assessment rate of $0.0117 per kernelweight pound of merchantable walnuts certified. In comparison, last year's budgeted expenditures were $2,280,175. The assessment of $0.0117 is $0.0001 higher than last year's established rate. Major expenditures recommended by the Board for the 1996–97 marketing year include $232,684 for general expenses, $150,508 for office expenses, $1,840,677 for research expenses, $48,000 for a production research director, and $30,000 for the reserve. Budgeted expenses for these items in 1995–96 were $246,847, $140,908, $1,828,420, $34,000, and $30,000, respectively.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected merchantable certifications of California walnuts. Walnut shipments for the year are estimated at 198,000,000 kernelweight pounds which will yield $2,316,600 in assessment income, which will be adequate to cover budgeted expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within five months after the end of the year.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1996–97 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 marketing year began on August 1, 1996, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable walnuts handled during such marketing year; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart titled ''Assessment Rates'' and a new § 984.347 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 984.347 Assessment rate.

On and after August 1, 1996, an assessment rate of $0.0117 per kernelweight pound is established for California merchantable walnuts.

Dated: November 22, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–30484 Filed 11–27–96; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1499

Foreign Donation of Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: These regulations govern the provision of agricultural commodities by Commodity Credit Corporation pursuant to section 416(b) of the Agricultural Act of 1949 or the Food for Progress Act of 1985 for distribution in foreign countries.

EFFECTIVE DATE: December 30, 1996.

FOR FURTHER INFORMATION CONTACT: Director/CCCPSD, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave., S.W., Stop 1031; Washington, D.C. 20250–1031; telephone (202) 720–3573.

SUPPLEMENTARY INFORMATION: This rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

This rule deals primarily with requirements imposed upon foreign governments and non-profit entities distributing humanitarian grant food supplies overseas. Therefore, the rule does not have a significant impact upon a substantial number of small business entities and a Regulatory Impact Statement was not prepared. A copy of this rule has been sent to the Chief Counsel, Office of Advocacy, U.S. Small Business Administration.

Paperwork Reduction Act

The information collection requirements imposed by this final rule have been previously submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). OMB has assigned control number 0051–0035 for this information collection. This regulation does not change any of the information collection requirements. A submission to extend this approval will be submitted to OMB.

Executive Order 12372

This rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 46 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed under the Executive Order 12988, Civil Justice Reform. The rule would have pre-emptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule would not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

Background

On February 14, 1994, the Commodity Credit Corporation (CCC) published a proposed rule (59 FR 6916) to govern its donation of agricultural commodities for distribution in foreign countries pursuant to section 416(b) of the Agricultural Act of 1949 (section 416(b)) or the Food for Progress Act of 1985. Comments on the proposed rule were received from private entities which are most affected by these regulations: private voluntary organizations (PVOs), shippers, and freight forwarders. Their 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.

Commodity Availability

Comment: The PVO community requested that the CCC make a commodity availability determination for the Food for Progress Program (FFP) similar to the one required for the section 416(b) program.

Response: As a general matter, only commodities in CCC uncommitted inventory are available for donation under section 416(b). Consequently, CCC annually reviews its inventory to determine commodity availability and publicizes the results to assist PVO's in planning donation activities. By contrast, FFP donations are not limited to CCC inventory; CCC may purchase commodities for FFP donations to meet justified needs. Therefore, there is no reason to announce yearly availability of commodities in connection with the FFP or to establish a specific list of eligible commodities.

Method of Payment to PVOs

Comment: PVOs requested that CCC delete the requirement in section 1499.7 of the proposed rule that a portion of the funds provided PVOs be paid on a reimbursement basis. The PVO's stated that they were unable to finance many expenses out-of-pocket.

Response: In CCC's experience, this requirement has not constrained PVO participation in CCC grant food aid programs. CCC has determined that, to maintain adequate program management, it is necessary to maintain a minimal 15% reimbursement requirement.

Recipient Agency Agreements

Comment: PVOs requested that section 1499.10 of the proposed rule be revised to delete the requirement that agreements with local recipient agencies include by reference the terms of these regulations. The PVOs suggested that such agreements need only be consistent with these regulations.

Response: CCC agrees. The final rule, therefore, has been revised to require that recipient agency agreements be consistent with these rules.

Private sector involvement

Comment: PVOs suggested that the requirement in § 1499.5(b)(6)(d) of the proposed rule that PVOs use private sector channels to sell commodities provided under section 416(b) is inappropriate because section 416(b) unlike FFP, does not specify support for the private sector.

Response: CCC will maintain this requirement because economic development is one of the goals of section 416(b). Development of private sector selling mechanisms is an element of economic development.

Other comments from PVOs

Comment: The PVO community proposed a number of changes which it asserted would ease its administrative burden without affecting CCC's ability to review and monitor the programs. The PVOs suggested that: the plan of operations be submitted to the Agricultural Counselor or Attache only if the Counselor or Attache is resident in the country targeted for assistance; the priorities governing decisions to enter into section 416(b) and FFP agreements be refined to better reflect the different purposes of each program; CCC allow flexibility in shifting funds among approved expenditure categories within the total CCC-approved commodity distribution budget in order to facilitate management of the programs by the PVOs; and a quarterly, rather than monthly, financial statement from the PVO will provide CCC sufficient and timely information with which to monitor the programs.

Response: CCC agrees with these suggestions and the final rule has been revised accordingly.

