



# Food Assistance Program Implementation Guidebook

Foreign Agricultural Service  
U.S. Department of Agriculture

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## **1.1 Food Assistance Division Directory**

**FOOD ASSISTANCE DIVISION**

**OFFICE OF CAPACITY BUILDING AND DEVELOPMENT**

**FOREIGN AGRICULTURAL SERVICE (FAS), USDA**

<b>DIRECTOR'S OFFICE</b> .....	FAX: (202) 690-0251
Ron Croushorn, Director.....	(202) 720-3038
Dorothy Feustel, Deputy Director.....	(202) 720-0150
Brian Goggin, Deputy Director.....	(202) 720-2637
William Whelan, Assistant to the Director.....	(202) 401-0157
Faye Johnson, Ag Mktg. Assistant .....	(202) 720-7515
Ida Larmore, Administrative Assistant.....	(202) 720-4221
Jamie Fisher, Chief, Local and Regional Procurement.....	(202) 720-5620
Erin Means, Program Analyst, LRP.....	(202) 401-0166
Seth Miller, Program Analyst, LRP.....	(202) 720-9432
John Lamm, Program Analyst, LRP.....	(202) 720-7507

<b>FOOD FOR DEVELOPMENT BRANCH</b> .....	FAX: (202) 690-0251
Nicola Sakhleh, Branch Chief.....	(202) 720-4228
Abdullah (Al) Ersoz, Ag Economist.....	(202) 720-3405
Jane Wilkins, Program Analyst.....	(202) 720-5263
Colin Miller, Program Analyst.....	(202) 401-0188
Echo Domingues, Program Analyst.....	(202) 401-0178

<b>SCHOOL FEEDING AND HUMANITARIAN BRANCH</b> .....	FAX: (202) 690-3078
Debbie Pfaff, Branch Chief.....	(202) 690-2543
Alessandra McCormack, Ag Economist.....	(410) 519-0845
Erika Beltran, Program Analyst.....	(202) 401-0129
Richard Chavez, Ag Marketing Specialist. ....	(202) 401-0100
Damien Singh, Ag Economist.....	(202) 720-6868
Kathryn Ivancic, Program Analyst.....	(202) 401-0189
Wentzel Mitchell, Program Analyst.....	(202) 720-7560
Jennifer Wenger, Program Analyst.....	(202) 720-0275
Paul Alberghine, Program Specialist (Health and Nutrition).....	(202) 720-2235
Mary Allen, Program Analyst.....	(202) 720-5453

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**TRANSPORTATION AND LOGISTICS BRANCH**.....FAX: (202) 690-0251  
Amy Harding, Branch Chief..... (202) 720-3538  
Pamela White, Traffic Management Specialist..... (202) 720-3539  
Johanne Alerte-Reyes..... (202) 720-6334

**MAILING ADDRESS:**

1400 Independence Avenue, SW  
Stop 1034  
Washington, DC 20250

**PHYSICAL LOCATION:**

Room 4159, South Building  
1400 Independence Avenue, SW  
Washington, DC 20250



## **1.3 McGovern-Dole Regional Country Coverage**

**Debra Pfaff**, *School Feeding and Humanitarian Branch Chief* – (202) 690-2543

Fax – (202) 690-3078

**Erica Beltran**..... **West Africa, Southern Africa Backup**

*Senior Analyst* Cameroon, Cape Verde, Chad, Cote D'Ivoire, Equatorial Guinea,  
(202) 401-0129 Ghana, Guinea, Guinea Bissau, Mali, Nigeria, Senegal, Sierra Leone

[Erika.Beltran@fas.usda.gov](mailto:Erika.Beltran@fas.usda.gov)

**Kate Ivancic**..... **West and Central Africa, E. Africa Backup, Agreement Closeout**

*Program Analyst* Benin, Burkina Faso, Burundi, Comoros, D.R. of Congo,  
(202) 401-0189 R. of Congo, Gabon, Gambia, Liberia, Mauritania, Niger, Togo

[Kate.Ivancic@fas.usda.gov](mailto:Kate.Ivancic@fas.usda.gov)

**Wentzel Mitchell**..... **Southern Africa, West Africa Backup**

*Senior Analyst* Angola, Botswana, Lesotho, Madagascar, Malawi,  
(202) 720-7560 Mozambique, Namibia, Seychelles, South Africa,

[Wentzel.Mitchell@fas.usda.gov](mailto:Wentzel.Mitchell@fas.usda.gov)

Swaziland, Tanzania, Zambia, Zimbabwe

**Jennifer Wenger**..... **East and Central Africa, Haiti, Latin America**

**Backup**

*Program Analyst* Central African Republic, Chad, Eritrea,  
(202) 720-0275 Ethiopia, Kenya, Principe, Rwanda, Sao Tome,

[Jennifer.Wenger@fas.usda.gov](mailto:Jennifer.Wenger@fas.usda.gov)

Somalia, Sudan, Uganda, Haiti

**Richard Chavez**..... **Latin America and the Caribbean, Haiti Backup**

*Senior Analyst*

(202) 401-0100

[Richard.Chavez@fas.usda.gov](mailto:Richard.Chavez@fas.usda.gov)

**Mary Allen**..... **Central Asia, Southeast Asia Backup**

*Program Analyst* Afghanistan, Kazakhstan, Kyrgyzstan, Mongolia,  
(202) 720-5453 Pakistan, Tajikistan, Turkmenistan, Uzbekistan

[Mary.Allen@fas.usda.gov](mailto:Mary.Allen@fas.usda.gov)

**Alessandra McCormack**.....**Southeast Asia, Central Asia Backup**  
*Ag Economist* Bangladesh, Cambodia, Laos, Nepal, Sri Lanka, Vietnam  
(202) 401-0178  
[Alessandra.McCormack@fas.usda.gov](mailto:Alessandra.McCormack@fas.usda.gov)

**Damien Singh**.....**Success Stories, Economic Analysis**  
*Economist*  
(202) 720-6868  
[Damien.Singh@fas.usda.gov](mailto:Damien.Singh@fas.usda.gov)

**Paul Alberghine** .....**Micronutrient Fortified Food Aid Pilot Program (technical lead)**  
*Program Specialist* Other Nutrition Issues  
(202) 720-2235  
[Paul.Alberghine@fas.usda.gov](mailto:Paul.Alberghine@fas.usda.gov)

## **1.4 Monitoring and Evaluation Staff Directory**

**Barbara Shumar**..... 202-205-7651  
Lead Closeout Analyst [Barbara.Shumar@fas.usda.gov](mailto:Barbara.Shumar@fas.usda.gov)

**Angella Greaves**..... 202-720-0761  
Closeout Analyst [Angella.Greaves@fas.usda.gov](mailto:Angella.Greaves@fas.usda.gov)

**Jorge Martinez**..... 202-690-1771  
Closeout Analyst [Jorge.Martinez@fas.usda.gov](mailto:Jorge.Martinez@fas.usda.gov)

**Robert Miller**..... 202-720-0581  
Closeout Analyst [Robert.Miller@fas.usda.gov](mailto:Robert.Miller@fas.usda.gov)

**Amy Ritualo**..... 202-708-1697  
Monitoring and Evaluation Specialist [Amy.Ritualo@fas.usda.gov](mailto:Amy.Ritualo@fas.usda.gov)

## **1.5 Applicable Food Aid Regulations and Circulars**

All USDA food assistance program participants are required to comply with the regulations specific to the program for which they have received a grant:

- **7CFR 1499** for Food for Progress (FFPr)
- **7CFR 1599** for the McGovern-Dole International Food for Education and Child Nutrition (McGovern-Dole) Program

Please see these regulations attached at the end of this section (Attachment A), or view them on the [Food Assistance Division website](#).

All USDA food assistance program participants are also required to comply with the following additional regulations and circulars:

- **7 CFR 3015:** [Uniform Federal Assistance Regulations](#)
- **7 CFR 3019:** [Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations](#)
- **7 CFR 3052:** [Audits of States, Local Governments, and Non-Profit Organizations](#)
- **OMB Circular A-110:** [Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations](#)
- **2 CFR Part 230:** [Cost Principles for Non-Profit Organizations](#) (OMB Circular A-122)
- **OMB Circular A-133:** [Audits of States, Local Governments, and Non-Profit Organizations](#)

**Attachment A**

7 CFR 1499 and 1599

Food for Progress and McGovern-Dole Regulations

**DEPARTMENT OF AGRICULTURE****48 CFR Part 470****Commodity Credit Corporation****7 CFR Parts 1496 and 1499****Foreign Agricultural Service****7 CFR Part 1599**

RIN 0551-AA78

**McGovern Dole International Food for Education and Child Nutrition Program and Food for Progress Program**

**AGENCY:** Foreign Agricultural Service and Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations to administer the Food for Progress (FFPr) Program and the McGovern-Dole International Food for Education and Child Nutrition Program (McGovern-Dole Program) by making revisions to provide greater clarity with respect to all aspects of the program, with specific emphasis on the eligibility requirements that a participant must meet and the actions that must be undertaken by a participant in order to receive assistance under these programs, including the reports that are filed by program participants with the Foreign Agricultural Service (FAS). This final rule also amends the Agriculture Acquisition Regulation (AGAR), to specify the criteria that is used in determining whether a commodity that is procured under these programs and under domestic feeding programs administered by U.S. Department of Agriculture (USDA) is considered to be a product of the United States. The purpose of these amendments is to improve the efficiency of the programs and make it clearer to participants what they must do to meet eligibility requirements.

**DATES:** *Effective Date:* May 26, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Babette Gainor, Deputy Director, Food Assistance Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1034, 1400 Independence Avenue, SW., Washington, DC 20250-1034; *telephone:* (202) 720-4221; *Fax:* (202) 690-0251; *E-Mail:* PPDED@fas.usda.gov and/or Babette.Gainor@fas.usda.gov.

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disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 720-5881 (voice) or (202) 720-7808 (TDD).

**SUPPLEMENTARY INFORMATION:****Background**

On October 24, 2008, FAS published a proposed rule (73 FR 63387) to remove 7 CFR part 1496; revise 7 CFR parts 1499 and 1599, which contain the general regulations governing the FFPr and the McGovern-Dole Program; and add 48 CFR part 470, which governs the commodity acquisition procedures of USDA. The proposed rule was intended to accomplish the following objectives:

- Improve the efficiency of the programs by providing greater clarity to program participants on eligibility, reporting and performance requirements;
- Better define the criteria used to determine a product of the United States;
- Allow for the full utilization of all types of acquisition contracts that are authorized under the Federal Acquisition Regulations (FAR); and,
- Restructure and rewrite the regulations, including new subparts and sections, to make them easier to read and understand.

**Analysis of Comments Received**

Seventeen comments on the proposed rule were received from private entities that are affected by these regulations, including: three private voluntary organizations (PVOs), two PVO associations, seven commodity organizations, four shipping and freight industry representatives, and one Office of Inspector General (OIG). One comment was received by an organization comprised of over 250 non-governmental organizations that stated, "Overall we believe FAS has done an excellent job in revising part 1499 and that the changes will improve the quality of the food aid programs and increase the ability of PVOs to assist those in need." The comments are discussed below, except for those dealing with issues outside of the scope of the proposed rule, making editorial suggestions, or simply expressing support for the proposed rule.

**A. Eligibility Determination: 7 CFR Parts 1499.3(a)(1) and 1599.3(a)(1)**

*Comment:* One commenter suggested that USDA should change "grants" to "awards" to be more inclusive since "awards" includes grants and cooperative agreements.

*Response:* USDA accepts this suggestion and has made the changes accordingly.

**B. Agreements: 7 CFR Parts 1499.5(c) and 1599.5(c)**

*Comment:* One commenter suggested that USDA allow a participant to make 100 percent line item adjustments to the budget unless the agreement specifies otherwise. The commenter further stated that this is the norm for most Government regulations.

*Response:* The current language affords USDA the ability to provide greater flexibility to participants' budgets other than just line item adjustments. Additionally, due to various sources from which USDA receives funds for grants governed under parts 1499 and 1599, USDA cannot provide 100 percent flexibility between all budget line items as it has the potential of inadvertently creating an Antideficiency Act violation within the program. For example, FFPr operates under statutory authority that limits the amount of funds that may be spent each year for freight costs and administrative expenses. USDA only can allow flexibility within a budget that would not allow for the possibility of these limits being exceeded. This limitation is also covered in 7 CFR 3019.25(f).

**C. Payments: 7 CFR Parts 1499.6 and 1599.6**

*Comments:* One commenter questioned whether survey costs noted in sections 1499.6(a)(7) and 1599.6(a)(7) included load, discharge, and delivery surveys. A comment was received that questioned the necessity of an "original" bill of lading for payment, particularly given that an original is required to take title of commodities. Additionally, a commenter requested that all references to 7 CFR part 3019 be quoted directly in the relevant sections of 7 CFR parts 1499 and 1599 rather than referring the reader back to 7 CFR part 3019.

*Response:* Load survey costs are not included in sections 1499.6(a)(7) and 1599.6(a)(7). The determination whether a discharge survey, a delivery survey, or both have been completed is dependent upon multiple factors, including but not limited to destination country and contract terms. To provide greater clarity in these sections, USDA has replaced "survey costs" with "survey costs other than those at load port." In response to the comment about providing an original bill of lading, USDA agrees that an original or "true copy" of the bill of lading, such as a pdf version of the original bill of lading,

would be acceptable for payment purposes; this change has been made to these sections. USDA cannot accede to the request to directly quote applicable sections of 7 CFR part 3019 into the relevant sections of the regulations. The provisions of 7 CFR part 3019 are applicable to all USDA grant programs and refer to pertinent circulars released by the Office of Management and Budget (OMB). This regulation is likely to change more often than the FAS and the Commodity Credit Corporation (CCC) grant program regulations. Quoting the applicable sections of 7 CFR part 3019 directly into parts 1499 and 1599 would multiply the regulations requiring updates and notifications to the public that otherwise could be limited to only 7 CFR part 3019.

*D. Transportation of Goods: 7 CFR Parts 1499.7(b) and 1599.7(b)*

*Comments:* Two comments were received on this section. The first commenter encouraged USDA to implement direct ocean freight procurement for its food aid programs. The other commenter objected to USDA directly contracting for freight in accordance with the FAR on the bases that the current process is not unlawful and has been upheld in a previous court ruling, the change would preclude freight forwarders from participating in the program, the proposed system would return to a process that was ruled inefficient by the Grace Commission, and, finally, USDA failed to provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully on this change.

*Response:* USDA is committed to providing an efficient and effective acquisition process under its food donation programs. USDA is further committed to ensuring transparency and fairness in this process. Therefore, once the Final Rule is published, USDA will use the Food Aid Consultative Group (FACG) to outline acquisition processes that USDA is considering implementing under these regulations. The FACG is the official consultative group that allows all organizations with an interest in food aid programs to provide input to the U.S. Government.

With respect to the proposal to use the FAR to acquire freight, this provision is primarily included to reflect the fact that under this rule USDA would be directly contracting for freight in many circumstances and program recipients would not have the burden of obtaining such services. Further, under current practices, in most instances the program recipient is not solely responsible for procuring

freight services; but rather, while such entities do a significant portion of the work related to obtaining freight, decisions regarding the acceptance of freight contracts also involve decisions of employees of USDA. In order to alleviate any questions that exist concerning the propriety of this activity, the determination has been made to follow provisions of the FAR. To the extent that a program participant is solely responsible for these activities without regard to any involvement of employees of USDA, then the FAR provisions would not be applicable.

With respect to the use of freight forwarders, the use of the FAR to acquire freight does not preclude the use, by USDA, of the services of a licensed freight forwarder, similar to the process currently used in Title II of the Food for Peace Act, (Pub. L. 83–480, or referred to as Pub. L. 480 Title II). In such a case, a licensed freight forwarder would act as directed by USDA.

*E. Transportation of Goods: 7 CFR Parts 1499.7(c) and 1599.7(c)*

*Comments:* Four comments were received concerning the use of a licensed freight forwarder rather than a shipping agent. Three commenter's objected to the use of a licensed freight forwarder rather than a shipping agent to facilitate the acquisition of transportation. One commenter stated that sections 1499.7(c)(1)–(3) and 1599.7(c)(1)–(3) go beyond USDA's authority and conflict with that of the Federal Maritime Commission's (FMC) application requirements. Another comment was received asking to clarify the intention of sections 1499.7(c) and 1599.7(c) as to preclude the use of entities other than licensed freight forwarders or to govern only licensed freight forwarders within these sections.

*Response:* USDA agrees with the comments concerning sections 1499.7(c)(1)–(3) and 1599.7(c)(1)–(3) being in conflict with the FMC's application process and has removed these provisions. USDA further agrees with the comments concerning sections 1499.7(c)(4) and 1599.7(c)(4) and has removed this requirement since proof of financial responsibility is required in the FMC application process. As to the comments requesting the continued use of shipping agents, USDA does not agree with this comment and will adopt the proposed change set forth in the proposed rule. Currently, there is no definition of "shipping agent" and there are no services of a shipping agent identified that a licensed freight forwarder could not provide. In fact, an unlicensed freight forwarder may not book or arrange vessel space for others,

process shipping documentation or collect freight forwarder compensation from the ocean carriers. Further information regarding this issue is found at the Web site maintained by FMC at <http://www.fmc.gov/home/faq/index.asp>. In addition, FMC has a regulated process for licensing freight forwarders that will remove this duplicative process from USDA. Lastly, USDA has provided further clarification on the intention of sections 1499.7(c) and 1599.7(c) to allow only licensed freight forwarders to be used by participants in arranging transportation.

*F. Damage to and Loss of Commodities: 7 CFR Parts 1499.9 and 1599.9*

*Comment:* One commenter expressed concern regarding the number of times a notification of loss or damage to commodities may be required during the commodity voyage.

*Response:* USDA agrees with the concern expressed by the commenter but also notes that timely notification of damages to and losses of commodities are necessary to protect the assets of the program. USDA has removed the word "immediately" from this section and inserted the provision for a timeframe of notification to be outlined in the program agreement.

*G. Claims for Damage to or Loss of Commodities: 7 CFR Parts 1499.10 and 1599.10*

*Comments:* Three comments were received on this section. One commenter asked if funds arising from a claim could cover the cost of services from a third party sub-contract who settled the claims process, and if so, would this arrangement have to be stipulated in the program agreement or could "advance approval" for such a use of these funds be obtained in another manner. The second commenter recommended USDA to require program participants to purchase marine cargo insurance as this requirement would lend itself to the goal of timely resolution of cargo claims. This commenter also suggested that USDA adopt a percentage threshold for establishing claim value levels. The third commenter suggested that USDA allow the participant to determine whether or not to file a claim for losses under \$10,000 rather than \$20,000. This commenter also asked for clarification on who would provide funds for marine cargo insurance if such insurance were required.

*Response:* USDA agrees that, if such a situation were to arise, it should be handled outside the program agreement. The current regulation allows for advance approval and does not stipulate

that such approval must be stipulated in the program agreement; therefore, no changes are made to the regulations. However, USDA will include procedures on this subject matter in applicable program documents and in the guidance provided to participants, which will be developed once the final rule is in effect. Regarding the required purchase of marine cargo insurance, USDA will consider this provision on an agreement basis as USDA assesses the risk involved in moving the commodities. If USDA determines that it is in the best interest of the programs, USDA will require and provide funding for marine cargo insurance. As to the value for requiring a claim to be filed, USDA does not agree with either suggestion and therefore has not made any changes to these sections. The current language allows participants to file a claim at any level. In setting the \$20,000 value level, USDA determined that a benefit to the program could be reached while factoring in the amount of resources necessary to administer the claims process.

*H. Subrecipients: 7 CFR Parts 1499.12 and 1599.12*

*Comment:* One commenter questioned the need for USDA to receive copies of subrecipient contracts. The commenter suggested that the participant retain copies of the subrecipient contracts and make them available upon request by USDA.

*Response:* USDA understands the concern expressed by the commenter; however, USDA has had recent experiences with subrecipient contracts either not being in place or not providing adequate assurances to protect the integrity of the donation programs. Further, OIG also recommends that these contracts receive oversight by FAS and CCC. Therefore, USDA is retaining the current language in this section.

*I. Recordkeeping and Reporting Requirements: 7 CFR Parts 1499.13 and 1599.13*

*Comment:* One commenter recommended the following: require USDA to make the annual Single Audit Act and OMB Circular A-133 mandatory, regardless of funding availability; provide specific timeframes for participants to submit reports and evaluations; and clarify how the new evaluation requirement will complement FAS's current system of close-out reviews.

*Response:* USDA agrees that participants must conduct an annual audit in accordance with the Single Audit Act (31 U.S.C. 7501-7507) and

revised OMB Circular A-133. In support of this, 7 CFR 3019.26(a), that is referenced in sections 1499.13(d) and 1599.13(d), contains the reference to the Single Audit Act and OMB Circular A-133. Regarding the timeframe for report submissions, USDA intends to provide a specific timeframe for participants to submit reports and evaluations within the agreements. At this time, USDA does not foresee a change in reporting timeframes but has moved this provision into the agreements to afford flexibility in managing the programs. Evaluating activities conducted under USDA food aid programs will provide insight to USDA in developing more effective programs as well as enable USDA to highlight program outcomes rather than program outputs that are currently captured in semi-annual reports. These evaluations will complement FAS's current system of close-out reviews by using a third party neutral evaluator and, in the case of mid-period evaluations, afford more transparency on program short-comings prior to the actual closure process so that USDA can determine the best course of action to remedy the short-comings.

*J. Definitions: 48 CFR Part 470.101*

*Comments:* Three comments were received that outlined the ability for some commodities to be maintained in a non-commingled manner, and, therefore, requested that USDA consider either excluding some commodities from this definition, removing the definition, and thereby the allowance for commingling in its entirety, or modifying it to conform more closely to the domestic commodity donation programs.

*Response:* USDA recognizes that commodities are maintained and stored in various manners. USDA further agrees with protecting the U.S. origin integrity of commodities when this is the normal commercial practice. Accordingly, 48 CFR 470.101 has been revised to provide that in those instances in which it has been determined by USDA that a commodity that is stored in a commingled manner but which is one that can be reasonably stored on an identity preserved basis with respect to its origin, USDA will require such commodity that is being procured to originate from the United States.

*K. United States Origin of Agricultural Products: 48 CFR Part 470.103(b)*

*Comments:* USDA received three comments concerning USDA's attempt to harmonize the use of additives in international programs with those used

in domestic programs. The commenter's suggest replacing "or" with "and" at the end of section 470(b)(1).

*Response:* Section 402(2) of Public Law 480 provides, in relevant part, that with respect to the administration of Title II of that Act, "\* \* \* a product of an agricultural commodity shall not be considered to be produced in the United States if it contains any ingredient that is not produced in the United States, if that ingredient is produced and is commercially available at fair and reasonable prices. This provision is also made applicable to the FFPr Program by section 1110(e)(4) of the FFPr Act. With respect to the McGovern-Dole Program, section 3107(a) of the Farm Security and Rural Investment Act of 2002 defines an agricultural commodity to be "an agricultural commodity, or a product of an agricultural commodity, that is produced in the United States."

Based upon the review of the issues raised by this comment, since procurements of commodities for use in Public Law 480 and the FFPr Program must follow the requirements of section 402(2) of Public Law 480, the definition of "additive" has been modified to refer to "ingredient" and the cited statutory provision has been incorporated into the definition of "ingredient". With respect to the McGovern-Dole Program, in order to ensure consistency with these other two programs and in recognition of the fact that often procurements of commodities are done simultaneously for two or more of these programs, USDA will use the same definition of "ingredient."

USDA concurs with the comment since it is desirable to harmonize the manner in which ingredients are treated for this purpose. USDA has revised 48 CFR 470.103(b) to reflect the statutory provision regarding ingredients as found in Public Law 480 with regard to procurements made for FAS and the U.S. Agency for International Development (USAID) programs. Accordingly, for these international programs, the procurement of commodities with ingredients will be handled in the same manner as procurements relating to programs administered by the Food and Nutrition Service except as may otherwise be required by statute.

*L. United States Origin of Agricultural Products: 48 CFR Part 470.103(c)*

*Comments:* USDA received four comments concerning the use of commingled products as a product of the United States. Two of the comments expressed concern that non-U.S. origin products may be provided under USDA food assistance programs, while two

other comments suggested modifications related to the timing of the commodity procurement to bring the language into commercial norms.

*Response:* USDA agrees that this section does not adequately take into consideration the situation in which a vendor has procured U.S. agricultural products prior to the issuance of a solicitation. Accordingly, this provision has been revised to provide that a commingled product shall be considered to be a product of the United States, if the offeror can establish that the offeror has in inventory at the time the contract for the commodity or product is awarded to the offeror, or obtains during the contract performance period specified in the solicitation, or a combination thereof, a sufficient quantity of the commodity or product that was produced in the United States to fulfill the contract being awarded, and all unfulfilled contracts that the offeror entered into to provide such commingled product to the U.S. Government.

In addition, this section has been revised with respect to the domestic origin requirements for products of animals. Upon further consideration, USDA has determined that rather than to attempt to set forth in this section a generic provision regarding domestic origin, that the specific requirements applicable to the country in which the animal from which the product was obtained was bred, raised, slaughtered and processed should be set forth in individual solicitations. Under this process, USDA can take into account the differences that exist with respect to various animals, *e.g.*, poultry, pork or beef, and the various types of products that are obtained, *e.g.*, full cuts of meat or poultry and processed products.

#### *M. Issuance of Invitations: 7 CFR Part 1496.4*

*Comment:* One commenter pointed out that the removal of the provision requiring a one day turnaround of supplier bids would impose immense new market risks for suppliers.

*Response:* Regarding the turnaround time for the acceptance of offers (referred to as "bids"), the process would follow the practices prescribed by the FAR, 48 CFR Chapter 4. These are standard solicitation methods prescribed government-wide. Offerors would be given the opportunity to propose prices for a specific period of time, for example, 24, 36 or 48 hours. This would be the offer acceptance period. After that time, offers would expire and would no longer be valid, thereby preventing the imposition of new market risks for suppliers.

#### *N. Miscellaneous Points of Clarification*

*Comments:* One comment was received recommending that FAS continue to monitor agreements entered into under Section 416(b) of the Agricultural Act of 1949 (Section 416(b)) in the same manner and subject to the same regulations as the McGovern-Dole Program and FFPr. Another comment was received that recommended USDA create and attach reporting forms to the agreements. A commenter asked a question about the relevant application of OMB A-122 Circular to 7 CFR parts 1499 and 1599.

*Response:* In response to the comment on monitoring Section 416(b), USDA intends to monitor Section 416(b) in a manner consistent with 7 CFR parts 1499 and 1599 as relevant to the purpose and scope of Section 416(b). Under Section 416(b), CCC makes available commodities that it has acquired in its normal operations for use in international programs. No commodities are procured for use under this provision. By using the **Federal Register** to announce and administer Section 416(b), USDA will have the flexibility to apply the relevant sections of 1499 and 1599 to this donation program while taking into account any unique requirements for this program. In response to the comment on reporting forms, USDA may reference the reporting form number and revision date within the agreement but attaching the reporting forms will only add to the volume of the agreement. With regard to OMB A-122 Circular, this circular, as well as others, has been incorporated into 7 CFR 3019, entitled "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations".

In reviewing the language in 48 CFR part 470, we have determined that while changes to the actual provisions of 48 CFR 470.202(e)(3) are not needed, USDA does wish to make clear that with respect to the lowest landed cost determination, as the programs have evolved over many years, the program participant obtains potential bids from prospective carriers and these bids are provided to the Farm Service Agency (FSA) which utilizes a sophisticated computer program to analyze the freight bids in conjunction with the various bids obtained in the procurement of commodities to ascertain which combination of carrier bids and commodity bids produces the lowest landed cost of delivery of the commodity to foreign destinations. Prior to the computer system running a lowest landed cost analysis, the grantees

and/or USAID determine if each offeror's service and rates are responsive to their needs. Once the grantee and/or USAID provides their acceptance of the offers of service, USDA then runs an analysis to determine lowest landed cost. USAID and grantee organizations will have full discretion over carrier responsiveness determinations in accordance with the procedures identified in 22 CFR 211.

Changes to the AGAR have been reviewed and approved by the Acting Deputy Assistant Secretary for Departmental Administration as authorized in 48 CFR Chapter 4, subpart 401.601(a)(1).

#### **Executive Order 12866**

The final rule has been determined to be non-significant under E.O. 12866 and has not been reviewed by the Office of Management and Budget.

#### **Regulatory Flexibility Act**

This rule is not subject to the Regulatory Flexibility Act because FAS is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking and as such under Section 601(2) of the Act it is exempt.

#### **Environmental Assessment**

FAS has determined that this rule does not constitute a major State or Federal action that would significantly affect the human or natural environment consistent with the National Environmental Policy Act (NEPA), 40 CFR part 1502.4, Major Federal actions requiring the preparation of Environmental Impact Statements; and Compliance with NEPA implementing the regulations of the Council on Environmental Quality, 40 CFR parts 1500-1508. Therefore no environmental assessment or environmental impact statement will be prepared.

#### **Executive Order 12988**

This rule has been reviewed under E.O. 12988. This rule is not retroactive and it does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule would not be retroactive.

#### **Executive Order 12372**

This program is not subject to E.O. 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

**Executive Order 13132**

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

**Unfunded Mandates**

This rule contains no unfunded mandates as defined in sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA).

**Paperwork Reduction Act of 1995**

In accordance with the Paperwork Reduction Act of 1995, FAS has previously received approval from OMB with respect to the information collection required to support these programs. The Information Collection is described below:

*Title:* Food Donation Programs (Food for Progress, Section 416(b)) and McGovern-Dole International Food for Education and Child Nutrition.

*OMB Control Number:* 0551-0035.

**E-Government Act Compliance**

FAS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The forms, regulations, and other information collection activities required to be utilized by a person subject to this rule are available at <http://www.fas.usda.gov>.

**List of Subjects****7 CFR Part 1496**

Agricultural commodities, Food assistance programs, Foreign aid, Government procurement.

**7 CFR Part 1499**

Agricultural commodities, Food assistance programs, Foreign aid.

