is a commercial recall and USDA will not assume responsibility for costs incurred beyond replacement of the implicated commodity. USDA will seek reimbursement from the vendor as in other cases.

5. When End Product is Recalled (Commercial Recall)

- When the bulk product delivered to the processor is safe, but the end product is determined to be a health or safety risk, normally due to a problem at the processing plant, it will be treated as a commercial recall. The processor assumes responsibility for all costs incurred by the USDA, the SDA and/or RAs, pursuant to the terms of the processing contract. USDA will not assume responsibility for costs incurred.

## **B. Administrative Recalls**

The Department may occasionally decide to remove products from distribution when it decides safety is a concern, even though the products technically meet purchase specification requirements and are free to move in commercial distribution channels. FNS shall be responsible for notifying the SDAs. Since these products ostensibly meet purchase specification requirements, USDA will develop strategies for disposition and replacement of the product, and reimburse States and recipient agencies for their reimbursable costs, including any incurred processing fees, within acceptable limits. Although commodities are normally delivered 6 to 8 weeks after purchase, USDA will attempt to expedite delivery of replacement products. USDA will coordinate product removal, replacement and expense reimbursement.

## **C. Specification Recalls**

A commodity that does not meet product specifications may be voluntarily, or at USDA's request, be recalled. If recall at the direction of USDA, FNS shall be responsible for notifying the appropriate SDAs. The vendor, working with the relevant Procurement Agency, is responsible for retrieving and promptly replacing the identified commodity, and reimbursing SDAs/RAs for transportation and storage expenses.

## **D. Holds**

Commodities may be placed on hold for up to 10 calendar days to prevent use until further testing and inspection can clarify a suspected problem. FNS is responsible for notifying the appropriate SDAs. FSIS (or FDA through the Under Secretary of Food Safety), in consultation with FNS staff and the responsible procurement agency, is responsible for making the recommendation to FNS to put the product on hold. If a product is held beyond 10 days for further testing, USDA may instruct the SDA to immediately consolidate the product and put it under SDA control. USDA may reimburse SDAs/RAs as follows:

## 1. Product Placed on Hold, Then Released

If the hold extends beyond 10 calendar days, USDA may reimburse SDAs/RAs up to 1 month's standardized storage cost, if applicable. If held product is returned to the SDA warehouse, USDA may reimburse for one round trip (remove the recalled product to State control and return it to the RA) to and from SDAs warehouse/distributor.

## 2. Product Placed on Hold by Local Health Inspector, Then Released or Voluntarily Recalled by Vendor

In instances in which USDA, through FSIS and FDA, does not concur with local health inspectors that probable cause existed for the hold, USDA assumes no responsibility for costs incurred by the SDAs/RAs.

## V. REIMBURSABLE/REPLACEMENT PROCESS AND RESPONSIBILITIES

When a donated commodity poses a health or safety risk, the vendor must replace the product and reimburse the SDAs/RAs in accordance with their contracts. Should the vendor default or delay restitution more than 20 days after notification, USDA may replace the commodities and reimburse the SDAs/RAs. Subsequently, USDA will seek reimbursement from the vendor.

USDA may reimburse SDAs for the following expenses:

- One month standardized storage costs;
- One round trip transport of commodities;
- On-site destruction of commodities, when approved by USDA; and
- Processing costs, when an SDA/RA has further processed the product under an approved agreement, subject to the limitations in Section IV.A.

### A. Federal Responsibilities

1. The responsible Procurement Agency will closely monitor the process to attempt to ensure the vendor/processor initiates reimbursement within 20 days of the recall notification. During this time, the procurement agency will process the reimbursement documentation/invoice received from the SDAs. Should the vendor/processor delay restitution or default, AMS/FSA will authorize the National Finance Center (NFC) to electronically transmit reimbursement to each SDA **within 4 working days**, provided the SDA has established a vendor express account as outlined below. If the SDA has not established a vendor express account, they will be mailed a check within 10 working days.

2. For claims not received within the initial timeframes, a final disbursement will be completed **within 90 calendar days** after the start of the recall.

3. FNS Regional Offices will review documentation submitted by local agencies and the SDA during management evaluations. Findings of inadequate documentation can result in a claim against the SDA.

4. FNS and the responsible procurement agency, in consultation with the vendor, will make a decision regarding replacement of product or entitlement credit **within 60 calendar** of the recall notification. The preferred method is replacement of product. If the vendor agrees to replace the product, it will not be delivered to the SDA between April 1 and August 1, except when mutually agreeable to the vendor and the SDA.

## B. SDA Responsibilities

In order to take advantage of the expedited payment system, each SDA must complete and submit to AMS a Vendor Express application. Once processed, each SDA will receive a unique Vendor Express Number. This is a one-time process. In the event that the SDA changes banks or other pertinent information, a change must be submitted to AMS.

1. After receiving the reimbursement documentation from the RAs, SDAs must consolidate this information, including any State expenses, and submit a USDA Public Voucher and documentation via fax or mail to the appropriate USDA program within **3 working days**. In other words, the Procurement Agency must receive the consolidated State information within 15 calendar days from the recall notification date (10 calendar days at the RA and up to 3 working days at the SDA). State agencies failing to meet this deadline will be reimbursed at close-out (90 calendar days).

2. SDAs are responsible for ensuring the sufficiency and accuracy of the RA documentation prior to submission to the Department. Documentation not supplied to USDA must be maintained on file as per Federal record retention requirements and be available for review

3. Upon receiving the electronic funds transfer from USDA, SDAs shall reimburse RAs in a timely manner. (Note - In some cases, the SDA does not have payment capabilities. In those instances, it is important that the SDA reach an agreement with the Child Nutrition State agency to process payments to RAs. There may also be other outlets involved (charitable institutions, Regional Office Administered Programs, summer camps, etc.) with which the SDA has no agreement. In those cases, the SDA must work closely with USDA to ensure timely reimbursement to these entities.)

## C. RA Responsibilities

The quantity and location of the product must be submitted to the SDA within 10 calendar days for the RA to be reimbursed within 30 days of the recall notification. If the RA does not meet this deadline, reimbursement will be made at the close-out of the recall process (90 calendar days). Refer to Appendix B for a discussion of reimbursable costs.

**COMMODITY COMPLAINTS:**



All recipient agency commodity complaints should be processed through the State Distributing Agency. Fill out the Electronic Food Complaint form and email it back to the Food Distribution office. (See Form KY-FD-21 Form)