Commissions

Comment: Shippers and shipping agents expressed concern regarding section 1499.8(e)(1) of the proposed rule which allows commissions to be paid only on the ocean portion of any transportation arranged for the commodities even if the movement of the commodities involves inland transportation after discharge. A number of freight forwarders noted that they were section 8(a) qualified small businesses and that this proposed rule would have an adverse impact on their businesses as a result of reducing the amount of commissions that they could receive. Comments also noted that the Shipping Act of 1984 mandates that conference carriers pay to shipping agents a commission based on the aggregate of all rates and charges for a movement which would include both ocean and inland charges. Finally, they suggested that this proposal was unreasonable because it ignored the fact that shipping agents did a considerable amount of work with shipments after cargo is discharged and moves inland.

Response: CCC has determined that the complexity of arranging inland transportation warrants continued financing of commissions for that service when CCC is financing this movement.

Comment: Section 1499.8(e)(2) proposed a limit on the amount of commission payable to a shipping agent. The limit proposed was 2/3 of the maximum commission payable (2 1/2 percent of the total freight). A number of comments characterized the proposed change as arbitrary and unduly restrictive and argued that it would not result in overall savings for CCC.

Response: In view of the issues raised by these comments, CCC has concluded not to proceed with the proposed 2/3's limitation.

Freight payments

Comments: Several parties suggested that CCC make full freight payment upon loading, stating this would be consistent with standard commercial practice.

Response: In CCC's experience, payment upon discharge is necessary to assure proper handling and discharge of the commodities provided and to protect CCC's programmatic interests. These programs are not commercial; they often provide commodities that would not otherwise be moved in normal international trade to recipients facing emergency food needs.

Agents

Comment: Section 1499.8(c) of the proposed rule extends conflict of interest requirements currently applicable to title I, P.L. 480 and section 416(b) to the FFP. Comments argued that this provision would punish status rather than address any actual conflict of interest, and would reduce competition and increase costs.

Response: The provisions complained of are legislatively required in connection with shipments under title I and section 416(b). CCC has determined to extend the conflict of interest provisions to the FFP in order to maintain consistency between these food donation programs.

Other Changes to Proposed Rule

The final rule also incorporates the changes to the section 416(b) and Food for Progress (FFP) programs mandated by the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127. That Act allows the use of generated local currency in section 416(b) for administrative expenses, extends the time period to expend such currency; authorizes the participation of international organizations in the FFP; expands CCC's authority to provide commodities on credit terms under the FFP; and to fund technical assistance for monetization programs in the FFP. Finally, the final rule makes a number of editorial and organizational changes to the text of the proposed rule.

List of Subjects in 7 CFR Part 1499

Agricultural commodities, Exports, Foreign aid.

Accordingly, title 7 of the Code of Federal Regulations is amended by adding a new Part 1499 to read as follows:

PART 1499—FOREIGN DONATION PROGRAMS

Sec.

Authority: 7 U.S.C. 1431(b); 7 U.S.C. 1736o; E.O. 12752.

§ 1499.1 Definitions.

Activity—a Cooperating Sponsor's use of agricultural commodities provided under Program Agreements or use of sale proceeds.

Agricultural Counselor or *Attache*—the United States Foreign Agricultural Service representative stationed abroad, who has been assigned responsibilities with regard to the country into which the commodities provided are imported, or such representative's designee.

CCC—the Commodity Credit Corporation.

Commodities—agricultural commodities or products.

Director, P.L. 480–OD—the Director, Pub. L. 480 Operations Division, Foreign Agricultural Service, USDA.

Director, CCCPSD—the Director, CCC Program Support Division, Foreign Agricultural Service, USDA.

Director, PDD—the Director, Program Development Division, Foreign Agricultural Service, USDA.

Deputy Administrator—Deputy Administrator for Export Credits, Foreign Agricultural Service, USDA.

Force Majeure—damage caused by perils of the sea or other waters; collisions; wrecks; standing without the fault of the carrier; jettison; fire from any cause; Act of God; public enemies or pirates; arrest or restraint of princes, princesses, rulers of peoples without the fault of the carrier; wars; public disorders; captures; or detention by public authority in the interest of public safety.

General Sales Manager—General Sales Manager and Associate Administrator, Foreign Agricultural Service, USDA, who is a Vice President, CCC.

KCCO—Kansas City Commodity Office, Farm Services Agency, USDA, P.O. Box 419205, Kansas City, Missouri, 64141–6205.

KCFMO—Kansas City Financial Management Office, Farm Services Agency, USDA, P.O. Box 419205, Kansas City, Missouri, 64141–6205.

Ocean freight differential—the amount, as determined by CCC, by which the cost of ocean transportation is higher than would otherwise be the case by reason of the requirement that the commodities be transported on U.S.-flag vessels.

Program Agreement—an agreement entered into between CCC and Cooperating Sponsors.

Program income—interest on sale proceeds and money received by the Cooperating Sponsor, other than sales proceeds, as a result of carrying out approved activities.

Recipient agency—an entity located in the importing country which receives commodities or commodity sale proceeds from a Cooperating Sponsor for the purpose of implementing activities.

Sale proceeds—money received by a Cooperating Sponsor from the sale of commodities.

Section 416(b)—Section 416(b) of the Agricultural Act of 1949.

USDA—the United States Department of Agriculture.

§ 1499.2 General purpose and scope.