**7 CFR Part 1599**

Agricultural commodities, Food assistance programs, Exports, Foreign aid.

**48 CFR Part 470**

Government procurement, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, under the authority of 5 U.S.C. 553; 15 U.S.C. 714b and 714c, 7

CFR parts 1496, 1499, 1599 and 48 CFR part 470 are amended as follows:

**Title 7—Agriculture****PART 1496—[REMOVED]**

- 1. 7 CFR part 1496 is removed.
- 2. Revise part 1499 to read as follows:

**PART 1499—FOOD FOR PROGRESS PROGRAM**

Sec.

- 1499.1 General statement.
- 1499.2 Definitions.
- 1499.3 Eligibility determination.
- 1499.4 Application process.
- 1499.5 Agreements.
- 1499.6 Payments.
- 1499.7 Transportation of goods.
- 1499.8 Entry and handling of commodities.
- 1499.9 Damage to or loss of commodities.
- 1499.10 Claims for damage to or loss of commodities.
- 1499.11 Use of commodities and sales proceeds.
- 1499.12 Subrecipients.
- 1499.13 Recordkeeping and reporting requirements.
- 1499.14 Noncompliance with an agreement.
- 1499.15 Suspension, termination, and closeout of agreements.
- 1499.16 Appeals.
- 1499.17 Paperwork Reduction Act.

**Authority:** 7 U.S.C. 1736o; and 15 U.S.C. 714b and 714c.

**§ 1499.1 General statement.**

(a) This part sets forth the general terms and conditions governing the donation of commodities by the Commodity Credit Corporation (CCC) to participants in the Food for Progress Program (FFPr). Under FFPr, participants use the donated commodities or proceeds from the sale of such commodities to implement activities in a foreign country pursuant to an agreement with CCC. The Foreign Agricultural Service (FAS) of the Department of Agriculture (USDA) administers FFPr on behalf of CCC.

(b) In addition to the provisions of this part, other regulations of general application issued by USDA, including the regulations set forth in Chapter 30 of this title, are applicable to the FFPr. All provisions of the CCC Charter Act (15 U.S.C. 714 et seq.) and any other statutory provisions that are generally applicable to CCC are applicable to FFPr and the regulations set forth in this part.

(c) This part shall not apply to a donation by CCC to a foreign government or an intergovernmental agency or organization (such as the United Nations' World Food Program) under FFPr.

**§ 1499.2 Definitions.**

The following definitions are applicable to this part:

*Activity* means a project to be carried out by a participant, directly or through a subrecipient, to fulfill the objectives of an agreement.

*Agreement* means a legally binding agreement entered into between CCC and a participant to implement activities under FFPr.

*CCC* means the Commodity Credit Corporation and includes any official of the United States delegated the responsibility to act on behalf of CCC.

*CCC-provided funds* means U.S. dollars provided under an agreement to a participant for expenses for the internal transportation, storage and handling of the donated commodities, expenses involved in the administration and monitoring of the activities under the agreement, and technical assistance related to the monetization of donated commodities.

*Commodities* mean U.S. agricultural commodities or products of U.S. agricultural commodities.

*Donated commodities* means the commodities donated by CCC to a participant under an agreement. The term may include donated commodities that are used to produce a further processed product for use under the agreement.

*FAS* means the Foreign Agricultural Service acting on behalf of CCC.

*FFPr* means the Food for Progress Program.

*Force majeure* is a common clause in contracts, exempting the parties for non-fulfillment of their obligations as a result of conditions beyond their control, such as earthquakes, floods or war.

*Income* means interest earned on sale proceeds and other resources received by a participant, other than sale proceeds, as a result of carrying out an agreement. The term may include resources from VAT refunds, activity fees, interest on loans, and other sources.

*Participant* means an entity with which CCC has entered into an agreement.

*Subrecipient* means a legal entity that receives donated commodities, income, sale proceeds or other resources from a participant for the purpose of implementing in the targeted country activities described in a FFPr agreement and that is accountable to such participant for the use of such commodities, funds, or resources. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of FAS.

*Sale proceeds* mean funds received by a participant from the sale of donated commodities.

*Targeted country* means the country in which activities are implemented under an agreement.

**§ 1499.3 Eligibility determination.**

(a) An entity will be eligible to become a participant only after FAS determines that the entity has:

(1) Organizational experience in implementing and managing awards, and the capability and personnel to develop, implement, monitor, report on, and provide accountability for activities in accordance with this part;

(2) Experience working in the proposed targeted country;

(3) An adequate financial framework to implement the activities the entity proposes to carry out under FFPr. In order to determine whether the entity is financially responsible, FAS may require it to submit corporate policies and financial materials that have been audited or otherwise reviewed by a third party;

(4) A person or agent located in the United States with respect to which service of judicial process may be obtained by FAS on behalf of the entity; and

(5) An operating financial account in the proposed targeted country, or a satisfactory explanation for not having such an account and a description of how a FFPr agreement would be administered without such an account.

(b) In determining whether an entity will be eligible to be a participant, FAS may consider the entity's previous compliance or noncompliance with the provisions of this part and part 1599 of this title. FAS may consider matters such as whether the entity corrected deficiencies in the implementation of an agreement in a timely manner and whether the entity has timely and accurately filed reports and other submissions that are required to be filed with FAS and other agencies of the United States.

**§ 1499.4 Application process.**

(a) An entity seeking to enter into an agreement with CCC shall submit an application, in accordance with this section, that sets forth its proposal to carry out activities under FFPr in the proposed targeted country. An application shall contain the items specified in paragraph (b) of this section and shall be submitted electronically to FAS at the address set forth at <http://www.fas.usda.gov>. An entity that has not yet met the eligibility requirements in § 1499.3 may submit an application, but FAS will not enter into an agreement with an entity until FAS had made a determination of eligibility under § 1499.3.

(b) An applicant shall include the following items in its application:

(1) A completed Form SF-424, which is a standard application for Federal assistance;

(2) An introduction that contains the elements specified in paragraph (c) of this section; and

(3) A plan of operation that contains the elements specified in paragraph (d) of this section.

(c) The introduction shall include:

(1) An explanation of the need for the food aid in the targeted country and how the applicant's proposed activities would address that need;

(2) Information regarding the applicant's ability to become registered and operate in the targeted country;

(3) Information about the applicant's past food aid projects; and

(4) A budget that details the amount of any sale proceeds, income, and CCC-provided funds that the applicant proposes to use to fund:

(i) Administrative costs;

(ii) Inland transportation, storage and handling costs; and

(iii) Activity costs.

(d) A plan of operation shall include:

(1) The name of the targeted country where the proposed activities would be implemented;

(2) The kind, quantity, and proposed use of the commodities requested, and any commodities that would be acceptable substitutions therefor, and the proposed delivery schedule;

(3) If monetization or barter is proposed:

(i) The quantity of the requested commodities that would be sold or bartered;

(ii) The amount of sale proceeds anticipated;

(iii) The amount of income expected to be generated;

(iv) The anticipated monetization completion date;

(v) The goods or services to be generated from the barter of the requested commodities; and

(vi) The value of the goods or services anticipated to be generated from the barter of the requested commodities.

(4) A list of each of the activities that would be implemented, with a brief statement of the objectives to be accomplished under each activity;

(5) For each proposed activity, the targeted geographic area, anticipated beneficiaries, and methods that the applicant would use to choose such beneficiaries, including obtaining and considering statistics on poverty levels, food deficits, and any other required items set forth on the FAS Web site at <http://www.fas.usda.gov>.

(6) For each proposed activity:

(i) An explanation of whether the activity would be carried out through the distribution or barter of the requested commodities or funded by sale proceeds, income, or a combination thereof; and

(ii) The amount of commodities requested and of any sale proceeds and income expected to be generated to carry out such activity; and

(iii) A detailed description of the activity, including the steps involved in its implementation and the anticipated completion date;

(7) Any cash or non-cash contributions that the applicant expects to receive from non-CCC sources that:

(i) Are critical to the implementation of the proposed activities; or

(ii) Enhance the implementation of the activities;

(8) Any subrecipient that would be involved and a description of each subrecipient's responsibilities and its capability to perform responsibilities;

(9) Any governmental or nongovernmental entities that would be involved and the extent to which FFPr will strengthen or increase the capabilities of such entities to further economic development in the targeted country;

(10) The method by which the applicant intends to inform beneficiaries of an activity about the source of the requested commodities or funding for the activity and, where the beneficiaries will be receiving the commodities directly, how to prepare and use them properly;

(11) Established baselines, a timeline, and proposed outcomes that would enable FAS to measure the applicant's progress towards achieving the objectives of the proposed activities;

(12) If the proposed activities would involve the use of sale proceeds or income:

(i) The process that the applicant would use to sell the requested commodities, including steps the applicant would take to use, to the extent possible, the private sector in the monetization process; and

(ii) The procedures that the applicant would use to assure that sale proceeds and income are received and deposited into a separate, interest-bearing account and disbursed from such account for use only in accordance with the agreement;

(13) A description of any port, transportation, storage, and warehouse facilities that would be used with sufficient detail to demonstrate that they would be adequate to handle the requested commodities without undue spoilage or waste, and, in cases where the applicant proposes to distribute some or all of the requested

commodities, a description of how they would be transported from the receiving port to the point at which distribution would be made to the beneficiaries;

(14) Any reprocessing or repackaging of the requested commodities that would take place prior to the distribution, sale or barter by the applicant;

(15) The action the applicant would take to ensure that any commodities to be distributed to beneficiaries, rather than sold, would be imported and distributed free from all customs, duties, tolls, and taxes;

(16) A plan that shows how the requested commodities could be imported and distributed without a disruptive impact upon production, prices and marketing of the same or like products in the country where they will be delivered, and the extent to which any sale or barter of the requested commodities would displace or interfere with any sales that may otherwise be made by the applicant or any other entity in the country where they will be delivered; and

(17) Any additional required items set forth on the FAS Web site at <http://www.fas.usda.gov>.

#### **§ 1499.5 Agreements.**

(a) After FAS approves an applicant's proposal, FAS will develop an agreement in consultation with the applicant. The agreement will set forth the obligations of CCC and the participant. A participant must comply with the terms of the agreement to receive assistance.

(b) A participant shall not use donated commodities, sale proceeds, income or CCC-provided funds for any activity or any expenses incurred by the participant prior to the date of the agreement or after the agreement is suspended or terminated, except as approved by FAS.

(c) The agreement will include a budget that sets forth the maximum amounts of sale proceeds and CCC-provided funds that may be expended for various purposes under the agreement. A participant may make adjustments to this budget without prior approval from FAS only as specified in the agreement.

(d) Prior to providing any donated commodities or CCC-provided funds to a participant under an agreement, FAS may require the participant to complete a training program administered by FAS that is designed to ensure that the participant is aware of, and has the capacity to complete, all required reporting and audit functions set forth in this part.

(e) A participant will be prohibited from using CCC-provided funds to acquire goods and services, either directly or indirectly through another party, from certain countries that will be specified in the agreement. Any violation of this provision of the agreement will be a basis for immediate termination by CCC of the agreement, in addition to the imposition of any other applicable civil and criminal penalties.

(f) The agreement will prohibit the sale or transshipment of the donated commodities to a country not specified in the agreement for as long as such donated commodities are controlled by the participant.

(g) CCC may enter into a multicountry agreement in which donated commodities are delivered to one country and activities are carried out in another.

(h) CCC may provide donated commodities and CCC-provided funds under a multiyear agreement contingent upon the availability of commodities and funds.

#### **§ 1499.6 Payments.**

(a) If the participant arranges for transportation in accordance with § 1499.7(b)(2), and the participant seeks payment directly, the participant shall, as specified in the agreement, either submit to FAS, or maintain on file and make available to FAS, the following documents:

(1) A signed copy of the completed Form CCC-512;

(2) The original, or a true copy of, each on-board bill of lading indicating the freight rate and signed by the originating carrier;

(3) For all non-containerized cargoes:

(i) A signed copy of the Federal Grain Inspection Service (FGIS) Official Stowage Examination Certificate (Vessel Hold Certificate);

(ii) A signed copy of the National Cargo Bureau Certificate of Readiness (Vessel Hold Inspection Certificate); and,

(iii) A signed copy of the National Cargo Bureau Certificate of Loading;

(4) For all containerized cargoes, a copy of the FGIS Container Condition Inspection Certificate;

(5) A signed copy of the liner booking note or charter party covering ocean transportation of the cargo;

(6) In the case of charter shipments, a signed notice of arrival at the first discharge port, unless FAS has determined that circumstances of force majeure have prevented the vessel's arrival at the first port of discharge;

(7) A request by the participant for reimbursement of freight, survey costs other than at load port, and other

expenses approved by CCC, indicating the amount due and accompanied by a certification from the carrier or other parties that payments have been received from the participant; and

(8) A document on letterhead and signed by an officer or agent of the participant specifying the name of the entity to receive payment; the bank ABA number to which payment is to be made; the account number for the deposit at the bank; the participant's taxpayer identification number; and the type of the account into which the payment will be deposited.

(b) If the participant arranges for transportation in accordance with § 1499.7(b)(2), and the participant has used a freight forwarder, the participant shall cause the freight forwarder to submit the documents specified in § 1499.6(a) in order to receive payment from CCC.

(c) In no case will CCC reimburse a participant for demurrage costs or pay demurrage to any other entity.

(d) If FAS has agreed to pay the costs of transporting, storing, and distributing the donated commodities from the designated port or point of entry, the participant will be reimbursed in the manner set forth in the agreement.

(e) If the agreement authorizes the payment of CCC-provided funds, CCC will pay these funds to the participant on a reimbursement for expenses basis, except as provided in paragraph (f)(1) of this section. The participant shall request the payment of CCC-provided funds to reimburse it for authorized expenses in the manner set forth in the agreement.

(f)(1) A participant may request an advance of the amount of funds specified in the agreement. FAS will not approve any request for an advance if:

(i) It is received earlier than 60 days after the date of a previous advance made in connection with the same agreement; or

(ii) Any required reports, as specified in § 1499.13 and in the agreement, are more than six months in arrears.

(2) Except as may otherwise be provided in the agreement, the participant shall deposit and maintain in a bank account located in the United States all funds advanced by CCC. The account shall be interest-bearing, unless the exceptions in § 3019.22(k) of this title apply, or FAS determines that this requirement would constitute an undue burden. The participant shall remit semi-annually to CCC any interest earned on the advanced funds. The participant shall, no later than 10 days after the end of each calendar quarter, submit a financial statement to FAS

accounting for all funds advanced and all interest earned.

(3) The participant shall return to CCC any funds that are advanced by CCC if such funds have not been obligated as of the 180th day after the advance was made. Such funds and interest shall be transferred to FAS within 30 days of such date.

(g) If a participant is required to pay funds to CCC in connection with an agreement, the participant shall make such payment in U.S. dollars, unless otherwise approved in advance by FAS.

(h) Suppliers of commodities shall seek payment according to the purchase contract with CCC.

#### **§ 1499.7 Transportation of goods.**

(a) Shipments of donated commodities are subject to the requirements of 46 U.S.C. 55305 and 55314, regarding carriage on U.S.-flag vessels.

(b) Transportation of donated commodities and other goods such as bags that may be provided by CCC under FFPr will be acquired under a specific agreement in the manner determined by FAS. Such transportation will be acquired by:

(1) CCC in accordance with the Federal Acquisition Regulations (FAR), USDA's procurement regulations set forth in chapter 4 of title 48 of the Code of Federal Regulations (the AGAR), and directives issued by the Director, Office of Procurement and Property Management, USDA; or

(2) The participant, with reimbursement by CCC, in the manner specified in the agreement.

(c) A participant that acquires transportation in accordance with paragraph (b)(2) of this section may only use the services of a freight forwarder that is licensed by the FMC and that would not have a conflict of interest in carrying out the freight forwarder duties. To assist FAS in determining whether there is a potential conflict of interest, the participant must submit to FAS a certification indicating that the freight forwarder:

(1) Is not engaged in, and will not engage in, supplying commodities or furnishing ocean transportation or ocean transportation-related services for commodities provided under any FFPr agreement to which the participant is a party; and

(2) Is not affiliated with the participant and has not made arrangements to give or receive any payment, kickback, or illegal benefit in connection with its selection as an agent of the participant.

(d) A participant that is responsible for transportation under paragraph (b)(2)

of this section shall declare in the transportation contract the point at which the ocean carrier will take custody of commodities to be transported.

#### **§ 1499.8 Entry and handling of commodities.**

(a) The participant shall make all necessary arrangements for receiving the donated commodities in the targeted country, including obtaining appropriate approvals for entry and transit. The participant shall store and maintain the donated commodities in good condition from the time of delivery at the port of entry or the point of receipt from the originating carrier until their distribution, sale or barter.

(b) The participant shall, as provided in the agreement, arrange for transporting, storing, and distributing the donated commodities from the designated point and time where title to the commodities passes to the participant by contracting directly with suppliers of services, as set forth in the agreement.

(c)(1) If a participant arranges for the packaging or repackaging of donated commodities that are to be distributed, the participant shall ensure that the packaging:

(i) Is plainly labeled in the language of the targeted country;

(ii) Contains the name of the donated commodities;

(iii) Includes a statement indicating that the donated commodities are furnished by the people of the United States of America; and,

(iv) Includes a statement indicating that the donated commodities shall not be sold, exchanged or bartered.

(2) If a participant arranges for the reprocessing and repackaging of donated commodities that are to be distributed, the participant shall ensure that the packaging:

(i) Is plainly labeled in the language of the targeted country;

(ii) Contains the name of the reprocessed product;

(iii) Includes a statement indicating that the reprocessed product was made with commodities furnished by the people of the United States of America; and,

(iv) Includes a statement indicating that the reprocessed product shall not be sold, exchanged or bartered.

(3) If a participant distributes donated commodities that are not packaged, the participant shall, to the extent practicable, display:

(i) Banners, posters or other media informing the public of the name and source of the donated commodities; and

(ii) A statement that the donated commodities may not be sold, exchanged, or bartered.

(d) A participant shall arrange with the government of the targeted country that all donated commodities to be distributed will be imported and distributed free from all customs, duties, tolls, and taxes. A participant is encouraged to make similar arrangements, where possible, with the government of the country where donated commodities to be sold or bartered are delivered.

#### **§ 1499.9 Damage to or loss of commodities.**

(a) FAS will be responsible for the donated commodities prior to the transfer of title to the commodities to the participant. The participant will be responsible for the donated commodities following the transfer of title to the commodities to the participant. The title will transfer as specified in the agreement.

(b) A participant shall inform FAS, in the manner and within the time period set forth in the agreement, of any damage to or loss of the donated commodities that occurs following the transfer of title to the commodities to the participant. The participant shall take all steps necessary to protect its interests and the interests of CCC with respect to any damage to or loss of the donated commodities that occurs after title has been transferred to the participant. The agreement will specify whether the participant is responsible for obtaining a survey in the event that the donated commodities are damaged or lost following the transfer of title to the commodities to the participant.

(c) If the donated commodities are damaged or lost during the time that they are in the care of the carrier:

(1) And either FAS or the participant engages the services of an independent cargo surveyor, the surveyor will provide to FAS and the participant any report, narrative chronology or other commentary that it prepares;

(2) FAS and the participant will provide to each other the names and addresses of any individuals known to be present at the time of discharge or during the survey who can verify the quantity of damaged or lost commodities;

(3) And the participant engages the services of the surveyor, CCC will reimburse the participant for the reasonable costs, as determined by FAS, of the survey, unless:

(i) The participant was required by the agreement to pay for the survey;

(ii) The survey was a delivery survey and the surveyor did not also prepare a discharge survey; or

(iii) The survey was not conducted contemporaneously with the discharge of the vessel, unless FAS determines that such action was justified under the circumstances;

(4) Any survey obtained by the participant shall, to the extent practicable, be conducted jointly by the surveyor, the participant, and the carrier, and the survey report shall be signed by all parties;

(5) And the damage or loss occurred with respect to a bulk grain shipment, if the agreement provides that the participant is responsible for survey and outturn reports, the participant shall engage the services of an independent cargo surveyor to:

(i) Observe the discharge of the cargo;

(ii) Report on discharging methods, including scale type, calibrations and any other factor that may affect the accuracy of scale weights, and, if scales are not used, state the reason therefor and describe the actual method used to determine weight;

(iii) Estimate the quantity of cargo, if any, lost during discharge through carrier negligence;

(iv) Advise on the quality of sweepings;

(v) Obtain copies of port or vessel records, if possible, showing the quantity discharged; and

(vi) Notify the participant immediately if the surveyor has reason to believe that the correct quantity was not discharged or if additional services are necessary to protect the cargo; and

(6) And the damage or loss occurred with respect to a container shipment, if the agreement provides that the participant is responsible for survey and outturn reports, the participant shall engage the services of an independent cargo surveyor to list the container numbers and seal numbers shown on the containers, indicate whether the seals were intact at the time the containers were opened, and note whether the containers were in any way damaged.

(d) If the participant has title to the donated commodities, and the value of any damaged donated commodities is in excess of \$1,000, the participant shall immediately arrange for an inspection by a public health official or other competent authority approved by FAS and provide to FAS a certification by such public health official or other competent authority regarding the exact quantity and condition of the damaged commodities. The value of damaged donated commodities shall be determined on the basis of the

commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities. The participant shall inform FAS of the results of the inspection and indicate whether the damaged commodities are:

(1) Fit for the use authorized in the agreement and, if so, whether there has been a diminution in quality; or

(2) Unfit for the use authorized in the agreement.

(e)(1) If the participant has title to the donated commodities, the participant shall arrange for the recovery of that portion of the donated commodities designated as suitable for the use authorized in the agreement. The participant shall dispose of donated commodities that are unfit for such use in the following order of priority:

(i) Sale for the most appropriate use, *i.e.*, animal feed, fertilizer, industrial use, or another use approved by FAS, at the highest obtainable price;

(ii) Donation to a governmental or charitable organization for use as animal feed or for other non-food use; or

(iii) Destruction of the commodities if they are unfit for any use, in such manner as to prevent their use for any purpose.

(2) The participant shall arrange for all U.S. Government markings to be obliterated or removed before the donated commodities are transferred by sale or donation.

(f) A participant may retain any proceeds generated by the disposal of the donated commodities in accordance with paragraph (e)(1) of this section and shall use the proceeds for expenses related to the disposal of the donated commodities and for activities specified in the agreement.

(g) The participant shall notify FAS immediately and provide detailed information about the actions taken in accordance with paragraph (e)(1) of this section, including the quantities, values, and dispositions of commodities determined to be unfit.

**§ 1499.10 Claims for damage to or loss of commodities.**

(a) FAS will be responsible for claims arising out of damage to or loss of a quantity of the donated commodities prior to the transfer of title to the commodities to the participant.

(b) If the participant has title to the donated commodities, and the value of the damaged or lost donated commodities is estimated to be \$20,000 or greater, the participant will be responsible for:

(1) Initiating a claim arising out of such damage or loss, including actions relating to collections pursuant to commercial insurance contracts; and

(2) Notifying FAS immediately and providing detailed information about the circumstances surrounding such damage or loss, the quantity of damaged or lost donated commodities, and the value of the damage or loss.

(c) If the participant has title to the donated commodities, and the value of the damaged or lost donated commodities is estimated to be less than \$20,000, the participant will be responsible for providing detailed information about the damage or loss in the next report required to be filed under § 1499.13(c)(1) or (2) and shall not be required to initiate a claim collection action.

(d)(1) The value of a claim for lost donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities.

(2) The value of a claim for damaged donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities, less any funds generated if such commodities are sold in accordance with § 1499.9(e)(1).

(e) If FAS determines that a participant is not exercising due diligence in the pursuit of a claim, FAS may require the participant to assign its rights to pursue the claim to FAS.

(f)(1) The participant may retain any funds obtained as a result of a claims collection action initiated by it in accordance with this section, or recovered pursuant to any insurance policy or other similar form of indemnification, but such funds shall only be expended for purposes approved in advance by FAS.

(2) FAS will retain any funds obtained as a result of a claims collection action initiated by it under this section; provided, however, that if the participant paid for the freight or a portion thereof, FAS will use a portion of such funds to reimburse the participant for such expense on a prorated basis.

**§ 1499.11 Use of commodities and sale proceeds.**

(a) A participant must use the donated commodities in accordance with the agreement.

(b) A participant shall not permit the distribution, handling, or allocation of donated commodities on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliation of the potential consumers or beneficiaries.

(c) A participant shall not permit the distribution, handling, or allocation of

donated commodities by the military forces or any government or insurgent group without the specific authorization of FAS.

(d) A participant may sell or barter donated commodities only if such sale or barter is provided for in the agreement or the participant is disposing of damaged commodities as specified in § 1499.9. The participant shall sell the donated commodities at a reasonable market price in the economy where the sale occurs. The participant shall use any sale proceeds, income, or goods or services derived from the sale or barter of the donated commodities only as provided in the agreement.

(e) The participant shall deposit all sale proceeds and income into a separate, interest-bearing account unless the exceptions in § 3019.22(k) of this title apply, the account is in a country where the laws or customs prohibit the payment of interest, or FAS determines that this requirement would constitute an undue burden.

(f) A participant may use sale proceeds or income to purchase real or personal property only if local law permits the participant to retain title to such property. However, the participant shall not use sale proceeds or income to pay for the acquisition, development, construction, alteration or upgrade of real property that is:

(1) Owned or managed by a church or other organization engaged exclusively in religious pursuits; or

(2) Used in whole or in part for sectarian purposes, except that a participant may use sale proceeds or income to pay for repairs to or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of donated commodities, but only if such structure is not used in whole or in part for any religious or sectarian purposes while the donated commodities are stored in it. If such use is not specifically provided for in the agreement, such use may only occur after receipt of written approval from FAS.

(g) A participant shall endeavor to comply with §§ 3019.41 through 3019.43 of this title when procuring goods and services and when engaging in construction work to implement the agreement. The participant shall also establish procedures to prevent fraud. As provided for in the agreement, the participant shall enter into a written contract with each provider of goods, services or construction work that requires the provider to maintain adequate records to account for all donated commodities or funds or both provided to the provider by the

participant and to submit periodic reports to the participant. The participant shall submit a copy of the signed contracts to FAS.

#### **§ 1499.12 Subrecipients.**

(a) If provided for in the agreement, a participant may utilize the services of a subrecipient to implement activities under this agreement. The participant shall enter into a written subagreement with the subrecipient, and provide a copy of such subagreement to FAS, in the manner set forth in the agreement, prior to the transfer of any donated commodities, sale proceeds, income or CCC-provided funds to the subrecipient. Such written subagreement shall require the subrecipient to pay to the participant the value of any donated commodities, sale proceeds, income, or CCC-provided cash funds that are not used in accordance with the subagreement or are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(b) If a participant demonstrates to FAS that it is not feasible to enter into a subagreement with a subrecipient, FAS may grant approval to proceed without a subagreement; provided, however, that the participant must obtain such approval from FAS prior to transferring any donated commodities, sale proceeds, income, or CCC-provided funds to the subrecipient.

(c) The participant shall monitor the actions of a subrecipient as necessary to ensure that donated commodities or funds provided to the subrecipient are used for authorized purposes in compliance with applicable laws and regulations and the agreement and that performance goals are achieved. The participant shall provide in the subagreement that the subrecipient must comply with applicable provisions of the regulations set forth in Chapter XXX of this title.

#### **§ 1499.13 Recordkeeping and reporting requirements.**

(a) A program participant shall retain records and permit access to records in accordance with the requirements of § 3019.53 of this title. The date of submission of the final expenditure report, as referenced in § 3019.53(b) of this title, shall be the final date of submission of the forms required by paragraphs (c)(1) and (2) of this section as prescribed by FAS.

(b) A participant shall, within 30 days after export of all or a portion of the donated commodities, submit evidence of such export to FAS, in the manner set forth in the agreement. The evidence may be submitted through an electronic media approved by FAS or by providing

the carrier's on board bill of lading. The evidence of export must show the kind and quantity of commodities exported, the date of export, and the country where commodities were delivered.

(c)(1) A participant shall submit to FAS information, using a form as prescribed by FAS, covering the receipt, handling and disposition of the donated commodities. Such report shall be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the donated commodities have been distributed, sold or bartered and such disposition has been reported to FAS.

(2) If the agreement authorizes the sale or barter of donated commodities, the participant shall submit to FAS information, using a form as prescribed by FAS, covering the receipt and use of sale proceeds and income, and, in the case of bartered commodities, covering the services and goods derived from the barter of donated commodities. Such reports shall be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the sale proceeds and income have been disbursed and reported to FAS. When reporting financial information, the participant shall include the amounts in U.S. dollars and the exchange rate.

(3) The participant shall report, in the manner specified in the agreement, its progress, measured against established baselines, towards achieving the objectives of the activities under the agreement.

(4) The participant shall retain copies of and make available to FAS all barter receipts, contracts or other documents related to the barter of the donated commodities and the services or goods derived from such barter, for a minimum of two years after the agreement has been closed out.

(5) The participant shall provide to FAS additional information or reports relating to the agreement if requested by FAS.

(d) A participant shall submit to FAS, in the manner specified in the agreement, an annual audit in accordance with § 3019.26 of this title. If FAS requires an annual financial audit with respect to a particular agreement, and CCC provides funds for this purpose, the participant shall arrange for such audit and submit it to FAS, in the manner specified in the agreement.

(e)(1) A participant shall, as provided in the agreement, submit to FAS interim and final evaluations of the agreement. Unless otherwise provided in the agreement, the evaluations shall be submitted at the mid-point and end-

point of the implementation period. The participant shall arrange for the evaluations to be conducted by an independent third party that:

- (i) Is financially and legally separate from the participant's organization;
- (ii) Has staff with demonstrated knowledge, analytical capability, language skills and experience in conducting evaluations of development programs involving agriculture, education, and nutrition;
- (iii) Uses acceptable analytical frameworks such as comparison with non-project areas, surveys, involvement of stakeholders in the evaluation, and statistical analyses;
- (iv) Uses local consultants, as appropriate, to conduct portions of the evaluation; and,
- (v) Provides a detailed outline of the evaluation, major tasks, and specific schedules prior to initiating the evaluation.

