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## REPORT OF THE COMPTROLLER GENERAL OF THE UNITED STATES

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### Information On A Department Of Agriculture Claim Against The Commonwealth Of Puerto Rico

This report discusses a \$2.5 million claim of Agriculture's Food and Nutrition Service against the Commonwealth of Puerto Rico. The claim, one of the largest ever involving Agriculture's domestic commodity distribution programs, concerns spoilage or infestation of federally donated food during fiscal year 1975 when the Commonwealth's needy family food donation program ended and its food stamp program began.

The report summarizes information on events preceding and following establishment of the claim, factors affecting the phaseout of the needy family food donation program in the Commonwealth, official documentation on the final disposition of the spoiled or infested commodities, and the status of the claim. The report does not contain GAO conclusions on responsibility for the commodity losses or the validity of dollar amounts in the claim.

FEB. 24, 1977



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

A-51604

The Honorable James B. Allen  
United States Senate

Dear Senator Allen:

R Pursuant to your June 28, 1976, request and later discussions with your office, we reviewed a \$2.5 million claim of the U.S. Government, established in March 1976, against the Department of Social Services of the Commonwealth of Puerto Rico. The claim, one of the largest ever set up involving the Department of Agriculture's domestic commodity distribution programs, concerns losses, through spoilage or infestation, of federally donated food during and after the phaseout of the needy family food donation program in the Commonwealth between July 1974 and January 1975. The \$2.5 million claim includes a March 1975 claim against the Department of Social Services for \$78,600 in donated commodity losses.

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Our review centered on gathering information showing the chronology of events preceding and following the establishment of the claims; factors affecting the needy family food donation program in the Commonwealth, including the impact of a June 1974 consent decree on the amounts of Federal commodities donated to the Commonwealth; official documentation covering final disposition of the spoiled or infested commodities; and the status of the March 1976 claim. As agreed with your office, our review was not directed at placing blame on the party or parties responsible for the commodity losses nor at determining the validity of the dollar amounts in the March 1976 claim.

During the review, we interviewed Department of Agriculture officials and studied pertinent Department files at both the regional and national levels. We also contacted Commonwealth officials in an attempt to obtain copies of all official reports documenting

how spoiled or infested commodities were disposed of. The information we obtained is summarized below and discussed in more detail in the accompanying appendix and exhibits.

- The losses involved in the \$2.5 million claim occurred as the result of commodity spoilage and infestation in fiscal year 1975 during the Commonwealth's transition from the needy family program to the food stamp program. This was a period during which the recipient caseload for the Commonwealth's needy family program dropped rapidly, the amounts of commodities donated to the program reached a peak, commodity purchase and shipment problems were encountered, adequate information on Commonwealth warehouse facilities was not available, reallocation of surplus needy family commodities to other eligible outlets was difficult, local transportation was unreliable, and Commonwealth money and staff to operate the program were dwindling.
- Commonwealth officials knew that the Department of Agriculture increased the commodity amounts previously requisitioned by the Commonwealth for the needy family program in fiscal year 1975. These increases were the direct result of a June 1974 consent decree signed by attorneys representing the Commonwealth and the Department. The consent decree terminated a court suit against the Commonwealth and the Department to speed up implementation of the food stamp program throughout Puerto Rico.
- A Department table (exhibit A) showing quantities and values of commodity losses became a primary basis of the March 1976 claim against the Commonwealth. The procedures used by the Department to specify the commodity losses shown in this table are discussed in the appendix.
- At the start of our review, the Department had on file copies of official records covering the actual disposition of about 6 percent of the commodity quantities listed in its March 1976 claim. Commonwealth officials told the Department that they had complete documentation pertaining to the final disposition of spoiled or

infested commodities either through condemnation and destruction, or through sale or donation as animal feed. We arranged with Commonwealth officials to obtain copies of all official disposition documents. The documentation subsequently obtained indicated that the Department of Social Services, the Commonwealth agency responsible for the needy family program, held official destruction or other records on the actual disposition of about 14 percent of the commodity quantities listed in the March 1976 claim and the proposed disposition of an additional 36 percent of the quantities listed in the claim. With Social Services' concurrence, we turned over to the Department of Agriculture copies of all disposition documents obtained from the Commonwealth.

--In September 1976 the Department of Agriculture received a Commonwealth proposal disclaiming any responsibility for the \$2.5 million loss, but offering to settle the entire claim with the replacement in kind of about \$198,000 of cheese which would be donated to eligible outlets in the Commonwealth. As of the end of January 1977, claim settlement between the Commonwealth and the Department had been suspended pending completion of a Department investigation aimed at accounting for the final disposition of all commodities included in the March 1976 claim. A report on the results of this investigation was tentatively scheduled to be issued about the middle of April 1977.

We obtained the comments of cognizant Department of Agriculture officials on a draft of our report. These comments indicate that the report is an accurate summary of the circumstances surrounding the claim. As your office instructed, we will furnish copies of the final report to the Department of Agriculture and to the Chairman, Subcommittee on Nutrition, Senate Committee on Agriculture, Nutrition, and Forestry.

The information obtained in this review was discussed with your office on December 21, 1976. During this meeting we also briefed your office on the current status of our other food stamp and commodity distribution reviews underway in the Commonwealth pursuant to your June 28, 1976, request. The results of these reviews will be sent to you in another report.

Sincerely yours,

  
ACTING Comptroller General  
of the United States

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<u>ABBREVIATIONS</u>		
ASCS	Agricultural Stabilization and Conservation Service	
FNS	Food and Nutrition Service	
GAO	General Accounting Office	

INFORMATION ON A DEPARTMENT OF AGRICULTURECLAIM AGAINST THE COMMONWEALTH OF PUERTO RICO

In March 1976 the Department of Agriculture filed a claim of \$2,543,350.12 against the Department of Social Services of the Commonwealth of Puerto Rico for losses, through spoilage or infestation, of federally donated food in fiscal year 1975 during the Commonwealth's transition from the needy family food donation program to the food stamp program. (See exhibit A for information on quantities and values of commodity losses covered by the claim.)