This part establishes the general terms and conditions governing CCC's donation of commodities to Cooperating Sponsors under the section 416(b) and Food for Progress programs. This does not apply to donations to intergovernmental agencies or organizations (such as the World Food Program) unless CCC and such intergovernmental agency or organization enters into an agreement incorporating this part.

§ 1499.3 Eligibility requirements for Cooperating Sponsor.

A Cooperating Sponsor may be either:

(a) A foreign government;

(b) An entity registered with the Agency for International Development (AID) in accordance with AID regulations; or

(c) An entity that demonstrates to CCC's satisfaction:

(1) Organizational experience and resources available to implement and manage the type of program proposed, *i.e.*, targeted food assistance or sale of commodities for economic development activities;

(2) Experience working in the targeted country; and

(3) Experience and knowledge on the part of personnel who will be responsible for implementing and managing the program. CCC may require that an entity submit a financial statement demonstrating that it has the financial means to implement an effective donation program.

§ 1499.4 Availability of commodities from CCC inventory.

CCC will periodically announce the types and quantities of agricultural commodities available for donation from CCC inventory for the section 416(b) program.

§ 1499.5 Program Agreements and Plans of Operation.

(a) *Plan of Operation.* (1) Prior to entering into a section 416(b) Program Agreement, a Cooperating Sponsor shall submit a Plan of Operation to the Director, PDD and to the Agricultural Counselor or Attache, if an Agricultural Counselor or Attache is resident in the country where activities are to be implemented. After approval by CCC, the Plan of Operation will be incorporated into the section 416(b) Program Agreement as ''Attachment A.''

(2) CCC may require Cooperating Sponsors to submit a Plan of Operation in connection with the Food for Progress program.

(3) A Plan of Operation shall be in the following format and provide the following information:

1. Name and Address of Applicant:

2. Country of Donation:

3. Kind and Quantity of Commodities Requested:

4. Delivery Schedule:

5. Program Description:

Provide the following information:

(a) Activity objectives, including a description of any problems anticipated in achieving the activities' objectives;

(b) Method for choosing beneficiaries of activities;

(c) Program administration including, as appropriate, plans for administering the distribution or sale of commodities and the expenditure of sale proceeds, and identification of the administrative or technical personnel who will implement the activities;

(d) Activity budgets, including costs that will be borne by the Cooperating Sponsor, other organizations or local governments;

(e) The recipient agency, if any, that will be involved in the program and a description of each recipient agency's capability to perform its responsibilities as stated in the Plan of Operation;

(f) Governmental or nongovernmental entities involved in the program and the extent to which the program will strengthen or increase the capabilities of such entities to further economic development in the recipient country;

(g) Method of educating consumers as to the source of the provided commodities and, where appropriate, preparation and use of the commodity; and

(h) Criteria for measuring progress towards achieving the objectives of activities and evaluating program outcome.

6. Use of Funds or Goods and Services Generated:

When the activity involves the use of sale proceeds, the receipt of goods or services from the barter of commodities, or the use of program income, the following information must be provided:

(a) the quantity and type of commodities to be sold or bartered;

(b) extent to which any sale or barter of the agricultural commodities provided would displace or interfere with any sales that may otherwise be made;

(c) the amount of sale proceeds anticipated to be generated from the sale, the value of the goods or services anticipated to be generated from the barter of the agricultural commodities provided, or the amount of program income expected to be generated;

(d) the steps taken to use, to the extent possible, the private sector in the process of selling commodities;

(e) the specific uses of sale proceeds or program income and a timetable for their expenditure; and

(f) procedures for assuring the receipt and deposit of sale proceeds and program income into a separate special account and procedures for the disbursement of the proceeds and program income from such special account.

7. Distribution Methods:

(a) a description of the transportation and storage system which will be used to move the agricultural commodities from the receiving port to the point at which distribution is made to the recipient;

(b) a description of any reprocessing or repackaging of the commodities that will take place; and

(c) a logistics plan that demonstrates the adequacy of port, transportation, storage, and warehouse facilities to handle the flow of commodities to recipients without undue spoilage or waste.

8. Duty Free Entry:

Documentation indicating that any commodities to be distributed to recipients, rather than sold, will be imported and distributed free from all customs, duties, tolls, and taxes.

9. Economic Impact:

Information indicating that the commodities can be imported and distributed without a disruptive impact upon production, prices and marketing of the same or like products within the importing country.

(b) *Agreements.* CCC and the Cooperating Sponsor will enter into a written Program Agreement which will incorporate the terms and conditions set forth in this part. The commodities provided by CCC, and any packaging, will meet the specifications set forth in such Program Agreement. A Program Agreement may contain special terms or conditions, in addition to or in lieu of, the terms and conditions set forth in the regulations in this part when CCC determines that such special terms or conditions are necessary to effectively carry out the particular Program Agreement.

§ 1499.6 Usual marketing requirements.

(a) A foreign government Cooperating Sponsor shall provide to the Director, PDD, data showing commercial and non-commercial imports of the types of agricultural commodities requested during the prior five years, by country of origin, and an estimate of imports of such commodities during the current year.

(b) CCC may require that a Program Agreement with a foreign government include a ''usual marketing requirement'' that establishes a specific level of imports for a specified period. The Program Agreement may also include a prohibition on the export of provided commodities, as well as of other similar commodities specified in the Program Agreement.

§ 1499.7 Apportionment of costs and advances.

