

WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION

COMMERCIAL DISTRIBUTION AGREEMENT FOR SCHOOL FOOD AUTHORITIES PARTICIPATING IN THE USDA FOODS PROGRAM AND CONTRACTING WITH COMMERCIAL DISTRIBUTORS

SCHOOL YEAR 2024-25

Instructions: This document is for read-only purposes. This document describes the requirements of contracting with a commercial distributor and the USDA Foods Program. SFAs will be required to login to the Wisconsin USDA Foods Ordering System and accept these terms in the Contract Form under the Application. By clicking "Accept", the SFA agrees with the following terms and conditions.

I. GENERAL INFORMATION

By checking the agree to box located at the end of the agreement, the School Food Authority (SFA) and the Wisconsin Department of Public Instruction (DPI) agree to the following terms and conditions for distribution of USDA Foods by a commercial distributor. Furthermore, the purpose of this agreement is to facilitate the distribution of USDA Foods to SFAs in Wisconsin who participate in the National School Lunch Program and seek to utilize a commercial distributor, herein after referred to as "Commercial Distributor," for delivery of USDA Foods. This agreement excludes further-processed USDA Foods obtained through the direct diversion of bulk USDA Foods. The SFA agrees to administer the Food Distribution Program in accordance with federal regulations including policy and instructions issued by DPI. The applicable regulations are 7 CFR 210 (National School Lunch Program), 7 CFR 250 (Food Distribution Program), and applicable procurement and contracting regulations in 2 CFR Part 200 (the Super-Circular).

II. AGREEMENT/POLICY STATEMENT

THE WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION (DPI) AGREES TO:

1. Allocate USDA Foods, to the extent available and allowable, to the SFA for the Child Nutrition Programs covered by this Agreement.
2. Provide Commercial Distributors with the following information:
 - a. For each participating SFA with whom the Commercial Distributor has an agreement, a detailed list of the USDA Foods requested for the upcoming school year. The list will include: material identification (ID), ordered quantity, ordered unit of measure and requested delivery month.
 - b. Monthly, the DPI will provide a detailed list of all USDA Foods to be distributed to each participating SFA. This list will be for the upcoming month's deliveries. This list will include: material ID, USDA Foods description, quantity, SFA ID, SFA name, and delivery month.
 - c. Monthly, DPI will also provide a report listing the total quantities to be picked up (per Commercial Distributor) from the warehouse and distributed to SFAs. This report will include: material ID, USDA Foods description, total quantity, total weights and delivery month.
 - d. The lists mentioned in letters a-c above excludes further processed USDA Foods obtained through the direct diversion of bulk USDA Foods.

3. DPI will be responsible for costs associated with warehouse storage and handling during the assigned month of distribution (e.g., if SFA requests product for September distribution, DPI will pay the warehouse storage and handling costs until September 30).

THE SCHOOL FOOD AUTHORITY (SFA) AGREES TO:

1. Request and accept, in as large quantities as may be efficiently utilized in the food service program, the USDA Foods allocated by DPI for SFAs approved to participate in the National School Lunch Program.
2. Reimburse DPI for the within-state handling, processing, warehousing, and transportation costs as may accrue to the receipt of the USDA Foods.
3. Promptly report to DPI any complaints or irregularities pertaining to the USDA Foods received, including items received in unusable condition.
4. Comply with the applicable regulations and amendments and with any instructions or procedures issued by DPI, including the use of appropriate federal procurement procedures when contracting with a Commercial Distributor.
5. Contract with a Commercial Distributor for no longer than a one-year period. The contract with the Commercial Distributor may be renewed at the option of both parties for a maximum of four additional one-year periods.
6. Contract only with a Commercial Distributor properly authorized through the Wisconsin Department of Transportation and the United States Department of Transportation. Commercial Distributors must follow Federal Motor Carrier Safety regulations.
7. Contract only with a Commercial Distributor agreeing to comply with applicable regulations (7 CFR 210, 7 CFR 250 and 2 CFR Part 200) and federal/state policy and instructions issued by DPI.
8. Contract only with an eligible Commercial Distributor that has signed a Memorandum of Understanding (MOU) with DPI to participate in commercial distribution of USDA Foods.
9. Contract only with a Commercial Distributor agreeing to meet a 250 case minimum estimated monthly pick-up total by state-designated warehouse pick-up location (i.e., a minimum of 250 cases total, all USDA Foods combined, for all SFAs serviced by that Commercial Distributor out of that state-designated warehouse pick-up location).
10. Contract only with a Commercial Distributor agreeing to deliver all USDA Foods items allocated by DPI to the SFA including further-processed end products (includes further-processed end products only if the SFA is participating in the state-processing program and not direct diversion processing program).
11. Contract only with a Commercial Distributor agreeing to pick up, at a minimum of monthly, the SFA's USDA Foods from the designated state-contracted warehouse (see Attachment A for further details regarding the designated state-contracted warehouse pick-up location). Commercial Distributors may deliver USDA Foods directly to the SFA or store the USDA Foods for later delivery to the SFA.
12. Contract only with a Commercial Distributor agreeing to abide by the following transfer of title requirements:
 - a. Commercial Distributor must give a minimum of 48 hours notice to the designated warehouse to set dock appointments.
 - b. At the time the Commercial Distributor picks up an SFA's USDA Foods, a transfer of title will occur to the SFA. The Commercial Distributor shall be financially liable for

the value of each SFA's USDA Foods in the Commercial Distributor's possession. The Commercial Distributor will inspect each pallet of USDA Foods for damages and accuracy before removing them from the warehouse.

- c. Full pallet ordering and removal from the state-designated warehouse is required. This is to prevent a Commercial Distributor from breaking down large quantity items into smaller orders. There will be no additional charge for pallets if the Commercial Distributor picks up the entire authorized quantity of USDA Foods for the month. This will allow for identification of USDA Foods, in the event of a USDA Food Hold/Recall. Partial pallets will be allowed when split between Commercial Distributors.
- d. If the Commercial Distributor picks up product in full truck load increments, the state-designated warehouse will not charge the Commercial Distributor an order withdrawal fee. A full truckload equates to the full authorized quantity of USDA Foods for the month. Therefore, if the full authorized quantity is less than a full truck load, there will be no withdrawal fee if the Commercial Distributor takes the full authorized quantity of USDA Foods at one time. However, if the full authorized quantity of USDA Foods for a Commercial Distributor is more than one full truck load, but the total does not equal a full truck load increment; there will be no withdrawal fee if the Commercial Distributor takes the full authorized quantity of USDA Foods at one time (i.e., within the same business day during normal warehouse business hours).
- e. If the Commercial Distributor picks up less than a full truck load of product, the state-designated warehouse may charge the Commercial Distributor an order withdrawal fee. The state-designated warehouse will bill the Commercial Distributor directly for any applicable order withdrawal fee for pick-up quantities of less than a full truck load.
- f. Commercial Distributor must pick up USDA Foods from the state-contracted warehouse by the last day of the distribution month that the SFA requested the product (e.g., if an SFA orders USDA Foods to be delivered to the state-contracted warehouse in September, the Commercial Distributor has until September 30 to pick up those USDA Foods). If USDA Foods are not removed from the state-contracted warehouse by the last day of the distribution month that the SFA requested the product, the warehouse will bill the Commercial Distributor for the additional storage cost. At this time, products will be transferred into the Commercial Distributor's storage account on behalf of the SFA. It is recommended that the SFA and Commercial Distributor agreement clearly state that additional storage charges resulting from the Commercial Distributor not picking up the product, are the responsibility of the Commercial Distributor and will not be passed on to the SFA.
- g. Pallet exchange with the state-designated warehouse is required. Pallets must be Grade "A", four-way pallets, 40" x 48." If pallets do not meet this specification or are in poor condition, the state-designated warehouse may establish a pallet account and invoice the Commercial Distributor accordingly.
- h. Commercial Distributor may request the state-designated warehouse to have products palletized; palletization refers to requests for special configuration of a pallet. All products will come on pallets, and you will only be charged if you request the product to be palletized in a specific configuration. If requested, pallets shall conform to the following:

1. Manufacturers standard 40" x 48" GMS partial 4-way shipping pallets are acceptable.
 2. Maximum height: 7'6" (including pallet)
 3. Maximum weight: 3,200 pounds (including pallet)
 4. Pallets are to be securely banded or shrink wrapped.
 5. Pallet exchange is required with all warehouses and will be exchanged for like pallets.
- i. If Commercial Distributor requests the state-designated warehouse to have products palletized, the warehouse will charge the Commercial Distributor directly for the cost of palletizing product.
13. Each SFA should establish with the Commercial Distributor a storage period after which the SFA must either accept the product or find another eligible SFA served by the Commercial Distributor to accept the product. DPI recommends that this period not exceed 30 days storage beyond the end of the assigned distribution month.
 14. Contract only with a Commercial Distributor agreeing to abide by the following storage and distribution requirements:
 - a. At all times, the Commercial Distributor facilities, including all storage areas, and transportation equipment, shall follow the United States Food, Drug and Cosmetic Act and their State's Department of Agriculture food inspection laws.
 - b. At all times, food must be stored at appropriate temperatures and rotated using First-in, First-out procedures.
 - c. The Commercial Distributor shall not store agricultural items, chemical products, or products that may be harmful to the quality of the USDA Foods anywhere near these USDA Foods.
 - d. The Commercial Distributor will segregate all USDA Foods inventory from commercial inventory.
 - e. The Commercial Distributor will assign an individual SKU to all USDA Foods products.
 - f. The Commercial Distributor will include USDA Foods material identifications on order guides for the SFA.
 - g. Substitution for USDA Foods with a commercial equivalent product (equal in grade and quality) is only allowable with prior approval from the SFA.
 15. Contract with Commercial Distributors having the following capabilities:
 - a. Commercial Distributor shall have the capacity to receive and accommodate information from DPI through computer software/hardware that is Internet accessible.
 - b. Commercial Distributor shall have the capacity to receive multiple electronic files.
 - c. Commercial Distributor must have a system in place to allocate USDA Foods by customer.
 - d. Commercial Distributor must have the capability to number and track the allocation of USDA Foods delivered within the duration of the agreement with the SFA.

- e. Commercial Distributor shall provide, upon request by the SFA or the DPI, an over, short, and damage report.
 - f. Contract with Commercial Distributor shall have an effective date prior to effective date of this Agreement. Upon request, SFA will need to provide DPI a copy of Commercial Distribution Contract.
16. Require Commercial Distributor to comply with food hold and recall alert procedures including:
- a. Commercial Distributor shall follow procedures established by the DPI in compliance with USDA Foods Recall Procedures and [Wisconsin USDA Foods Recall Procedures](#). The SFA shall notify the Commercial Distributor within 24 hours, or by the end of the next business day, of any USDA Foods recall notifications.
 - b. Any product involved in a USDA Foods Recall will not be distributed or disposed of without prior DPI approval.
 - c. In the event of a USDA Foods recall, payment terms shall be established between the DPI and all parties involved.
17. Require that the Commercial Distributor provide proof of adequate (sufficient to cover the highest inventory month) insurance or bond for coverage of loss of USDA Foods. In the event of such a loss, the SFA agrees to reconcile any overage, shortage, and damaged USDA Foods with the Commercial Distributor. The SFA may accept replacement for shorted or damaged USDA Foods with an equal or better commercial product (grade and quality) or may accept payment from the Commercial Distributor for the full USDA Foods value, including any storage and handling fees that the SFA has paid to the State and any processing fees. It is the SFA's responsibility to ensure that they receive 100% of the USDA Foods (and/or USDA Foods value) ordered from and delivered by the Commercial Distributor.
18. Recover all USDA Foods from the Commercial Distributor or full value of the USDA Foods if the contract is terminated by either party. Full value includes any processing fees and costs paid to the State. The SFA agrees to negotiate with the Commercial Distributor the cost of transferring/removal of all remaining USDA Foods from the Commercial Distributor, if the SFA terminates the contract without cause. If the SFA terminates the contract with cause, or if the Commercial Distributor terminates the contract without cause, then the Commercial Distributor agrees to cover the costs of transferring or removing all remaining USDA Foods.
19. Reserve within the Commercial Distributor contract the right of review and audit by representatives of the DPI, USDA, Office of the Inspector General, and the General Accounting Office. At a minimum, the right of review and audit shall include:
- a. USDA Foods in the possession of the Commercial Distributor.
 - b. The facilities used in handling, storing, and transporting USDA Foods.
 - c. Procedures used by the Commercial Distributor in carrying out the requirements of the agreement.
 - d. Recordkeeping required by this agreement.
 - e. When requested, the Commercial Distributor shall furnish representatives with samples of USDA Foods product.