DESCRIPTION OF PROGRAMS

The needy family food donation program <sup>1/</sup>, authorized by section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), and section 416 of the Agricultural Act of 1949, as amended (7 U.S.C. 1431), and administered nationally by the Department of Agriculture's Food and Nutrition Service (FNS), provided for the donation and distribution of surplus or price-supported commodities to low-income households through cooperating State agencies. Under the program, members of eligible households were required to visit a food distribution center, generally on a monthly basis, to receive specified quantities of about 24 different food items.

The recipient households could refuse to accept some of the food items available in a given month, but could not make substitutions--that is, they could not take twice the authorized quantity of one item and none of another. In addition, program benefits were not retroactive. Food not selected by

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<sup>1/</sup>The needy family food donation program (or needy family program) was one of several Department of Agriculture domestic commodity distribution programs which made federally donated food items available to households, schools, and institutions. According to the Department's Food and Nutrition Service, direct food distribution through the needy family program has now virtually ended. This is a result of the 1973 congressional mandate (Public Law 93-86, 87 Stat. 247) for a nationwide food stamp program and the corresponding legal prohibition against distribution of federally donated food to households living in areas where the food stamp program is operating (7 U.S.C. 2013 (b))--except in certain situations, such as during an area's transition from food donations to food stamps.

a household in a particular month could not be added to its authorized food allotment for succeeding months. During fiscal year 1974, the 609,000 persons participating in the needy family program in the Commonwealth received \$53 million in donated commodities.

During the time covered by this report, the FNS regional office in Princeton, New Jersey, was responsible for supervising the needy family program in the Commonwealth. The distributing agency for the program in the Commonwealth was the Department of Social Services. Social Services rented 6 central warehouses for storing commodities received from FNS and used 83 local centers throughout the Commonwealth for distributing the commodities to recipient households.

The food stamp program, authorized by the Food Stamp Act of 1964, as amended (7 U.S.C. 2011 et seq.), and administered nationally by FNS, is designed to help low-income households obtain nutritionally adequate diets by supplementing their food budgets. Under the program, participating households buy food stamps having a face value greater than their purchase price--the difference is termed "bonus value." The stamps can be used to buy food through authorized retail food stores and other authorized outlets. During June 1976, the 1.6 million food stamp recipients in the Commonwealth received \$50.6 million in bonus value coupons.

THE JUNE 1974 CONSENT DECREE--FROM  
FOOD DONATIONS TO FOOD STAMPS

Although Public Law 91-671, enacted on January 11, 1971 (84 Stat. 2048), authorized the Commonwealth to participate in the food stamp program, the program did not begin there until 3-1/2 years later. Public Law 93-86, enacted on August 10, 1973 (87 Stat. 247), mandated that, if a State (including the Commonwealth) chose to participate in the food stamp program, it must submit a plan to the Department of Agriculture by January 1, 1974, for operating the program in all counties or other governmental subdivisions within its boundaries, unless the State could show it was impossible or impractical to operate the program in certain areas. In December 1973 the Commonwealth submitted to FNS a five-stage plan for island-wide implementation of the food stamp program between July 1974 and March 1975. The Department approved this plan in February 1974.

In the spring of 1974 a Commonwealth welfare rights group and the municipality of San Juan, Puerto Rico, brought suit in Federal District Court for the District of Puerto Rico to require that the Commonwealth and the Department



implement the food stamp program throughout the Commonwealth by June 30, 1974, "or at the earliest moment thereafter that is possible and practicable." In May 1974 the Commonwealth submitted, and FNS approved, an accelerated, three-stage plan for implementing the food stamp program island-wide between July and November 1974.

On June 13, 1974, a consent decree terminated the court suit brought by the welfare rights group and San Juan. Signed by an Assistant Commonwealth Attorney General representing Puerto Rico and an Assistant U.S. Attorney representing the Department, the consent decree stipulated, among other items, that:

1. It was both possible and practicable to implement the food stamp program in every area and municipality throughout the Commonwealth by November 1, 1974.

2. The Commonwealth would distribute 18 designated commodities monthly to households certified as eligible for the needy family program but not yet certified as eligible for the food stamp program. (An appendix to the consent decree listed the 18 commodities and the distribution rates per household.) The consent decree stated that this distribution of commodities would continue until the food stamp program had been implemented in every municipality except that, for 1 month after implementation of the food stamp program in each municipality and for 2 months thereafter if food was available, the Commonwealth must distribute the designated commodities to each household certified as eligible for needy family assistance but not yet certified as eligible to receive food stamps.

3. The Department would supply the Commonwealth with all the necessary commodities needed to enable it to distribute the 18 food items to certified households at the specified rates.

In a statement attached to the consent decree, the Chief Judge of the U.S. District Court for Puerto Rico ordered all the parties to strictly comply with the stipulations of the consent decree. The food stamp program officially began in Puerto Rico on July 1, 1974.

The following 18 commodities were specified in the June 1974 consent decree for mandatory distribution in the Commonwealth:

dry beans	rolled oats
canned vegetables	cheese
butter or margarine	canned luncheon meat
rice	canned meat
all-purpose flour	fruit or vegetable juice
evaporated milk	macaroni
instant fortified milk	egg mix
lard	canned fruit
cornmeal	instant potatoes (if available)

After the consent decree was signed, FNS officials prepared estimates of food requirements for the Commonwealth's needy family program. Estimates of food quantities were based on three factors--a per household distribution rate as stipulated by the consent decree, a projected caseload of 610,000 persons monthly, and a program duration of 5 months (July through November 1974). Using these estimates (less quantities of the 18 food items already in inventory or purchased and en route to Puerto Rico), FNS revised the pending food requisitions previously submitted by Social Services for the first quarter of fiscal year 1975 and informed Social Services of the revised requisition amounts.

Both the Department of Agriculture's Agricultural Stabilization and Conservation Service (ASCS) and its Agricultural Marketing Service participated in acquiring commodities used in the needy family food donation program. ASCS formed a task force in June 1974 to help facilitate purchases of grain and dairy products for the Commonwealth's needy family program and to expedite the overland shipment of all program commodities and their transfer to ships bound for the Commonwealth.