(a) CCC will bear the costs of processing, packaging, transportation, handling and other incidental charges incurred in delivering commodities to Cooperating Sponsors. CCC will deliver bulk grain shipments f.o.b. vessel, and shipments of all other commodities f.a.s. vessel or intermodal points. CCC will choose the point of delivery based on lowest cost to CCC.

(b) When the General Sales Manager approves in advance and in writing, CCC may agree to bear all or a portion of reasonable costs associated with:

(1) Transportation from U.S. ports to designated ports or points of entry abroad, maritime survey costs, and in cases of urgent and extraordinary relief requirements, transportation from designated ports or points of entry abroad to designated storage and distribution sites;

(2) In cases of urgent and extraordinary relief requirements,

reasonable storage and distribution costs; and

(3) Under the Food for Progress Program, administration or monitoring of food assistance programs, or technical assistance regarding sales of commodities provided by CCC.

(c) CCC will not pay any costs incurred by the Cooperating Sponsor prior to the date of the Program Agreement.

(d) Except as provided in paragraph (b) of this section, the Cooperating Sponsor shall ordinarily bear all costs incurred subsequent to CCC's delivery of commodities at U.S. ports or intermodal points.

(e) A Cooperating Sponsor seeking agreement by CCC to bear the costs identified in paragraphs (b)(2) or (b)(3) of this section shall submit to the Director, PDD, a Program Operation Budget detailing such costs. If approved, the Program Operation Budget shall become part of the Program Agreement. The Cooperating Sponsor may make adjustments between line items of an approved Program Operation Budget up to 20 percent of the total amount approved or $1,000, whichever is less, without any further approval. Adjustments beyond these limits must be specifically approved by the Controller and the General Sales Manager.

(f) The Cooperating Sponsor may request advance of up to 85 percent of the amount of an approved Program Operating Budget. However, CCC will not approve any request for an advance received earlier than 60 days after the date of a previous advance made in connection with the same Program Agreement.

(g) Funds advanced shall be deposited in an interest bearing account until expended. Interest earned may be used only for the purposes for which the funds were advanced.

(h) The Cooperating Sponsor shall return to 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.

(i) The Cooperating Sponsor shall, not later than 10 days after the end of each calendar quarter, submit a financial statement to the Director, CCCPSD, accounting for all funds advanced and all interest earned.

(j) CCC will pay all other costs for which it is obligated under the Program Agreement by reimbursement. However, CCC will not pay any cost incurred after the final date specified in the Program Agreement.

§ 1499.8 Ocean transportation.

(a) *Cargo preference.* Shipments of commodities provided under either the section 416(b) or Food for Progress programs are subject to the requirements of sections 901(b) and 901b of the Merchant Marine Act, 1936, regarding carriage on U.S.-flag vessels. CCC will endeavor to meet these requirements separately for each program for each 12-month compliance period. A Cooperating Sponsor shall comply with the instructions of CCC regarding the quantity of commodities that must be carried on U.S. flag vessels.

(b) *Freight procurement requirements.* In all cases where the Cooperating Sponsor arranges ocean transportation, whether by U.S. or non-U.S. flag vessel and CCC is financing any portion of the ocean freight:

(1) The Cooperating Sponsor shall arrange ocean transportation through competitive bidding and shall obtain approval of all invitations for bids from the offices specified in the Program Agreement prior to issuance.

(2) Invitations for bids shall be issued through the Transportation News Ticker (TNT), New York, and at least one other comparable means of trade communication.

(3) Freight invitations for bids shall include specified procedures for payment of freight, including the party responsible for the freight payments, and expressly require that:

(i) Offers include a contract canceling date no later than the last contract layday specified in the invitation for bids;

(ii) Offered rates be quoted in U.S. dollars per metric ton;

(iii) If destination bagging or transportation to a point beyond the discharge port is required, the offer separately state the total rate and the portion thereof attributable to the ocean segment of the movement;

(iv) Any non-liner U.S. flag vessel 15 years or older offer, in addition to any other offered rate, a one-way rate applicable in the event the vessel is scrapped or transferred to foreign flag registry prior to the end of the return voyage to the United States;

(v) In the case of packaged commodities, U.S. flag carriers specify whether delivery will be direct breakbulk shipment, container shipment, or breakbulk transshipment and identify whether transshipment (including container relays) will be via U.S. or foreign flag vessel;

(vi) Vessels offered subject to Maritime Administration approval will not be accepted; and

(vii) Offers be received by a specified closing time, which must be the same for both U.S. and non-U.S. flag vessels.

(4) In the case of shipments of bulk commodities and non-liner shipments of packaged commodities, the Cooperating Sponsor shall open offers in public in the United States at the time and place specified in the invitation for bids and consider only offers that are responsive to the invitation for bids without negotiation, clarification, or submission of additional information. Late offers shall not be considered or accepted.

(5) All responsive offers received for both U.S. flag and foreign flag service shall be presented to KCCO which will determine the extent to which U.S.-flag vessels will be used.

(6) The Cooperating Sponsor shall promptly furnish the Director, Public Law 480–OD, or other official specified in the Program Agreement, copies of all offers received with the time of receipt indicated thereon. The Director, Public Law 480–OD, or other official specified in the Program Agreement, will approve all vessel fixtures. The Cooperating Sponsor may fix vessels subject to the required approval; however, the Cooperating Sponsor shall not confirm a vessel fixture until advised of the required approval and the results of the Maritime Administration's guideline rate review. The Cooperating Sponsor shall not request guideline rate advice from the Maritime Administration. The Cooperating Sponsor will, promptly after receipt of vessel approval, issue a public notice of the fixture details on the TNT or other means of communication approved by the Director, Public Law 480–OD.