(2) Receipt by FAS of the evaluations referred to in paragraph (e)(1) of this section is a condition for the participant to retain any funds provided by CCC to carry out the evaluations.

(f) A participant shall submit to FAS the financial reports and information outlined in § 3019.52 of this title. The agreement will specify the acceptable forms and time requirements for submission.

#### **§ 1499.14 Noncompliance with an agreement.**

If a participant fails to comply with a term of an agreement, FAS may take one or more of the enforcement actions set forth in § 3019.62 of this title and, if appropriate, initiate a claim against the participant. FAS may also initiate a claim against a participant if the donated commodities are damaged or lost or the sale proceeds, income, or CCC-provided funds are lost due to an action or omission of the participant.

#### **§ 1499.15 Suspension, termination, and closeout of agreements.**

(a) An agreement may be suspended or terminated by CCC if it determines that:

- (1) The continuation of the assistance provided under the agreement is no longer necessary or desirable; or
- (2) Storage facilities are inadequate to prevent spoilage or waste, or distribution of the donated commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the targeted country.

(b) An agreement may be terminated in accordance with § 3019.61 of this title. If an agreement is terminated, the participant shall:

(1) Be responsible for the safety of any undistributed donated commodities and dispose of such commodities only as agreed to by FAS; and

(2) Follow the closeout procedures in §§ 3019.71 through 3019.73 of this title.

(c) An agreement will be considered completed when CCC and the participant have fulfilled their responsibilities under the agreement or the agreement has been terminated. The procedures in sections §§ 3019.71 through 3019.73 of this title will apply to the closeout of a completed agreement.

#### **§ 1499.16 Appeals.**

A participant may appeal a determination arising under this part to FAS. Such appeal will be in writing and submitted to the FAS official and in the manner set forth in the agreement. The participant will be given an opportunity to have a hearing before a final decision is made regarding its appeal.

#### **§ 1499.17 Paperwork Reduction Act.**

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0551-0035.

■ 3. Revise part 1599 to read as follows:

### **PART 1599—McGOVERN-DOLE INTERNATIONAL FOOD FOR EDUCATION AND CHILD NUTRITION PROGRAM**

Sec.

- 1599.1 General statement.
- 1599.2 Definitions.
- 1599.3 Eligibility determination.
- 1599.4 Application process.
- 1599.5 Agreements.
- 1599.6 Payments.
- 1599.7 Transportation of goods.
- 1599.8 Entry and handling of commodities.
- 1599.9 Damage to or loss of commodities.
- 1599.10 Claims for damage to or loss of commodities.
- 1599.11 Use of commodities and sales proceeds.
- 1599.12 Subrecipients.
- 1599.13 Recordkeeping and reporting requirements.
- 1599.14 Noncompliance with an agreement.
- 1599.15 Suspension, termination, and closeout of agreements.
- 1599.16 Appeals.
- 1599.17 Paperwork Reduction Act.

**Authority:** 7 U.S.C. 1736o-1.

#### **§ 1599.1 General statement.**

(a) This part sets forth the general terms and conditions governing the donation of commodities by the Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture (USDA) to

participants in the McGovern-Dole International Food for Education and Child Nutrition Program (McGovern-Dole Program). Under the McGovern-Dole Program, participants use the donated commodities, proceeds from the sale of such commodities, or funds provided by FAS to implement activities in a foreign country pursuant to an agreement with FAS. FAS administers the McGovern-Dole Program and acts on behalf of the Commodity Credit Corporation (CCC) in cases where the agreement is funded with CCC resources.

(b) In addition to the provisions of this part, other regulations of general application issued by the Department, including the regulations set forth in Chapter 30 of this title, are applicable to the McGovern-Dole Program. In cases where an agreement is funded with CCC resources, provisions of the CCC Charter Act (15 U.S.C. 714 et seq.) and any other statutory provisions that are generally applicable to CCC are applicable to McGovern-Dole Program and the regulations set forth in this part.

(c) This part shall not apply to a donation by FAS to a foreign government or an intergovernmental agency or organization (such as the United Nations' World Food Program) under the McGovern-Dole Program.

#### **§ 1599.2 Definitions.**

The following definitions are applicable to this part:

*Activity* means a project to be carried out by a participant, directly or through a subrecipient, to fulfill the objectives of an agreement.

*Agreement* means a legally binding agreement entered into between FAS and a participant to implement activities under the McGovern-Dole Program.

*CCC* means the Commodity Credit Corporation and includes any official of the United States delegated the responsibility to act on behalf of CCC.

*Commodities* mean U.S. agricultural commodities or products of U.S. agricultural commodities.

*Donated commodities* mean the commodities donated by FAS to a participant under an agreement. The term may include donated commodities that are used to produce a further processed product for use under the agreement.

*FAS* means the Foreign Agricultural Service of the United States Department of Agriculture.

*FAS-provided funds* means U.S. dollars provided under an agreement to a participant for expenses for the internal transportation, storage and handling of the donated commodities,

expenses involved in the administration and monitoring of the activities under the agreement, and the costs of activities conducted in the targeted country that would enhance the effectiveness of the activities implemented by the participant under the McGovern-Dole Program.

*Force majeure* is a common clause in contracts, exempting the parties for non-fulfillment of their obligations as a result of conditions beyond their control, such as earthquakes, floods or war.

*Income* means interest earned on sale proceeds and other resources received by a participant, other than sale proceeds, as a result of carrying out an agreement. The term may include resources from VAT refunds, activity fees, interest on loans, and other sources.

*McGovern-Dole Program* means the McGovern-Dole International Food for Education and Child Nutrition Program.

*Participant* means an entity with which FAS has entered into an agreement.

*Subrecipient* means a legal entity that receives donated commodities, income, sale proceeds or other resources from a participant for the purpose of implementing in the targeted country activities described in a McGovern-Dole Program agreement and that is accountable to such participant for the use of such commodities, funds, or resources. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of FAS.

*Sale proceeds* mean funds received by a participant from the sale of donated commodities.

*Targeted country* means the country in which activities are implemented under an agreement.

#### § 1599.3 Eligibility determination.

(a) An entity will be eligible to become a participant only after FAS determines that the entity has:

(1) Organizational experience in implementing and managing awards, and the capability and personnel to develop, implement, monitor, report on, and provide accountability for activities in accordance with this part;

(2) Experience working in the proposed targeted country;

(3) An adequate financial framework to implement the activities the entity proposes to carry out under McGovern-Dole Program. In order to determine whether the entity is financially responsible, FAS may require it to submit corporate policies and financial materials that have been audited or otherwise reviewed by a third party;

(4) A person or agent located in the United States with respect to which service of judicial process may be obtained by FAS on behalf of the entity; and

(5) An operating financial account in the proposed targeted country, or a satisfactory explanation for not having such an account and a description of how a McGovern-Dole Program agreement would be administered without such an account.

(b) In determining whether an entity will be eligible to be a participant, FAS may consider the entity's previous compliance or noncompliance with the provisions of this part and part 1499 of this title. FAS may consider matters such as whether the entity corrected deficiencies in the implementation of an agreement in a timely manner and whether the entity has timely and accurately filed reports and other submissions that are required to be filed with FAS and other agencies of the United States.

#### § 1599.4 Application process.

(a) An entity seeking to enter into an agreement with FAS shall submit an application, in accordance with this section, that sets forth its proposal to carry out activities under the McGovern-Dole Program in the proposed targeted country. An application shall contain the items specified in paragraph (b) of this section and shall be submitted electronically to FAS at the address set forth at <http://www.fas.usda.gov>. An entity that has not yet met the eligibility requirements in § 1599.3 may submit an application, but FAS will not enter into an agreement with an entity until FAS had made a determination of eligibility under § 1599.3.

(b) An applicant shall include the following items in its application:

(1) A completed Form SF-424, which is a standard application for Federal assistance;

(2) An introduction that contains the elements specified in paragraph (c) of this section; and

(3) A plan of operation that contains the elements specified in paragraph (d) of this section.

(c) The introduction shall include:

(1) An explanation of the need for food aid in the targeted country and how the applicant's proposed activities would address that need;

(2) An explanation of the need for a school feeding program in the targeted country and information regarding:

(i) The country's current school feeding operations, if they exist, the length and sessions of a typical school year, and current funding resources; and

(ii) Teacher training, parent-teacher associations, community infrastructure, and health, nutrition, water and sanitation conditions;

(3) Information regarding the applicant's ability to become registered and operate in the targeted country;

(4) Information about the applicant's past food aid projects;

(5) Methods that the applicant proposes to use to involve indigenous institutions as well as local communities and governments in the development and implementation of the activities in order to foster local capacity building and leadership;

(6) A budget that details the amount of any sale proceeds, income, and FAS-provided funds that the applicant proposes to use to fund:

(i) Administrative costs;

(ii) Inland transportation, storage and handling costs; and

(iii) Activity costs;

(7) A statement verifying the commitment of the government of the targeted country to work toward, through a national action plan, the goals of the World Declaration on Education for All convened in 1990 in Jomtien, Thailand, and the follow-up Dakar Framework for Action of the World Education Forum, convened in 2000; and

(8) A description of:

(i) How the benefits of education, enrollment, and attendance of children in schools in the targeted communities will be sustained when the assistance under the McGovern-Dole Program terminates; and

(ii) The estimated period of time required until the targeted country or the applicant would be able to sustain the program without additional assistance under the McGovern-Dole Program.

(d) A plan of operation shall include:

(1) The name of the targeted country where the proposed activities would be implemented;

(2) The kind, quantity, and proposed use of the commodities requested, and any commodities that would be acceptable substitutions therefor, and the proposed delivery schedule;

(3) If monetization or barter is proposed:

(i) The quantity of the requested commodities that would be sold or bartered;

(ii) The amount of sale proceeds anticipated;

(iii) The amount of income expected to be generated;

(iv) The anticipated monetization completion date;

(v) The goods or services to be generated from the barter of the requested commodities;

(vi) The value of the goods or services anticipated to be generated from the barter of the requested commodities; and

(vii) A justification for monetizing the requested commodities that discusses why monetization would provide a greater benefit than the receipt of FAS-provided funds to carry out activities.

(4) A list of each of the activities that would be implemented, with a brief statement of the objectives to be accomplished under each activity;

(5) For each proposed activity, the targeted geographic area, anticipated beneficiaries, and methods that the applicant would use to choose such beneficiaries, including obtaining and considering statistics on poverty levels, food deficits, literacy rates, and any other required items set forth on the FAS Web site at <http://www.fas.usda.gov>.

(6) For each proposed activity:

(i) An explanation of whether the activity would be carried out through the distribution or barter of the requested commodities or funded by FAS-provided funds, sale proceeds, income, or a combination thereof; and

(ii) The amount of commodities and FAS-provided funds requested, and of any sale proceeds and income expected to be generated, to carry out such activity; and

(iii) A detailed description of the activity, including the steps involved in its implementation and the anticipated completion date;

(7) Any cash or non-cash contributions that the applicant expects to receive from non-FAS sources that:

(i) Are critical to the implementation of the proposed activities; or

(ii) Enhance the implementation of the activities;

(8) Any subrecipient that would be involved and a description of each subrecipient's responsibilities and its capability to perform responsibilities;

(9) Any governmental or nongovernmental entities that would be involved and the extent to which the McGovern-Dole Program will strengthen or increase the capabilities of such entities to further educational and economic development in the targeted country;

(10) The method by which the applicant intends to inform beneficiaries of an activity about the source of the requested commodities or funding for the activity and, where the beneficiaries will be receiving the commodities directly, how to prepare and use them properly;

(11) Established baselines, a timeline, and proposed outcomes that would enable FAS to measure the applicant's

progress towards achieving the objectives of the proposed activities and the McGovern-Dole Program, which include:

(i) Increased enrollment and attendance rates, especially for girls;

(ii) Improved student achievement levels through improvements in the learning environment;

(iii) Improved maternal, child and student health and nutrition;

(iv) Attracting non-FAS contributions to development activities;

(v) Enabling community support for infrastructure development; and

(vi) Increased government and community support in education;

(12) If the proposed activities would involve the use of sale proceeds or income:

(i) The process that the applicant would use to sell the requested commodities, including steps the applicant would take to use, to the extent possible, the private sector in the monetization process; and

(ii) The procedures that the applicant would use to assure that sale proceeds and income are received and deposited into a separate, interest-bearing account and disbursed from such account for use only in accordance with the agreement;

(13) A description of any port, transportation, storage, and warehouse facilities that would be used with sufficient detail to demonstrate that they would be adequate to handle the requested commodities without undue spoilage or waste, and, in cases where the applicant proposes to distribute some or all of the requested commodities, a description of how they would be transported from the receiving port to the point at which distribution is made to the beneficiaries;

(14) Any reprocessing or repackaging of the requested commodities that would take place prior to the distribution, sale or barter by the applicant;

(15) The action the applicant would take to ensure that any commodities to be distributed to beneficiaries, rather than sold, would be imported and distributed free from all customs, duties, tolls, and taxes;

(16) A plan that shows how the requested commodities could be imported and distributed without a disruptive impact upon production, prices and marketing of the same or like products in the country where they will be delivered, and the extent to which any sale or barter of the requested commodities would displace or interfere with any sales that may otherwise be made by the applicant or any other entity in the country where they will be delivered; and

(17) Any additional required items set forth on the FAS Web site at <http://www.fas.usda.gov>.

#### § 1599.5 Agreements.

(a) After FAS approves an applicant's proposal, FAS will develop an agreement in consultation with the applicant. The agreement will set forth the obligations of FAS and the participant. A participant must comply with the terms of the agreement to receive assistance.

(b) A participant shall not use donated commodities, sale proceeds, income or FAS-provided funds for any activity or any expenses incurred by the participant prior to the date of the agreement or after the agreement is suspended or terminated, except as approved by FAS.

(c) The agreement will include a budget that sets forth the maximum amounts of sale proceeds and FAS-provided funds that may be expended for various purposes under the agreement. A participant may make adjustments to this budget without prior approval from FAS only as specified in the agreement.

(d) Prior to providing any donated commodities or FAS-provided funds to a participant under an agreement, FAS may require the participant to complete a training program administered by FAS that is designed to ensure that the participant is aware of, and has the capacity to complete, all required reporting and audit functions set forth in this part.

(e) A participant will be prohibited from using FAS-provided funds to acquire goods and services, either directly or indirectly through another party, from certain countries that will be specified in the agreement. Any violation of this provision of the agreement will be a basis for immediate termination by FAS of the agreement in addition to the imposition of any other applicable civil and criminal penalties.

(f) The agreement will prohibit the sale or transshipment of the donated commodities to a country not specified in the agreement for as long as such donated commodities are controlled by the participant.

(g) FAS may enter into a multicountry agreement in which donated commodities are delivered to one country and activities are carried out in another.

(h) FAS may provide donated commodities and FAS-provided funds under a multiyear agreement contingent upon the availability of commodities and funds.

**§ 1599.6 Payments.**

(a) If the participant arranges for transportation in accordance with § 1599.7(b)(2), and the participant seeks payment directly, the participant shall, as specified in the agreement, either submit to FAS, or maintain on file and make available to FAS, the following documents:

(1) A signed copy of the completed Form CCC-512;

(2) The original, or a true copy of, each on-board bill of lading indicating the freight rate and signed by the originating carrier;

(3) For all non-containerized cargoes:

(i) A signed copy of the Federal Grain Inspection Service (FGIS) Official Stowage Examination Certificate (Vessel Hold Certificate);

(ii) A signed copy of the National Cargo Bureau Certificate of Readiness (Vessel Hold Inspection Certificate); and

(iii) A signed copy of the National Cargo Bureau Certificate of Loading;

(4) For all containerized cargoes, a copy of the FGIS Container Condition Inspection Certificate;

(5) A signed copy of the liner booking note or charter party covering ocean transportation of the cargo;

(6) In the case of charter shipments, a signed notice of arrival at the first discharge port, unless FAS has determined that circumstances of force majeure have prevented the vessel's arrival at the first port of discharge;

(7) A request by the participant for reimbursement of freight, survey costs other than at load port, and other expenses approved by FAS indicating the amount due and accompanied by a certification from the carrier or other parties that payments have been received from the participant; and

(8) A document on letterhead and signed by an officer or agent of the participant specifying the name of the entity to receive payment; the bank ABA number to which payment is to be made; the account number for the deposit at the bank; the participant's taxpayer identification number; and the type of the account into which the payment will be deposited.

(b) If the participant arranges for transportation in accordance with § 1599.7(b)(2), and the participant has used a freight forwarder, the participant shall cause the freight forwarder to submit the documents specified in § 1599.6(a) in order to receive payment from FAS.

(c) In no case will FAS reimburse a participant for demurrage costs or pay demurrage to any other entity.

(d) If FAS has agreed to pay the costs of transporting, storing, and distributing the donated commodities from the

designated port or point of entry, the participant will be reimbursed in the manner set forth in the agreement.

(e) If the agreement authorizes the payment of FAS-provided funds, FAS will pay these funds to the participant on a reimbursement for expenses basis, except as provided in paragraph (f)(1) of this section. The participant shall request the payment of FAS-provided funds to reimburse it for authorized expenses in the manner set forth in the agreement.

(f)(1) A participant may request an advance of the amount of funds specified in the agreement. FAS will not approve any request for an advance if:

(i) It is received earlier than 60 days after the date of a previous advance made in connection with the same agreement; or

(ii) Any required reports, as specified in § 1499.13 and in the agreement, are more than six months in arrears.

(2) Except as may otherwise be provided in the agreement, the participant shall deposit and maintain in a bank account located in the United States all funds advanced by FAS. The account shall be interest-bearing, unless the exceptions in § 3019.22(k) of this title apply, or FAS determines that this requirement would constitute an undue burden. The participant shall remit semi-annually to FAS any interest earned on the advanced funds. The participant shall, no later than 10 days after the end of each calendar quarter, submit a financial statement to FAS accounting for all funds advanced and all interest earned.

(3) The participant shall return to FAS any funds that are advanced by FAS if such funds have not been obligated as of the 180th day after the advance was made. Such funds and interest shall be transferred to FAS within 30 days of such date.

(g) If a participant is required to pay funds to FAS in connection with an agreement, the participant shall make such payment in U.S. dollars, unless otherwise approved in advance by FAS.

(h) Suppliers of commodities shall seek payment according to the purchase contract.

**§ 1599.7 Transportation of goods.**

(a) Shipments of donated commodities are subject to the requirements of 46 U.S.C. 55305 and 55314, regarding carriage on U.S.-flag vessels.

(b) Transportation of donated commodities and other goods such as bags that may be provided by FAS under the McGovern-Dole Program will be acquired under a specific agreement

in the manner determined by FAS. Such transportation will be acquired by:

(1) FAS in accordance with the Federal Acquisition Regulations (FAR), the Department's procurement regulations set forth in chapter 4 of title 48 of the Code of Federal Regulations (the AGAR) and directives issued by the Director, Office of Procurement and Property Management, U.S. Department of Agriculture; or

(2) The participant, with reimbursement by FAS, in the manner specified in the agreement.

(c) A participant that acquires transportation in accordance with paragraph (b)(2) of this section may only use the services of a freight forwarder that is licensed by the Federal Maritime Commission (FMC) and that would not have a conflict of interest in carrying out the freight forwarder duties. To assist FAS in determining whether there is a potential conflict of interest, the participant must submit to FAS a certification indicating that the freight forwarder:

(1) Is not engaged, and will not engage, in supplying commodities or furnishing ocean transportation or ocean transportation-related services for commodities provided under any McGovern-Dole Program agreement to which the participant is a party; and

(2) Is not affiliated with the participant and has not made arrangements to give or receive any payment, kickback, or illegal benefit in connection with its selection as an agent of the participant.

(d) A participant that is responsible for transportation under paragraph (b)(2) of this section shall declare in the transportation contract the point at which the ocean carrier will take custody of commodities to be transported.

**§ 1599.8 Entry and handling of commodities.**

(a) The participant shall make all necessary arrangements for receiving the donated commodities in the targeted country, including obtaining appropriate approvals for entry and transit. The participant shall store and maintain the donated commodities in good condition from the time of delivery at the port of entry or the point of receipt from the originating carrier until their distribution, sale or barter.

(b) The participant shall, as provided in the agreement, arrange for transporting, storing, and distributing the donated commodities from the designated point and time where title to the commodity passes to the participant by contracting directly with suppliers of services, as set forth in the agreement.

(c)(1) If a participant arranges for the packaging or repackaging of donated commodities that are to be distributed, the participant shall ensure that the packaging:

- (i) Is plainly labeled in the language of the targeted country;
- (ii) Contains the name of the donated commodities;
- (iii) Includes a statement indicating that the donated commodities are furnished by the people of the United States of America; and

(iv) Includes a statement indicating that the donated commodities shall not be sold, exchanged or bartered.

(2) If a participant arranges for the reprocessing and repackaging of donated commodities that are to be distributed, the participant shall ensure that the packaging:

- (i) Is plainly labeled in the language of the targeted country;
- (ii) Contains the name of the reprocessed product;
- (iii) Includes a statement indicating that the reprocessed product was made with commodities furnished by the people of the United States of America; and

(iv) Includes a statement indicating that the reprocessed product shall not be sold, exchanged or bartered;

(3) If a participant distributes donated commodities that are not packaged, the participant shall, to the extent practicable, display:

- (i) Banners, posters or other media informing the public of the name and source of the donated commodities; and
- (ii) A statement that the donated commodities may not be sold, exchanged, or bartered.

(d) A participant shall arrange with the government of the targeted country that all donated commodities to be distributed will be imported and distributed free from all customs, duties, tolls, and taxes. A participant is encouraged to make similar arrangements, where possible, with the government of the country where donated commodities to be sold or bartered are delivered.

**§ 1599.9 Damage to or loss of commodities.**

(a) FAS will be responsible for the donated commodities prior to the transfer of title to the commodities to the participant. The participant will be responsible for the donated commodities following the transfer of title to the commodities to the participant. The title will transfer as specified in the agreement.

(b) A participant shall inform FAS, in the manner and within the time period set forth in the agreement, of any

damage to or loss of the donated commodities that occurs following the transfer of title to the commodities to the participant. The participant shall take all steps necessary to protect its interests and the interests of FAS with respect to any damage to or loss of the donated commodities that occurs after title has been transferred to the participant. The agreement will specify whether the participant is responsible for obtaining a survey in the event that the donated commodities are damaged or lost following the transfer of title to the commodities to the participant.

(c) If the donated commodities are damaged or lost during the time that they are in the care of the carrier:

(1) And either FAS or the participant engages the services of an independent cargo surveyor, the surveyor will provide to FAS and the participant any report, narrative chronology or other commentary that it prepares;

(2) FAS and the participant will provide to each other the names and addresses of any individuals known to be present at the time of discharge or during the survey who can verify the quantity of damaged or lost commodities;

(3) And the participant engages the services of the surveyor, FAS will reimburse the participant for the reasonable costs, as determined by FAS, of the survey, unless:

(i) The participant was required by the agreement to pay for the survey;

(ii) The survey was a delivery survey and the surveyor did not also prepare a discharge survey; or

(iii) The survey was not conducted contemporaneously with the discharge of the vessel, unless FAS determines that such action was justified under the circumstances;

(4) Any survey obtained by the participant shall, to the extent practicable, be conducted jointly by the surveyor, the participant, and the carrier, and the survey report shall be signed by all parties;

(5) And the damage or loss occurred with respect to a bulk grain shipment, if the agreement provides that the participant is responsible for survey and outturn reports, the participant shall obtain the services of an independent cargo surveyor to:

(i) Observe the discharge of the cargo;

(ii) Report on discharging methods, including scale type, calibrations and any other factor that may affect the accuracy of scale weights, and, if scales are not used, state the reason therefor and describe the actual method used to determine weight;

(iii) Estimate the quantity of cargo, if any, lost during discharge through carrier negligence;

(iv) Advise on the quality of sweepings;

(v) Obtain copies of port or vessel records, if possible, showing the quantity discharged; and

(vi) Notify the participant immediately if the surveyor has reason to believe that the correct quantity was not discharged or if additional services are necessary to protect the cargo; and

(6) And the damage or loss occurred with respect to a container shipment, if the agreement provides that the participant is responsible for survey and outturn reports, the participant shall engage the services of an independent cargo surveyor to list the container numbers and seal numbers shown on the containers, indicate whether the seals were intact at the time the containers were opened, and note whether the containers were in any way damaged.

(d) If the participant has title to the donated commodities, and the value of any damaged donated commodities is in excess of \$1,000, the participant shall immediately arrange for an inspection by a public health official or other competent authority approved by FAS and provide to FAS a certification by such public health official or other competent authority regarding the exact quantity and condition of the damaged commodities. The value of damaged donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities. The participant shall inform FAS of the results of the inspection and indicate whether the damaged commodities are:

(1) Fit for the use authorized in the agreement and, if so, whether there has been a diminution in quality; or

(2) Unfit for the use authorized in the agreement.

(e)(1) If the participant has title to the donated commodities, the participant shall arrange for the recovery of that portion of the donated commodities designated as suitable for the use authorized in the agreement. The participant shall dispose of donated commodities that are unfit for such use in the following order of priority:

(i) Sale for the most appropriate use, i.e., animal feed, fertilizer, industrial use, or another use approved by FAS, at the highest obtainable price;

(ii) Donation to a governmental or charitable organization for use as animal feed or for other non-food use; or

(iii) Destruction of the commodities if they are unfit for any use, in such

manner as to prevent their use for any purpose.

(2) The participant shall arrange for all U.S. Government markings to be obliterated or removed before the donated commodities are transferred by sale or donation.

(f) A participant may retain any proceeds generated by the disposal of the donated commodities in accordance with paragraph (e)(1) of this section and shall use the proceeds for expenses related to the disposal of the donated commodities and for activities specified in the agreement.

(g) The participant shall notify FAS immediately and provide detailed information about the actions taken in accordance with paragraph (e) of this section, including the quantities, values and dispositions of commodities determined to be unfit.

**§ 1599.10 Claims for damage to or loss of commodities.**

(a) FAS will be responsible for claims arising out of damage to or loss of a quantity of the donated commodities prior to the transfer of title to the commodities to the participant.

(b) If the participant has title to the donated commodities, and the value of the damaged or lost donated commodities is estimated to be \$20,000 or greater, the participant will be responsible for:

(1) Initiating a claim arising out of such damage or loss, including actions relating to collections pursuant to commercial insurance contracts; and

(2) Notifying FAS immediately and providing detailed information about the circumstances surrounding such damage or loss, the quantity of damaged or lost donated commodities, and the value of the damage or loss.

(c) If the participant has title to the donated commodities, and the value of the damaged or lost donated commodities is estimated to be less than \$20,000, the participant will be responsible for providing detailed information about the damage or loss in the next report required to be filed under § 1599.13(c)(1) or (2) and shall not be required to initiate a claim collection action.

(d)(1) The value of a claim for lost donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by FAS with respect to such commodities.

(2) The value of a claim for damaged donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by FAS with respect to such commodities, less any

funds generated if such commodities are sold in accordance with § 1599.9(e)(1).

(e) If FAS determines that a participant is not exercising due diligence in the pursuit of a claim, FAS may require the participant to assign its rights to pursue the claim to FAS.

(f)(1) The participant may retain any funds obtained as a result of a claims collection action initiated by it in accordance with this section, or recovered pursuant to any insurance policy or other similar form of indemnification, but such funds shall only be expended for purposes approved in advance by FAS.

(2) FAS will retain any funds obtained as a result of a claims collection action initiated by it under this section; provided, however, that if the participant paid for the freight or a portion thereof, FAS will use a portion of such funds to reimburse the participant for such expense on a prorated basis.

**§ 1599.11 Use of commodities and sale proceeds.**

(a) A participant must use the donated commodities in accordance with the agreement.

(b) A participant shall not permit the distribution, handling, or allocation of donated commodities on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliation of the potential consumers or beneficiaries.

(c) A participant shall not permit the distribution, handling, or allocation of donated commodities by the military forces or any government or insurgent group without the specific authorization of FAS.

(d) A participant may sell or barter donated commodities only if such sale or barter is provided for in the agreement or the participant is disposing of damaged commodities as specified in § 1599.9. The participant shall sell the donated commodities at a reasonable market price in the economy where the sale occurs. The participant shall use any sale proceeds, income, or goods or services derived from the sale or barter of the donated commodities only as provided in the agreement.

(e) The participant shall deposit all sale proceeds and income into a separate, interest-bearing account unless the exceptions in § 3019.22(k) of this title apply, the account is in a country where the laws or customs prohibit the payment of interest, or FAS determines that this requirement would constitute an undue burden.

(f) A participant may use sale proceeds or income to purchase real or personal property only if local law

permits the participant to retain title to such property. However, the participant shall not use sale proceeds or income to pay for the acquisition, development, construction, alteration or upgrade of real property that is:

(1) Owned or managed by a church or other organization engaged exclusively in religious pursuits; or

(2) Used in whole or in part for sectarian purposes, except that a participant may use sale proceeds or income to pay for repairs to or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of donated commodities, but only if such structure is not used in whole or in part for any religious or sectarian purposes while the donated commodities are stored in it. If such use is not specifically provided for in the agreement, such use may only occur after receipt of written approval from FAS.

(g) A participant shall endeavor to comply with §§ 3019.41 through 3019.43 of this title when procuring goods and services and when engaging in construction work to implement the agreement. The participant shall also establish procedures to prevent fraud. As provided for in the agreement, the participant shall enter into a written contract with each provider of goods, services or construction work that requires the provider to maintain adequate records to account for all donated commodities or funds or both provided to the provider by the participant and to submit periodic reports to the participant. The participant shall submit a copy of the signed contracts to FAS.