#### PROBLEMS IN PHASING OUT THE NEEDY FAMILY PROGRAM

FNS officials told us that by September and October 1974 a backlog of commodities had developed in Social Services warehouses primarily as a result of (1) lost distribution opportunities due to both delayed shipments and a declining caseload well under the projected figure of 610,000 per month and (2) the fact that, for some commodities, the distribution

rate specified by the consent decree was appreciably higher than the distribution rates formulated by FNS and by Social Services. For example, a family of four was entitled to 10 pounds of cheese under the distribution rate mandated by the consent decree, to a maximum of 5 pounds of cheese using the FNS guide, and to about 1.2 pounds of cheese under Social Services' "take" rate based on its previous program experience. In the case of cheese, the consent decree's higher distribution rate per household ultimately led to the Commonwealth's receipt of much larger amounts of this commodity than in fiscal year 1974.

Exhibits B, C, and D summarize the results of the needy family program in the Commonwealth during fiscal years 1974 and 1975. The data in these tables was obtained from FNS files. Exhibit B shows, in general, a rapidly declining program caseload between July and November 1974, while exhibit C indicates that, during this same period, Social Services' receipt of federally donated commodities reached a peak. Exhibit B also shows that, although the total amount of donated commodities Social Services received in fiscal year 1975 was less than in the previous year, 81 million pounds of commodities were received between July and November 1974 as compared to 62 million pounds between July and November 1973--a 31-percent increase. In addition, for cheese--a relatively perishable commodity and the food item with the highest dollar loss listed on the March 1976 claim--exhibit B shows that Social Services received four times more cheese in the first 4 months of fiscal year 1975 than it did during all of fiscal year 1974.

Exhibit D shows delays in monthly receipts of cheese during the phaseout of the needy family program. Whereas all of the cheese was scheduled to be delivered in July and August 1974, most of it was actually delivered in the fall of 1974, thereby contributing to lost distribution opportunities.

Besides citing problems involving lost distribution opportunities and the large amounts of commodities received by Social Services within a short period of time, FNS officials also noted several additional factors, listed below, which affected the phaseout of the needy family program in the Commonwealth. These factors were particularly evident in the first quarter of fiscal year 1975 when most commodity shipments were received. Some of the factors had traditionally affected the program's operation in the Commonwealth.

- Difficulties were experienced by ASCS and the Agricultural Marketing Service in purchasing some of the required food items (including cheese) in sufficient quantities for distribution by Social Services in July and August 1974.
- Logistical problems occurred. These were endemic to a supply chain stretching thousands of miles and encompassing scores of different processors, U.S. overland shippers, freight forwarders, ocean shippers, and Commonwealth overland shippers. According to FNS officials, the needy family program used a "shipping period" method in requisitioning commodities; that is, a processor or vendor would theoretically guarantee shipment of an order by not later than a prescribed date. FNS officials said, however, that many processors and vendors often shipped orders later than the prescribed date and that ASCS regulations provided only minimal penalties for late shipments.
- FNS lacked specific knowledge concerning availability and adequacy of warehouse facilities in the Commonwealth, the actual phasein rate of the food stamp program, and the actual phaseout caseload for the needy family program.
- Difficulties were encountered in trying to redonate commodities originally designated for Social Services to other eligible outlets either in the United States or in the Commonwealth because (1) most States had ended their needy family program by fiscal year 1975, (2) schools, institutions, and commercial processors often could not use these commodities due to the quantities or unit sizes involved, and (3) food items in ports or on ships in transit normally could not be redirected because of cost considerations.
- There were uncertainties regarding local transportation for carrying commodities from ships in port to Social Services warehouses, from the warehouses to local distribution centers, from one distribution center to another to balance inventories, or from distribution centers to warehouses to remove residual inventories when the program terminated. Local transportation was occasionally not only unpredictable but simply not available, as during strikes in parts of August, September, and October 1974. As a result of these strikes, Social Services commodities backed up in ports and in ships while awaiting transportation to warehouses.

--Needy family officials in the Commonwealth reported a lack of money and personnel as their program was phased out and the food stamp program was phased in. FNS personnel said that, at one point after termination of the program in January 1975, only two persons in Social Services (an official and one subordinate) were responsible for preparing closeout reports requested by FNS and for handling the residual commodities.

--The semi-tropical climate of Puerto Rico had an adverse impact. According to FNS, even with excellent warehouse facilities and management, grain and dairy food items would probably be subject to some degree of spoilage in the Commonwealth due to climatic conditions and the lengthy food supply chain requiring many loading points between processor and recipient. FNS, however, did not have a percent factor which might represent an "excusable loss" of this type.

THE FIRST CLAIM: MELTED CHEESE--  
OCTOBER AND NOVEMBER 1974

The first of two major claims FNS established for commodity losses sustained by the needy family program in Puerto Rico during fiscal year 1975 was officially set up in March 1975. The claim involved the spoilage of about 97,000 pounds of commodities (principally cheese) valued at \$78,636.12. Losses occurred at four Social Services warehouses and two local distribution centers at various times in October and November 1974. The type and extent of the losses were established through periodic reports submitted by Social Services to FNS and by an exchange of correspondence between the two.

Social Services cited the following reasons for the losses.

1. Unexpectedly high temperatures in October 1974 raised warehouse temperatures above their normal high levels--causing the cheese to melt and spoil. According to Social Services, the year-round temperature in Puerto Rico varies between 70 and 90 degrees (F.). Because of poor ventilation, at least three of the warehouses normally had inside temperatures between 85 and 96 degrees (F.). Instructions on the cases of donated cheese read that for storage of 3 months or less, the cheese should be stored between 65 and 70 degrees (F.).

