

SUBJECT: Losses Due to Spoilage or Damage; Failure to Comply with Processing Agreement and Inventory of USDA Donated Commodities

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**A. Purpose.** This policy pertains to claims for fraud, theft, spoilage or damage of USDA donated commodities and losses.

**B. Scope.** This policy covers all recipient agencies (RAs), school food service warehouses, commercial contracted warehouses, and State-contracted warehouses. This policy will cover all RAs utilizing food manufacturers to further process USDA commodities.

**C. Authority.**

1. 7 CFR Sec. 250.13 (e) and (f), Improper Distribution and Disposition of Damaged Commodities.
2. FNS Instruction 410-1, Revision 2, Non-Audit Claims - Food Distribution Program
3. USDA National Policy Memo FD-020, Single Inventory and Related Commodity Issues – Clarification of Regulatory Changes and Other Guidance

**D. Policy.** The State reserves the right to pursue a claim against RAs in instances where it deems it necessary due to the size or nature of the loss.)

1. If an RA improperly distributes or uses any donated commodities, or causes the loss of or damage to commodities through its failure to provide proper storage, care, and handling or due to an excessive inventory, the Bureau will pursue a claim for the value of the lost commodities. This policy also covers claims arising from improper use of funds derived from the sale of donated food containers, distribution of salvaged commodities or insurance.
2. The general policy is to collect claims in full through administrative action to permit the taking of legal action, if necessary, before the expiration of any statutory or contract period of limitations. All instances of lost commodities must be reported to the Bureau immediately after the occurrence of the loss via telephone or email. RAs must submit a written Commodity Loss Claim Report (Exhibit D) with any supporting documentation to the Bureau within 3 to 10 business days after the occurrence of the loss. This provides the RA time to go through the necessary procedures for completion of a commodity loss report. Condemnation and/or destruction of mass quantities of food, which may be indicative of a larger problem, must be reported to the Bureau immediately upon discovery of the loss.
3. The Bureau will take or recommend to RAs and warehouses appropriate action regarding changes that need to be made so that the conditions that caused the claims are reduced or eliminated which should result in a reduction in the volume of losses. Without any mitigating circumstances, USDA considers all losses attributed to underutilization or inadequate temperature control to be caused by negligence and subject to a claim. When such a loss occurs, the burden of proof is on the RA to validate that the failure to maintain proper temperature control was not due to its negligence.

4. The Bureau is ultimately responsible for all USDA food losses, regardless of where the physical possession of the commodity is at the time of the loss (i.e., at the recipient agency, commercial warehouse, school warehouse or carrier). Therefore, the Bureau will monitor agencies, including their commercially contracted warehouse, State-contracted warehouses, and carriers to ensure that USDA commodities are being stored, transported and distributed properly.
5. RAs are not normally required to report commodities lost or out-of-condition and are not bound by the policies stated in Paragraph D.1-4 unless it is a further processed item or are lost due to theft or fraud. All such losses should be handled in the same manner as commercial food items. However, the State reserves the right to pursue a claim against an RA in cases where it deems necessary or appropriate due to the size and/or nature of the loss.

#### **E. Claim Determination.**

1. The Bureau shall begin claim action immediately upon receipt of a commodity loss report based upon a loss due to theft, fraud, or in instances where the State exercises its right to pursue a claim against an RA due to the size and/or nature of the loss. The State will assess a claim determination within 30 days of receipt of the report of lost foods. No claim determination is required where the value of the lost food is \$500 or less except in cases where there is evidence of theft or fraud or if it is a further processed item.
2. If it is adjudged that a claim should be assessed and the value of the lost foods does not exceed \$500, the Bureau will determine the claim. If the value of the lost food equals or exceeds \$500 the fully documented facts and findings will be sent to the Southeastern Regional Office (SERO), USDA. If SERO confirms that a claim should be assessed, the Bureau will request restitution from the liable entities.