**§ 1599.12 Subrecipients.**

(a) If provided for in the agreement, a participant may utilize the services of a subrecipient to implement activities under this agreement. The participant shall enter into a written subagreement with the subrecipient, and provide a copy of such subagreement to FAS, in the manner set forth in the agreement, prior to the transfer of any donated commodities, sale proceeds, income or FAS-provided funds to the subrecipient. Such written subagreement shall require the subrecipient to pay to the participant the value of any donated commodities, sale proceeds, income, or FAS-provided cash funds that are not used in accordance with the subagreement or are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(b) If a participant demonstrates to FAS that it is not feasible to enter into a subagreement with a subrecipient,

FAS may grant approval to proceed without a subagreement; provided, however, that the participant must obtain such approval from FAS prior to transferring any donated commodities, sale proceeds, income, or FAS-provided funds to the subrecipient.

(c) The participant shall monitor the actions of a subrecipient as necessary to ensure that donated commodities or funds provided to the subrecipient are used for authorized purposes in compliance with applicable laws and regulations and the agreement and that performance goals are achieved. The participant shall provide in the subagreement that the subrecipient must comply with applicable provisions of the regulations set forth in Chapter XXX of this title.

**§ 1599.13 Recordkeeping and reporting requirements.**

(a) A program participant shall retain records and permit access to records in accordance with the requirements of § 3019.53 of this title. The date of submission of the final expenditure report, as referenced in § 3019.53(b) of this title, shall be the final date of submission of the forms required by paragraphs (c)(1) and (2) of this section, as prescribed by FAS.

(b) A participant shall, within 30 days after export of all or a portion of the donated commodities, submit evidence of such export to FAS, in the manner set forth in the agreement. The evidence may be submitted through an electronic media approved by FAS or by providing the carrier's on board bill of lading. The evidence of export must show the kind and quantity of commodities exported, the date of export, and the country where commodities were delivered.

(c)(1) A participant shall submit to FAS information, using a form as prescribed by FAS, covering the receipt, handling and disposition of the donated commodities. Such report shall be submitted to FAS, by the dates and for the reporting periods specified in the program agreement, until all of the donated commodities have been distributed, sold or bartered and such disposition has been reported to FAS.

(2) If the agreement authorizes the sale or barter of donated commodities, the participant shall submit to FAS information, using a form as prescribed by FAS, covering the receipt and use of sale proceeds and income, and, in the case of bartered commodities, covering the services and goods derived from the barter of donated commodities. Such reports shall be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the sale proceeds and income have been

disbursed and reported to FAS. When reporting financial information, the participant shall include the amounts in U.S. dollars and the exchange rate.

(3) The participant shall report, in the manner specified in the agreement, its progress, measured against established baselines, towards achieving the objectives of the activities under the agreement.

(4) The participant shall retain copies of and make available to FAS all barter receipts, contracts or other documents related to the barter of the donated commodities and the services or goods derived from such barter, for a minimum of two years after the agreement has been closed out.

(5) The participant shall provide to FAS additional information or reports relating to the agreement if requested by FAS.

(d) A participant shall submit to FAS, in the manner specified in the agreement, an annual audit in accordance with § 3019.26 of this title. If FAS requires an annual financial audit with respect to a particular agreement, and FAS provides funds for this purpose, the participant shall arrange for such audit and submit to FAS, in the manner specified in the agreement.

(e)(1) A participant shall, as provided in the agreement, submit to FAS interim and final evaluations of the implementation of the agreement. Unless otherwise provided in the agreement, the evaluations shall be submitted at the mid-point and end-point of the implementation period. The participant shall arrange for the evaluations to be conducted by an independent third party that:

(i) Is financially and legally separate from the participant's organization;

(ii) Has staff with demonstrated knowledge, analytical capability, language skills and experience in conducting evaluations of development programs involving agriculture, education, and nutrition;

(iii) Uses acceptable analytical frameworks such as comparison with non-project areas, surveys, involvement of stakeholders in the evaluation, and statistical analyses;

(iv) Uses local consultants, as appropriate, to conduct portions of the evaluation; and

(v) Provides a detailed outline of the evaluation, major tasks, and specific schedules prior to initiating the evaluation.

(2) Receipt by FAS of the evaluations referred to in paragraph (e)(1) of this section is a condition for the participant to retain any funds provided by FAS to carry out the evaluations.

(f) A participant shall submit to FAS the financial reports and information outlined in § 3019.52 of this title. The agreement will specify the acceptable forms and time requirements for submission.

**§ 1599.14 Noncompliance with an agreement.**

If a participant fails to comply with a term of an agreement, FAS may take one or more of the enforcement actions set forth in § 3019.62 of this title and, if appropriate, initiate a claim against the participant. FAS may also initiate a claim against a participant if the donated commodities are damaged or lost or the sale proceeds, income, or FAS-provided funds are lost due to an action or omission of the participant.

**§ 1599.15 Suspension, termination, and closeouts of agreements.**

(a) An agreement may be suspended or terminated by FAS if it determines that:

(1) The continuation of the assistance provided under the agreement is no longer necessary or desirable; or

(2) Storage facilities are inadequate to prevent spoilage or waste, or distribution of the donated commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the targeted country.

(b) An agreement may be terminated in accordance with § 3019.61 of this title. If an agreement is terminated, the participant shall:

(1) Be responsible for the safety of any undistributed donated commodities and dispose of such commodities only as agreed to by FAS; and

(2) Follow the closeout procedures in §§ 3019.71 through 3019.73 of this title.

(c) An agreement will be considered completed when FAS and the participant have fulfilled their responsibilities under the agreement or the agreement has been terminated. The procedures in §§ 3019.71 through 3019.73 of this title will apply to the closeout of a completed agreement.

**§ 1599.16 Appeals.**

A participant may appeal a determination arising under this part to FAS. Such appeal will be in writing and submitted to the FAS official and in the manner set forth in the agreement. The participant will be given an opportunity to have a hearing before a final decision is made regarding its appeal.

**§ 1599.17 Paperwork Reduction Act.**

The information collection requirements contained in this regulation have been approved by OMB under provisions of 44 U.S.C. Chapter

35 and have been assigned OMB Number 0551-0035.

## Title 48—Federal Acquisition Regulations System

### CHAPTER 4—DEPARTMENT OF AGRICULTURE

■ 4. Amend 48 CFR Chapter 4 by establishing subchapter I consisting of part 470 to read as follows:

#### SUBCHAPTER I—FOOD ASSISTANCE PROGRAMS

#### PART 470—COMMODITY ACQUISITIONS

Sec.	
470.000	Scope of part.
470.101	Definitions.
470.102	Policy.
470.103	United States origin of agricultural products.
470.200	[Reserved]
470.201	Acquisition of commodities and freight shipment for Foreign Agricultural Service programs.
470.202	Acquisition of commodities for United States Agency for International Development (USAID) programs.
470.203	Cargo preference.

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1691 through 1726b; 1731 through 1736g-3; 1736o; 1736o-1; 40 U.S.C. 121(c); 46 U.S.C. 53305, 55314 and 55316.

#### 470.000 Scope of part.

This part sets forth the policies, procedures and requirements governing the procurement of agricultural commodities by the Department of Agriculture for use:

- (a) Under any domestic feeding and assistance program administered by the Food and Nutrition Service; and
- (b) Under Title II of the Food for Peace Act (7 U.S.C. 1721 *et seq.*); the Food for Progress Act of 1985; the McGovern-Dole International Food for Education and Child Nutrition Program; and any other international food assistance program.

#### 470.101 Definitions.

The following definitions are applicable to this part:

**Commingled product** means grains, oilseeds, rice, pulses, other similar commodities and the products of such commodities, when such commodity or product is normally stored on a commingled basis in such a manner that the commodity or product produced in the United States cannot be readily distinguished from a commodity or product not produced in the United States.

**Department** means the Department of Agriculture.

**Food and Nutrition Service** means such agency located within the Department of Agriculture.

**Foreign Agriculture Service** means such agency located within the Department of Agriculture.

**Free alongside ship (f.a.s.)** (\* \* \* *named port of shipment*) means a term of sale which means the seller fulfills its obligation to deliver when the goods have been placed alongside the vessel on the quay or in lighters at the named port of shipment. The buyer bears all costs and risks of loss of or damage to the goods from that moment.

**Grantee organization** means an organization which will receive commodities from the United States Agency for International Development under Title II of the Food for Peace Act (7 U.S.C. 1721 *et seq.*) or from the Foreign Agricultural Service under the Food for Progress Act of 1985; the McGovern-Dole International Food for Education and Child Nutrition Program; and any other international food assistance program.

**Ingredient** means spices, vitamins, micronutrients, desiccants, and preservatives when added to an agricultural commodity product.

**Free carrier (FCA)** (\* \* \* *named place*) means a term of sale which means the seller fulfills its obligation when the seller has handed over the goods, cleared for export, into the charge of the carrier named by the buyer at the named place or point. If no precise point is indicated by the buyer, the seller may choose, within the place or range stipulated, where the carrier should take the goods into their charge.

**Last contract lay day** means the last day specified in an ocean freight contract by which the carriage of goods must start for contract performance.

**Lowest landed cost** means, as authorized by 46 U.S.C. 55314(c), with respect to an agricultural product acquired under this part the lowest aggregate cost for the acquisition of such product and the shipment of such product to a foreign destination.

**Multi-port voyage charter** means the charter of an ocean carrier in which the carrier will stop at two or more ports to discharge cargo.

#### 470.102 Policy.

(a) **Policy.** It is the policy of the Department to follow the policies and procedures set forth in the Federal Acquisition Regulation (FAR) as supplemented by the Agriculture Acquisition Regulation, including this part, in the procurement of agricultural commodities and products of agricultural commodities that are used in domestic feeding and international feeding and development programs.

(b) **Electronic submission.** To the maximum extent possible, the use of

electronic submission of solicitation-related documents shall be used with respect to the acquisition of agricultural commodities and related freight; however, to the extent that a solicitation allows for the submission of written information in addition to information in an electronic format and there is a discrepancy in such submissions, the information submitted in a written format shall prevail unless the electronic submission states that a specific existing written term is superseded by the electronic submission.

(c) **Freight.** With respect to the acquisition of freight for the shipment of agricultural commodities and products of agricultural commodities, the provisions of the FAR, including Part 47, shall be utilized and various types of services to be obtained may include multi-trip voyage charters.

#### 470.103 United States origin of agricultural products.

(a) **Products of United States origin.** As provided by 7 U.S.C. 1732(2) and 1736o-1(a) commodities and the products of agricultural commodities acquired for use in international feeding and development programs shall be products of United States origin. A product shall not be considered to be a product of the United States if it contains any ingredient that is not produced in the United States if that ingredient is:

- (1) Produced in the United States; and
- (2) Commercially available in the United States at fair and reasonable prices from domestic sources.

(b) **Use by the Food and Nutrition Service.** Commodities and the products of agricultural commodities acquired for use by the Food and Nutrition Service shall be a product of the United States, except as may otherwise be required by law, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to ingredients. Ingredients from non-domestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise:

- (1) Produced in the United States; and
- (2) Commercially available in the United States at fair and reasonable prices from domestic sources.

(c) **Commingled product.**

(1) Except as provided in paragraph (c)(2) of this section, a commingled product shall be considered to be a product of the United States if the offeror can establish that the offeror has in inventory at the time the contract for the commodity or product is awarded to

the offeror, or obtains during the contract performance period specified in the solicitation, or a combination thereof, a sufficient quantity of the commodity or product that was produced in the United States to fulfill the contract being awarded, and all unfulfilled contracts that the offeror entered into to provide such commingled product to the United States.

(2) To the extent the Department has determined a commodity is one that is generally commingled, but is also one which can be readily stored on an identity preserved basis with respect to its country of origin, the Department may require that the commodity procured by the Department shall be of 100 percent United States origin.

(d) *Product derived from animals.* With respect to the procurement of products derived from animals, the solicitation will set forth any specific requirement that is applicable to the country in which the animal was bred, raised, slaughtered or further processed.

#### 470.200 [Reserved]

#### 470.201 Acquisition of commodities and freight shipment for Foreign Agricultural Service programs.

(a) *Lowest landed cost and delivery considerations.*

(1) Except as provided in paragraphs (a)(3) and (4) of this section, in contracts for the Foreign Agricultural Service for commodities and related freight shipment for delivery to foreign destinations, the contracting officer shall consider the lowest landed cost of delivering the commodity to the intended destination. This lowest landed cost determination will be calculated on the basis of rates and service for that portion of the commodities being purchased that is determined is necessary and practicable to meet 46 U.S.C. 55314(c)(3) and cargo preference requirements and on an overall (foreign and U.S. flag) basis for the remaining portion of the commodities being procured and the additional factors set forth in this section. Accordingly, the solicitations issued with respect to a commodity procurement or a related freight procurement will specify that in the event an offer submitted by a party is the lowest offered price, the contracting officer reserves the right to reject such offer if the acceptance of another offer for the commodity or related freight, when combined with other offers for commodities or related freight, results in a lower landed cost to the Department.

(2) The Department may contact any port prior to award to determine the

port's cargo handling capabilities, including the adequacy of the port to receive, accumulate, handle, store, and protect the cargo. Factors considered in this determination may include, but not be limited to, the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices. The Department may consider the use of another coastal range or port if a situation exists at a port that may adversely affect the ability of the Department to have the commodity delivered in a safe and timely manner. Such situations include:

- (i) A port is congested;
- (ii) Port facilities are overloaded;
- (iii) A vessel would not be able to dock and load cargo without delay;
- (iv) Labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; or
- (v) Other similar situation that may adversely affect the ability of the Department to have the commodity delivered in a timely manner.

(3) *Use of other than lowest landed cost.* In order to ensure that commodities are delivered in a timely fashion to foreign destinations and without damage, the contracting officer may award an acquisition without regard to the lowest land cost process set forth in paragraph (a)(1) of this section if:

- (i) The solicitation specifies that the lowest land cost process will not be followed in the completion of the contract; or
- (ii) After issuance of the solicitation, it is determined that:

(A) Internal strife at the foreign destination or urgent humanitarian conditions threatens the lives of persons at the foreign destination;

(B) A specific port's cargo handling capabilities (including the adequacy of the port to receive, accumulate, handle, store, and protect commodities) and other similar factors may adversely affect the delivery of such commodities through damage or untimely delivery. Such similar factors include, but are not limited to: port congestion; overloaded facilities at the port; vessels not being able to dock and load cargo without delay due to conditions at the port; labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; and the existence of inadequate or unsanitary warehouse and other supporting facilities;

(C) The total transit time of a carrier, as it relates to a final delivery date at the foreign destination may impair the timely delivery of the commodity;

(D) Other similar situations arise that materially affect the administration of the program for which the commodity or freight is being procured; or

(E) The contracting officer determines that extenuating circumstances preclude awards on the basis of lowest-landed cost, or that efficiency and cost-savings justify use of types of ocean service that would not involve an analysis of freight. However, in all such cases, commodities would be transported in compliance with cargo preference requirements. Examples of extenuating circumstances are events such as internal strife at the foreign destination or urgent humanitarian conditions threatening the lives of persons at the foreign destination. Other types of services may include, but are not limited to, multi-trip voyage charters, indefinite delivery/indefinite quantity (IDIQ), delivery cost and freight (C & F), delivery cost insurance and freight (CIF), and indexed ocean freight costs.

(4) If a contracting officer determines that action may be appropriate under paragraph (a)(3) of this section, prior to the acceptance of any applicable offer, the contracting officer will provide to the Head of Contracting Activity Designee a written request to obtain commodities and freight in a manner other than on a lowest landed cost basis consistent with Title 48 Code of Federal Regulations. This request shall include a statement of the reasons for not using lowest landed cost basis. The Head of the Contracting Activity Designee, or the designee one level above the contracting officer, may either accept or reject this request and shall document this determination.

(b) *Multiple offers or delivery points.* If more than one offer for the sale of commodities is received or more than one delivery point has been designated in such offers, in order to achieve a combination of a freight rate and commodity award that produces the lowest landed cost for the delivery of the commodity to the foreign destination, the contracting officer shall evaluate offers submitted on a delivery point by delivery point basis; however, consideration shall be given to prioritized ocean transport service in determining lowest landed cost.

(c) *Freight shipping and rates.*

(1) In determining the lowest-landed cost, the Department shall use the freight rates offered in response to solicitations issued by the Department or, if applicable, the grantee organization.

(2) Freight rates offered must be submitted as specified in the solicitation issued by the Department or, if applicable, the grantee organization.

Any such solicitation issued by a grantee organization must contain the following elements:

(i) If directed by the Department, include a closing time for the receipt of written freight offers and state that late written freight offers will not be considered;

(ii) Provide that freight offers are required to have a canceling date no later than the last contract lay day specified in the solicitation;

(iii) Provide the same deadline for receipt of written freight offers from both U.S. flag vessel and non-U.S. flag vessels; and

(iv) Be received and opened prior to any related offer for acquisition of commodities to be shipped.

(3) The Department may require organizations that will receive commodities from the Department to submit information relating to the capacity of a U.S. port, or, if applicable, a terminal, prior to the acquisition of such commodities or freight.

(d) *Freight rate notification.* If the Department is not the party procuring freight with respect to a shipment of an agricultural commodity for delivery to a foreign destination, the organization that will receive commodities from the Department, or its shipping agent, shall be notified by the Department of the vessel freight rate used in determining the commodity contract award and the organization will be responsible for finalizing the charter or booking contract with the vessel representing the freight rate.

**470.202 Acquisition of commodities for United States Agency for International Development (USAID) programs.**

(a) *Lowest landed cost and delivery considerations.*

(1) Except as provided in paragraphs (a)(3) and (e)(2) of this section, with respect to the acquisition of agricultural commodities for delivery to foreign destinations and related freight to transport such commodities under Title II of Public Law 480, contracts will be entered into in a manner that will result in the lowest landed cost of such commodity delivery to the intended destination. This lowest landed cost determination shall be calculated on the basis of rates and service for that portion of the commodities being purchased that is determined is necessary and practicable to meet 46 U.S.C. 55314(c)(3) and cargo preference requirements and on an overall (foreign and U.S. flag) basis for the remaining portion of the commodities being procured and the additional factors set forth in this section. Accordingly, the solicitations issued with respect to a

commodity procurement or a freight procurement will specify that in the event an offer submitted by a party is the lowest offered price, the contracting officer reserves the right to reject such offer if the acceptance of another offer for the commodity or freight, when combined with other offers for commodities or freight, results in a lower landed cost to USAID.

(2) The Department may contact any port prior to award to determine the port's cargo handling capabilities, including the adequacy of the port to receive, accumulate, handle, store, and protect the cargo. Factors which will be considered in this determination will include, but not be limited to, the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices. The Department may consider the use of another coastal range or port if a situation exists at a port that may adversely affect the ability of the Department to have the commodity delivered in a safe and/or timely manner. Such situations include:

(i) A port is congested;

(ii) Port facilities are overloaded;

(iii) A vessel would not be able to dock and load cargo without delay;

(iv) Labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; or

(v) Other similar situation that may adversely affect the ability of the Department to have the commodity delivered in a timely manner.

(3) *Use of other than lowest landed cost.* In order to ensure that commodities are delivered in a timely fashion to foreign destinations and without damage, the Department may complete an acquisition without regard to the lowest land cost process set forth in paragraph (a)(1) of this section, if:

(i) The solicitation specifies that the lowest land cost process will not be followed in the completion of the contract; or

(ii) After issuance of the solicitation, it is determined that:

(A) Internal strife at the foreign destination or urgent humanitarian conditions threatens the lives of persons at the foreign destination;

(B) A specific port's cargo handling capabilities (including the adequacy of the port to receive, accumulate, handle, store, and protect commodities) and other similar factors will adversely affect the delivery of such commodities without damage or in a timely manner. Such similar factors include, but are not limited to: port congestion; overloaded facilities at the port; vessels would not be able to dock and load cargo without

delay; labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; and the existence of inadequate or unsanitary warehouse and other supporting facilities;

(C) The total transit time of a carrier, as it relates to a final delivery date at the foreign destination may impair the ability of the Department to achieve timely delivery of the commodity; or

(D) Other similar situations arise that materially affect the administration of the program for which the commodity or freight is being procured.

(4) If the contracting officer determines that action may be appropriate under paragraph (a)(3) of this section, prior to the acceptance of any applicable offer, the contracting officer shall provide to the head of contracting activity designee and to USAID, a written request to obtain commodities and freight in a manner other than on a lowest landed cost basis. This request shall include a statement of the reasons for not using lowest landed cost basis. The head of contracting authority designee, or one level above the contracting officer, with the concurrence of USAID, shall, on an expedited basis, either accept or reject this request and shall document this determination in writing and provide a copy to USAID.

(b) *Freight shipping and rates.*

(1) In determining lowest-landed cost as specified in paragraph (a) of this section, the Department shall use vessel rates offered in response to solicitations issued by USAID or grantee organizations receiving commodities under 7 U.S.C. 1731 *et seq.*

(2) USAID may require, or direct a grantee organization to require, an ocean carrier to submit offers electronically through a Web-based system maintained by the Department. If electronic submissions are required, the Department may, at its discretion, accept corrections to such submissions that are submitted in a written form other than by use of such Web-based system.

(c) *Delivery date.* The contracting officer shall consider total transit time, as it relates to a final delivery date, in order to satisfy Public Law 480 Title II program requirements.

(d) *Delivery points.*

(1) Commodities offered for delivery free alongside ship Great Lakes port range or intermodal bridge-point Great Lakes port range that represent the overall (foreign and U.S. flag) lowest landed cost will be awarded on a lowest landed cost basis. Tonnage allocated on this basis will not be reevaluated on a lowest landed cost U.S.-flag basis unless

the contracting officer determines that 25 percent of the total annual tonnage of bagged, processed, or fortified commodities furnished under 7 U.S.C. 1731 *et seq.* has been, or will be, transported from the Great Lakes port range during that fiscal year.

(2) The contracting officer shall consider commodity offers as offers for delivery "intermodal bridge-point Great Lakes port range" only if:

(i) The offer specifies delivery at a marine cargo-handling facility that is capable of loading ocean going vessels at a Great Lakes port, as well as loading ocean going conveyances such as barges and container vans, and

(ii) The commodities will be moved from one transportation conveyance to another at such a facility.

(e) *Multiple awards or delivery points.*

(1) If more than one offer for the sale of commodities is received or more than one delivery point has been designated in such offers, in order to achieve a combination of a freight rate and commodity award that produces the lowest landed cost for the delivery of the commodity to the foreign destination, the contracting officer shall evaluate offers submitted on a delivery point by delivery point basis; however, consideration shall be given to prioritized ocean transport service in determining lowest landed cost.

(2) The contracting officer may determine that extenuating circumstances preclude awards on the basis of lowest landed cost. However, in all such cases, commodities may be transported in compliance with cargo preference requirements as determined by USAID.

(3) The contracting officer shall notify USAID or, if applicable, the grantee organization, that its shipping agent will be notified of the vessel freight rate used in determining the commodity contract award. The grantee organization or USAID will be responsible for finalizing the charter or booking contract with the vessel representing the freight rate so used.

#### **470.203 Cargo preference.**

An agency having responsibility under this subpart shall administer its programs, with respect to this subpart, in accordance with regulations prescribed by the Secretary of Transportation.

Dated: March 19, 2009.

**Suzanne Hall,**

*Acting Administrator, Foreign Agricultural Service, and Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. E9-6487 Filed 3-25-09; 8:45 am]

**BILLING CODE 3410-10-P**

## **NATIONAL CREDIT UNION ADMINISTRATION**

### **12 CFR Parts 701 and 742**

**RIN 3133-AD53**

#### **Regulatory Flexibility Regarding Ownership of Fixed Assets**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is amending its Regulatory Flexibility (RegFlex) Program to provide additional flexibility to qualifying federal credit unions (FCUs) when acquiring unimproved land for future expansion. Previously, when an FCU acquired unimproved land for future expansion and did not fully occupy the completed premises within one year, it was required to partially occupy the completed premises within three years or obtain a waiver. This amendment increases the three years to six years for RegFlex FCUs without a waiver. NCUA is also making conforming amendments to its fixed asset rule to be consistent with the RegFlex changes.

**DATES:** The rule is effective April 27, 2009.

**FOR FURTHER INFORMATION CONTACT:** Frank Kressman, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, or telephone: (703) 518-6540.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

###### *1. Proposal*

NCUA issued proposed amendments to its RegFlex and fixed assets rules in September 2008 as summarized above. 73 FR 57013 (October 1, 2008). NCUA received six comment letters on the proposal: three from credit unions, two from credit union trade associations, and one from a bank trade association. All commenters except the bank trade association support the amendments.

###### *2. Fixed Assets*

The Federal Credit Union Act authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations. 12 U.S.C. 1757(4). Generally, the fixed asset rule provides limits on fixed asset investments, establishes occupancy and other requirements for acquired and abandoned premises, and prohibits certain transactions. 12 CFR 701.36. Fixed assets are defined in § 701.36(e) as premises, furniture, fixtures, and equipment and include any office,

branch office, suboffice, service center, parking lot, facility, real estate where a credit union transacts or will transact business, office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment.

Section 701.36 prohibits an FCU with \$1 million or more in assets from investing in fixed assets, the aggregate of which exceeds five percent of the FCU's shares and retained earnings; although upon an FCU's application, a regional director may set a higher limit. 12 CFR 701.36(a)(1)-(2). If an FCU acquires premises, as broadly defined in § 701.36(e), for future expansion and does not fully occupy the space within one year, its board must have a resolution in place by the end of that year with plans for full occupation and make those plans available to NCUA upon request. 12 CFR 701.36(b)(1). Additionally, the FCU must partially occupy the premises within a reasonable period, not to exceed three years, unless the FCU obtains a waiver within 30 months of acquiring the premises. 12 CFR § 701.36(b)(1)-(2). In this rulemaking, NCUA is only addressing the circumstance where an FCU is acquiring unimproved land but no other kind of premises.

##### *3. Regulatory Flexibility Program*

The RegFlex Program exempts from certain regulatory restrictions and grants additional powers to those FCUs that have demonstrated sustained superior performance as measured by CAMEL ratings and net worth classifications. 12 CFR 742.1. An FCU may qualify for RegFlex treatment automatically or by application to the appropriate regional director. 12 CFR 742.2. Also, an FCU's RegFlex authority can be lost or revoked. 12 CFR 742.3.

##### **B. Discussion**

Although a RegFlex eligible FCU is exempt from the five percent aggregate limit on fixed asset investments under the current rule, it is not exempt from the requirement to partially occupy premises acquired for future expansion within three years or request a waiver of this requirement. 12 CFR 701.36(a), 701.36(b)(2), 701.36(d), 742.4(a)(3). Where an FCU is acquiring unimproved land, the partial occupancy requirement often is more difficult to satisfy than if the FCU were purchasing premises with an existing branch building. The Board is aware that some FCUs contend the fixed asset rule's three-year partial occupancy requirement, even with a waiver option, is burdensome and an unnecessary level of oversight for

## **2. Agreement Negotiation Guide and Documents**

- 2.1 Agreement Negotiation
- 2.2 Frequently Asked Questions
- 2.3 Necessary Documentation
- 2.4 Navigating your Agreement in the Food Aid Information System (coming soon)

## **2.1 Agreement Negotiation**

### **Regulations on Agreement between USDA and Participant**

The agreement negotiation process is referred to in Regulation 1499.5 and 1599.5. Much of the process will take place between the Participant and a Food Assistance Division (FAD) analyst assigned to that agreement. This process varies in time depending on the details of each agreement. Starting with fiscal year (FY) 2012 agreements the agreement negotiation process will take place in the Food Aid Information System (FAIS), with continued interaction between the Participant and the FAD analyst.

### **Agreement Preamble**

The preamble is the legal language of your agreement with USDA. It includes many of the specific requirements for which the Participant will be held accountable. This document also specifies the program's tonnages, commodity types, and delivery schedule.

Most of the document is non-negotiable and includes many of the specific requirements for which the Participant will be held accountable. This is a template document where almost nothing changes except for program dates, agreement commodity, and funding amounts.

### **Attachment A – Plan of Operations:**

Attachment A or plan of operations is the part of the agreement specific to the Participant. FAIS will roll over whatever is in your proposal to form the plan of operations in the agreement. This will include your budget, activities, results, and commodity selections. In FY 2012, this will also include discussion on the performance monitoring plan and the project level results Frameworks.

Attachment A is where the FAD analyst and the Participant will spend most of the time writing, negotiating, and reaching an agreement on the final plan of operations. In FY 2012, this will also include discussion on the performance monitoring plan and the project level results frameworks.

### **Attachment B – Commodity Specifications**

Commodity specifications are provided by FAD's Transportation and Logistics Branch and explain the commodity's characteristics, and chemical and physical requirements.

### **Attachment C – Budget**

The budget will be entered in FAIS during the proposal process, transferred into the agreement if the award is approved, and negotiated and re-worked during the agreement negotiation process.

FAS/Commodity Credit Corporation (CCC) will review the program operation budgets to determine if any proposed expenditures are unjustified, exceed legislative authority, or are unreasonable.

## **Attachment D – FAS Terrorist Financing Certification and Food Aid Grant Agreements**

This document is non-negotiable. It includes standard language to certify that you are not funding terrorism as required by the U.S. Department of State.

### **Bellmon Estimation**

The Bellmon estimation is a document that ensures there is no negative effect of the commodities on market in which they are being sold or distributed. It also includes information on storage, handling, and transportation of the commodities. Most of this information is provided by the Participant and reviewed by the FAD analyst.

## **2.2 Frequently Asked Questions**

Q: *What is ITSH?*

A: ITSH stands for "Internal Transportation, Shipping, and Handling." It refers to costs associated with the internal transportation, storage, and handling of donated commodities. These costs begin at the point where CCC delivers the commodities in country and generally include inland rail or truck transportation from the endpoint of the bill of lading to the distribution sites, warehouse rent (at one or various warehouses), and handling (i.e., laborers, repackaging supplies, etc.).

The point where CCC delivers the commodities for countries with seaport facilities would be the port specified in the agreement between CCC and the Participant. For landlocked countries, that point would be the initial storage site, or in the case of bulk commodities, the point of initial discharge, as specified in the agreement between CCC and the Participant.

CCC does not provide dollars to pay ITSH, except in countries with urgent and extraordinary relief requirements. CCC does allow Participants to use monetized funds to cover ITSH costs in countries that do not meet the urgent and extraordinary requirements.