2. There was a lack of available refrigerated warehouse space because of, in part, increased use of commercial facilities to handle the greater food demand caused by the food stamp program.
3. Large quantities of cheese were received in the first 4 months of fiscal year 1975. In April 1974 Social Services estimated its cheese requirements for July through September 1974 at 2,688,000 pounds. After the consent decree was signed by both the Department and the Commonwealth in June 1974, FNS (with the knowledge of Social Services) revised the estimates and the corresponding requisitions to reflect the consent decree's mandated rate of distribution (about 2.5 pounds per person) for 5 months based on a caseload of 610,000 persons. According to Social Services records, 5.1 million pounds of cheese arrived in Puerto Rico from July through September 1974. During the same period in the previous year, Social Services received 459,000 pounds of donated cheese for a caseload averaging about 551,000 persons.
4. Receipt of this large amount of cheese, plus the simultaneous receipt of large amounts of other commodities specified by the consent decree, jammed Social Services warehouses to the point where adequate air space could not be maintained between rows and walls. According to Social Services, the spoiled cheese was properly palletized, the pallets were in good condition, and the warehouses were fumigated regularly. Social Services also said that it followed a turnover policy of first-in first-out whenever available space in the warehouses made this possible. (FNS files did not show whether it independently verified this information concerning the warehouse practices of Social Services.)

Social Services gave FNS copies of four Puerto Rico Department of Health condemnation and destruction documents covering the actual disposition of about 99 percent of the commodity amounts included in the March 1975 claim. These four documents indicated that the commodities were condemned as unfit for human consumption and were destroyed by fire.

In the March 1975 letter officially billing Social Services for this commodity loss, FNS said:

"\* \* \*while we can understand the climatic conditions which may have caused a single loss of this kind, we feel that if prudent food management practices were in effect, effective measures would have been taken to preclude the further losses."

In April 1975 FNS made two additional payment demands, but never received a response from Social Services regarding this matter. In March 1976, a year after its first demand for payment, FNS included the \$78,600 commodity loss in a second claim action (discussed in the following sections) taken against Social Services.

MORE COMMODITY LOSSES: RATS IN THE  
CHEESE AND OTHER PROBLEMS--  
FEBRUARY, MARCH, AND APRIL 1975

When the needy family program ended in the Commonwealth on January 31, 1975, Social Services estimated the residual inventory of program commodities in its central warehouses at about 29 million pounds. FNS proposed that Social Services take the following actions to reduce this inventory without spoilage or waste.

- Separate in storage all inventories of donated foods which might not be suitable for human consumption and arrange for their immediate inspection.
- Sell as animal feed all grains infested or otherwise unfit for human consumption and immediately dispose of all other foods found to be spoiled.
- Offer the Puerto Rico Department of Education and other eligible institutions, such as hospitals, old-age centers, and camps, all grains found to be suitable for human use, and sell the remaining grain products which the Department of Education and the institutions could not accept.
- Transfer to the Department of Education and the eligible institutions all other commodities suitable for human consumption.
- Provide FNS with a report on actions taken to remove residual supplies of donated foods on hand at the termination of the needy family program.

FNS officials said Social Services assured them that such closeout actions had been or would be undertaken. In March and April 1975, however, the Department of Agriculture's Office of Audit issued a series of interim reports dealing with the infestation of Social Services commodities. The reports indicated that, during an audit of the school lunch program in Puerto Rico, the auditors found bug- and rodent-infested commodities which, according to school officials, had been received from Social Services warehouses in that condition. According to the auditors, subsequent visits to 22 institutions, such as hospitals, clinics, old-age centers, and camps, (1) showed that commodities on hand, which had been donated by Social Services in February and March 1975, were infested or otherwise contaminated and (2) disclosed a lack of controls to prevent use of questionable commodities to feed people, insufficient instructions as to what to do with commodities not fit for human consumption, and a lack of reports to Social Services noting the commodities received in poor condition. The auditors said that it was possible some unfit food might have been served to people at a few institutions.

In late April 1975 FNS told Social Services that, based on the Office of Audit findings, corrective action was necessary to bring about (1) a proper disposition of unfit donated commodities, (2) documentation of these food losses for inclusion in a claim determination report, and (3) a review of the eligibility of two institutions (a jail and an out-patient clinic) to receive federally donated food items. FNS said that, although administration of the Commonwealth's food distribution program for institutions was transferred from Social Services to the Department of Education on March 31, 1975, Social Services was responsible for taking the specified corrective actions because the Office of Audit reports dealt with program deficiencies which occurred before that date. (FNS files did not indicate any formal response by Social Services to the FNS request for corrective action, but in September 1975 Social Services sent FNS a report identifying the amounts of commodities (1) transferred to charitable institutions for animal feed or (2) distributed to charitable institutions for human use which the Department of Health subsequently determined to be unfit for human consumption.)

An April 1975 letter from the Department of Health to the Department of Social Services provided an example of the conditions health personnel found in one Social Services warehouse. These conditions resulted in a



commodity loss that was included in the second claim.

1. From April to September 1974, 11,000 cases, each containing six 5-pound cheese packages (a total of 330,000 pounds of cheese), were received at the Mayaguez warehouse.
2. This cheese was not refrigerated and, as a result, was contaminated by fungus, rats, rat urine and excretion, and insects.
3. In September 1974 the warehouse received 6,000 additional cases of cheese (a total of 180,000 pounds) which, together with the older cheese, was placed in refrigeration.
4. The old cheese contaminated the new when they were placed on the same pallets which were already full of insects and other contaminants.
5. Within the refrigerator, the new cheese continued to be contaminated by fungus and rats--the rats made their nests in the cheese and thus survived the cold.
6. From the total of 17,000 cases, 15,000 were confiscated by health personnel.
7. All of the cheese was contaminated by fungus and rats, and its flavor and texture were abnormal.
8. Much of the cheese which had been distributed by the warehouse to the Department of Education had to be confiscated by health personnel as a result of calls made to the health department by schools to which the cheese had been donated.

THE SECOND CLAIM--  
JULY 1975 TO MARCH 1976

The FNS regional office in Princeton, New Jersey, prepared a table in July 1975 summarizing data on the pound and dollar loss incurred by the needy family program in Puerto Rico due to spoilage or infestation of donated commodities during fiscal year 1975. (See exhibit A.) The data excluded the commodity amounts involved in the earlier \$78,600 claim. In preparing the table, which became a primary basis for the second claim action taken against Social Services in March 1976, FNS used available information from its own records; Office of Audit reports;

official memorandums, letters, and documents on commodity condemnation and final disposition; and reports on field trips to Puerto Rico by FNS personnel. The table contains three key columns of information which are discussed below.