(7) Non-Vessel Operating Common Carriers may not be employed to carry shipments on either U.S. or foreign-flag vessels.

(8) The Cooperating Sponsor shall promptly furnish the Director Public Law 480–OD, a copy of the signed laytime statement and statement of facts at the discharge port.

(c) *Shipping agents.* (1) The Cooperating Sponsor may appoint a shipping agent to assist in the procurement of ocean transportation. The Cooperating Sponsor shall nominate the shipping agent in writing to the Deputy Administrator, Room 4077–S, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1031, and include a copy of the proposed agency agreement. The Cooperating Sponsor shall specify the time period of the nomination.

(2) The shipping agent so nominated shall submit the information and

certifications required by 7 CFR 17.5 to the Deputy Administrator.

(3) A person may not act as a shipping agent for a Cooperating Sponsor unless the Deputy Administrator has notified the Cooperating Sponsor in writing that the nomination is accepted.

(d) *Commissions.* (1) When any portion of the ocean freight is paid by CCC, total commissions earned on U.S. and foreign flag bookings by all parties arranging vessel fixtures, shall not exceed 2½ percent of the total freight costs.

(2) Address commissions are prohibited.

(e) *Contract terms.* When CCC is paying any portion of the ocean freight, charter parties and liner booking contracts must conform to the following requirements, as applicable:

(1) Packaged commodities on liner vessels shall be shipped on the basis of full berth terms with no demurrage or despatch;

(2) Shipments of bulk liquid commodities may be contracted in accordance with trade custom. Other bulk commodities, including shipments that require bagging or stacking for the account of the vessel, shall be shipped on the basis of vessel load, free out, with demurrage and despatch applicable at load and discharge ports; except that, if bulk commodities require further inland distribution, they shall be shipped on the basis of vessel load with demurrage and despatch at load and berth terms discharge, *i.e.*, no demurrage, despatch, or detention at discharge. Demurrage and despatch shall be settled between the ocean carrier and commodity suppliers at load port and between the ocean carrier and charterers at discharge ports. CCC is not responsible for resolving disputes involving the calculation of laytime or the payment of demurrage or despatch.

(3) If the Program Agreement requires the Cooperating Sponsor to arrange an irrevocable letter of credit for ocean freight, the Cooperating Sponsor shall be liable for detention of the vessel for loading delays attributable solely to the decision of the ocean carrier not to commence loading because of the failure of the Cooperating Sponsor to establish such letter of credit. Charter parties and liner booking contracts may not contain a specified detention rate. The ocean carrier shall be entitled to reimbursement, as damages for detention for all time so lost, for each calendar day or any part of the calendar day, including Saturdays, Sundays and holidays. The period of such delay shall not commence earlier than upon presentation of the vessel at the designated loading port within the laydays specified in the charter party or liner booking contract, and upon notification of the vessel's readiness to load in accordance with the terms of the applicable charter party or liner booking contract. The period of such delay shall end at the time that operable irrevocable letters of credit have been established for ocean freight or the time the vessel begins loading, whichever is earlier. Time calculated as detention shall not count as laytime. Reimbursement for such detention shall be payable no later than upon the vessel's arrival at the first port of discharge.

(4) Charges including, but not limited to charges for inspection, fumigation, and carrying charges, attributable to the failure of the vessel to present before the canceling date will be for the account of the ocean carrier.

(5) Ocean freight is earned under a charter party when the vessel and cargo arrive at the first port of discharge, *Provided,* That if a *force majeure* prevents the vessel's arrival at the first port of discharge, 100% of the ocean freight is payable or, if the charter party provides for completing additional requirements after discharge such as bagging, stacking, or inland transportation, not more than 85% of the ocean freight is payable, at the time the General Sales Manager determines that such *force majeure* was the cause of nonarrival; and

(6) When the ocean carrier offers delivery to destination ports on U.S.-flag vessels, but foreign-flag vessels are used for any part of the voyage to the destination port without first obtaining the approval of the Cooperating Sponsor, KCCO, and any other approval that may be required by the Program Agreement, the ocean freight rate will be reduced to the lowest responsive foreign-flag vessel rate offered in response to the same invitation for bids and the carrier agrees to pay CCC the difference between the contracted ocean freight rate and the freight rate offered by such foreign-flag vessel.

(f) *Coordination between CCC and the Cooperating Sponsor.* When a Program Agreement specifies that the Cooperating Sponsor will arrange ocean transportation:

(1) KCCO will furnish the Cooperating Sponsor, or its agent, with a Notice of Commodity Availability (Form CCC–512) which will specify the receiving country, commodity, quantity, and date at U.S. port or intermodal delivery point.

(2) The Cooperating Sponsor shall complete the Form CCC–512 indicating name of steamship company, vessel name, vessel flag and estimated time of arrival at U.S. port; and shall sign and return the completed form to KCCO, with a copy to the Director, P.L. 480–OD. If CCC agrees to pay any part of the ocean transportation for liner cargoes, the Cooperating Sponsor shall also indicate on the Form CCC–512 the applicable Federal Maritime Commission tariff rate, and tariff identification.

(3) KCCO will issue instructions to have the commodity delivered f.a.s. or f.o.b. vessel, U.S. port of export or intermodal delivery point, consigned to the Cooperating Sponsor.