Q: *What is ICR?*

A: "ICR" stands for "Indirect Cost Recovery." ICR is a mechanism that allows a Participant to recover costs associated with running an organization that cannot be directly linked and billed to a specific project.

Q: *What is NICRA?*

A: "NICRA" stands for "Negotiated Indirect Cost Recovery Agreement." This is an agreement that determines the rate and the base of application for which a Participant can recover indirect costs. CCC will accept a NICRA rate negotiated by the U.S. Agency for International Development (USAID) or another U.S. Government agency.

Q: *What should a Participant do if it does not have a NICRA?*

A: The Participant should inform the Office of the Director of FAD in writing that they do not have a NICRA, and USDA will arrange to negotiate the rate. The Participant should notify USDA that they do not have a NICRA as soon as possible, because the negotiation process can be lengthy. A rate of 0 percent will be used as the default until the NICRA is negotiated.

Q: *For what budget items may a Participant apply an ICR?*

A: The Participant may apply an ICR on allowable items in accordance with their NICRA.

Q: *Can a Participant request and receive additional funds for ICR if actual rates associated with its NICRA replace any provisional rates in effect when the agreement was signed?*

A: A Participant can request additional funds from monetization proceeds due to ICR rate increases. However, CCC's response will rely on the Participant's ability to show that removing activity funds will not adversely affect the program. Due to fiscal year program constraints, CCC/USDA funds are not available for increases in indirect costs.

Q: *If the actual ICR rate associated with a Participant's NICRA decreases, does the Participant have to recalculate its ICR application and return overpayments to CCC?*

A: In the case of cash funding from CCC: if the rate in the NICRA declines and all of the dollars are not expended, CCC would subtract the remaining dollars from the final cash disbursement. Note that ICR is applied at the time of actual expenditure.

In the case of funding from monetization: CCC requires that any excess funding derived from a decreased ICR rate be put into the approved activities. This change must be approved by the General Sales Manager through the amendment process.

Q: *If the NICRA allows application against the monetization activities, is the Participant required to submit additional information to USDA?*

A: Yes. Under the new NICRA policy, the Participant must submit itemized budgets that provide sufficient detail to ensure the appropriate application of NICRA. USDA will continue to require detailed budgets for administrative expenses and will now require a listing of project expenses if NICRA is applicable.

Q: *On what may I spend the NICRA allocation?*

A: The NICRA allocation is intended to cover overhead costs that cannot be linked to a specific grant or program. The application of NICRA and the use of the reimbursement depends on the accounting system of the Participant.

Q: Can a Participant request and receive additional NICRA funds if actual NICRA rates replace any provisional rates in effect when the agreement was signed?

A: A Participant can request additional NICRA funds if its rate increases; however, due to fiscal year program constraints, CCC may not be able to accommodate the request. This is especially true with CCC funding for dollar administrative expenses, which cannot exceed \$10.0 million. As for increased funding through monetization funds, CCC may be able to more easily accommodate this request; however, CCC's response will rely on the participant's ability to show that removing project funds will not adversely affect the projects.

Q: *If USDA's calculation decreases the NICRA rate, does the participant have to recalculate its NICRA and return overpayments to CCC?*

A: In the case of dollars from CCC, if the NICRA rate declines and all of the dollars are not expended, we would subtract the remaining dollars from the final cash disbursement. Note,

this subtracted figure should include ICR since it is applied at the time of actual expenditure. In the case of monetization dollars, we would require that any excess be put into the approved projects.

## **2.3 Necessary Documentation**

### **Subrecipients and Subagreements (Reg 1499.12 and 1599.12)**

According to the regulations a subrecipient is defined as “a legal entity that receives donated commodities, income, sale proceeds or other resources from a Participant for the purpose of implementing activities in the targeted country.” Participants shall enter into a written subagreement with each subrecipient. Copies of all subagreements valued at more than \$50,000 must be submitted to FAD within 90 days of entering into an agreement with the subrecipient. Subagreements will stipulate the responsibilities of each party. A subrecipient is accountable to the Participant.

Participants are responsible for monitoring the actions of their subrecipients as necessary to ensure that donated commodities or resources are used for authorized purposes in compliance with applicable laws, regulations, and the agreement and that performance goals are achieved.

### **Documentation of Registration with Host Government and Duty-Free Entry Status**

A proposal must address the applicant’s ability to become registered and operate in targeted country.

The Participant shall make all necessary arrangements for receiving the donated commodities in country, including obtaining appropriate approvals for entry and transit. The Participant must ensure that all commodities are imported and distributed free from all customs, duties, tolls, and taxes.

Before the agreement is signed, the Participant should provide verification of their registration to FAD. Registration methods vary throughout the world. Please check for requirements in each country by contacting the FAS Attaché or U.S. Embassy in the host country. A list of FAS attachés may be found at: [www.fas.usda.gov/scriptsw/fasfield/ovs\\_directory\\_search.asp](http://www.fas.usda.gov/scriptsw/fasfield/ovs_directory_search.asp) .

### **Letter from Freight Forwarder**

If the Participant uses the services of a freight forwarder, the Participant will provide the FAD Director with the name of and contact information for the freight forwarder and the certification required by 7 C.F.R. section 1599.7(c) after the agreement is finalized and prior to submitting its initial order for the delivery of donated commodities under this agreement. A list of certified freight forwarders and a template of the letter can be obtained by contacting the Transportation and Logistics Branch of the Food Assistance Division.

### **NICRA Documentation**

The NICRA may be with another agency, but USDA requires a signed copy of this agreement to process the rate for your agreement budget. For additional information on NICRA please see [OMB Circular A-122](#).

## **2.4 Navigating your Agreement in FAIS (coming soon)**

## **3. Funds Management**

3.1 Cash Advances and Reimbursements

3.2 Return of Unspent Funds

3.3 Participant Financial Responsibilities

Attachment A: Cash Advance/Reimbursement Request Letter

Attachment B: Final Cash Reimbursement Letter

Attachment C: Forms for Repayment of Unspent Funds

## **3.1 Cash Advances and Reimbursements**

### **Policies**

The Participant may request its first cash advance at the time that the agreement is signed. Subsequent advances (up to 100 percent of the total budget) may be requested 60 days after the date of the previous advance. A Participant has 180 days to expend each cash advance, and all expenditures must be documented. FAS/CCC normally advances funds through a wire transfer.

When a program is completed, the Participant may request a final reimbursement once it has expended the budgeted funds (any money that was advanced from FAS/CCC, minus any interest earned, plus any additional funds for which the Participant is to be reimbursed). The reimbursement will be processed only if all reports have been submitted and FAS/CCC determines that the agreement can be closed.

All advances from FAS/CCC must be kept in an interest bearing account. All interest earned on unspent funds shall be treated as program income to be used for the purposes of the grant. The Program Participant shall return to FAS/CCC any funds not obligated as of the 180th day after being advanced, together with any interest earned on such unexpended funds. Funds and interest shall be returned within 30 days of such date.

### **Procedures**

Starting in FY 2012, requests for cash payments are submitted in FAIS. Guidance for cash payment procedures is available in FAIS. The cash payment process in FAIS can be summarized as follows: the Participant will request cash through FAIS, the request will be verified by FAD, the approved request will be forwarded to the Web Based Supply Chain Management (WBSCM) system, and the payment will be processed.

Until requests for cash payments are submitted in FAIS please follow the steps below to request a cash advance or reimbursement.

Send an email request to Faye (Ophelia) Johnson of the Food Assistance Division at [Ophelia.Johnson@fas.usda.gov](mailto:Ophelia.Johnson@fas.usda.gov). In the email request, attach a copy of the "Cash Advance/Reimbursement Letter" or the "Final Cash Reimbursement Letter" with the necessary information filled in. Please be sure to:

- Note whether the request is an advance or a reimbursement
- Include updated bank account information (so that USDA to wire transfer the cash advance/reimbursement directly to your organization's bank)

You can download these forms on the [Food Assistance website](#). They are also included in Attachments A and B of this section. If you do not hear from Faye within 6 business days, please contact her (or the division office) via phone to confirm receipt of your email request.

Faye will verify your request figures with the Food Assistance Division's financial database and will email back an electronic copy of the official cash advance/reimbursement letter. This final document should be signed by your organization and mailed back with an original signature. Mailing information is located at the bottom of this page.

If for any reason the request cannot be granted exactly as requested, Faye will explain any changes made on the form. If you do not agree with the revised request, simply contact her via email or phone to discuss the situation.

Once the Food Assistance Division receives the signed letter back from you, the transfer of funds will be processed as quickly as possible. While the process can take as little as two weeks, USDA is required to wire the funds in no more than 45 days.

Please note that FAD will not approve cash requests if:

- Required reports are more than six months in arrears. Reports may be submitted by email along with the cash request if reporting is not up to date.
- The request is received earlier than 60 days after the date of a previous advance made in connection with the same agreement.

For additional information or assistance, please contact Faye Johnson by phone at (202) 720-7515 or by email at [Ophelia.Johnson@fas.usda.gov](mailto:Ophelia.Johnson@fas.usda.gov)

## **Mailing Information**

### For USPS Mail:

Food Assistance Division  
OCBD/FAS/USDA  
Attn: Faye Johnson  
1400 Independence Avenue, SW  
STOP 1034  
Washington, DC 20250

### For Courier Service (i.e. UPS or FedEx):

Food Assistance Division  
OCBD/FAS/USDA  
Attn: Faye Johnson  
1250 Maryland Avenue, SW  
Suite 400  
Washington, DC 20024

Please note that that USDA greatly prefers courier service to US Postal Service shipments. However, if you must send a request via US Postal Service, please note that receipt of your signed request could be delayed by more than 30 days due to security measures related to all mail entering USDA.

## **3.2 Return of Unspent Funds**

When a Participant completes all programming, it must return the following unexpended funds to USDA, if any:

- Unobligated cash advances
- Interest earned on cash advances
- Additional proceeds not authorized for use
- Other unspent funds, including monetized proceeds
- Expenditures exceeding the line item flexibility allowed in the grant agreement

Funds may be returned either by check or, preferably, by wire transfer. To return these funds, please email a “return of funds” form to USDA before sending a check or wire transfer. The required forms can be found on the [FAS website](#) or in Attachment C of this section. Please email completed forms to Faye (Ophelia) Johnson at: [Ophelia.Johnson@fas.usda.gov](mailto:Ophelia.Johnson@fas.usda.gov). Please also copy: [PPDED@fas.usda.gov](mailto:PPDED@fas.usda.gov).

## **3.3 Participant Financial Responsibilities**

### **Bank Accounts**

Participants must deposit all sale proceeds and income into a separate, interest-bearing account. Exceptions will only be made if the account is in a country where the laws and customs prohibit the payment of interest or if FAD determines that this requirement would constitute an undue burden.

### **Supervision and Disbursements**

An appropriate Participant official must supervise each account and must approve all disbursements from the account.

### **Full Accounting**

Full accounting of funds must be maintained by the Participant. Please note the following:

- Accounting records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, and interest.
- Accounting records must provide a comparison of expenditures with budgeted amounts.
- All expenditures must be supported by source documentation. An adequately documented expenditure is one that can be supported with a proof of payment document (cancelled check, official receipts, bank wire transfer advice, etc.) and accompanying invoices, receipts, travel documents, vouchers, contracts, purchase orders, and time sheet as applicable to the nature of the transaction.

### **Retention of Records**

Participants are required to keep all documents regarding expenditures for three years from the date of submitting final reports, unless litigation, a claim, or an audit is started before the expiration of the three-year period. In the case of litigation, a claim, or audit, records must be retained until the issue(s) have been resolved and final action has been taken.

## **Attachment A**

### Cash Advance/Reimbursement Request Letter

An electronic copy of this form is available on the Food Aid website:

<http://www.fas.usda.gov/food-aid.asp>

**CASH ADVANCE OR REIMBURSEMENT REQUEST  
(FOR ALL PROGRAMS) (PD-)**

TO: Director, Food Assistance Division (or via U.S. Postal Service)  
 USDA/Foreign Agricultural Service  
 1400 Independence Avenue, SW, Room 4159 1400 Independence Avenue, SW, Mail Stop 1034  
 Washington, DC 20250 Washington, DC 20250-1034

FROM:

SUBJECT: Agreement Number: -00, Budget Number:  
 COUNTRY:

In accordance with the above referenced Agreement and Budget, we hereby request the advance/reimbursement of \$\_\_\_\_\_. These calculations are based on the table below wherein funds requested for administrative costs are indicated by "admin," funds for internal transportation, storage and handling, are indicated by "ITSH," and funds for activities that enhance the effectiveness of the program are indicated by "Projects."

Category	Total Approved Budget *	Previous Advance(s) Reimbursement(s)	Starting Balance	Interest Accrued	Amount Requested	Ending Balance
Admin	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Projects	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
ITSH	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

\* Please see Part II, Item II, Paragraph C of agreement for these figures. [Double click table to insert information.](#)

Please **wire** transfer the funds requested above to the following bank account:

Bank Name:  
 Street Line 1:  
 Street Line 2:  
 City, State & Zip:  
 Wire Transfer Number (ABA):  
 Account Name:  
 Account Type:  
 Account Number:  
 SWIFT Number:  
 Tax ID Number:

**Please be sure that all required financial reports have been submitted to FAD prior to requesting cash. Reports may be submitted by email along with the cash request (advance/reimbursement) if reporting is not up to date.**

I hereby certify that the above information is correct and in accordance with the approved Program operating Budget and that the bank account listed above is this organization's account. I understand that any funds advanced must be obligated within 180 days as stated in the pertinent regulations (7 CFR 1499.6 for Food for Progress and 7 CFR 3019.22 for Local Regional Procurement and 7 CFR 1599.6 for McGovern-Dole).

By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**---(USDA APPROVAL BELOW—THIS IS A ONE PAGE DOCUMENT)---**

Concurrence:

FAD Analyst \_\_\_\_\_ Date: \_\_\_\_\_

FAD Branch Chief \_\_\_\_\_ Date: \_\_\_\_\_

FAD Director \_\_\_\_\_ Date: \_\_\_\_\_

## **Attachment B**

### Final Cash Reimbursement Letter

An electronic copy of this form is available on the Food Aid website:

<http://www.fas.usda.gov/food-aid.asp>

**REIMBURSEMENT REQUEST/CLOSE-OUT  
(FOR ALL PROGRAMS)**

TO: Director, Food Assistance Division  
 USDA/Foreign Agricultural Service  
 1400 Independence Avenue, SW, Room 4159  
 Washington, DC 20250

(or via U.S. Postal Service)  
 1400 Independence Avenue, SW, Mail Stop 1034  
 Washington, DC 20250-1034

FROM:

SUBJECT: Agreement \_\_\_\_\_, Budget Number \_\_\_\_\_  
 COUNTRY: \_\_\_\_\_

In accordance with the above referenced Agreement and Budget, we hereby request the advance/reimbursement of \$\_\_\_\_\_. These calculations are based on the table below wherein funds requested for administrative costs are indicated by "admin," funds for internal transportation, storage and handling, are indicated by "ITSH," and funds for activities that enhance the effectiveness of the program are indicated by "Projects."

Category	Total Approved Budget *	Previous Advance(s) Reimbursement(s)	Starting Balance	Less Interest	Amount Requested	Amount to De-obligate
<b>Admin</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Projects</b>	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0.00
<b>ITSH</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

\* Please see Part II, Item II, Paragraph C of agreement for these figures. **Double click table to insert information.**

Please **wire** transfer the funds requested above to the following bank account:

Bank Name:  
 Street Line 1:  
 Street Line 2:  
 City, State & Zip:  
 Routing Transit Number:  
 Account Name:  
 Account Type:  
 Account Number:  
 Tax ID Number:

**Please be sure that all required financial reports have been submitted to FAD prior to requesting cash. Reports may be submitted by email along with the cash request (advance/reimbursement) if reporting is not up to date.**

I hereby certify that the above information is correct and in accordance with the approved Program operating Budget and that the bank account listed above is this organization's account. I understand that any funds advanced must be obligated within 180 days as stated in the pertinent regulations (7 CFR 1499.7 for Food for Progress and 7 CFR 3019.22 for Local Regional Procurement and 7 CFR 1599.6 for McGovern-Dole).

By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**----(USDA APPROVAL BELOW—THIS IS A ONE PAGE DOCUMENT)---**

Concurrence:

FAD Analyst \_\_\_\_\_ Date: \_\_\_\_\_

FAD Branch Chief \_\_\_\_\_ Date: \_\_\_\_\_

FAD Director \_\_\_\_\_ Date: \_\_\_\_\_

## **Attachment C**

### Forms for Repayment of Unspent Funds

This attachment includes the following forms (in this order):

- Repayment of Unspent CCC Funds by Check and Agreement Closure
- Repayment of Unspent CCC and Monetization Funds by Check and Agreement Closure
- Repayment of Unspent CCC and Monetization Funds by Wire Transfer and Agreement Closure
- Repayment of Unspent CCC Funds by Wire Transfer and Agreement Closure
- Repayment of Unspent Monetization Funds by Check and Agreement Closure
- Repayment of Unspent Monetization Funds by Wire Transfer and Agreement Closure

Electronic copies of these forms are available on the Food Aid website:

<http://www.fas.usda.gov/food-aid.asp>

**REPAYMENT OF UNSPENT CCC FUNDS BY CHECK  
AND AGREEMENT CLOSURE  
(Section 416(b)/Food for Progress/McGovern-Dole)**

TO: Director, Food Assistance Division  
USDA/Foreign Agricultural Service  
STOP 1034  
1400 Independence Avenue, SW  
Washington, DC 20250-1034

From:

Subject: Agreement \_\_\_\_\_, Budget Number \_\_\_\_\_,  
Country \_\_\_\_\_

In accordance with the above referenced Agreement and Budget, we request closure of this agreement and hereby return to USDA the unspent amount of \$\_\_\_\_\_. This includes administrative funds in the amount of \$\_\_\_\_\_; internal transportation, shipping and handling funds in the amount of \$\_\_\_\_\_; and interest in the amount of \$\_\_\_\_\_; and projects/technical assistance (under McGovern-Dole only) of \$\_\_\_\_\_.

If repaying under a Food for Progress or 416(b) program, please make the check payable to the **Commodity Credit Corporation**. If repaying under a McGovern-Dole International Food for Education program, please make the check payable to USDA's **Foreign Agricultural Service**. Also provide the following information on the check:

1. Agreement number
2. Country
3. Type of Program (Section 416(b) or Food for Progress or McGovern-Dole)
4. Type of Cost: Administrative Expense

Please mail the check to:

Director, Food Assistance Division  
USDA/Foreign Agricultural Service  
1400 Independence Avenue, SW, STOP 1034,  
Washington, DC 20250-1034

Sincerely,

For USDA use.
_____
Branch Chief
Date

**REPAYMENT OF UNSPENT CCC AND MONETIZATION FUNDS BY CHECK  
AND AGREEMENT CLOSURE  
(Section 416(b)/Food for Progress/McGovern-Dole)**

TO: Director, Food Assistance Division  
USDA/Foreign Agricultural Service  
STOP 1034  
1400 Independence Avenue, SW  
Washington, DC 20250-1034

From:

Subject: Agreement \_\_\_\_\_, Budget Number \_\_\_\_\_,  
Country \_\_\_\_\_

In accordance with the above referenced Agreement and Budget, we request closure of this agreement and hereby return to USDA the unspent amount of \$\_\_\_\_\_. This includes administrative funds in the amount of \$\_\_\_\_\_; internal transportation, shipping and handling funds in the amount of \$\_\_\_\_\_; interest in the amount of \$\_\_\_\_\_; and monetization proceeds of \$\_\_\_\_\_.

If repaying under a Food for Progress or 416(b) program, please make the check payable to the **Commodity Credit Corporation**. If repaying under a McGovern-Dole International Food for Education program, please make the check payable to USDA's **Foreign Agricultural Service**. Also provide the following information on the check:

1. Agreement number
2. Country
3. Type of Program (Section 416(b) or Food for Progress or McGovern-Dole)
4. Type of Cost: Administrative Expense

Please mail the check to:

Director, Food Assistance Division  
USDA/Foreign Agricultural Service  
1400 Independence Avenue, SW, STOP 1034,  
Washington, DC 20250-1034

Sincerely,

For USDA use.
_____ Branch Chief
Date





**REPAYMENT OF UNSPENT MONETIZATION FUNDS BY CHECK  
AND AGREEMENT CLOSURE  
(Section 416(b)/Food for Progress/ McGovern-Dole)**

TO: Director, Food Assistance Division  
USDA/Foreign Agricultural Service  
STOP 1034  
1400 Independence Avenue, SW  
Washington, DC 20250-1034

From:

Subject: Agreement \_\_\_\_\_, Budget Number \_\_\_\_\_,  
Country \_\_\_\_\_

In accordance with the above referenced Agreement and Budget, we request closure of this agreement and agree to reimburse the outstanding amount of funds in the amount of \$ \_\_\_\_\_. This includes the deduction of unspent monetization funds originally allocated for projects.

If repaying under a Food for Progress or 416(b) program, please make the check payable to the **Commodity Credit Corporation**. If repaying under a McGovern-Dole International Food for Education program, please make the check payable to USDA's **Foreign Agricultural Service**. Also provide the following information on the check:

1. Agreement number
2. Country
3. Type of Program (Section 416(b) or Food for Progress or McGovern-Dole)
4. Type of Cost: Unspent Monetization

Please mail the check to:

Director, Food Assistance Division  
USDA/Foreign Agricultural Service  
1400 Independence Avenue, SW, STOP 1034,  
Washington, DC 20250-1034

Please notify Food Assistance Division either by phone (202) 720-4221 or by E-mail PPDED@fas.usda.gov when wire transfer has taken place.

Sincerely,

For USDA use.
_____
Branch Chief
Date

**REPAYMENT OF UNSPENT MONETIZATION FUNDS BY WIRE TRANSFER  
AND AGREEMENT CLOSURE  
(Section 416(b)/Food for Progress/ McGovern-Dole)**

TO: Director, Food Assistance Division  
USDA/Foreign Agricultural Service  
STOP 1034  
1400 Independence Avenue, SW  
Washington, DC 20250-1034

From:

Subject: Agreement \_\_\_\_\_, Budget Number \_\_\_\_\_,  
Country \_\_\_\_\_

In accordance with the above referenced Agreement and Budget, we request closure of this agreement and agree to reimburse the outstanding amount of funds in the amount of \$\_\_\_\_\_. This includes the deduction of unspent monetization funds originally allocated for projects.

For repayment by wire transfer, please use the following information:

ABA No.:	021-030-004	
Bank Name:	Treasury, NYC	
Type Code:	CTR	
Beneficiary (BNF):	Commodity Credit Corporation	
Account No. (ALC)	4992	
Bank to Bank Information (BBI):	Program Type:	
	Country Name:	
	Agreement No:	
	Type of Cost:	Administrative Expense

Please notify Food Assistance Division either by phone (202) 720-4221 or by E-mail PPDED@fas.usda.gov when wire transfer has taken place.

Sincerely,

For USDA use.
_____
Branch Chief
Date

## **4. Commodity Management**

4.1 Commodity Procurement and Shipping

4.2 Commodity Handling and Storage

4.3 Damage to or Loss of Commodities

Attachment A: Sample Letter from a Freight Forwarder

Attachment B: List of Licensed Freight Forwarders

## **4.1 Commodity Procurement and Shipping**

### **Letter from Freight Forwarder**

If the Participant uses the services of a freight forwarder, the Participant will provide the FAD Director the name of and contact information for the freight forwarder and the certification required by 7 C.F.R. section 1599.7(c) after the agreement is finalized and prior to submitting its initial order for the delivery of donated commodities. A list of certified freight forwarders and a template of the letter can be found on the forms and templates web page.

### **Commodity Selection**

The commodities may vary from year-to-year depending on availability of U.S. produce. Participants should understand that not all commodities are always available.

### **Sales Orders and Commodity Invitations**

Participants should be aware that it takes approximately 90 days from when a commodity is called forward to reach the U.S. port. Transit time from the United States to final destination is not included in this estimation. Bulk commodities can be called forward 60 days in advance of the desired in-country arrival date. Be aware of timing when paying for or contracting a warehouse for commodity storage. Issues that may affect commodity requests include commodity availability or high freight rates.

The Participant, working with their freight forwarder, should be cognizant of any special requirements related to commodity specifications, packaging, and customs clearance prior to calling forward their commodities.

Currently, when the Participant (or freight forwarder on behalf of the Participant) is ready to receive shipments of commodities, sales orders must be entered into the WBSCM system.

In most cases, the Participant's freight forwarder enters the sales order. FAD's Transportation and Logistics Branch (TLB) reviews the sales orders and routes them to the Kansas City Commodity Office (KCCO). KCCO prepares either a processed or bulk commodity invitation based on the sales orders, which TLB reviews prior to publishing. Packaged and processed commodity invitations are issued monthly. Bulk commodity invitations are issued on an as-requested basis. The annual packaged and processed procurement schedule can be found at KCCO's website: [http://www.fsa.usda.gov/Internet/FSA\\_File/exp\\_sch\\_11.pdf](http://www.fsa.usda.gov/Internet/FSA_File/exp_sch_11.pdf)

### **Freight Invitation**

A change in freight contracting practices has taken place under the new regulations. Either USDA will issue a Federal Acquisition Regulation (FAR) compliant freight invitation and contract with the carrier for movement of the commodities for a particular agreement or the

Participant, as laid out in the agreement, will acquire freight. Please note that a minimum of 75 percent of all USDA commodities must be transported on U.S.-flag vessels.

### **Commodity and Freight Purchase**

KCCO receives commodity offers through WBSCM. WBSCM performs the lowest landed cost evaluation identifying the lowest commodity and freight price combination and generates an “optimal solution” for FAD’s review.

FAD and KCCO participate in a brief meeting to determine if the optimal solution falls within the funds available for the programs and TLB confirms acceptance of the optimal solution with KCCO as appropriate.

### **Transportation of Goods**

The Participant should select a licensed freight forwarder and notify FAS of this selection prior to calling forward their first shipment. The attached list includes freight forwarders eligible to work on food assistance programs per Sec. 1499.7(c) and Sec. 1599.7(c).

The Participant that is responsible for transportation under paragraph (b) (2) of 1499.7 and 1599.7 shall declare in the transportation contract the point at which the ocean carrier will take custody of commodities to be transported (Sec. 1499.7 (d) and Sec. 1599.7 (d)).

Shipment of donated commodities are subject to the requirements of 46 U.S.C. 55305 and 55314, regarding carriage on U.S.-flag vessels.

## **4.2 Commodity Handling and Storage**

### **Entry and Handling of Commodities (Sec. 1499.8 and Sec. 1599.8)**

The Participant shall make all necessary arrangements for receiving the donated commodities in the targeted country, including obtaining appropriate approvals for entry and transit (Sec. 1499.8 (a)).

The Participant shall, as provided in the agreement, arrange for transporting, storing, and distributing the donated commodities from the designated point and time where title to the commodities passes to the Participant by contracting directly with suppliers of services, as set forth in the agreement. (Sec. 1499.8 (b)).

A Participant shall arrange with the government of the targeted country that all donated commodities to be distributed will be imported and distributed free from all customs, duties, tolls, and taxes. A Participant is encouraged to make similar arrangements, where possible, with the government of the country where donated commodities to be sold or bartered are delivered. (Sec. 1499.8 (d)).

### **Use of Commodities (Sec. 1499.11 and Sec. 1599.11)**

A Participant must use the donated commodities in accordance with the agreement.

A Participant shall not permit the distribution, handling, or allocation of donated commodities on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliation of the potential consumers or beneficiaries.

A Participant shall not permit the distribution, handling, or allocation of donated commodities by the military forces or any government or insurgent group without the specific authorization of FAS.

### **Sale Proceeds (Sec. 1499.11 and Sec. 1599.11)**

The Participant shall deposit all sale proceeds and income into a separate, interest-bearing account unless the exceptions in Sec. 3019.22(k) of this title apply, the account is in a country where the laws or customs prohibit the payment of interest, or FAS determines that this requirement would constitute an undue burden.

A Participant may use sale proceeds or income to purchase real or personal property only if local law permits the Participant to retain title to such property. However, the Participant shall not use sale proceeds or income to pay for the acquisition, development, construction, alteration, or upgrade of real property that is: (1) owned or managed by a church or other organization engaged exclusively in religious pursuits; or (2) used in whole or in part for sectarian purposes, except that a Participant may use sale proceeds or income to pay for repairs to or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of donated commodities, but only if such structure is not used in whole or in part for any religious or sectarian purposes while the donated

commodities are stored in it. If such use is not specifically provided for in the agreement, such use may only occur after receipt of written approval from FAS.

A Participant may sell or barter donated commodities only if such sale or barter is provided for in the agreement or the Participant is disposing of damaged commodities as specified in Sec. 1499.9. The Participant shall sell the donated commodities at a reasonable market price in the economy where the sale occurs. The Participant shall use any sale proceeds, income, or goods or services derived from the sale or barter of the donated commodities only as provided in the agreement.

### **Commodity Packaging and Publicity (Sec. 1499.8(c) and 1599.8(c))**

If a Participant arranges for the packaging or repackaging of donated commodities that are to be distributed, the Participant shall ensure that the packaging: (1) is plainly labeled in the language of the targeted country; (2) contains the name of the donated commodities; (3) includes a statement indicating that the donated commodities are furnished by the people of the United States of America; and (4) includes a statement indicating that the donated commodities shall not be sold, exchanged, or bartered.

If a Participant arranges for the reprocessing and repackaging of donated commodities that are to be distributed, the Participant shall ensure that the packaging: (1) is plainly labeled in the language of the targeted country; (2) contains the name of the reprocessed product; (3) includes a statement indicating that the reprocessed product was made with commodities furnished by the people of the United States of America; and (4) includes a statement indicating that the reprocessed product shall not be sold, exchanged, or bartered.

If a Participant distributes donated commodities that are not packaged, the Participant shall, to the extent practicable, display banners, posters, or other media informing the public of the name and source of the donated commodities, and a statement that the donated commodities may not be sold, exchanged, or bartered.