20. Conduct a year-end physical inventory and reconciliation at the SFA-contracted Commercial Distributor facility jointly with the Commercial Distributor, or at a minimum have the SFA-contracted Commercial Distributor conduct a year-end physical inventory and reconcile any discrepancies found between the Commercial Distributor-conducted physical inventory and the SFA's records.
21. If SFA prepares meals for another SFA, SFA will include a statement in the joint agreement(s) contract(s) to indicate that the joint agreement agency(s) understands and agrees to have their USDA Foods delivered by a Commercial Distributor.
22. If SFA contracts with a Food Service Management Company or a Food Vendor for their meal service, SFA must hold the contract with the Commercial Distributor. Should the SFA no longer contract with the Food Service Management Company or Food Vendor, the SFA must fulfill the contract with the Commercial Distributor.
23. In accordance with Federal civil rights and law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, include the required Nondiscrimination Statement in all applicable contracts.
24. Comply with 2 CFR Part 200.213, Executive Order 12549, Suspension and Debarment (Non-procurement). The SFA will not enter into contracts in excess of \$25,000 with debarred suspended or voluntarily excluded entities until such time as the debarment, suspension or voluntarily exclusion is lifted. The SFA agrees to use Form AD-1048 or an equivalent form in their bidding process for all contracts in excess of \$25,000. By signing the certification statement on the form, the bidder certifies that neither it nor any of its principals (e.g., key employees) have been proposed for department, debarred, or suspended by a federal agency.

Assurance of Civil Rights Compliance

The SFA hereby agrees that it will comply with:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
- ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
- iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
- v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
- vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000);
- vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
- viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);
- ix. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.
- x. The USDA non-discrimination statement that 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, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By incorporating this assurance into this Agreement, the SFA agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities, and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the SFA, its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA.

Nondiscrimination Statement

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for

Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted 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; or

2. fax:

(833) 256-1665 or (202) 690-7442; or

3. email:

program.intake@usda.gov

This institution is an equal opportunity provider.

ATTACHMENT A

All USDA Foods covered through this agreement will be received and initially stored at one of the two state-contracted warehouse facilities.

The following are the two state-contracted warehouse facilities:

Northern Region: Central Storage & Warehouse – Eau Claire
2650 Fortune Drive
Eau Claire, WI 54703
Contact: Deb Kressin, Phone: 715-874-2951

Southern Region: Central Storage & Warehouse – Madison
4309 Cottage Grove Road
Madison, WI 53716
Contact: Dan Fritsch, General Manager, Phone: 608-221-7611

For each SFA that has selected a Commercial Distributor for delivery of USDA Foods, the State will designate a warehouse pick-up location. The State is divided into two regions, the Northern Region and the Southern Region, as indicated on the below map. Each region of the State contains one state contracted warehouse facility that services all SFAs located in that region. Since the two regions are designated in the state warehouse contract, the designated warehouse pick-up locations cannot be modified.