(g) Documents required for payment of freight—(1) General rule. To receive payment for ocean freight, the following documents shall be submitted to the Director, CCCPSD:

(i) One copy of completed Form CCC–512;

(ii) Four copies of the original on-board bills of lading indicating the freight rate and signed by the originating carrier;

(iii) For all non-containerized grain cargoes,

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

(B) One copy of the National Cargo Bureau Certificate of Readiness (Vessel Hold Inspection Certificate); and

(C) One copy of the National Cargo Bureau Certificate of Loading;

(iv) For all containerized grain and grain product cargoes, one copy of the FGIS Container Condition Inspection Certificate;

(v) One signed copy of liner booking note or charter party covering ocean transportation of cargo;

(vi) For charter shipments, a notice of arrival at first discharge port submitted by the Cooperating Sponsor;

(vii) Four copies of either:

(A) A request by the Cooperating Sponsor for reimbursement of ocean freight or ocean freight differential indicating the amount due, and accompanied by a certification from the ocean carrier that payment has been received from the Cooperating Sponsor; or

(B) A request for direct payment to the ocean carrier, indicating amount due; or

(C) A request for direct payment of ocean freight differential to the ocean carrier accompanied by a certification from the carrier that payment of the Cooperating Sponsor's portion of the ocean freight has been received.

(2) *In cases of force majeure.* To receive payment in cases where the General Sales Manager determines that circumstances of *force majeure* have prevented the vessel's arrival at the first port of discharge, the Cooperating

Sponsor shall submit all documents required by paragraph (g)(1) of this section except for the notice of arrival required by paragraph (g)(1)(vi) of this section.

(h) *CCC payment of ocean freight or ocean freight differential*—(1) *General rule.* CCC will pay, not later than 30 days after receipt in good order of the required documentation, 100 percent of either the ocean freight or the ocean freight differential, whichever is specified in the Program Agreement.

(2) *Additional requirements after discharge.* Where the charter party or liner booking note provide for the completion of additional services after discharge, such as bagging, stacking or inland transportation, CCC will pay, not later than 30 days after receipt in good order of the required documentation, either not more than 85 percent of the total freight charges or 100 percent of the ocean freight differential, whichever is specified in the Program Agreement. CCC will pay the remaining balance, if any, of the freight charges not later than 30 days after receipt of notification from the Cooperating Sponsor that such additional services have been provided; except that CCC will not pay any remaining balance where the GSM determines that the vessel's arrival at first port of discharge was prevented by *force majeure.*

(3) *No demurrage.* CCC will not pay demurrage. *§ 1499.9 Arrangements for entry and handling in the foreign country.*

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

(b) When CCC has agreed to pay costs of transporting, storing, and distributing commodities from designated points of entry or ports of entry, the Cooperating Sponsor shall arrange for such services, by through bill of lading, or by contracting directly with suppliers of services, as CCC may approve. If the Cooperating Sponsor contracts directly with the suppliers of such services, the Cooperating Sponsor may seek reimbursement by submitting documentation to CCC indicating actual costs incurred. All supporting documentation must be sent to the Director, CCCPSD. CCC, at its option, will reimburse the Cooperating Sponsor for the cost of such services in U.S. dollars at the exchange rate in effect on the date of payment by CCC, or in foreign currency.

§ 1499.10 Restrictions on commodity use and distribution.

(a) The Cooperating Sponsor may use the commodities provided only in accordance with the terms of the Program Agreement.

(b) Commodities shall not be distributed within the importing country on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliations of the potential consumers or recipients.

(c) Commodities shall not be distributed, handled or allocated by military forces without specific CCC authorization.

§ 1499.11 Agreement between cooperating sponsor and recipient agencies.

(a) The Cooperating Sponsor shall enter into a written agreement with a recipient agency prior to the transfer of any commodities, sale proceeds or program income to the recipient agency. Copies of such agreements shall be provided to the Agricultural Counselor or Attache, and the Director, PDD. Such agreements shall require the recipient agency to pay the Cooperating Sponsor the value of any commodities, sale proceeds or program income that are used for purposes not expressly permitted under the Program Agreement, or that are lost, damaged, or misused as result of the recipient agency's failure to exercise reasonable care;

(b) CCC may waive the requirements of paragraph (a) of this section where it determines that such an agreement is not feasible or appropriate.

§ 1499.12 Sales and barter of commodities provided and use of proceeds.

(a) Commodities may be sold or bartered without the prior approval of CCC where damage has rendered the commodities unfit for intended program purposes and sale or barter is necessary to mitigate loss of value.

(b) A Cooperating Sponsor may, but is not required to, negotiate an agreement with the host government under which the commodities imported for a sale or barter may be imported, sold, or bartered without assessment of duties or taxes. In such cases and where the commodities are sold, they shall be sold at prices reflecting prevailing local market value.

(c) The Cooperating Sponsor shall deposit all sale proceeds into an interest-bearing account unless prohibited by the laws or customs of the importing country or CCC determines that to do so would constitute an undue burden. Interest earned on such deposits shall only be used for approved activities.

(d) Except as otherwise provided in this part the Cooperating Sponsor may use sale proceeds and resulting interest only for those purposes approved in the applicable Plan of Operation.

