

SUBJECT: Losses Due to Spoilage or Damage of USDA TEFAP Commodities

A. Purpose. This policy pertains to any claims for spoilage, damage, fraud, or theft of USDA TEFAP commodities and losses due to excessive inventories of commodities.

B. Scope. This policy covers all eligible recipient agencies' (RAs) and their storage facilities.

C. Policy.

1. State-contracted recipient Agencies are responsible for not requisitioning, receiving or accepting any TEFAP commodities in quantities exceeding their ability to properly handle, store, and distribute in their contracted service area. If an RA (a) improperly distributes or uses any TEFAP commodities; (b) causes the loss of or damage to TEFAP commodities through its failure to provide proper storage, care, and handling, including poor or lack of pest control; or (c) experiences a loss of TEFAP commodities due to excessive inventory, the Bureau will pursue a claim for the value of the lost TEFAP commodities. This policy also covers claims arising from improper use of funds derived from the sale of donated food containers, distribution of salvaged TEFAP commodities or insurance.
2. **The state-contracted Recipient Agency is responsible for filing all loss claims with the Bureau regardless of whether the loss occurred at their facility or at one of their sub-distributors' sites.** The general policy is to collect claims in full through administrative action before pursuing legal action. The state-contracted Recipient Agency must report all losses to the Bureau immediately after the occurrence of the loss. This initial notification to the Bureau may be done via a telephone call forewarning the Bureau of a commodity loss and advising the written report will follow. This provides the RA time to go through the necessary procedures for completion of the appropriate commodity loss report. If the loss is \$100 or less, it should be recorded using the Report of Adjustment to Inventory form (Exhibit V) and maintained in your records. For losses over \$100, the RA must file a written Commodity Loss report (Exhibit C) with the Bureau within 3 to 10 business days after the occurrence of the loss in order to fully satisfy the reporting requirements. **Condemnation and/or destruction of mass quantities of TEFAP 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 the state-contracted RAs, appropriate action regarding changes that need to be made so that the conditions that caused the claims are reduced or eliminated thereby resulting in a reduction in the volume of losses. Without any mitigating circumstances, USDA considers all losses attributed to

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 TEFAP food losses, regardless of where the physical possession of the TEFAP commodity is at the time of the loss (i.e., at the recipient agency, commercial warehouse, agency warehouse or carrier). Therefore, the Bureau will monitor the state-contracted recipient agencies, their warehouse and storage facilities whether owned, leased or donated, their carriers, sites and sub-distributors, to ensure that USDA commodities are being properly stored, transported and distributed. The Bureau will be responsible for monitoring its own state-contracted warehouses.

D. Claim Determination.

1. The Bureau shall begin claim action immediately upon receipt of a TEFAP commodity loss report and 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 \$100 or less except in cases where there is evidence of theft or fraud.
2. If it is adjudged that a claim should be assessed and the value of the lost TEFAP foods does not exceed \$2,500, the Bureau will proceed to collect the claim. If the value of the lost TEFAP food equals or exceeds \$2,500, the Bureau must submit the fully documented facts and findings to the Southeastern Regional Office (SERO), USDA. If SERO agrees that a claim should be assessed, the Bureau will seek restitution from the liable entities.

E. In-Kind Replacement and Similar Replacement of TEFAP Commodity Losses.

1. In-kind replacement is defined as replacement of lost TEFAP foods with a quantity of the *same* foods of U.S. origin that (a) are of equal or better quality than the lost TEFAP foods and (b) are of equal monetary value to USDA's cost for replacing the lost foods. If replacement in-kind is not practicable, the TEFAP foods should be replaced with *similar* foods upon obtaining the approval from USDA. *Similar replacement* is defined as a replacement of lost donated foods with a quantity of similar foods of U.S. origin of the same types as those normally donated by USDA and is of at least equal monetary value to USDA's cost of replacing the lost foods. For example, in-kind replacement would be the replacement of beef with beef. Likewise, similar replacement would be the replacement of vegetables (peas) with vegetables (corn). The replacement products must always be: (1) equal or greater in monetary value; (2) of the same food group; (3) desirable by recipients; and (4) of the same types as those normally supplied by USDA for TEFAP.
2. Any TEFAP foods that are lost must be replaced by the **purchase** of additional foods.

Therefore, **foods donated by sources other than USDA cannot be used to replace the USDA TEFAP foods that were lost.** The Bureau will require that state-contracted RAs and their sub-distributors provide documentation to verify that: (1) replacements (in-kind or similar) were actually purchased; (2) the replacement was sufficient to cover the total claim amount; and (3) the monetary value of replacements was equal to or greater than the donated food loss.

F. Repayment for Lost Commodities. If the loss is due to recurring operational deficiencies, cash repayment is mandatory.

1. If replacement in kind or with similar foods could result in future losses, i.e., the loss was due to excessive inventory or underutilization, the lost TEFAP food shall not be replaced and cash repayment shall be sought.
2. The Bureau may approve the offset of claims with funds collected from the salvage of spoiled food to reduce claims. For example, an RA reports a loss of frozen corn due to freezer failure. The Bureau will assess claim since the RA did not maintain proper temperature control. The RA 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.
3. 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 must return funds received from the sale of these recycled articles to the Bureau for deposit in the salvage fund.
4. When a claim is assessed against an RA and there is no evidence of fraud or negligence, the Bureau or SERO, as applicable, will consider the special needs and circumstances of the RA and adjust the claim and/or condition for claim collection as appropriate. These special needs and circumstances include, but are not limited to the RA’s use of volunteers and limited financial resources and the effect the claim would have on the RA’s ability to meet the food needs of low-income persons.

G. Claims Register and Commodity Loss Report.

1. The Bureau will maintain a claims register that will include the following:
 - (a) Name of the RA responsible for the loss.

- (b) The date the loss was initially reported to the Bureau.
 - (c) The date of the loss.
 - (d) A brief description of how the loss occurred.
 - (e) A list of the lost commodities.
 - (f) The dollar amount of the claim.
 - (g) Current status or resolution.
2. The RA must use Exhibit C, the TEFAP Commodity Loss Report Form, when making a written report of the commodity loss.