### **Warehouse, Storage, and Security**

The Participant shall store and maintain the donated commodities in good condition from the time of delivery at the port of entry or the point of receipt from the originating carrier until their distribution, sale or barter (Sec. 1499.8 (a)).

The Participant is responsible for the commodity once the commodity reaches its warehouse.

Warehouses should be climate controlled based on the condition of the area in which they are stored and the commodities being stored.

FAS does not pay commodity insurance.

## **4.3 Damage to or Loss of Commodities**

### **Damage to and/or Loss of Commodities (Sec. 1499.9 and 1599.9)**

(a) FAS will be responsible for the donated commodities prior to the transfer of title to the commodities to the Participant. The Participant will be responsible for the donated commodities following the transfer of title . The title will transfer as specified in the agreement.

(b) A Participant shall inform FAS, in the manner and within the time period set forth in the agreement, of any damage to or loss of the donated commodities that occurs following the transfer of title . The Participant shall take all steps necessary to protect its interests and the interests of CCC with respect to any damage to or loss of the donated commodities that occurs after title has been transferred . The agreement will specify whether the Participant is responsible for obtaining a survey in the event that the donated commodities are damaged or lost following the transfer of title .

(c) If the donated commodities are damaged or lost during the time that they are in the care of the carrier:

(1) And either FAS or the Participant engages the services of an independent cargo surveyor, the surveyor will provide to FAS and the Participant any report, narrative chronology, or other commentary that it prepares;

(2) FAS and the Participant will provide to each other the names and addresses of any individuals known to be present at the time of discharge or during the survey who can verify the quantity of damaged or lost commodities;

(3) And the Participant engages the services of the surveyor, CCC will reimburse the Participant for the reasonable costs, as determined by FAS, of the survey, unless:

(i) The Participant was required by the agreement to pay for the survey;

(ii) The survey was a delivery survey and the surveyor did not also prepare a discharge survey;

(iii) The survey was not conducted contemporaneously with the discharge of the vessel, unless FAS determines that such action was justified under the circumstances;

(4) Any survey obtained by the Participant shall, to the extent practicable, be conducted jointly by the surveyor, the Participant, and the carrier, and the survey report shall be signed by all parties;

(5) And the damage or loss occurred with respect to a bulk grain shipment, if the agreement provides that the Participant is responsible for survey and outturn reports, the Participant shall engage the services of an independent cargo surveyor to:

- (i) Observe the discharge of the cargo;
- (ii) Report on discharging methods, including scale type, calibrations, and any other factor that may affect the accuracy of scale weights, and, if scales are not used, state the reason therefore and describe the actual method used to determine weight;
- (iii) Estimate the quantity of cargo, if any, lost during discharge through carrier negligence;
- (iv) Advise on the quality of sweepings;
- (v) Obtain copies of port or vessel records, if possible, showing the quantity discharged; and
- (vi) Notify the Participant immediately if the surveyor has reason to believe that the correct quantity was not discharged or if additional services are necessary to protect the cargo.

(6) And the damage or loss occurred with respect to a container shipment, if the agreement provides that the Participant is responsible for survey and outturn reports, the Participant shall engage the services of an independent cargo surveyor to list the container numbers and seal numbers shown on the containers, indicate whether the seals were intact at the time the containers were opened, and note whether the containers were in any way damaged.

(d) If the Participant has title to the donated commodities, and the value of any damaged donated commodities is in excess of \$1,000, the Participant shall immediately arrange for an inspection by a public health official or other competent authority approved by FAS and provide to FAS a certification by such public health official or other competent authority regarding the exact quantity and condition of the damaged commodities. The value of damaged donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities. The Participant shall inform FAS of the results of the inspection and indicate whether the damaged commodities are:

- (1) Fit for the use authorized in the agreement and, if so, whether there has been a diminution in quality; or
- (2) Unfit for the use authorized in the agreement.

- (e) (1) If the Participant has title to the donated commodities, the Participant shall arrange for the recovery of that portion of the donated commodities designated as suitable for the use authorized in the agreement. The Participant shall dispose of donated commodities that are unfit for such use in the following order of priority:
- (i) Sale for the most appropriate use, i.e., animal feed, fertilizer, industrial use, or another use approved by FAS, at the highest obtainable price;
  - (ii) Donation to a governmental or charitable organization for use as animal feed or for other non-food use; or
  - (iii) If they are unfit for any use, destruction of the commodities in such manner as to prevent their use for any purpose.
- (2) The Participant shall arrange for all U.S. government markings to be obliterated or removed before the donated commodities are transferred by sale or donation.

(f) A Participant may retain any proceeds generated by the disposal of the donated commodities in accordance with paragraph (e)(1) of this section and shall use the proceeds for expenses related to the disposal of the donated commodities and for activities specified in the agreement.

(g) The Participant shall notify FAS immediately and provide detailed information about the actions taken in accordance with paragraph (e)(1) of this section, including the quantities, values, and dispositions of commodities determined to be unfit.

### **Claims for Damage to or Loss of Commodities (Sec. 1499.10 and 1599.10)**

(a) FAS will be responsible for claims arising out of damage to or loss of a quantity of the donated commodities prior to the transfer of title to the commodities to the Participant.

(b) If the Participant has title to the donated commodities, and the value of the damaged or lost donated commodities is estimated to be \$20,000 or greater, the Participant will be responsible for:

(1) Initiating a claim arising out of such damage or loss, including actions relating to collections pursuant to commercial insurance contracts; and

(2) Notifying FAS immediately and providing detailed information about the circumstances surrounding such damage or loss, the quantity of damaged or lost donated commodities, and the value of the damage or loss.

(c) If the Participant has title to the donated commodities, and the value of the damaged or lost donated commodities is estimated to be less than \$20,000, the Participant will be responsible for providing detailed information about the damage or loss in the next report

required to be filed under Sec. 1499.13(c)(1) or (2) and shall not be required to initiate a claim collection action.

(d) (1) The value of a claim for lost donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities.

(2) The value of a claim for damaged donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities, less any funds generated if such commodities are sold in accordance with Sec. 1499.9(e)(1).

(e) If FAS determines that a Participant is not exercising due diligence in the pursuit of a claim, FAS may require the Participant to assign its rights to pursue the claim to FAS.

(f) (1) The Participant may retain any funds obtained as a result of a claims collection action initiated by it in accordance with this section, or recovered pursuant to any insurance policy or other similar form of indemnification, but such funds shall only be expended for purposes approved in advance by FAS.

(2) FAS will retain any funds obtained as a result of a claims collection action initiated by it under this section; provided, however, that if the Participant paid for the freight or a portion thereof, FAS will use a portion of such funds to reimburse the Participant for such expense on a prorated basis.

### **Preventing Spoilage and Theft**

A Participant should do anything necessary to prevent spoilage and theft of the commodities. This includes preventing mold, mildew, and infestation. If fumigation is necessary, it should be done by a qualified technician with fumigation experience.

Losses should be reported immediately as stipulated by the McGovern-Dole regulations and in the agreement language:

*The Participant shall notify the FAD Director in writing within 15 days of the date that the Participant becomes aware of any damage to or loss of the donated commodities in excess of \$1,000 that occurs following the transfer of title of the donated commodities to the Participant. The Participant shall report all damage and losses in the semiannual implementation reports.*

**Attachment A: Sample Letter from a Freight Forwarder**



**United States  
Department of  
Agriculture**

Farm and Foreign  
Agricultural  
Services

Foreign  
Agricultural  
Service

1400 Independence  
Ave, SW  
Stop 1034  
Washington, DC  
20250-1034

**TO:** FY 2010 Food for Progress and McGovern-Dole International Food for Education and Child Nutrition Program Participants

**FROM:** Ronald Croushorn, Director  
Food Assistance Division  
Office of Capacity Building and Development  
Foreign Agricultural Service

**SUBJECT:** Freight Forwarder Certification Process

The regulations for the Food for Progress and McGovern-Dole International Food for Education and Child Nutrition programs (7 CFR section 1499.7(c) and 7 CFR section 1599.7(c)), require that any freight forwarders used to handle freight arrangements under the programs be licensed by the Federal Maritime Commission and not have a conflict of interest in carrying out the freight forwarder duties. Participants who want to use the services of a freight forwarder under the programs need to follow the instructions below.

The participant is required to submit to the Foreign Agricultural Service a certification indicating that the freight forwarder: 1) is not engaged, and will not engage, in supplying commodities or furnishing ocean transportation or ocean transportation-related services for commodities provided under any Food for Progress or McGovern-Dole International Food for Education and Child Nutrition Program agreement to which the participant is a party; and 2) is not affiliated with the participant and has not made arrangements to give or receive any payment, kickback, or illegal benefit in connection with its selection as an agent of the participant. Please use the attached format for this certification.

Please submit the freight forwarder certification to the following address:

United States Department of Agriculture  
Foreign Agricultural Service  
Office of Capacity Building and Development  
Food Assistance Division  
Transportation and Logistics Branch  
1400 Independence Avenue, SW, Stop 1034  
Washington, D.C. 20250-1034  
Attn: Amy Harding

In addition, please submit a fax copy to 202-690-3077.

Should you have any questions regarding this process, please contact Ms. Amy Harding at 202-720-3538 or via email at [amy.harding@fas.usda.gov](mailto:amy.harding@fas.usda.gov).

Attachments

Food for Progress  
Freight Forwarder Certification

[Insert Participant Name] has selected [insert Freight Forwarder Name] to act as freight forwarder for all [insert Participant Name] FY 2010 Food for Progress Program agreements.

*OR*

[Insert Participant Name] has selected [insert Freight Forwarder Name] to act as freight forwarder for all [insert Participant Name] FY 2010 Food for Progress Program agreements in [insert Country Name].

[Insert Participant Name] certifies that [insert Freight Forwarder Name] is licensed by the Federal Maritime Commission and:

1) is not engaged, and will not engage, in supplying commodities or furnishing ocean transportation or ocean transportation-related services for commodities provided under any Food for Progress Program agreement to which the [insert Participant Name] is a party; and

2) is not affiliated with [insert Participant Name] and has not made arrangements to give or receive any payment, kickback, or illegal benefit in connection with its selection as an agent of [insert Participant Name].

Name and Title of Participant Representative  
Signature of Participant Representative

McGovern-Dole International Food for Education and Child Nutrition Program  
Freight Forwarder Certification

[Insert Participant Name] has selected [insert Freight Forwarder Name] to act as freight forwarder for all [insert Participant Name] FY 2010 McGovern-Dole International Food for Education and Child Nutrition Program (McGovern-Dole) agreements.

*OR*

[Insert Participant Name] has selected [insert Freight Forwarder Name] to act as freight forwarder for all [insert Participant Name] FY 2010 McGovern-Dole International Food for Education and Child Nutrition Program (McGovern-Dole) agreements in [insert Country Name].

[Insert Participant Name] certifies that [insert Freight Forwarder Name] is licensed by the Federal Maritime Commission and:

1) is not engaged, and will not engage, in supplying commodities or furnishing ocean transportation or ocean transportation-related services for commodities provided under any McGovern-Dole Program agreement to which the [insert Participant Name] is a party; and

2) is not affiliated with [insert Participant Name] and has not made arrangements to give agent of [insert Participant Name].

Name and Title of Participant Representative  
Signature of Participant Representative

**Attachment B: List of Licensed Freight Forwarders**

## **Food Assistance Licensed Freight Forwarders**

BKA Logistics LLC  
1629 K Street, NW, Suite 500  
Washington, DC 20006  
(202) 331-7395  
Mr. Mark Millard

Trans Global Services, LLC  
1550 Wilson Boulevard, #701  
Arlington, VA 22209  
(703) 312-0725  
Mr. Ravi Singh

Fettig & Donalty, Inc  
1225 Eye St NW Suite 1200  
Washington DC 20005  
Telephone (202) 628-5700  
Mr. John Comeau

International Services Corporation  
1629 K St NW  
Washington DC 20006  
Telephone (202) 785-3400  
Mr. Stephen Druhot

AMEX International, Inc.  
1615 L Street, NW, Suite 340  
Washington, DC 20036  
Telephone (202) 429-0222  
Mr. Ruben Baylon

Muller Shipping Corporation  
One Industrial Plaza, Building E  
Valley Stream, New York 11581  
Telephone (516) 256-7700  
Mr. Paul Blizzard

Geodis Wilson USA, Inc.  
75 Northfield Avenue  
Edison, NJ 08837  
Telephone (732) 623-6600  
Mr. John Torzewski

Partenaire  
2101 Wilson Boulevard  
Arlington, VA 22201-3062  
Telephone (703) 533-2225  
Mr. Thierry Reiter

Panalpina, Inc.  
22750 Glenn Drive  
Sterling, VA 20164  
Telephone (703) 674-2351  
Ms. Sherry Sons

## **5. Amendments and Budget Realignments**

- 5.1 Do I Need an Amendment or Budget Realignment?
- 5.2 Budget Realignment Instructions
- 5.3 Amendment Instructions
- 5.4 No-Cost Extensions

## **5.1 Do I Need an Amendment or Budget Realignment?**

FFPr and McGovern-Dole agreements set forth the rights and obligations of both FAS/CCC and the Participant. As such, an agreement must be amended when the Participant wants to do something that is different from what is stated in the agreement, usually as a result of some change in circumstance after the agreement has been signed.

### **When is a Budget Realignment Necessary?**

Situations where a Participant may need a budget realignment include, but are not limited to:

- Prior to making any adjustments to inflexible budget line items
- Prior to making any adjustments to flexible budget line items that exceed the line item flexibility stated in the agreement language. (Note: Every agreement is different. Read your agreement carefully to determine what flexibility you have.)
- Prior to exceeding the total expenditures for administrative costs and/or ITSH costs approved in the agreement budget.

### **When is an Amendment Necessary?**

- An amendment is required when any language in the signed agreement need to be changed to reflect a change in the program that would not comply with the existing agreement language. An amendment could include changes to geographic location, activities, or target beneficiaries.
- An amendment can (and often does) include a budget realignment.

### **Factors that Affect Amendment Requests**

- Was the amendment submitted in the proper format?
- Are any administrative cost increases within reason?
- Have there been any agreement violations?
- Will the proposed amendment benefit the program?
- Will the amendment cause any financial harm to FAS/CCC?
- Is the Participant up-to-date on required reporting?

### **An Important Disclaimer**

The agreement must be amended before the Participant takes any action that is different from what is specified in the agreement. If the Participant proceeds before an amendment is signed, it is a violation of the agreement. The regulations provide that, if a Participant uses the

donated commodities, sales proceeds, or CCC cash for a purpose not permitted by the agreement, FAS/CCC will require the Participant to compensate it for the value of the commodity misused and associated freight charges and/or for the misused cash funds.

## **5.2 Budget Realignment Instructions**

### **How to Request a Budget Realignment**

Currently, Participants must submit an official amendment or budget realignment request to the FAD Director. However, in the future, look for guidance to submit amendment requests and budget realignments in FAIS. Before submitting an official amendment or budget re-alignment request, FAD recommends the Participant contact the FAD analyst as soon as an amendment may be necessary.

A request for budget realignment should include an updated budget (see instructions below) and written letter addressed to the FAD Director that summarizes and justifies the proposed budgetary changes. Participants are encouraged to discuss the proposed budget realignment with the appropriate regional analyst before submitting a letter. (See Section 1 of this training manual for contact information and regional coverage.)

The budget realignment request should be emailed to the appropriate FAD analyst. Although email is preferred, you may mail a hard copy of your request to:

U.S. Postal Service Mail:

Ron Croushorn, Director  
Food Assistance Division  
OCBD/FAS/USDA  
1400 Independence Avenue, SW  
STOP 1034  
Washington, DC 20250

Courier Service (i.e., FedEx or UPS):

Ron Croushorn, Director  
Food Assistance Division  
OCBD/FAS/USDA  
1400 Independence Avenue, SW  
Room 4159  
Washington, DC 20250

### **The Budget Realignment Process**

After FAD receives a budget realignment request, the Participant works with a FAD analyst to negotiate the specifics of the revised budget. Once the budget realignment has been approved, FAD will send the Participant a copy of the revised budget along with a letter signed by the General Sales Manager of CCC and/or the Associate Administrator of FAS.

### **Preparing the Budget Request (For Pre-FY 2012 Agreements)**

Please note that parts of the budget spreadsheet are intentionally protected. Do NOT attempt to add, delete, or modify the protected cells. Please contact the FAD analyst if the budget format does not fit your needs. The cells that require the entry of a dollar amount need to be actual dollar values as opposed to formulas. If you need to calculate the dollar amounts with

formulas, please do so and then copy and “paste special” the values back in as “values” so that formulas do not appear in the final spreadsheet. Maintaining the proper format is crucial to FAD’s objective of uploading this data into its database. Complete only those line items that apply to your program; leave all others blank.

For your convenience, a summary table has been added to the second worksheet in the workbook. This table allows you to view subtotals and totals that cannot be seen on the actual spreadsheet. If you need to view other subtotals or make other calculations for your own purposes, feel free to save the file under another file name, manipulate the data as you wish, and then enter the relevant data back into the “protected” spreadsheet (following the instructions below) for submission to FAD. If a manipulated spreadsheet is submitted, it will be returned.

When submitting the budget realignment, please use the appropriate budget template, available on the FAS website. Your amended budget submission should reflect the final revised budget, not only the changes to your original budget. Complete all line items that are to be included in the final budget, including both those that have changed and those that have not. If you work from your original budget spreadsheet, please copy and paste only values (not formulas) into the revised budget template.

Working from left to right, fill in the columns titled "QTY," "#UNITS," and "\$/UNIT." The column "TOTAL" will be calculated automatically. Please enter only numbers, with up to two decimal places in these columns. Do not enter formulas. If you are working from your original budget, please only copy and paste the values into the QTY, #UNITS, and \$/UNIT columns. All line items that are not being amended should appear exactly as they are in your original budget.

EXAMPLE: Your commodities were unloaded, transported, and distributed much faster than expected. For this reason, you only need the Logistics Manager for 9 months instead of the anticipated 12 months. You would like to use this extra money to cover unforeseen bank fees. In the Logistics Manager line item, enter QTY = 1, #UNITS = 9, \$/UNIT = 3,000. This represents the new cost for the Logistics Manager. The TOTAL = 27,000, will be calculated automatically. Your bank fees were \$750 per month more than the \$1,000 originally budgeted. In the Bank Fees line item, enter QTY = 1, #UNITS = 12, \$/UNIT = 1,750. This represents the addition of \$750 per month in bank fees. The TOTAL = 21,000 will be calculated automatically.

Next, complete column "FROM MONTZ" if any portion of any of the line items will be paid from monetization proceeds. If all funds will be from FAS/CCC dollars, ignore this column. Column

## USDA Food Assistance Training Manual

"FROM USDA" will be calculated automatically. If no portion of the funds will come from monetization, the "FROM USDA" column should equal the "TOTAL" column.

Type in your NICRA rate as a percentage in the "NICRA" column. For example, if your NICRA is 10%, type in 10. It will appear as 10%.

Finally, please add narrative information in the far right column entitled "COMMENTS," for any row that has been amended. The column will hold up to 50 characters.

## **5.3 Amendment Instructions**

### **How to Request an Amendment**

Currently, participants must submit an official amendment or budget realignment request to the FAD Director. However, in the future, look for guidance to submit amendment requests and budget realignments in FAIS. Before submitting an official amendment or budget re-alignment request, FAD recommends the Participant contact the FAD analyst as soon as an amendment may be necessary.

To request an amendment, Participants must send a written letter to the FAD Director , specifying exactly what the Participant wants to change in the agreement and why. The Participant should carefully read the entire agreement and identify all sections that would have to be changed if the request is approved. If the changes in Attachment A would be extensive, the Participant should include a suggested revision of Attachment A that incorporates these changes. Participants are encouraged to discuss the proposed amendment with the appropriate analyst before submitting it. (Please see Section 1 of this handbook for contact information and regional coverage.) All amendment requests must be signed by a person who has the legal authority to bind the Participant.

The amendment request should be emailed to the appropriate analyst. Although email is preferred, you may mail a hard copy of your request to:

**U.S. Postal Service Mail:**

Ron Croushorn, Director  
Food Assistance Division  
OCBD/FAS/USDA  
1400 Independence Avenue, SW  
STOP 1034  
Washington, DC 20250

**Courier Service (i.e., FedEx or UPS):**

Ron Croushorn, Director  
Food Assistance Division  
OCBD/FAS/USDA  
1400 Independence Avenue, SW  
Room 4159  
Washington, DC 20250

### **The Amendment Process**

Once FAD receives an amendment request, the Participant works with a FAD analyst to negotiate the terms of the amendment, much like the negotiation of the original agreement. Once the amendment has been cleared for signature at FAS, it is sent to the Participant for their signature. The Participant must then return the signed amendment to FAD, where it will be signed by the General Sales Manager of the CCC and/or the Associate Administrator of FAS.

Please note: The amendment must be signed by a person who is authorized to do so. In the case of the Participant, it must be a person who has the legal authority to bind the Participant. This will generally be the same person who signed the original agreement or the person who now holds the same position. If it is a person in a different position, that person must have the legal authority to bind the Participant.

## **5.4 No-Cost Extensions**

When a program needs to continue beyond the final activity date stated in the agreement, but without additional cost, the Participant should request a no-cost extension. To request a no-cost extension, the Participant must write a letter to the FAD Director requesting the extension. Once the request is approved, the Participant will receive a letter signed by the FAD Director acknowledging that the no-cost extension has been approved.

The no-cost extension request should be emailed to the appropriate analyst. (Please see Section 1 of this handbook for contact information and regional coverage.) Although email is preferred, you may mail a hard copy of your request to:

**U.S. Postal Service Mail:**

Ron Croushorn, Director  
Food Assistance Division  
OCBD/FAS/USDA  
1400 Independence Avenue, SW  
STOP 1034  
Washington, DC 20250

**Courier Service (i.e., FedEx or UPS):**

Ron Croushorn, Director  
Food Assistance Division  
OCBD/FAS/USDA  
1400 Independence Avenue, SW  
Room 4159  
Washington, DC 20250

## **6. Reporting**

- 6.1 Overview of Reporting Requirements
- 6.2 Instructions for Preparing and Submitting Financial Reports
- 6.3 Guidelines for Submitting Logistics and Monetization Reports
- 6.4 OMB Circular A-133 Audits
- 6.5 Submitting Success Stories

## **6.1 Overview of Reporting Requirements**

Reporting forms, audit information and evaluation policy are on the [FAS website](#). Participants are required to monitor progress against objectives and indicators in their agreements. This includes ensuring funds are being used properly and in accordance with the agreement budget. The reports help FAD be aware of any potential problems, issues, and challenges in the program. Reports provide a picture on how an agreement is progressing and reports are used to evaluate an agreement at time of closeout. It is important for all Participants to submit timely and accurate reports by completing all applicable sections and verifying all numbers (i.e., tonnages and dollar amounts).

If you have any questions, please seek assistance from a FAD Analyst. After submitting reports, it is imperative that the Participant respond to inquiries from FAD analysts in a timely manner.

For FY 2012 agreements, reporting requirements will be different with use of results frameworks and performance monitoring plans. Currently, the reporting requirements for which a Participant is responsible are detailed in the agreement with USDA, by FAS Personnel, and within the Rules and Regulations: 7 CFR Part 1499 (FFPr), 7 CFR Part 1599 (McGovern-Dole), and 7 CFR Part 3019 (USDA-wide). Based on these regulations and the agreements, the reports required for each program are listed in the table below.

<b>McGovern-Dole and FFPr Required Reports</b>	<b>Frequency</b>
Logistics and Monetization	Semi-annually (as specified in agreement)
Project Status ( <i>McGovern-Dole only</i> )	Semi-annually (as specified in agreement)
USDA/CCC/FAS Financial	Quarterly – based on calendar year
A-133 Audit	Annually
Mid-term and Final Evaluations (FY 10 and after awards)	<a href="#">Defined in Evaluation Policy</a>
Reporting on Performance Monitoring Plan (FY 12 and after awards)	Semi-annually (as specified in agreement)

The project status report is unique to the McGovern-Dole program, but the rest of the reports are required by both programs. Most of the reports are due semi-annually; however the financial reports are required quarterly, and can be sent with the semi-annual submissions of the other required reports. The dates of submissions for these reports are May 15 and November 15, or as stipulated in the agreement. Starting with FY 2010 agreements; FAS requires mid-term and final evaluations. The requirements for these are in the [FAD's Monitoring and Evaluation Policy](#) that is available on the FAS website.

## **6.2 Instructions for Preparing and Submitting Financial Reports**

**Reporting forms and audit information may be found at:**

<http://www.fas.usda.gov/excredits/FoodAid/formstemp.asp>

### **What Financial Reports Must Include**

In accordance with 7 C.F.R. 1499.13 and 1599.13, a financial report must be filed detailing use of CCC or FAS funds. Financial reports must reflect all of the following items for the most recent calendar quarter of the relevant agreement:

- 1) Cash-on-hand at the beginning of the quarter
- 2) CCC/FAS advances received during the quarter
- 3) Non-CCC/FAS funds received during the quarter
- 4) Expenditures by subcategory of expenses as defined below
- 5) Cash-on-hand at the end of the quarter

Within the administrative category, the expense subcategories include: salaries, benefits, general expenses for in-country offices, office expense for U.S. headquarters related to monetization programs, travel, equipment maintenance, equipment leases, equipment purchases with supporting information for each equipment purchase, and professional services. Within the ITSH category, the subcategories include: handling, warehouse, and internal transportation.

### **Helpful Hints for Completing a Financial Report**

- Keep in mind that this report covers both CCC/FAS funds and administrative expenditures from monetized proceeds.
- Remember to report any interest earned on CCC/FAS funds during the reporting period.
- The line items in the financial report correspond to the subtotals in the standardized electronic budget format. Simply fill in the amount spent under each line item subtotal during the reporting period.
- FAD prefers that Participants use the financial reporting format available on the FAS website.

### **Final Financial Reports**

Once all of the budgeted funds have been expended, a final report may be submitted. If a reimbursement is requested, the final report should show a negative balance, reflecting funds spent by the Participant on the last 15 percent of budgeted items not covered by a cash advance. CCC/FAS may reimburse some or all of the negative balance, depending on interest earned and the balance remaining under the approved budget. CCC/FAS will not reimburse a Participant for expenditures in excess of the approved amount.

### **Deadlines for Financial Reports**

Participants are required to produce quarterly financial reports and submit those reports semi-annually. Participants must observe the following deadlines:

- On **May 15<sup>th</sup>**, Participants must submit two financial reports covering the quarters from October 1<sup>st</sup> to December 31<sup>st</sup> and January 1<sup>st</sup> to March 31<sup>st</sup>.
- On **November 15<sup>th</sup>**, Participants must submit two financial reports covering the quarters from April 1<sup>st</sup> to June 30<sup>th</sup> and July 1<sup>st</sup> to September 30<sup>th</sup>.

## How to Submit Quarterly Financial Reports

FAD prefers that Participants use the suggested format available on the FAS [website](#) and submit an electronic copy of the form by email, to: [PEBReports@fas.usda.gov](mailto:PEBReports@fas.usda.gov). If the Participant is submitting the report by email, no signature is required.

Although email is preferred, you may mail a hard copy of the report to:

### U.S. Postal Service Mail:

Ron Croushorn, Director  
Food Assistance Division  
OCBD/FAS/USDA  
1400 Independence Avenue, SW  
STOP 1034  
Washington, DC 20250

### Courier Service (i.e., UPS or FedEx):

Ron Croushorn, Director  
Food Assistance Division  
OCBD/FAS/USDA  
1400 Independence Avenue, SW  
Room 4159  
Washington, DC 20250

## Retention of Records

To meet requirements of 7 CFR Part 1499.13 and 1599.13, the Participant must maintain records and documents for a period of three years from the date of the program's completion, in a manner which will accurately reflect all transactions pertaining to the receipt, transportation, storage, and distribution of the commodities, and to the receipt and disbursement of currency generated from any commodity sales. The U.S. government will be allowed access to inspect projects, records, procedures, and methods pertaining to the generation of sales proceeds and disbursements to ensure accountability. Furthermore, the Participant will allow and facilitate access to all sites of commodity handling and storage and to all commodity records related to this agreement by representatives of the U.S. government, including contract monitoring and financial analysis staff.

## **6.3 Guidelines for Preparing Logistics and Monetization Reports**

These guidelines are intended to assist the preparer of Logistics and Monetization (LogMon) Reports, as required by 7 C.F.R. Sec. 1499.13 and 1599.13. The following numbers correspond to the items on the report.

### **Guidelines for Completing the Logistics and Monetization Report**

1. Enter the full legal name of your organization.
2. The agreement number can be found on the upper right corner of the signed agreement (i.e., "FCC-180-2009/045-00").
3. Enter full name of country in which program is implemented. If program involves more than one country, specify all countries, identifying the region first (i.e., Central America: El Salvador, Honduras, Nicaragua).
4. Check yes or no. If this is the final report, please ensure that the "Final Information" section is completely filled out.
5. Enter the number of the report submitted (i.e., if this is the third report, enter '3').
6. Enter date report completed and sent to FAS.
7. Enter the beginning and ending dates of period covered in your report.
8. Check the appropriate program box – in this case "Food for Progress." Also check the corresponding program type. (If program is both direct feed and monetization, check both.)

<b><u>COMMODITY LOGISTICS INFORMATION</u></b>
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(Complete this section for all programs.)

#### **Table A. GENERAL COMMODITY INFORMATION (required for all programs)**

- List commodities separately and report information in net metric tons.
- If multiple months (dates received), list all months applicable (i.e., May-July 2000).