Known Puerto Rico Department of Social Services  
and Department of Education warehouse losses

Known losses included (1) amounts of cheese, cornmeal, all-purpose flour, and rolled oats determined to be unfit for human consumption by Puerto Rico Department of Health officials during March 1975 inspections of Social Services warehouses, (2) lesser amounts of commodities transferred by Social Services to Department of Education warehouses and reported to FNS as spoiled or infested, (3) 605,000 pounds of macaroni which a U.S. Department of Agriculture inspector determined were unfit for human consumption during an April 1975 inspection of Social Services warehouses, and (4) amounts of canned beans, dry beans, egg mix, peaches, and rice deemed unfit for human consumption during a May 1975 inspection of Social Services warehouses by Department of Health authorities.

Estimated losses of commodities transferred  
to the Departments of Education in  
Puerto Rico and the Virgin Islands and to  
charitable institutions in Puerto Rico

To compute these estimated losses, FNS used information from the Office of Audit's April 1975 interim reports on spoiled or infested commodities transferred by Social Services to about 20 schools and institutions. FNS said that it computed an average loss percentage based on the amounts of Social Services commodities which these schools and institutions received and the amounts of these commodities which were later found to be spoiled or infested. FNS assumed that the average loss factor at these schools and institutions would be representative of the situation at all schools and institutions which received commodities transferred by Social Services from the needy family program. The average loss factor was then applied against the total amount of commodities transferred from Social Services warehouses to all schools and institutions.

For example, FNS calculated that Social Services transferred, for human consumption, 654,660 pounds of cheese to schools and institutions and computed a 55-percent average loss factor for cheese at the schools and institutions visited by Office of Audit representatives. Thus, FNS

estimated that 360,063 pounds of spoiled cheese (654,660 x .55) valued at \$271,163 had been transferred by Social Services to schools and institutions. Losses of transferred amounts of cornmeal, all-purpose flour, rolled oats, and rice were estimated in a similar manner. Total estimated losses for these five commodities amounted to 2,894,991 pounds valued at \$702,304. FNS officials said they had to estimate certain losses in this manner because Social Services had not provided timely information on specific amounts of spoiled or infested commodities transferred from its warehouses.

#### Averaged dollar value per pound

Because FNS did not have specific price information to estimate the value of commodity losses, it used a cumulative average of prices the Federal Government paid for the commodities during varying periods in fiscal years 1974 and 1975. According to FNS, handling and transportation costs borne by the Federal Government in shipping commodities to all U.S. and Commonwealth distribution warehouses were included.

#### Establishment of the \$2.5 million claim

In August 1975 FNS' Princeton office sent its commodity loss table to FNS headquarters, along with a recommendation that a claim be established in the full amount of the known and estimated food losses (\$2,464,714). The transmittal letter stated that some (unknown) percent of commodity loss would have been incurred by Puerto Rico's needy family program

"\* \* \*even under ideal storage and management procedures due to the proliferation of handling and movement of food supplies; the heat and humidity peculiar to the Island; inadequacies of facilities; and the efficacy levels of personnel employed by the Commonwealth."

FNS headquarters subsequently concurred in this recommendation and, in March 1976, billed Social Services \$2,543,350.12 for the value of donated foods both known and estimated to have been lost by spoilage or infestation as a result of poor management, improper storage, and careless handling and warehousing. This amount included the \$78,636.12 established by FNS' March 1975 claim for spoiled cheese and the \$2,464,714 established for other commodity losses during fiscal year 1975.

Also in March 1976 the Department of Agriculture's Office of Investigation issued a report on the disposition of some Federal commodities donated to Social Services. According to the report, there was evidence that, during the phaseout of the needy family program in Puerto Rico, the manager of one Social Services warehouse improperly distributed some federally donated commodities to two local merchants. In August 1975 Puerto Rico police, acting on a tip, had confiscated about 5,700 pounds of Social Services food, worth approximately \$1,250, at the store of one of these merchants. The other merchant reportedly paid \$1,400 for an unspecified amount of Social Services commodities. The Social Services warehouse manager, who at the time of the report was employed by the food stamp program in the Commonwealth, denied any wrongdoing.

Because the case had reportedly already been referred to the Puerto Rico Department of Justice for resolution, the Office of Investigation terminated its investigation of the matter in March 1976. Our November 1976 followup with the Office of Investigation staff in Puerto Rico revealed that a Commonwealth district attorney had declined criminal prosecution in this case due to what he considered to be insufficient evidence. He indicated, however, that an administrative discharge proceeding could be brought against the former warehouse manager.

Documentation on disposition of  
commodities included in the second claim

At the start of our review, FNS files contained two official Department of Health condemnation and destruction documents covering the actual disposition of about 5 percent of the total commodity pound loss listed in FNS' July 1975 table (about 40 percent of the cheese loss listed in the table). FNS files at that time also contained one other Department of Health document covering the proposed disposition of an additional 30 percent of the total commodity pound loss listed in the table. The commodities reflected on this document were large amounts of infested rolled oats, cornmeal, and all-purpose flour which remained in a Social Services warehouse reportedly pending their final disposition as animal feed.

FNS officials told us that Social Services had informed them that the Commonwealth had full documentation (including Department of Health condemnation and destruction records) accounting for the disposition of all residual needy family commodities. We asked Commonwealth officials for copies of all official disposition documents pertaining to losses con-

tained in the March 1976 claim. The documentation subsequently provided indicated that Social Services held official documents covering the actual disposition (primarily through physical destruction or burial) of 14 percent of the commodity quantities listed in the claim--including 53 percent of the total cheese amount. 1/ The documentation also reflected the proposed disposition, either through destruction or through sale or donation as animal feed, of an additional 36 percent of the quantities listed in the claim. 2/

FNS regulations required Social Services to have disposition records for all commodities donated to it by the Federal Government--except for those commodities transferred to other distributing agencies which, upon their receipt of the transferred commodities, became responsible for appropriate disposition records. A Social Services official told us that records in Puerto Rico Department of Education and Department of Health files might cover the disposition of needy family commodities which spoiled or became infested either before or after transfer to certain schools and charitable institutions. The official explained that such commodity losses would not be covered by the official disposition documents held by Social Services.