#### **F. Repayment for Lost Commodities.**

1. **In-Kind Replacement.** In-kind replacement means replacement of lost donated commodities with a like quantity of the same domestically grown foods that are equal to or of better quality, than the lost commodities and are of at least equal monetary value. For example, replacing donated all purpose flour with purchased all purpose flour. Replacement of bonus commodities must be approved by SERO.
2. **Similar Replacement.** If in-kind replacement is not practicable, the food may be replaced with a similar food upon approval by SERO. Similar replacement means replacement of lost donated commodities with a like quantity of domestically produced commodities from the same food group (dairy, grain, meat/meat alternate, vegetable or fruit) of at least equal monetary value to the lost commodities. For example, replacing all purpose flour with whole wheat flour or spaghetti.
3. **Replacement With Processed Food.** Commodities may be replaced with processed food as long as it meets the definition of similar replacement described above or is approved by SERO. The monetary value of the replacement product must equal the value of the lost

commodity. For example, turkeys can be replaced with turkey roasts; however, the monetary value of turkeys used to make the turkey roasts must equal the value of the lost turkeys.

4. **Prohibition on Replacement With Other Donated Food.** USDA donated foods cannot be replaced with other donated foods. They must be replaced with purchased foods obtained after the date of the loss. For example, eligible recipient agencies cannot use foods donated from other sources to replace lost USDA donated foods.
5. **Documentation and Follow Up.** The Bureau will retain documentation on file to verify that: (1) replacements (in-kind or similar) were actually purchased, (2) the replacement quantity was sufficient to cover the total claim quantity and (3) the monetary value of the replacement food was equal to or greater than the donated food loss. The Bureau will follow up on claims replacement at 30-day intervals until the claim is resolved.
6. **Cash Repayment of the Claim.** If replacement in kind or with similar could result in future losses (i.e., the original loss was due to excessive inventory or underutilization), the lost food shall not be replaced. If the loss is due to recurring operational deficiencies, cash repayment is mandatory.
  - (a) The Bureau may approve the offset of claims with funds collected from the salvage of spoiled food to reduce claims. For example, a county school food service (CSFS) reports a loss of frozen corn due to freezer failure. The Bureau will assess claim since the CSFS did not maintain proper temperature control. The CSFS knows some local farmers who want to buy the corn for animal feed. The money received from the salvage of this product may be used in the payment of the total amount owed to the Bureau. Prior to releasing the corn to the farmers, all USDA labels must be obliterated with a permanent opaque paint or removed.
  - (b) Funds collected from the recycling of container, packaging materials and pallets may not be used to offset lost commodity claims. These funds are considered to be “program income” and may only be used as allowable costs for program improvement operations. This revenue is derived from items that were initially purchased with Federal funds and must be maintained in the salvage account. All RAs and warehouses must return funds received from the sale of these recycled articles to the Bureau for deposit in the salvage fund.

#### **G. Claims Register and Commodity Loss Report.**

1. The Bureau will maintain a claims register that includes the following:
  - (a) Name of the RA responsible for the loss.
  - (b) The date of the loss and date initially reported to the Bureau.
  - (c) A brief description of how the loss occurred.
  - (d) A list of the lost commodities.
  - (e) The dollar amount of the claim.

- (f) Current status or resolution.
- 2. Exhibit D is the Commodity Loss Report Form to be used in making a written report of the commodity loss.
- 3. If a safety inspection is needed, the Florida Department of Agriculture and Consumer Services, Division of Food Safety, Food Safety Compliance (850-245-5520) should be contacted. Exhibit C is a listing of the County Health Departments if additional help is desired or if the food was stored in the school.

**H. Processing Claims.**

- 1. RA should submit the following information to the Bureau within 3 – 10 business days after the initial report of the loss.
  - (a) Name of the RA submitting the loss.
  - (b) Name of processor responsible for the loss.
  - (c) The date of the loss.
  - (d) A brief description of how the loss occurred.
  - (e) A list of the lost commodities.
  - (f) A list of the end product codes.
  - (g) The dollar amount of the claim. Itemized case price.
  - (h) Current status or resolution.

**I. Non-Compliant Processing Issues.** (Applies only to RAs who utilize food manufacturers to further process USDA commodities) A sample of examples is listed below.

- 1. Missed yields.
- 2. Overcharged RA per case.
- 3. Refunds not issued.
- 4. Cases not shipped.
- 5. Unsatisfactory product (with justification).
- 6. Value pass through not given.