(e) CCC will approve the use of sale proceeds and interest to purchase real and personal property where local law permits the Cooperating Sponsor to retain title to such property, but will not approve the use of sale proceeds or interest 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 activity, or

(2) Used in whole or in part for sectarian purposes; *except that,* a Cooperating Sponsor may use such sale proceeds or interest to pay for repairs or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of provided commodities but only if such structure is not used in whole or in part for any religious or sectarian purposes while the provided commodities are stored in such structure. When not approved in the Plan of Operation, such use may be approved by the Agricultural Counsellor or Attache.

(f) The Cooperating Sponsor shall follow commercially reasonable practices in procuring goods and services and when engaging in construction activity in accordance with the approved Plan of Operation. Such practices shall include procedures to prevent fraud, self-dealing and conflicts of interest, and shall foster free and open competition to the maximum extent practicable.

(g) To the extent required by the Program Agreement, the Cooperating Sponsor shall submit to the Controller, CCC, and to the Director, PDD, an inventory of all assets acquired with sale proceeds or interest or program income. In the event that its participation in the program terminates, the Cooperating Sponsor shall dispose, at the direction of the Director, PDD, of any property, real or personal, so acquired.

§ 1499.13 Processing, packaging and labeling of section 416(b) commodities in the foreign country.

(a) Cooperating Sponsors may arrange for the processing of commodities provided under a section 416(b) Program Agreement, or for packaging or repackaging prior to distribution. When a third party provides such processing, packaging or repackaging, the

Cooperating Sponsor shall enter into a written agreement requiring that the provider of such services maintain adequate records to account for all commodities delivered and submit periodic reports to the Cooperating Sponsor. The Cooperating Sponsor shall submit a copy of the executed agreement to the Agricultural Counselor or Attache.

(b) If, prior to distribution, the Cooperating Sponsor arranges for packaging or repackaging commodities provided under section 416(b), the packaging shall be plainly labeled in the language of the country in which the commodities are to be distributed with the name of the commodity and, except where the commodities are to be sold or bartered after processing, packaging or repackaging, to indicate that the commodity is furnished by the people of the United States of America and not to be sold or exchanged. If the commodities are not packaged, the Cooperating Sponsor shall, to the extent practicable, display banners, posters or other media containing the information prescribed in this paragraph.

(c) CCC will reimburse Cooperating Sponsors that are nonprofit private voluntary organizations or cooperatives for expenses incurred for repackaging if the packages of commodities provided under section 416(b) are discharged from the vessel in damaged condition, and are repackaged to ensure that the commodities arrive at the distribution point in wholesome condition. No prior approval is required for such expenses equaling $500 or less. If such expense is estimated to exceed $500, the authority to repackage and incur such expense must be approved by the Agricultural Counselor or Attache in advance of repackaging.

§ 1499.14 Disposition of commodities unfit for authorized use.

(a) *Prior to delivery to Cooperating Sponsor at discharge port or point of entry.* If the commodity is damaged prior to delivery to a governmental Cooperating Sponsor at discharge port or point of entry overseas, the Agricultural Counselor or Attache will immediately arrange for inspection by a public health official or other competent authority. If the commodity is damaged prior to delivery to a nongovernmental Cooperating Sponsor at the discharge port or point of entry, the nongovernmental Cooperating Sponsor shall arrange for such inspection. If inspection discloses the commodity to be unfit for the use authorized in the Program Agreement, the Agricultural Counselor or Attache or the nongovernmental Cooperating Sponsor shall dispose of the commodities in accordance with the priority set forth in paragraph (b) of this section. Expenses incidental to the handling and disposition of the damaged commodity will be paid by CCC from the sale proceeds or from an appropriate CCC account designated by CCC. The net proceeds of sales shall be deposited with the U.S. Disbursing Officer, American Embassy, for the credit of CCC in an appropriate CCC account designated by CCC; however, if the commodities are provided for a sales program, the net sale proceeds, net of expenses incidental to handling and disposition of the damaged commodity, shall be deposited to the special account established for sale proceeds. The Cooperating Sponsor shall consult with CCC regarding the inspection and disposition of commodities and accounting for sale proceeds in the event the Cooperating Sponsor executed a sales agreement under which title passed to the purchaser prior to delivery to the Cooperating Sponsor.

(b) *After delivery to Cooperating Sponsor.* (1) If after arrival in a foreign country and after delivery to a Cooperating Sponsor, it appears that the commodity, or any part thereof, may be unfit for the use authorized in the Program Agreement, the Cooperating Sponsor shall immediately arrange for inspection of the commodity by a public health official or other competent authority approved by the Agricultural Counselor or Attache. If no competent local authority is available, the Agricultural Counselor or Attache may determine whether the commodities are unfit for the use authorized in the Program Agreement and, if so, may direct disposal in accordance with this paragraph (b) of this section. The Cooperating Sponsor shall arrange for the recovery of that portion of the commodities designated during the inspection as suitable for authorized use. If, upon inspection, the commodity (or any part thereof) is determined to be unfit for the authorized use, the Cooperating Sponsor shall notify the Agricultural Counselor or Attache of the circumstances pertaining to the loss or damage. With the concurrence of the Agricultural Counselor or Attache, the commodity determined to be unfit for authorized use shall be disposed of in the following order of priority:

(i) By transfer to an approved section 416(b) program for use as livestock feed. CCC shall be advised promptly of any such transfer so that shipments from the United States to the livestock feeding program can be reduced by an equivalent amount;

(ii) Sale for the most appropriate use, i.e., animal feed, fertilizer, or industrial use, at the highest obtainable price. When the commodity is sold, all U.S. Government markings shall be obliterated or removed;

(iii) By donation to a governmental or charitable organization for use as animal feed or for other non-food use; or

(iv) If the commodity is unfit for any use or if disposal in accordance with paragraph (b)(1) (i), (ii) or (iii) of this section is not possible, the commodity shall be destroyed under the observation of a representative of the Agricultural Counselor or Attache, if practicable, in such manner as to prevent its use for any purpose.

