

441—66.7(234) Commodity losses and claims. Commodities which cannot be demonstrated by appropriate records or other satisfactory evidence to have been delivered to, or to be available in good condition for delivery to, eligible recipient agencies for which they were intended are considered to be lost commodities.

66.7(1) *Circumstances of loss.* Commodities may be lost through one or more of the following means:

- a. Theft, damage, spoilage, or infestation in transit or in storage.
- b. Improper distribution to institutions, families, or individuals or distributing above authorized rates.
- c. Sale or exchange of commodities or diversion to an improper use.
- d. Failure to deliver end products according to contracted yields under a processing agreement.
- e. Other similar causes.

66.7(2) *Reporting commodity losses.* All commodity losses regardless of the dollar value shall be reported to the program manager by the responsible entity such as, but not limited to, contractors and subcontractors, warehouses, or carriers.

66.7(3) *Determination of fault and claim procedures.* The program manager shall investigate the commodity loss and determine who is at fault as described in FNS Instruction 410-1, Claims for Losses of Donated Foods and Related Administrative Losses — Procedures for the State Distributing Agency, published on December 29, 2010.

a. *Value of loss does not exceed \$500.* The department shall not initiate a claim action against an entity that has been determined to be at fault if the value of the accumulated commodity loss does not exceed \$500. EXCEPTION: If there is evidence of violation of a federal or state statute, procedures in subrule 66.7(7) shall apply.

b. *Losses exceeding \$500.* When the department believes that a claim exists against an entity and the value of the lost commodities exceeds \$500, the department shall immediately refer the claim determination to the FNS regional office. When the department receives notice from FNS that a claim exists, the department shall immediately initiate the claim procedure.

c. *Losses occurring in transit.* A claim action must be initiated regardless of the value of the commodity losses if the commodity losses occur when in transit for delivery.

d. *Demand letters.* The department shall send up to three demand letters to the entity determined responsible for the loss.

e. *Late charge.* Interest shall be assessed against an entity beginning on the thirty-first day following the date of the first demand letter, unless an extension has been granted. Interest shall be assessed at the rate determined by the U.S. Treasury Department at the beginning of each fiscal quarter.

66.7(4) *Claims payment.* The claim shall be paid to the food distribution program.

a. Cash payment will be accepted.

b. Replacement with like items may be used in lieu of cash payment for losses with the approval of the program manager. Approval shall not be granted if the replacement in kind would result in further losses or if the inventory is already in excess. A claim for the loss of bonus items may not be paid through replacement in kind.

66.7(5) *Administrative review of claim.* An entity may request an administrative review of a claim by sending a letter requesting review of the claim and a copy of a demand letter to the administrator of the division of financial, food, and work supports within 20 days of receipt of its first demand letter.

a. When more information is needed, the administrator shall request the information within 5 days of receipt of the request for review of the claim.

b. The administrator shall review the claim and issue a decision affirming, altering, or reversing the claim decision within 10 days of the request for the review or the receipt of additional information, whichever is later.

66.7(6) *Failure to make restitution.* Failure to make restitution when requested is cause for cancellation of the contract.

66.7(7) *Referral for violation of federal or state statute.* In instances of suspected violation of federal or state statute such as, but not limited to, embezzlement, misapplication, theft or fraud of any funds or commodities from the program, the department shall refer the case to the FNS.
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