We did not attempt to inspect any commodity disposition records in Department of Education or Department of Health files. With Social Services' concurrence, we turned over to FNS copies of all disposition documents obtained from the Commonwealth.

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1/The Social Services disposition documentation included six of the seven disposition records in FNS files when we started our review. If all seven records are considered, FNS and Social Services together hold official documentation covering the actual disposition of 15 percent of the commodity quantities listed in the claim--including 55 percent of the cheese loss.

2/The Social Services disposition documentation covered an \$82,000 sale, for animal feed, of 6.5 million pounds of infested commodities, but did not show how the sale proceeds were used. FNS had previously authorized a single sale of this type, but instructed that, in accordance with FNS regulations, sale proceeds be retained to pay for needy family program phaseout costs. (FNS files did not contain documentation verifying the use of these proceeds.)

(At the time of our review, FNS files did not indicate whether it independently verified Department of Social Services, Department of Education, and Department of Health disposition records related to the pending claim.)

#### STATUS OF THE MARCH 1976 CLAIM

In May 1976 the Department of Agriculture's Office of Audit released the audit report resulting from its March and April 1975 field visits to Social Services warehouses and to schools and institutions. The report, which along with FNS' July 1975 table of commodity losses (exhibit A) formed the basis for the March 1976 claim, pointed out that, in addition to marginal and inadequate warehouse facilities in Puerto Rico, the following management practices of warehouse personnel contributed to commodity losses.

1. Improper storage of commodities at Social Services warehouses.
2. Failure to maintain adequate inventory control and fully use first-in first-out procedures.
3. Securing of unventilated warehouses at night and on weekends by closing all doors and windows.
4. Failure to initiate action to dispose of spoiled or infested commodities.

Consequently, according to the report, commodities spoiled or became infested because of (1) excessive temperatures being allowed to build up, (2) poor stacking practices, (3) long inventory periods, and (4) good commodities being placed near bad ones.

The Office of Audit report also indicated that the Commonwealth apparently did not object to the various stipulations of the June 1974 consent decree, accepted title to the donated commodities with no quality exceptions noted (thereby, according to the report, certifying receipt of the food in good condition), and only sporadically reported problems of spoilage or infestation before the Office of Audit field visits in March and April 1975.

In a September 1976 letter to FNS, after preliminary correspondence and meetings with FNS and Office of Audit

officials, Social Services officially responded to the March 1976 claim. The letter said that (1) the estimated losses of cheese, cornmeal, all-purpose flour, rolled oats, and rice were not a proper basis for fixing monetary responsibility and (2) minimal losses of such commodities as dry beans, butter, margarine, canned luncheon meat, and lard were reasonable and normal under circumstances involving a long, complex supply chain; delayed shipments; delayed arrivals; and the unusually high quantity of food received by Social Services.

The letter also said that the remaining, known losses generally occurred due to (1) such commodities as cheese, cornmeal, rolled oats, all-purpose flour, macaroni, and rice being very susceptible to spoilage or infestation as a result of exposure to Puerto Rico's high temperature and humidity levels, (2) a lack of warehouse facilities, (3) extremely hot temperatures in the warehouses used, (4) the large quantity of commodities sent to the Commonwealth, and (5) the sudden arrivals of delayed shipments. Social Services said that, although assuming no responsibility for this loss, it would replace, in kind, about \$198,000 of spoiled cheese "in the spirit of trying to reach an understanding with the Federal authorities" to settle the entire claim. The new cheese would be distributed to institutions in Puerto Rico. The \$198,000 represents about 8 percent of the \$2.5 million in FNS' March 1976 bill to Social Services (about 17 percent of the total cheese loss in the bill).

In an effort to further define the terms of a possible settlement, Social Services in late December 1976 concurred in an FNS recommendation stipulating that

- any in-kind replacements of spoiled or infested commodities could be made, if mutually agreed to, in commodities other than cheese;
- these in-kind replacements would occur within 18 months beginning January 1, 1977, and be furnished only to outlets eligible to receive federally donated commodities during that period;
- the replaced amounts would be in addition to (1) the Federal commodities made available to the eligible outlets under the Department of Agriculture's commodity distribution programs for schools and other agencies and (2) Social Services' normal food expenditures for the eligible outlets; and

--Social Services would provide FNS' Princeton office with original receipts covering all purchases of commodity replacements.

According to Department of Agriculture officials, the Federal Claims Collection Act of 1966 (31 U.S.C. 952(b)) and a related FNS instruction authorize the FNS Administrator to compromise or withdraw claims arising under section 32 of the Act of August 24, 1935, when those claims do not exceed \$20,000. Uncollected section 32 claims exceeding \$20,000 must be referred to GAO for appropriate action.

Department officials also said that, in accordance with the Federal Claims Collection Act (31 U.S.C. 953), the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(k)), a Corporation policy statement, and an FNS instruction, the FNS Administrator can compromise or withdraw all claims arising under section 416 of the Agricultural Act of 1949, provided that the Executive Vice President of the Department's Commodity Credit Corporation approves all compromises or withdrawals of section 416 claims involving more than \$100,000. 1/ The Commodity Credit Corporation is a wholly owned Government corporation created to stabilize and support farm income and prices, assist in maintaining balanced and adequate supplies of agricultural commodities, and facilitate their orderly distribution. The Corporation has no operating personnel of its own. Its activities, such as acquiring commodities for the needy family program under section 416, are carried out by ASCS and FNS personnel.

In January 1977 the ASCS Administrator, who is also the Corporation's Executive Vice President, requested that the Department of Agriculture's Office of Investigation conduct an investigation in the Commonwealth aimed at accounting for the final disposition of all commodities included in the March 1976 claim and verifying the use of proceeds from the \$82,000 sale of infested commodities for animal feed. (See footnote 2, p. 15.) This investigation will be conducted on a priority basis, with a report tentatively scheduled to be sent to ASCS about the middle

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1/According to FNS records, the March 1976 claim contains about \$90,000 in losses of section 32 commodities (mainly meat, fruits, and vegetables) and about \$2.45 million in losses of section 416 commodities (mainly grain and dairy products).



of April 1977.