EXAMPLE:

Commodity	Agreement Allocation	Amount Received	Dates Received (Month/Year)	Balance	Expected Delivery Date
Whole Milk	2,500.00	2,500.00	July 1999	0.00	not applicable
Corn	6,000.00	4,000.00	April 2000	2,000.00	April 2001
Soybean Meal	5,000.00	2,451.00	May 2000	2,549.00	May 2001
Wheat Flour	8,000.00	8,000.00	May-July 2000	0.00	not applicable
Buckwheat	1,000.00	1,000.00	May 2000	0.00	not applicable
Total	22,500.00	17,951.00		4,549.00	

**Table B. COMMODITY RECEIPT AND LOSSES (Required for all programs)**

- List commodities separately and report information in net metric tons.
- In the "L/D" columns, report the losses/damages for each stage of commodity movement.
- Provide sub-totals for each reporting period (by report number- see example below).
- Provide aggregate totals for the entire program agreement (this reporting period plus all previous periods). You may simply add rows (previous reports) to illustrate aggregate and sub-totals.

EXAMPLE:

Report #	Commodity	Bill of Lading Amount	Amount Rec'd at Port (Surveyed)	-----Losses/Damages (L/D)-----				Total Losses/Damages	Balance
				Ocean Transport L/D	Inland Transport L/D	Warehouse L/D	Distribution L/D		
1	Beans	500	499.00	1.00	1.00	0.00	0.00	2.00	498.00
1	Corn	1000	995.00	5.00	5.00	5.00	5.00	20.00	980.00
1	Subtotal	1500	1,494.00	6.00	6.00	5.00	5.00	22.00	1,478.00

2	Corn	4000	3,995.00	5.00	10.00	5.00	0.00	20.00	3,975.00
2	Soybean Meal	2000	1,990.00	10.00	n/a	1.00	0.00	11.00	1,989.00
2	Wheat Flour	8000	7,950.00	50.00	25.00	25.00	0.00	100.00	7,900.00
2	Buck-wheat	1000	n/a	n/a	n/a	n/a	0.00	0.00	1,000.00
2	Subtotal	15000	15,000.00	65.00	35.00	31.00	0.00	141.00	27,728.00
	TOTAL	16500	16,494.00	71.00	41.00	36.00	5.00	161.00	29,206.00

**Note:** If this was a through Bill of Lading shipment where the survey was done at the inland destination point, you may only be aware of the amount received at the warehouse and the total losses/damages. (In this example, Buckwheat was shipped on a through bill of lading.) If separate information is not available for the ocean and inland portions of the voyage, type “not available” in those blanks. Conversely, if the delivery did not involve an inland movement, type “not applicable” for inland losses/damages. Note this in question #14.

**9.** Specify when, where (e.g., region, ship, or warehouse name, etc.), and why commodity losses occurred.

**10.** List any claims for a reduction or recovery of freight charges on lost or defective goods (including both ocean and inland portion of freight, where applicable). Give both local currency (LC) and U.S. dollar (USD) equivalents. When reporting the status of any claims, include when the claim was filed, by whom, and the status of the claim (i.e., paid, not substantiated, awaiting response, etc.). See CFR 1499.10 for procedures on filing claims.

**11.** Describe the capacity of the port to handle the commodities, including the equipment, docking structures, and personnel (stevedores, customs officials, etc.).

**12.** Specify procedures used to keep costs of transportation and warehousing to reasonable levels.

**13.** Explain procedures used to maintain the security of the commodities during transportation and storage.

**14.** Give your assessment of the inland transportation system, including vehicles, drivers, trains, boats (in-country), etc., with respect to issues of service, quality, and timeliness.

### **DIRECT DISTRIBUTION INFORMATION**

(Complete this section only if program involves direct distribution – e.g., not the sale of commodities. Some programs may involve both. If so, complete this section.)

**Table C. DIRECT DISTRIBUTION (if applicable)**

- List commodities separately and report information in net metric tons.
- This table is for summary purposes only. You may attach additional sheets that contain information on regional breakdowns and/or Food for Work programs, if applicable.
- If multiple months (date), list all months applicable (i.e., May-July 2000).
- If multiple types of institutions were reached within a region and commodity, list all types.
- Food for Work programs may be explained in detail in questions #15 and 16 below.

EXAMPLE:

Report #	Commodity	Amount Distributed (NMT)	Distribution Region	Type of Institution (Include Food for Work)	# of Recipient Institutions	# of Beneficiaries
1	Corn	2,000.00	Amazon	Orphanages, hospitals	45	9,500
1	Corn	2,000.00	Red River Valley	Food For Work (elaborate in #15)	5	250
Sub-total for Report 1	Corn	4,000.00	--	--	50	9,750
2	Buckwheat	1,000.00	Big Mountain	Sunday schools	5	250
Sub-total for Report 2	Buckwheat	1,000.00	--	--	5	250
Total		5,000.00	--	--	55	10,000

**15.** Explain how the lives of the beneficiaries have changed due to the program, as well as the effects of the program on the community. Elaborate on relationships with local non-governmental organizations.

**16.** Quantify the program's progress, in measurable terms, with respect to goals outlined in the agreement (e.g., 220 children fed lunch for 6 months, etc.).

**17.** Identify the procedure for monitoring the transportation and distribution of the commodities, and how these systems have been able to provide for a reasonable accounting of the donated goods.

**18.** Explain how the commodity was received by the beneficiary population and whether or not it was new to the region, or a modified version of a local staple, etc. Make recommendations for improving future programs by specifying commodities or package types that would be appreciated by the beneficiaries.

**19.** These donation programs are not designed to continue indefinitely. Elaborate on how this program has helped the beneficiaries achieve some form of development to become more self-sufficient in the future.

## **MONETIZATION INFORMATION**

(Complete this section only if the program involves the sale of a commodity.)

**20.** Check yes or no. If no sales were made during this period, list previous totals from earlier sales as aggregate totals, if applicable, and state why no sales were made (i.e., commodities did not arrive, sold already, etc.).

### **Table D. SALES (for monetization programs)**

- List commodities separately and report information in net metric tons.
- Provide sub-totals by commodity.
- Provide aggregate totals, which include any previous shipments covered under this agreement.
- Indicate if currency values reported in (thousands, millions, etc.), and specify LC, i.e., pesos.
- If exchange rate fluctuations occur, provide the average exchange rate for the period.

EXAMPLE:

Report #	Commodity	Date(s) of Sale (Month/Yr)	Amount Sold (NMT)	Price per MT (pesos)	Exchange Rate (pesos to USD)	Proceeds Generated (pesos)
1	Whole Milk	Aug 1999	2,500.00	2,000 pesos/MT	25 pesos = \$1	500,000.00
1	Subtotal Report1		2,500.00			500,000.00
2	Soybean Meal	May 2000	1,989.00	4,500 pesos/MT	25 pesos = \$1	8,950,500.00
2	Wheat Flour	May 2000	7,900.00	3,300 pesos/MT	25 pesos = \$1	26,070,000.00
2	Subtotal Report2	--	9,889.00	--		35,020,500.00
	Aggregate Total	--	12,389.00			35,520,500.00

**21.** Indicate whether or not this program involved barter transactions. If so, elaborate on the terms of the deal (i.e., how much of the USDA commodity was exchanged, and what was received in return).

**22.** USDA regulations require that the proceeds generated from these programs are placed into a separate, program specific, interest-bearing account.

**Table E. SPECIAL FUNDS ACCOUNT (for monetization programs)**

Provide all figures in LC, and specify, i.e., pesos.

EXAMPLE:

Report #	Beginning Balance (pesos)	Sales Deposits (pesos)	Interest Earned (pesos)	Other Program Income (pesos)	Total Deposits (pesos)	Total Disbursements (pesos)	Account Balance (pesos)
1	0.00	500,000.00	0.00		500,000.00		500,000.00
2	500,000.00		0.00		35,020,500.00	10,000,000.00	25,520,000.00

**23.** Indicate whether or not any funds were disbursed from the special funds account during this reporting period. Explain why no funds were disbursed if this is the case. Note sources of "other program income," as well as other relevant information, in this block.

**Table F. USE OF FUNDS (for monetization programs)**

- For monetization programs in which a portion of the proceeds are used for administrative expenses, list the total amount used for administrative expenses on one line.
- Highlight uses of funds in which recipient agencies (under contract with your organization) receive more than \$25,000 of monetization proceeds. See 7 CFR 1499.12 for auditing requirements of recipient agencies.
- Additional information may be attached (i.e., organizational reports that detail how and where funds were used).

EXAMPLE:

Report #	Amount (pesos)	Use of Funds
2	420,000.00	Administrative expenses
2	580,000.00	Local NGO for development projects
2	9,000,000.00	Agricultural school building project
Total	10,000,000.00	

**24.** If there were any problems with the sales process (e.g., market was glutted, currency devaluation, buyers reneged, etc.), indicate here.

**25.** This may include issues or disagreements with buyers, bankers, government officials, etc.

**26.** Indicate which bank was used (if more than one, specify the primary bank). Why was this bank chosen? Is this bank capable of larger transactions?

**FINAL INFORMATION**  
 (Complete this section for all programs. Please answer these questions as completely as possible. Some questions may not be answerable until the end of the program.)

**27.** In the process of the selling and distributing the commodities, new channels may develop to handle the shipments. Specify them here, and how they do or do not integrate with existing local marketing/infrastructure channels.

- 28.** Have agriculture/business opportunities expanded as a result of your activities? Are many of the market institutions dominated by the government? Is this trend continuing? Diminishing? Elaborate.
- 29.** Explain how any taxes or tariffs affected the progress/outcome of the proposed program. What can be done to avoid these types of problems in the future?
- 30.** USDA strives to ensure that the donated commodities are used properly, both to achieve maximum satisfaction and to avoid potential health or safety concerns. Describe what actions were taken to reach these goals.
- 31.** Compare the progress of the program with the objectives as outlined in the agreement. Provide numbers where applicable to measure the current situation to the stated goals.
- 32.** Explain how, in the long and short run, the program affects the beneficiaries.
- 33.** Explain any unforeseen benefits or drawbacks since program implementation.
- 34.** USDA regulations require that all participating cooperating sponsors have an audit in accordance with the Office of Management and Budget's (OMB) audit supplement A-133. For more information, visit: [http://www.whitehouse.gov/omb/circulars/a133\\_compliance\\_supplement\\_2010](http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2010).
- 35.** This is your chance to tell us how to make USDA food aid programs work better.

## **Submitting Logistics and Monetization Reports**

Save the completed report as a Microsoft Word or PDF document (if possible). Submit the report as an e-mail attachment to [PEBReports@fas.usda.gov](mailto:PEBReports@fas.usda.gov). E-mail questions and comments about this form to the same e-mail address.

Although email is preferred, you may mail a hard copy of the report to:

U.S. Postal Service Mail:

Ron Croushorn, Director  
Food Assistance Division  
OCBD/FAS/USDA  
1400 Independence Avenue, SW  
STOP 1034  
Washington, DC 20250

Courier Service (i.e., FedEx or UPS):

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1400 Independence Avenue, SW  
Room 4159  
Washington, DC 20250

## **Retention of Records**

To meet requirements of 7 CFR Part 1499.13, the Participant must maintain records and documents for a period of three years from the date of the program's completion, in a manner that will accurately reflect all transactions pertaining to the receipt, transportation, storage, and distribution of the commodities, and to the receipt and disbursement of currency generated from any commodity sales.

The U.S. government will be allowed access to inspect projects, records, procedures, and methods pertaining to the generation of sales proceeds and disbursements to ensure accountability. Furthermore, the Participant will allow and facilitate access to all sites of commodity handling and storage and to all commodity records related to this agreement by representatives of the U.S. government , including contract monitoring and financial analysis staff.

### **Deadlines for Submitting Logistics and Monetization Reports**

Participants are required to submit logistics and financial reports semi-annually. Participants must observe the following deadlines:

- **May 15<sup>th</sup>**: Participants must submit a report covering the period from October 1st to March 31<sup>st</sup>.
- **November 15<sup>th</sup>**: Participants must submit a report covering the period from April 1st to September 30<sup>th</sup>.

## **6.4 OMB Circular A-133 Audits**

Participants are required to perform an audit to ensure compliance with the program agreements and regulations. If a Participant provides more than \$25,000 to a recipient agency, this agency must also perform an audit. All non-federal organizations that expend \$500,000 or more of federal awards in a year are required to obtain an annual audit. Organizations expending less than \$500,000 in a year are exempt from the federal audit requirements, but must make records available for review or audit.

Participants can request funds to cover the cost of the audit in their proposal submission to FAD.

### **How To Facilitate an A-133 Audit?**

- Identify federal awards received and expended.
- Prepare financial statements and a schedule of expenditures of federal awards.
- Obtain an auditor.
- Ensure completion of audit.
- Submit the audit reporting package and Data Collection Form (SF-SAC) to the Federal Clearinghouse within 9 months from the end of your fiscal year.

In addition to submitting a copy of your OMB Circular A-133 Audits to the Federal Clearinghouse, both OMB Circular A-133 and agreement audits must also be:

- attached to the agreement within FAIS, and
- emailed to [PPDED@fas.usda.gov](mailto:PPDED@fas.usda.gov).

### **Audit Findings**

Audits are reviewed for findings. If a Participant has findings, the Monitoring and Evaluation Staff (M&ES) will contact the Participant regarding their corrective action plan. If the next year audit continues to have findings or shows no improvement, M&ES may request a meeting with the Participant and its accounting staff.

### **Helpful Websites**

[A-133 Compliance Supplemental](#)

[General Guidance for Completing A-133 Audits](#)

[Foreign Food Aid Donation Cluster](#)

## **6.5 Submitting Success Stories**

Food assistance programs improve the lives of people around the world, yet many do not get the chance to personally see the tremendous impact the programs make on individuals, families, and communities who benefit from them. Success stories are an effort to provide a window into which people can learn about food assistance programs and meet the people whose lives were changed by them. In addition, it gives the beneficiaries the opportunity to say “thank you” for America’s help. Success stories benefit USDA, private-voluntary organizations, NGOs, recipient countries, and beneficiaries as they generate funding, support, and good will for U.S. food assistance.

Success stories are used in “The McGovern-Dole Congressional Report,” “The International Food Assistance Report,” “The U.S. Overseas Loans and Grants Report,” “U.S. Annual Aid Review,” and other reports to Congress and for general public awareness.

Success stories may include the following information:

- Impact of food aid on individuals, communities, governments, etc.
- Number of meals served and nutritional benefits realized.
- Beneficiaries of buildings/schools constructed.
- Increase in productivity due to irrigation systems built.
- Income generated.
- Number of jobs created.

Success stories can:

- Provide a detailed overview of a program, illustrated by a powerful photograph.
- Focus on one person who benefited from a program or worked to create change in the community, including a background paragraph and a quote from and photo of the subject. If you would like to submit a photo and caption with a success story, please contact a FAD analyst for USDA’s photo permission guidance.

To submit a story, review the guidelines provided at:  
<http://www.fas.usda.gov/FoodAidStories/Story.aspx>

## 7. Monitoring and Evaluation Policy



# Monitoring and Evaluation Policy

Food Assistance Division, Office of Capacity Building and Development

6/9/2011

## Background

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USDA is committed to ensuring a strong culture of evaluation and learning from experience. The policy described in this document sets forth an ambitious agenda for monitoring and evaluation in the Foreign Agriculture Service (FAS) and demonstrates the Agency's will to achieve results that make positive changes for people living in poverty. The Agency places a high level of importance on managing for results, and to this end, the Office of Capacity Building and Development (OCBD) adheres to a Results Oriented Management (ROM) approach that supports the Agency's capacity to manage public resources thoughtfully, to ensure accountability and transparency, and to help ensure that programming is driven by evidence and not by anecdote.

The purpose of this monitoring and evaluation policy is to institutionalize results oriented management into the programs administered by OCBD, in particular the McGovern-Dole International Food for Education and Child Nutrition and the Food for Progress Programs managed by the Food Assistance Division (FAD). This policy will guide the integration and implementation of monitoring and evaluation systems and processes into FAD programs and will serve to inform Agency staff and stakeholders of its expectations regarding program monitoring and evaluation. The policy outlines the purpose of monitoring and evaluation, the range of methods used to monitor and evaluate programs, the roles and responsibilities of Agency staff, program participants, and other key stakeholders, and the ways in which monitoring and evaluation information will be used and disseminated to inform decisions regarding program management and implementation.

This policy also seeks to address the findings from external reviews that have been focused on USDA food assistance programs. In 2007, and again in 2011, GAO conducted an assessment of the effectiveness and efficiency of U.S. Government food assistance programs.<sup>1</sup> These reports noted the need for improvements in monitoring and evaluating USDA's food assistance programs. In response to these reports and previous reports conducted by GAO and the USDA Office of the Inspector General (OIG), FAS established a Monitoring and Evaluation Unit within OCBD in FY 2007. The Monitoring and Evaluation Unit (M&ES) is responsible for managing and providing technical assistance in performance management and evaluation of OCBD programs, including food assistance programs.

OCBD's monitoring and evaluation policy as it is described in this document, is based on various laws and policies that guide performance management and the review of food assistance programs. The *Government Performance and Results Act (GPRA)* established in 1993 and the subsequent *GPRA Modernization Act* established in January 2011, require agencies to develop

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<sup>1</sup> For more information see: <http://www.gao.gov/new.items/d07560.pdf> and <http://www.gao.gov/new.items/d11491.pdf>.

and regularly report on Agency goals and objectives, including outcome oriented goals, performance indicators, targets and their links to U.S. Government priorities.<sup>2</sup>

Furthermore, USDA adheres to the Paris Declaration Principles on Aid Effectiveness<sup>3</sup>, as well as the Accra Agenda for Action, which reconfirmed and amplified the principles of ownership, mutual accountability and managing for results. The Agency's evaluation policy also draws significantly from guidance established by the American Evaluation Association<sup>4</sup> on a more effective government and the Organization for Economic Cooperation and Development's (OECD) Development Assistance Committee (DAC). The OECD/DAC Evaluation Network aims to increase the effectiveness of international development programs by supporting robust, informed and independent evaluation through improving evaluation policy, sharing good practice and supporting the development of operational and policy lessons.<sup>5</sup>

The monitoring and evaluation policy is also guided by food assistance program legislation. Food for Progress and McGovern-Dole (*see* 7 CFR Part 1499.13 and 7 CFR Part 1599.13) requires, unless otherwise specified in an agreement, independent, third party midterm and final evaluations.<sup>6</sup> The legislation governing the monitoring and evaluation requirements for these programs is further established and defined in this policy.

Beginning in 2009, the Food Assistance Division (FAD) of USDA/FAS began to undertake a strategic course of action to develop and institute a comprehensive ROM System to support the achievement of Division and Agency-wide program goals. Results Oriented Management focuses on higher-level program results such as the outcomes and the impact of programs, while also monitoring program activities, inputs and outputs. It promotes management decision-making at a more strategic level than can be achieved through tracking activities, collecting anecdotes and documenting individual success stories. ROM can help to improve internal and external program coordination and ensure that funds are allocated to programs that achieve results and have the greatest impact. To this extent, FAD's ROM System is integrated into key management structures and processes within the Division including, strategic planning, performance and accountability reporting, policy formulation, project management, financial and budget management and human resource management.

This policy is effective from the date established and will be applicable to all food assistance programs. Projects funded in FY2010 and FY2011 will use the policy as a guiding principle in fulfilling the established requirements of their current agreement while projects funded in FY2012 and beyond will comply with all requirements as specified in the policy.

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<sup>2</sup> For more information see: <http://www.gpo.gov/fdsys/pkg/BILLS-111hr2142enr/pdf/BILLS-111hr2142enr.pdf>.

<sup>3</sup> For more information see:

[http://www.oecd.org/document/18/0,3343,en\\_2649\\_3236398\\_35401554\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/18/0,3343,en_2649_3236398_35401554_1_1_1_1,00.html)

<sup>4</sup> For more information see: <http://www.eval.org/EPTF/aea10.roadmap.101910.pdf>

<sup>5</sup> For more information see: [www.oecd.org/dac/evaluationnetwork](http://www.oecd.org/dac/evaluationnetwork).

<sup>6</sup> For more information see: <http://www.fas.usda.gov/info/fr/2009/032609McGovDole.asp>.

## **Definitions and Purpose - Monitoring and Evaluation**

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All food assistance projects will support this monitoring and evaluation policy and the relevant ROM program frameworks by developing and implementing a range of monitoring processes and structures including, a results framework outlining the project's causal logic and the critical assumptions underpinning the project's strategy, a performance monitoring plan that includes performance indicators and a data collection plan, and an evaluation plan. This approach is complementary to FAD's operational guidelines related to project design and implementation including, inter alia, the use of project audits, work plans and financial plans.

Monitoring involves connecting relevant information to strategic decisions. Monitoring is used by program management and key stakeholders to assess performance and use of program resources. It assists in the oversight and continuous review of program implementation and the assessment of progress in meeting program objectives and results. Monitoring should be based on systematic data collection of established performance indicators including process, output and outcome indicators. Performance monitoring is necessary for project management but it is only one part of a results oriented management system.

Monitoring is complementary to evaluation and both processes support FAD's results oriented management system. As such, monitoring and evaluation plans should be developed in coordination with one another to ensure the most efficient and effective use of resources and information.

Evaluation is the systematic and objective assessment of both on-going and completed projects with regard to a project's design, implementation and results. Evaluations are used to deepen the Agency's understanding about how and why things work or do not work, to provide evidence of success, and to strengthen future programming and strategic planning. Specifically, evaluations aim to assess the relevance, effectiveness, efficiency, sustainability and impact of a project or program.

Evaluation is viewed as a tool for learning and accountability. Accountability is understood as involving two responsibilities or duties: the responsibility to undertake certain actions and the responsibility to provide an account of those actions. The four primary audiences of accountability include donor accountability, which emphasizes financial accounting and results attainment, beneficiary accountability, which involves project implementation, practice, policies and outcomes, internal accountability, which pertains to organizational mission, values, members, supporters and staff, and finally horizontal accountability, which comprises peer agencies and institutions of practice.

**Accountability:** Obligation to demonstrate that work has been conducted in compliance with agreed rules and standards or to report fairly and accurately on performance results vis a vis mandated roles and/or plans. This may require a careful, even legally defensible, demonstration that the work is consistent with the contract terms.

--OECD/DAC

As stewards of public resources, USDA is accountable to the American people and to program beneficiaries and stakeholders. Of primary concern to FAD is that the resources reach the target beneficiaries and that they actually produce the intended changes to reduce food insecurity, improve literacy, increase agricultural productivity and expand trade. When rigorous and carefully designed evaluations are transparent and made publicly available, they help to ensure that public resources are used as effectively and efficiently as possible.

To be accountable also implies the need to learn from programmatic successes and failures. Organizational learning is a key focus of evaluations in FAS with the primary audience including USDA, program participants, other key stakeholders and national and local governments where the programs are implemented. Important in the learning process is the translation from evaluation findings and recommendations to changes in the design and implementation of programs and program planning and management. USDA will also ensure the sharing of lessons learned to the broader group of stakeholders through the publication of evaluations.

FAD is working to develop a more integrated system for reporting and follow-up on evaluation findings and recommendations. The system will seek to enhance and improve learning within USDA, among and across regions, programs and sectors and to ensure that where applicable, lessons learned about programs in Latin America, for example, are shared with Agency staff and organizations managing and implementing programs in Africa and Asia.

Evaluations will be consistent with the following criteria:

- Independence
- Utility
- Transparency
- Relevance
- Partnerships
- Credibility
- Rigor
- Timeliness

### **Guiding Principles for Monitoring and Evaluation**

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This monitoring and evaluation policy adheres to a number of guiding principles. Taken together, the principles are mutually reinforcing and complimentary to ensure that the monitoring and evaluation policy and its supporting processes and systems meet the desired purpose of learning and accountability. The monitoring and evaluation processes and systems underpinning this policy will become an integral component of project design and management.

Monitoring will be conducted throughout the duration of each project. The monitoring data and information will serve to inform the performance monitoring reports and support management decisions and ongoing, organizational learning. Project management, including program participants, USDA program staff, and other key stakeholders, will be responsible for the continuous use of monitoring and evaluation information in the implementation of the projects. Such information will assist project management in identifying opportunities and challenges and whether or not mid-course project alterations need to be made, what changes need to be made and how such changes should be implemented.

Regular monitoring and evaluation information will also be used by FAS to meet its regular reporting and accountability requirements. This includes the Department's annual Performance and Accountability Report<sup>7</sup>, annual budget requests, interagency reports, and Congressional, OIG and GAO reviews as well as public requests.

To the extent possible and feasible, FAD evaluations will be timed in order to inform project funding decisions. This will help to ensure that management decisions regarding future project funding are evidence based and strengthen the link between results and resource allocation. An expanded body of knowledge about effective interventions and necessary conditions for project success and sustainability will also improve future project design and strategy.

Reflective of OCBDFAD's commitment to ownership and mutual accountability, OCBDFAD monitoring and evaluation principles will, to the extent possible, seek to build and enhance partnerships, build the capacity of organizations to conduct rigorous monitoring and evaluation, and increase the knowledge base on lesson learned and good practices in international efforts to address food insecurity.

Evaluation efforts managed by FAS focusing on strategic areas of interest, special studies, and impact evaluations will be undertaken in partnership with other USG agencies, other donor governments and foreign governments to the extent possible and feasible. Such an approach will support the Paris Declaration principles on harmonization and partnership and the US Government efforts to ensure a whole of government approach.

OCBDFAD will support the use multiple evaluation designs depending on the purpose of the evaluation. As a general principle evaluations should be designed using the most rigorous evaluation methodology appropriate and feasible and with due consideration to available resources. The selection of evaluation methods should depend on the purpose of the evaluation, the questions being asked, the level of rigor and evidence required and project design. Mixed methods approaches should most often be used including both qualitative and quantitative methods to the extent possible and practicable.

Impact evaluations, using quasi-experimental and experimental designs, including randomized evaluations, will be supported by FAD as appropriate. Impact evaluations aim to assess changes in program participants' behaviors or wellbeing and seek to establish a cause and effect relationship. Direct and indirect impacts will be assessed as well as intended and unintended impacts.

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<sup>7</sup> For more information see: <http://www.ocfo.usda.gov/usdarpt/usdarpt.htm>

Impact evaluations implemented by FAD and program participants must include a well-defined counterfactual or control group and seek to assess whether, for example, a school feeding program led to observed changes in learning and school performance or whether the observed changes in school performance were a result of other changes in the implementing environment. Impact evaluations should aim to identify attribution of the program interventions to the outcomes observed.

As specified in FAD regulations (see 7 CFR Part 1499.13 and 7 CFR Part 1599.13), evaluations will be independent and conducted by a third party. Specifically the regulations specify that the third party conducting the evaluation:

- Is financially and legally separate from the participant's organization;
- Has staff with demonstrated knowledge, analytical capability, language skills and experience in conducting evaluations of development programs involving agriculture, education, and nutrition;
- Uses acceptable analytical frameworks such as comparison with non-project areas, surveys, involvement of stakeholders in the evaluation, and statistical analyses;
- Uses local consultants, as appropriate, to conduct portions of the evaluation; and,
- Provides a detailed outline of the evaluation, major tasks, and specific schedules prior to initiating the evaluation.

**Counterfactual:** The situation or condition which hypothetically may prevail for individuals, organizations or groups were there no development intervention.

--OECD/DAC

Independence of the evaluation function from program design and management is a core principle of FAD evaluation especially final project evaluations.

Independence helps to ensure both credible and objective evaluations. FAD supported evaluations should be conducted by people who are not involved in the design and implementation of the project and the evaluation process must be free from political influence and organizational pressure.

### **Monitoring and Evaluation Requirements**

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FAD supports projects that incorporate and support rigorous and robust monitoring and evaluation systems from the design or proposal stage, throughout the project duration, and, to the extent possible, post-project implementation.

### ***Project Design/Proposal Development***

#### *Results Frameworks*

At the design or proposal development stage (pre-award) organizations will be responsible for clearly identifying and articulating how the proposed project will contribute to USDA food assistance program results frameworks. USDA Food Assistance Results Frameworks can be

found on the Food Assistance Division’s website<sup>8</sup>. Proposals should clearly identify the project strategy and what result(s) the project expects to achieve. Proposals, therefore, must include a project specific results framework that a) identifies the project’s logic and expected results at various levels and b) clearly links to the USDA program results frameworks.

The proposed project strategy and expected results should be clearly grounded in the country context and knowledge of existing relevant national and local programs. For example, a proposal submitted in support of USDA’s MGD program focused on improving literacy of school age children may focus on the intermediate results for improving quality of literacy instruction and improving attentiveness and exclude project activities focused on improving student attendance if the proposal can clearly justify that school attendance is not a hindering factor in improving literacy. Countries, for example, with high rates of school enrolment and attendance and access to schools may not necessarily warrant project activities focused on this intermediate result. Additional guidance on developing project specific results frameworks and linking to the FAD program frameworks is provided in the Food Assistance Division’s *Policy and Operational Guidance Manual for Use of Results Frameworks and Indicators*.<sup>9</sup>

The project results framework will be used to guide project monitoring and evaluation.

#### *Performance Monitoring Plans*

In addition to submitting a project-specific results framework, the proposal must include a draft plan for monitoring project performance. The performance monitoring plan (PMP) should identify indicators for monitoring progress in achieving results and present a strategy for collecting performance data.<sup>10</sup> The plan should include the FAD standard indicators and custom (project-specific) indicators. FAD standard indicators have been identified in the Policy and Operational Guidance Manual.<sup>11</sup> FAD standard indicators are used by USDA to measure progress in achieving USDA’s *program* results. The standard indicators will allow USDA to report progress among all of its projects across results areas (*i.e.* literacy, good health and dietary practices, agricultural productivity and trade) or country specific achievements. Projects are required to report on FAD’s standard indicators where relevant to the project’s strategy.

In addition, proposals may include additional indicators that the proposing organization deems key to monitoring program performance and accountability. As a good practice, these custom (project-specific) indicators should be based on broad stakeholder input. Although not required, proposals should include custom indicators that have been developed through a participatory approach involving key stakeholders. The proposing organization may wish to hold a stakeholders meeting to develop the project’s proposed results framework, performance monitoring plan and performance indicators. Using a participatory approach will help to ensure

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<sup>8</sup> Please see the Food Assistance Division website at: <http://www.fas.usda.gov/food-aid.asp>.

<sup>9</sup> Ibid.

<sup>10</sup> For a sample PMP and key components of a PMP, please see Annex A.