The ASCS Administrator said the investigation was requested because of information in our draft report that (1) based on official records obtained from Social Services and FNS files, about half the commodity quantities listed in the claim could not be accounted for either through actual or proposed disposition and (2) Social Services disposition documentation did not show the use of the \$82,000 received from the animal feed sale. FNS said that claim settlement proceedings have been suspended pending receipt of the Office of Investigation's report.

PUERTO RICO DEPARTMENT OF SOCIAL SERVICES

COMMODITY DISTRIBUTION PROGRAM LOSSES

IN FISCAL YEAR 1975 (note a)

Commodity	Inventory on hand 6/30/74 plus FY 75 deliveries (pounds)	Known Department of Social Services and Department of Education warehouse losses (pounds)	Estimated losses of commodities transferred to the Department of Education in Puerto Rico and the Virgin Islands and to charitable institutions in Puerto Rico (pounds)	Estimated food losses (pounds)	Averaged dollar value per pound	Total value lost
Dry beans	4,825,324	24,568	-	24,568	\$ .2710	\$ 6,658
Butter and margarine	6,977,826	766	-	766	.5321	408
Cheese	6,716,884	1,054,055	360,063	1,414,118	.7531	1,064,972
Cornmeal	8,101,760	1,921,270	792,021	2,713,291	.0789	214,079
Egg mix	2,189,859	53,985	-	53,985	1.4844	80,135
All-purpose flour	6,740,520	969,350	56,988	1,026,338	.1166	119,671
Fruit	1,721,400	1,265	-	1,265	.3267	413
Fruit juice	11,446,049	1,753	-	1,753	.1381	242
Lard	2,526,280	18	-	18	.3485	6
Canned luncheon meat	8,521,444	451	-	451	.5699	257
Macaroni	1,925,873	604,920	-	604,920	.1847	111,729
Canned meat	4,851,297	266	-	266	.8260	220
Evaporated milk	5,300,426	1,606	-	1,606	.2425	389
Instant fortified milk	6,573,240	540	-	540	.7195	389
Rolled oats	6,496,524	4,226,580	471,142	4,697,722	.0985	462,726
Rice	15,702,258	12,686	1,214,777	1,227,463	.3267	401,012
Canned vegetables	1,383,507	5,902	-	5,902	.2385	1,408
	<u>102,000,471</u>	<u>8,879,981</u>	<u>2,894,991</u>	<u>11,774,972</u>	-	<u>\$2,464,714</u>

a/This exhibit does not include the Social Services commodity losses included in the March 1975 claim against the Commonwealth.

SOURCE: Food Distribution Division, Food and Nutrition Service Regional Office, Princeton, New Jersey.

PUERTO RICO NEEDY FAMILY  
PROGRAM INFORMATION--  
FISCAL YEARS 1974 AND 1975

<u>Month</u>	<u>Number of participants</u>	<u>Total volume of commodities received (note a)</u>		<u>Volume of cheese received (note b)</u>			
		<u>Pounds</u>	<u>Percent</u>	<u>Pounds</u>	<u>Percent</u>		
July 1973	548,827	61,721,420	15,210,787	11.6	298,680	23.1	
Aug.	550,967		14,976,383	11.5	160,350	12.4	
Sept.	552,232		7,645,704	5.8	-	-	
Oct.	549,989		11,708,154	9.0	-	-	
Nov.	571,785		12,180,392	9.3	-	-	
Dec.	583,591		9,721,813	7.4	-	-	
Jan. 1974	585,636		11,428,629	8.7	-	-	
Feb.	592,546		8,267,313	6.3	-	-	
Mar.	597,516		10,019,509	7.7	337,230	26.1	
Apr.	598,851		8,632,121	6.6	293,700	22.8	
May	615,258		11,335,247	8.7	-	-	
June	608,931		9,660,658	7.4	201,600	15.6	
			<u>130,786,710</u>	<u>100</u>	<u>1,291,560</u>	<u>100</u>	
July 1974	571,686	81,274,023	14,336,857	16.4	111,990	2.1	
Aug.	570,728		16,631,653	19.1	2,007,270	37.6	
Sept.	529,412		18,617,395	21.4	2,951,910	55.3	
Oct.	464,403		26,618,776	30.5	268,320	5.0	
Nov.	319,814		5,069,342	5.8	-	-	
Dec.	162,286		4,959,257	5.7	-	-	
Jan. 1975							
(note c)	111,988			396,830	.5	-	-
Feb.	-			284,961	.3	-	-
Mar.	-			136,080	.2	-	-
Apr.	-			-	-	-	-
May	-			91,728	.1	-	-
June	-		-	-	-	-	
			<u>87,142,879</u>	<u>100</u>	<u>5,339,490</u>	<u>100</u>	

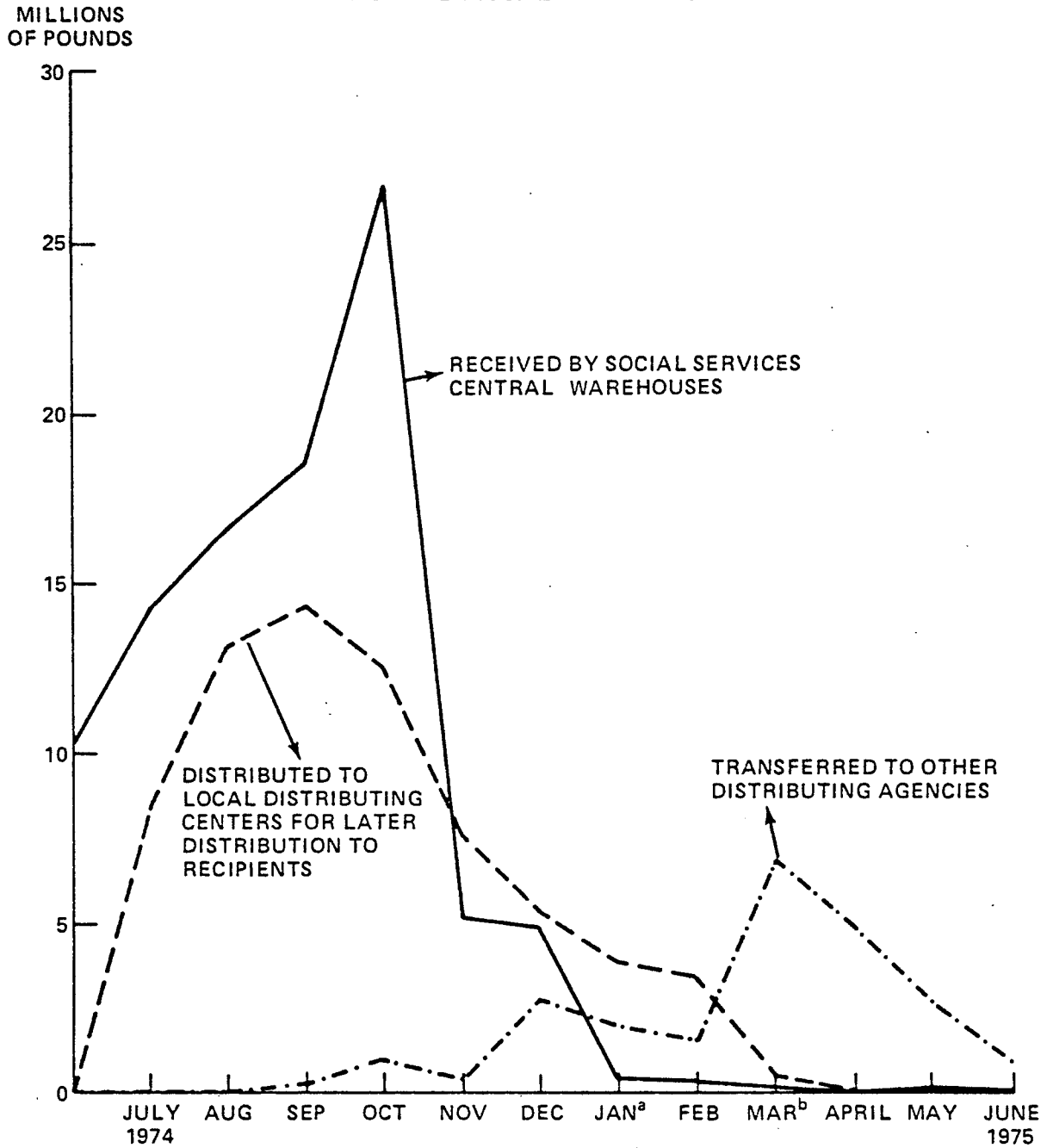
a/The commodity amounts include a small amount of food designated for distribution to charitable institutions, milk programs, summer camps, and disaster relief. FNS data indicates that during fiscal year 1974, for example, the needy family program received about 97 percent of the total pounds of federally donated commodities distributed by Social Services.

b/A separate breakout is provided for cheese because this food item was the commodity with the highest dollar loss listed in the March 1976 claim. The figures for cheese are also included in the totals for total volume of commodities received.

c/Program officially terminated on January 31, 1975.

DONATED COMMODITIES RECEIVED, DISTRIBUTED, AND TRANSFERRED  
 BY THE PUERTO RICO DEPARTMENT OF SOCIAL SERVICES

DURING FISCAL YEAR 1975



a/ Needy family program officially ended in Puerto Rico on January 31, 1975.

b/ Social Services' role as an official food distributing agency ended on March 31, 1975.

CHEESE ORDERED IN FISCAL YEAR 1975 FOR PUERTO RICO'SNEEDY FAMILY PROGRAM

<u>Month</u>	<u>Scheduled to be received</u>		<u>Actually received</u>	
	<u>Pounds</u>	<u>Percent</u>	<u>Pounds</u>	<u>Percent</u>
July 1974	1,579,200	30	-	-
Aug.	3,729,600	70	1,226,700	23
Sept.	-	-	3,281,940	62
Oct.	-	-	782,940	15
Nov.	-	-	-	-
Dec.	-	-	-	-
Jan. 1975	-	-	-	-
	<u>5,308,800</u>	<u>100</u>	<u>5,291,580</u>	<u>100</u>

Note: The amounts of cheese and their months of receipt shown here differ from the corresponding amounts and months in exhibit B. Exhibit B was derived from data contained in reports submitted to FNS by Social Services for all cheese received during fiscal year 1975. Exhibit D was derived from data contained in FNS requisitions and ASCS commodity receipt summaries for cheese ordered in fiscal year 1975 only. In addition, FNS files included at least two different figures for the total amount of cheese received by Social Services during fiscal year 1975. One FNS table listed 6,646,104 pounds received and our tabulations from Social Services reports showed 5,339,490 pounds received. (FNS files did not indicate whether FNS attempted to reconcile these apparent differences in the amounts of cheese received by Social Services in fiscal year 1975.)

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C. 100

INFORMATION ON A  
DEPARTMENT OF AGRICULTURE  
CLAIM AGAINST THE  
COMMONWEALTH OF  
PUERTO RICO /

~~A-51604~~  
CED-77-40  
2/24/77

RESTRICTED

Report to Senator James B. Allen, pursuant to his request. This report discusses<sup>d</sup> a \$2.5 million claim of the Department of Agriculture's Food and Nutrition Service against the Commonwealth of Puerto Rico. The claim, one of the largest ever established for Agriculture's domestic commodity distribution programs, concerns spoilage and infestation of federally donated food during fiscal year 1975 when the Commonwealth's needy family food donation program ended and its food stamp program began. The report provides<sup>d</sup> a factual summary of events preceding and following establishment of the claim. In accordance with instructions from Senator Allen's office and because of our own concern not to jeopardize the Federal Government's position in claim settlement proceedings, the report does not contain ~~our~~<sup>our</sup> conclusions on responsibility for the commodity losses or the validity of dollar amounts in the claim. Based on information in the report that about half the commodities listed in the claim were not accounted for by official disposition documentation at the time of our review of pertinent Commonwealth files, the Department of Agriculture in February 1977 began an investigation to determine the final disposition of the commodities in the claim.

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