<sup>11</sup> Please see the Food Assistance Division website at: <http://www.fas.usda.gov/food-aid.asp>.

that all stakeholder's requirements and needs are met, comprehensive knowledge of the implementing environment and country needs, knowledge of existing data collection tools and activities for performance data collection, institutionalization and ownership of the results framework and project strategy, and clearly articulated roles and responsibilities.

In the development of standard and custom indicators, USDA believes indicators should meet the following criteria:

**Direct** – the indicator should, as closely as possible, measure exactly the relevant result.

**Objective** – the indicator should be precise and unambiguous about what is being measured and how. There should be no doubt on how to measure or interpret the indicator.

**Adequate** – the indicator(s) should sufficiently capture all of the elements of a result.

**Practical** – the data can be obtained to inform the indicator in a timely and efficient manner and the data are of high-quality.

The full set of indicators selected to monitor project performance should be kept to the minimum necessary to inform project management and oversight. They should also be realistic in terms of project resources allocated to performance management including data collection, analysis and reporting.

#### *Evaluation Plans*

Finally, proposals should include a preliminary evaluation plan with a description of required evaluation activities, including proposed design, methodology, timeframe, and management of evaluation activities. Proposals should include a detailed description of its evaluation management function and budget allocation for monitoring and evaluation.

FAD recognizes the range of project sizes, scopes and durations across the Division's Programs. As described above, OCBD/FAD will support the use of multiple evaluation designs depending on the project characteristics and purpose of the evaluation. In support of OCBD/FAD general principles for evaluations, evaluations should be designed using the most rigorous methodology appropriate and feasible taking into account available resources, project strategy, current knowledge and evaluation practices, and the implementing environment. Proposals should aim to include strong evaluation design, including impact evaluation that seeks to advance the knowledge base and lessons learned in Food Assistance.

Organizations submitting proposals under any of the food aid solicitations may propose to engage with organizations with strong expertise in evaluation to assist in the evaluation design, implementation, data collection and analysis. Proposing organization should also consider the appropriate costs for the management and implementation of monitoring and evaluation activities. Proposals may include monitoring and evaluation key personnel and proposing

organizations should consider allocating, at a minimum, three percent (3%) of the project budget towards monitoring and evaluation.

### ***Project Implementation***

After project award, project monitoring and evaluation plans will be finalized in coordination and cooperation with FAD program staff and M&ES within three (3) months after project award. FAD program staff and M&ES will work with the program participant to finalize the performance monitoring and evaluation plans. This may include refinements to the plan to ensure that the definitions for the USDA standard indicators are clearly articulated, indicators selected and identified are appropriate and consistent with USDA expectations, and plans for performance measurement, evaluation and reporting meet USDA requirements.

Projects will be responsible for establishing indicator baseline information and targets for which the project will regularly measure performance against. The baseline information for indicators must be measured and established prior to the start of program activities. Annual targets for select indicators may be established in project agreements. Annual targets for other indicators identified in the PMP should also be established whenever possible and appropriate. Established targets should be realistic and ambitious.

The establishment of targets and baseline information must be submitted to USDA in the first project report submitted to USDA after the finalization of the PMP.<sup>12</sup> Projects are required to report progress and achievements in meeting the targets established for each of the standard and custom indicators in the semi-annual project reports. Such information will help project management, FAD staff, and key stakeholders determine whether the project is on track to achieve its intended results. Discussion of the performance indicators must include a narrative description, as outlined in the PMP, of how the project used the information for project management.

Following submission of the project reports, FAD staff will review the reports and provide, in writing, any follow-up observations or questions for the project team. FAD may request, for example, additional information or clarifications regarding the performance indicator data submitted or seek to discuss challenges or opportunities that may have arose during the reporting period. FAD may request a conference call with or a written

During project implementation the project will be responsible for:

- Submitting a revised performance monitoring plan three (3) months after project award
- Establishing annual indicator baselines and targets in project reports
- Reporting performance on indicators and targets semi-annually in project reports

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<sup>12</sup> For example, if the performance plan or PMP is finalized in December 2011, the targets and baseline information must be submitted in the May 2012 project report.

response from the project team to discuss the project reports.

The project reports and monitoring data and information will help to inform project midterm and final project evaluations.

### *Midterm Evaluations*

The purpose of midterm evaluations may vary across project. In general, however, mid-term evaluations should be used to assess progress in implementation; assess the relevance of the

<b>Midterm project review process and timing:</b>		
✓ Prepare for mid-term project evaluation		
✓ Identify project evaluation team or external consultant		
✓ Develop project evaluation TOR, including methodology	Approximately 4 months after implementation of key project activities	
✓ Assign roles and responsibilities		
✓ Conduct assessment and collect stakeholder input		
✓ Submit final mid-project evaluation report to USDA	Within 15 days following end of review process	
✓ Discuss actions to address findings and recommendations with USDA project manager	During review process or within 15 days following the receipt of the final report	
✓ Report on implementation of follow-up actions	Ongoing, in future project reports as appropriate	

interventions; provide an early signal of the effectiveness of interventions; document lessons learned; assess sustainability efforts to date; and discuss and recommend mid-course corrections, if necessary. A variety of methodologies may be used to carry out midterm evaluations and may include internal reviews, external reviews, implementation or process evaluations, evaluability assessments, or other special studies.

All food assistance projects are required to carry out a midterm evaluation. The purpose of the evaluation is to critically and objectively review and take stock of the project's implementing experience and the implementing environment, assess whether targeted beneficiaries are receiving services as expected, assess

whether the project is on track to meeting its stated goals and objectives, review the results frameworks and assumptions, document initial lessons learned, and discuss necessary modifications or mid-course corrections that may be necessary to effectively and efficiently meet the stated goals and objectives.

The project will be responsible for managing, conducting and allocating sufficient funds for the midterm evaluation. The midterm evaluation may take place as a review conducted by the

project staff or an independent consultant.<sup>13</sup> The purpose of contracting with an independent consultant is to bring specialized skills or experiences and an independent perspective to the project review.

The review should be managed by a project staff person or organizational staff person knowledgeable about monitoring and evaluation. The project may decide to create a review team and assign different areas of focus to team members, however, FAD recommends that all key project staff participate in the review process at various degrees to ensure diverse perspectives and experiences inform the assessment and subsequent recommendations.

The project should also consider participatory approaches to involving key stakeholders including implementing partners or sub-contractors, local and national government partners, project beneficiaries and other donor partners. The project shall also invite USDA to participate in the review, particularly during discussions related to mid-course corrections or changes in strategy, results frameworks, and critical assumptions.

The evaluation may occur precisely at the mid-point in project implementation (i.e. for a 30 month project the mid-term review may occur during month 15) or earlier depending on the project work plan and implementation timeline. The project may determine the most strategic timing of the review, however, the timing should allow for sufficient time for the implementation of project activities. The project is required to keep USDA up to date on the scheduling of the mid-term review through the submission of project reports.

As the final output of the review, the project is required to submit a detailed report outlining the purpose of the review, methodology, primary questions, findings, lessons learned to date, and recommendations. The final review report should include proposed actions the project deems appropriate to address the review findings and recommendations. The project is required to submit the review report to USDA project managers. The final report must be submitted to USDA within 15 days following the end of the review meeting.

During the review process or following receipt of the final review report, USDA will engage collaboratively with the project staff to discuss the proposed actions that need to be taken to address the findings and recommendations. The participating organization must include information on the progress of implementation of the agreed upon actions in future project reports.

### *Final Evaluations*

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<sup>13</sup> OECD/DAC Working Party on Aid Evaluation defines a review as “an assessment of the performance of an intervention, periodically or on an ad hoc basis” and notes that the use of the term “evaluation” tends to refer to a more comprehensive or in-depth assessment than a “review”. Reviews tend to emphasize operational or implementation aspects of a project. FAD subscribes to this definition and the focus on implementation issues and considers a project review to satisfy midterm evaluation requirements. For more information on the evaluation definitions please see: <http://www.oecd.org/dataoecd/29/21/2754804.pdf>.

Each project is required to undergo a comprehensive, independent final evaluation. The purpose of the final evaluation is to assess whether the project has achieved the expected results as outlined in the results framework. The final evaluation should assess areas of project design, implementation, management, lessons learned and replicability. It should seek to provide lessons learned and recommendations for USDA, program participants and other key stakeholders for future food assistance and capacity building programs. The evaluation will likely use mixed methods approaches as outlined in the agreed upon evaluation plan. In general the final evaluation should assess:

**Relevance**-The extent to which the project interventions met the needs of the project beneficiaries and is aligned with the country's agriculture and/or development investment strategy and with USDA and US Government's development goals, objectives, and strategies. Relevance should also address the extent to which the project was designed taking into account the economic, cultural and political context and existing relevant program activities.

**Effectiveness**-The extent to which the project has achieved its objectives. Effectiveness should also assess the extent to which the interventions contributed to the expected results or objectives.

**Efficiency**-The extent to which the project resources (inputs) have led to the achieved results. An assessment of efficiency should also consider whether the same results could have been achieved with fewer resources or whether alternative approaches could have been adopted to achieve the same results.

**Impact**-Assessment of the medium and long-term effects, both intended and unintended, of a project intervention. Effects can be both direct or indirect and positive or negative. To the extent possible, the evaluation should assess the extent to which the effects are due to the project intervention and not other factors.

**Sustainability**-Assessment of the likelihood that the benefits of the project will endure over time after the completion of the project. Sustainability should also assess the extent to which the project has planned for the continuation of project activities, developed local ownership for the project, and developed sustainable partnerships.

In addition to the focus on relevance, effectiveness, efficiency, sustainability and impact as described above the evaluation may focus on other areas of particular interest to USDA, project staff or key stakeholders. Input on the scope and purpose of the evaluation therefore must be solicited from key stakeholders during the planning stages of the evaluation as described.

The project will be responsible for allocating sufficient funds, managing, and contracting with an independent consultant(s) to conduct the final evaluation. If the organization maintains an evaluation unit, USDA requires that the evaluation is managed by the organization's evaluation

unit. If the organization does not have a dedicated evaluation unit the review should be managed by a project staff person or organizational staff person with significant knowledge and expertise concerning evaluation. Ideally, the organization would maintain an evaluation unit that was separated from the staff or line management function of the project being evaluated. Such a structure helps to ensure the independence and impartiality of the evaluation process and report of findings, conclusions and recommendations. In cases where the organization does not have a dedicated evaluation unit or organization staff with significant expertise in evaluation, USDA may decide to manage the project level evaluation through its own monitoring and evaluation unit.

The timing of the final evaluation should be established at the start of the project and included in the project work plan and updated as appropriate. In general, the evaluation should be timed to inform new programming decisions and strategies. Final project evaluations should be planned at least six (6) months prior to the completion of a project.

FAD supports a participatory evaluation process. This helps to ensure the quality, validity, utility and mutual ownership of the evaluation findings and recommendations. As a result, FAD staff, as well as, relevant program participant staff and key stakeholders should be involved cooperatively in the design and implementation of the evaluation to the extent possible and appropriate including but not limited to the evaluation preparation and planning, as a key informant and key stakeholder, reviewing findings, conclusions and recommendations to ensure factual accuracy of the evaluation report and discussing and addressing evaluation recommendations.

The program participant's evaluation unit, should develop a terms of reference (TOR) for the evaluation which includes the purpose and scope of the evaluation, specific issues or questions to be addressed in the evaluation, prospective approach and methodology, timing and work plan of the evaluation, ethical considerations, and evaluation management and selection of evaluation team. The evaluation TOR must be submitted to FAD for input and comment prior to the selection of the evaluation team and implementation of the evaluation. As a general practice, the draft evaluation TOR should be submitted to USDA no later than three (3) months prior to the start of the evaluation activities. The final TOR for the evaluation must be submitted to USDA at least one (1) month prior to the start of the evaluation activities.

Unless identified in the project proposal, the independent evaluation consultant(s) should be selected through a competitive procurement process. The selection of the evaluation contractor or consultant(s) must be based on professional competency, experience in relation to the evaluation tasks, independence from the program participant, avoidance of conflict of interest, and experience and knowledge of the country in which the evaluation will be conducted.

The final evaluation report must be submitted to USDA within at least three months following the evaluation field work and before the project closes (before the project end date). The final project evaluation will be made public as described below.

### *Other Evaluation Activities*

FAD, in cooperation with M&ES, may identify additional evaluation activities of strategic interest to the Agency. This may include higher-level country-based or thematic evaluations. FAD may focus specific evaluation activities, for example, on understanding the impact of microfinance activities or agricultural extension programs on agricultural productivity.

USDA managed evaluations may also include impact evaluation activities as defined above. Such activities require collaboration with the program participants and therefore will be defined in more detail in the solicitation process.

When selecting projects to undergo impact evaluation OCBDFAD will consider:

- Projects that have the potential or expectation to scale-up or receive future funding;
- Projects that propose new interventions, where little evidence on their effectiveness exists;
- Projects that are considered “pilot” projects; and
- Projects or interventions receiving a significant amount of USDA funds.

USDA may also decide to conduct an evaluation after project completion. Such an evaluation may seek to assess the long-term effects and sustainability of a project.

In order to ensure the availability of adequate data and information to support a post-project evaluation USDA may require a project to submit any quantitative data that is collected by the project, in particular data that is collected for evaluation purposes. The data are required to be submitted in a user-friendly readable format with accompanying data documentation. Data submitted should not be aggregated but should be individual level record data. The data and proper documentation should be provided in a format that is sufficiently useable and readable by USDA or its evaluation contractor.

### **Data Quality Standards and Assessment**

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USDA and program participants utilize monitoring and evaluation data to inform current and future funding activities, assess the performance of its programs, and report on the results of its programs to external stakeholders including Congress, other USG partner agencies, OMB, GAO, other external stakeholders including partner countries and the public. Therefore, USDA places a strong emphasis on ensuring a high level of data quality for its performance measures.

The following criteria should be considered when assessing data quality<sup>14</sup>:

**Accuracy** – Data are correct. Deviations in data can be explained or are predictable.

Measurement error is kept to a minimum and within acceptable margins.

**Validity** – Data measure the result or outcome it is intended to measure.

**Reliability** – Data collected over time are comparable. Trends are meaningful and allow for measurements of progress over time. Data collection methods and analyses are consistent over time.

**Timeliness** –Data are collected in a timely manner to inform management decision-making and strategic planning. The expectation is that data are reported semi-annually.

**Integrity** – Data quality is routinely monitored. Data quality assessments are integrated into data collection processes and procedures to ensure data are not erroneously reported or intentionally altered.

All final project PMP plans should include a discussion on how the project will ensure and maintain the quality of monitoring and evaluation data at all levels involved in data collection from data collected by field staff/monitors to analysis and reports of performance data in project reports. Projects should develop tools and guidelines for project staff and implementing partners to ensure that all relevant partners understand the definitions of the performance measures, data collection methods, and reporting processes and procedures. Projects are required to develop a process for verifying and validating data to ensure that the data submitted in the project reports meets the criteria above. The process should be outlined in the PMP. USDA may request to review data quality assessments or may wish to conduct a data quality assessment in cooperation with the project during a project site visit.

If after conducting a data quality assessment the project identifies weaknesses or concerns with the accuracy or quality of the data the project should provide this information to USDA in the preproject reports. The project may request to revise or correct previously submitted data to USDA and should provide such information in subsequent project reports. The project should include a narrative noting the data quality issues experienced and describe corrective action the project has taken to ensure such reporting errors do not affect future performance measure reports.

### **Facilitating the Exchange of Information and Enhancing Learning**

In support of the USDA open government initiative<sup>15</sup> and to increase transparency and learning, all USDA final evaluation reports will be made publicly available on the FAS website. In addition, USDA will regularly publish information on project and program level results and accomplishments. This will ensure that the widest audiences as possible are reached and that

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<sup>14</sup> Definitions have been drawn from USAID ADS Chapter 203, *Assessing Learning*, Revision Date 04/02/2010 and *MCC Policy and Evaluation of Compacts and Threshold Programs* Version DCI-2007-55.2, dated May 12, 2009.

<sup>15</sup> For more information and the USDA Open Government Initiative please see: <http://www.usda.gov/open>.

other organizations learn from FAS's experiences. Principled exceptions may be made where classified, personal or proprietary information is concerned.

USDA hopes that the facilitation and exchange of lessons learned and good practices will lead to improved program design and effectiveness of its current and future efforts in food assistance and capacity building. USDA also supports and encourages its partner organizations in efforts to increase transparency and learning.

### Annex A. Sample Performance Monitoring Plan

PERFORMANCE INDICATOR	INDICATOR DEFINITION AND UNIT OF MEASUREMENT	DATA SOURCE	METHOD/APPROACH OF DATA COLLECTION OR CALCULATION	DATA COLLECTION		ANALYSIS, USE & REPORTING	
				WHEN	WHO	WHY	WHO
<b>Immediate Objective 1: Increased business sector activity in target areas</b> <b>“Areas” may include regions, communities, groups, administrative units, associations, organizations, enterprises, countries, or special populations.</b>							
<b>1. Number and percent of existing firms that expanded businesses over the past year</b>	<p><b>Definition:</b> Firms included are those receiving training and/or seed funds directly under LED or QZ programs and those vendors/suppliers who are indirectly involved in LED, LMAC/RR or EC.</p> <p>Business expansion is self reported using a survey that asks Y/N if expansion has occurred.</p> <p>Disaggregated by LED, LMAC/RR and EC, based on direct and indirect involvement.</p> <p>Unit: # of assisted firms that report business expansion; among firms assisted, # of firms that report expansion as a % of total firms assisted</p>	<p>Project Survey</p>	<p>Data will be collected for each firm 1 year after seed funds are received. One year is counted after the last disbursement of funds. Data will be collected from all qualifying firms (i.e. not a sample survey).</p> <p>Survey will include questions about net revenues. This data may be used ultimately in this indicator in lieu of expansion questions.</p>	<p>Quarterly, to capture all results from firms whose one year post-service delivery period terminates in that period.</p>	<p>Local specialists to administer survey to be reviewed by regional coordinators.</p>	<p>Periodic management reviews (semi-annual)</p> <p>Technical Reports (semi-annual)</p>	<p>Regional coordinator in conjunction with Project Director.</p>

## **8. Program Closeout**

8.1 The Closeout Process

8.2 Closeout Checklist

8.3 Equipment Disposition Instructions

Attachment A: Equipment Disposition Form

Attachment B: Tax Certification Letter Template

## **8.1 The Closeout Process**

### **Processing Closeouts**

When a Participant's program has ended and submits its final report, a FAD analyst will contact the Participant to begin the closeout process.

A FAD analyst will work with the Participant to ensure that all agreement records and documentation are up-to-date and that the agreement can move along in the closeout process. Please see the **closeout checklist** in section 8.2 of this manual for additional information on all items required for food aid agreement closeout.

### **Independent Review and Closeout by M&ES**

Once all required documentation has been collected and the FAD analyst determines that an agreement is ready to be closed, the agreement file is sent to M&ES. M&ES is a division of FAS that is independent from FAD. M&ES performs the following duties to complete program closeout:

- Prepares a written assessment of the agreement. Information to complete this evaluation is gathered from the logistics and monetization reports, financial reports, the signed agreement, and any amendments.
- In some instances, M&ES may determine that the Participant needs to reimburse USDA for unqualified expenses, excessive or unallowable line item movements, etc. M&ES will request these funds be returned within 30 days.
- In some instances, M&ES may inform the Participant that it is eligible for CCC cash funds that remain under the agreement and ask the Participant to request these funds.
- Once the written assessment is completed and all payments are settled, M&ES will draft a closeout letter. This letter informs the Participant that it has completed all of the requirements under the agreement and that FAS considers the agreement closed.
- If it determines that the Participant did not comply with a requirement of the agreement, M&ES will send the Participant an issue letter. The most common reasons for sending an issue letter include: 1) Participant moved too much between its flexible line items, 2) Participant spent more than the budgeted amount for administrative expenses, 3) Participant spent more than the budgeted amount for ITSH expenses, or 4) Participant has a large commodity loss.
- If appropriate, FAS may initiate a claim or take enforcement actions according to Sec. 3019.62.

Please see Section 1.4 of this manual for M&ES contact information.

## 8.2 Closeout Checklist

Participants must complete all items on this checklist before FAS can close their food aid agreement.

- All activities under the agreement have been completed or an explanation has been provided explaining why activities were not completed.
- A final, cumulative LogMon has been submitted (all non-cumulative LogMons were submitted).
- All commodities have been received and distributed or an explanation has been provided as to why commodities have not been received or distributed.
- If applicable, the final LogMon indicates that all monetization proceeds and interest were spent. If not, all unspent proceeds need to be returned to USDA.
- The final, cumulative financial report has been submitted (or all non-cumulative financial reports have been submitted).
- All CCC cash funds that were advanced have been spent or returned to FAS.
- An equipment disposition list, accounting for all capital equipment with a value of more than US\$5,000 has been submitted explaining how the equipment will be disposed.
- A tax certification letter or email stating that the organization has paid all relevant taxes in the recipient country, on all employees, for all years that the program was active has been submitted.
- OMB A-133 audits for all years the program was active have been submitted.
- All known issues been resolved.
- Has the Participant **completed all activities** under the agreement?

## **8.3 Equipment Disposition Instructions**

This section outlines current FAS policy concerning the disposition of equipment purchased under FFPr.

### **Relevant Regulations**

For USDA food aid agreements, the CCC follows Sec. 3019.34 and 3019.35 of 7 C.F.R. part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations. These sections address requirements regarding retention and disposition of equipment and supplies that may be acquired by the Participant with sales proceeds, program income, or CCC dollar grants. Please note that Sec. 3019.34(g)(4) provides that the CCC may reserve the right to transfer title to equipment to the federal government or a third party.

### **Required Documentation**

When an FFPr program is completed, the Participant must submit an equipment disposition list to FAS. This list should include all capital equipment that was (1) purchased with CCC cash and/or monetized proceeds and that (2) had a value of more than US\$5,000 when the program ended. This list should only include capital equipment purchased for program administration (i.e., cars for M&ES) and not equipment for activities (i.e., tractors for beneficiary farmers). The equipment disposition list should also indicate how the Participant disposed of the listed equipment. (Please see the equipment disposition template, provided in Attachment A below. Please note that Participants are not required to use this template; it is only provided for your convenience.)

## **Attachment A: Equipment Disposition Template**

The following information should be sent to [PEBReports@fas.usda.gov](mailto:PEBReports@fas.usda.gov).

Participant Name:

Country:

Agreement Number:

Please list all capital equipment purchased under the above agreement with a current value of more than US\$5,000 and describe how you intend to dispose of the equipment as you close the agreement. It is not necessary to list equipment purchased for programming (i.e., an irrigation system for beneficiaries).

<b>Item</b>	<b>Quantity</b>	<b>Purchase Price</b>	<b>Current Condition</b>	<b>Disposition Plan</b>

Preparer's Name:

Title:

Phone Number:

Date:

## **Attachment B: Tax Certification Letter Template**

Please fill in all items that are [underlined and in brackets].

[Name]

[Title]

[Participant Organization]

[Address]

[Date]

Ron L. Croushorn  
Director, Food Assistance Division  
Office of Capacity Building and Development  
Foreign Agricultural Service, USDA  
1400 Independence Avenue, SW, STOP 1034  
Washington, DC 20250

Dear Mr. Croushorn:

This letter certifies that [Participant Organization] paid all applicable payroll and social security-type taxes in [Recipient Country] for all employees working on the Food for Progress program with agreement number [Agreement #].

Sincerely,

[Name]

## **9. Compliance Reviews**

- 9.1 Compliance Staff
- 9.2 Purpose of Food Aid Compliance Reviews
- 9.3 Reviews

## **9.1 Compliance Staff**

### **Compliance, Security and Emergency Planning Division (CSEPD)**

The CSEPD staff conducts cooperator and food aid reviews, security investigations, and USDA Office of Inspector General (OIG) and Government Accountability Office audit liaison and emergency preparedness activities.

#### **Compliance Review Specialists (CRS):**

Ethel M. Butler, Compliance Review Officer).....	202-720-3065
Lawrence Chamorro.....	202-720-0575
Jennifer Duncan.....	202-690-1154
Jameika Henderson.....	202-720-7553
Alonzo Parker.....	202-690-4097
Marianne Soliman.....	202-720-8894

#### **Other CSPED Contacts:**

Jared Burnett, Director.....	202-720-0773
James Gartner, Management Control Officer and Audit Liaison.....	202-720-0517
Beth Wong, Compliance Review Officer.....	202-690-1041
Vincent J. Fusaro, Chief Compliance Review Branch.....	202-690-4851
Kim Reid, Security Officer.....	202-720-1759
Ken Vernon, Emergency Preparedness Officer.....	202-720-9285
Gabriella Bolanos-Ponce, Financial Management Analyst.....	202-401-0040
Tiffanie Grooms, Security Specialist.....	202-690-1759
William Johnson, Security Specialist.....	202-690-1624
Kim Connally, Program Assistant.....	202-720-6713

## **9.2 Purpose of Food Aid Compliance Reviews**

### **Purpose**

The federal awarding agency, the OIG, Comptroller General of the United States, or any of their duly authorized representatives have the right to timely and unrestricted access to any books, documents, papers, or other records of Participants that are pertinent to the awardsto audit, examine, excerpt, transcript, and copy such documents. This right also includes timely and reasonable access to a Participant’s personnel for the purpose of interviewing and discussing the documents.

CRS conduct approximately five to seven financial and compliance reviews annually of CCC/FAS/USDA food aid agreements. The decision as to which Participant to review is made at random or for organizations that have a history of trouble or delinquent reports. These compliance reviews are separate from OMB A-133 or other audit requirements.

The government of the exporting country may, at reasonable times, inspect the Participant's records pertaining to the receipt and use of the commodities and proceeds realized from the sale of the commodities, and have access to the Participant's commodity storage and distribution sites and to locations of activities supported with proceeds realized from the sale of the commodities.

The compliance review seeks to provide reasonable assurance that a Participant: (1) fulfilled its financial and administrative responsibilities; (2) monetized commodities in accordance with the agreement; (3) used monetization proceeds and CCC and FAS funds properly; (4) and provided accurate reporting of program outputs and results to FAD.

## **9.3 Reviews**

CRS examine/review a Participant's documentation in the areas of reporting, CCC/FAS advances, monetization, contracting, and damage or loss of commodity.

### **Reporting**

CRS select a sample of financial statements and LogMon reports to review to:

1. Determine the accounting basis used in reporting the data (i.e., cash or accrual).
2. Determine the methodology used for compiling and reporting data.
3. Verify that the reports were filed by the dates specified in the agreement.
4. Test the mathematical accuracy of the reports.
5. Trace the amounts reported to accounting records to verify that reported amounts agree with financial records.
6. Verify that all applicable accounts were included in the reports.
7. If the agreement being reviewed is a McGovern-Dole agreement, verify that Participant is reporting against the established baseline indicators (as listed in the agreement).

### **CCC/FAS Advances**

If the agreement authorizes the payment of FAS-provided funds, FAS will pay these funds to the participant on a reimbursement-for-expenses basis. However, the Participant may request an advance of the amount of funds specified in the agreement. If an advance is received, CRS seek to verify the following with regard to the advance:

1. It was deposited in an interest-bearing account that can be traced back to individual agreements.
2. Any interest earned was used for the same purpose as the advance.
3. Time elapsing between receipt of funds from CCC and disbursement of the funds was minimal.
4. Funds advanced by CCC were expended within 180 days from date of advance.
5. Unexpended advances were returned to CCC along with the interest earned on those funds.

Financial statements accounting for all funds advanced and all interest earned were submitted no later than 10 days after the end of each quarter.

## **Monetization**

CRS ensure monetization was completed in accordance with the agreement. The Participant should ensure that all monetization records and actions are transparent and traceable.

Documentation should demonstrate a fair solicitation and/or sale. Documentation should show that the Participant enforced the terms of the sales contract.

If the Participant received proceeds from monetization of donated commodities, the reviewer will verify that all proceeds from the sale of donated commodities were deposited in an interest-bearing account and that any interest earned on monetization proceeds was used for the same purposes as the monetization proceeds themselves.

## **Contracting**

CRS ensure a comprehensive agreement with the recipient organization (subrecipient) is in place. To do this, CRS obtain the Participant's procurement policy to verify it requires solicitations to incorporate a clear and accurate description of the technical requirements for the product, service, or construction activity to be procured; identifies all requirements that must be fulfilled; and includes other factors to be used in evaluating bids or proposals.

CRS also select a sample of procurements to:

1. Examine the contract files to verify they document the significant history of the procurements.
2. Verify that the procurements were made by full and open competition. If competition was limited, determine if the limitations were justified.
3. Verify that appropriate cost or price analyses were performed.

To the extent possible, CRS also seek to verify that the Participant and its employees did not have any financial interest in the selection or award of the contracts.

## **Damage or Loss of Commodity**

During the review, CRS seek to determine whether any misuse, loss, or damage to a commodity, sale proceeds, or program income caused by the Participant or a third party was appropriately resolved. To do this, CRS:

1. Examine all reports of misused, lost, or damaged commodities.
2. Verify the Participant notified the Kansas City Financial Management Office (KCFMO) immediately after any misuse, damage, or loss occurred.

## USDA Food Assistance Training Manual

3. Confirm the amount paid to CCC for commodities misused, lost, or damaged equaled domestic market price at the time of the misuse, loss, or damage.
4. Verify the Participant assigned the rights to third-party claims to CCC and promptly forwarded all documents pertaining to the claim to CCC, including any narrative chronology or other imperative commentary that can assist in the adjudication of the claim.
5. In the event of cargo loss or damage, verify the Participant provided KCFMO the names and addresses of individuals who were present during discharge.
6. If misuse, loss, or damage of commodity or proceeds occurred as a result of negligence by the warehouseman, carrier, recipient agency, or other person, verify the Participant pursued the claim through initial billing and a least three subsequent demands at not more than 30-day intervals.
7. If the collection actions failed, verify the Participant pursued legal actions in the judicial system of the respective country.
8. If the Participant chose not to pursue legal action, verify it notified the U.S. Agricultural Counselor or Attaché, in writing, of such decision.