(2) Actual expenses incurred, including third party costs, in effecting any sale may be deducted from the sale proceeds and, if the commodities were intended for direct distribution, the Cooperating Sponsor shall deposit the net proceeds with the U.S. Disbursing Officer, American Embassy, with instructions to credit the deposit to an appropriate CCC account as designated by CCC. If the commodities were intended to be sold, the Cooperating Sponsor shall deposit the gross proceeds into the special interest bearing account and, after approved costs related to the handling and disposition of damaged commodities are paid, shall use the remaining funds for purposes of the approved program. The Cooperating Sponsor shall promptly furnish to the Agricultural Counselor or Attache a written report of all circumstances relating to the loss and damage on any commodity loss in excess of $5,000; quarterly reports shall be made on all other losses. If the commodity was inspected by a public health official or other competent authority, the report and any supplemental report shall include a certification by such public health official or other competent authority as to the condition of the commodity and the exact quantity of the damaged commodity disposed. Such certification shall be obtained as soon as possible after the discharge of the cargo. A report must also be provided to the Chief, Debt Management Division, KCFMO, of action taken to dispose of commodities unfit for authorized use.

§ 1499.15 Liability for loss, damage, or improper distribution of commodities—claims and procedures.

(a) *Fault of Cooperating Sponsor prior to loading on ocean vessel.* The Cooperating Sponsor shall immediately notify KCCO, Chief, Export Operations Division if the Cooperating Sponsor will not have a vessel for loading at the U.S. port of export in accordance with the agreed shipping schedule. CCC will determine whether the commodity will be: moved to another available outlet; stored at the port for delivery to the Cooperating Sponsor when a vessel is available for loading; or disposed of as CCC may deem proper. The Cooperating Sponsor shall take such action as directed by CCC and shall reimburse CCC for expenses incurred if CCC determines that the expenses were incurred because of the fault or negligence of the Cooperating Sponsor.

(b) *Fault of others prior to loading on ocean vessel.* The Cooperating Sponsor shall immediately notify the Chief, Debt Management Office, KCFMO, when any damage or loss to the commodity occurs that is attributable to a warehouseman, carrier, or other person between the time title is transferred to a Cooperating Sponsor and the time the commodity is loaded on board vessel at the designated port of export. The Cooperating Sponsor shall promptly assign to CCC any rights to claims which may arise as a result of such loss or damage and shall promptly forward to CCC all documents pertaining thereto. CCC shall have the right to initiate claims, and retain the proceeds of all claims, for such loss or damage.

(c) *Survey and outturn reports related to claims against ocean carriers.* (1) If the Program Agreement provides that CCC will arrange for an independent cargo surveyor to attend the discharge of the cargo, CCC will require the surveyor to provide a copy of the report to the Cooperating Sponsor.

(2)(i) If the Cooperating Sponsor arranges for an independent cargo surveyor, the Cooperating Sponsor shall forward to the Chief, Debt Management Office, KCFMO, any narrative chronology or other commentary it can provide to assist in the adjudication of ocean transportation claims and shall prepare such a narrative in any case where the loss is estimated to be in excess of $5,000.00. The Cooperating Sponsor may, at its option, also engage the independent surveyor to supervise clearance and delivery of the cargo from customs or port areas to the Cooperating Sponsor or its agent and to issue delivery survey reports thereon.

(ii) In the event of cargo loss and damage, the Cooperating Sponsor shall provide to the Chief, Debt Management Office, KCFMO, the names and addresses of individuals who were present at the time of discharge and during survey and who can verify the quantity lost or damaged. For bulk grain shipments, in those cases where the Cooperating Sponsor is responsible for survey and outturn reports, the Cooperating Sponsor shall obtain the services of an independent surveyor to:

(A) Observe the discharge of the cargo;

(B) Report on discharging methods including scale type, calibrations and any other factor which 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 weights;

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

(D) Advise on the quality of sweepings;

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

(F) Provide immediate notification to the Cooperating Sponsor if additional services are necessary to protect cargo interests or if the surveyor has reason to believe that the correct quantity was not discharged; and

(G) In the case of shipments arriving in container vans, list the container van numbers and seal numbers shown on the container vans, and indicate whether the seals were intact at the time the container vans were opened, and whether the container vans were in any way damaged. To the extent possible, the independent surveyor should observe discharge of container vans from the vessel to ascertain whether any damage to the container van occurred and arrange for surveying as container vans are opened.

(iii) Cooperating Sponsors shall send copies to KCFMO, Chief, Debt Management Office of all reports and documents pertaining to the discharge of commodities.

(iv) CCC will reimburse the Cooperating Sponsor for costs incurred upon receipt of the survey report and the surveyor's invoice or other documents that establish the survey cost. CCC will not reimburse a Cooperating Sponsor for the costs of a delivery survey unless the surveyor also prepares a discharge survey, or for any other survey not taken contemporaneously with the discharge of the vessel, unless CCC determines that such action was justified in the circumstances.

(3) Survey contracts shall be let on a competitive bid basis unless CCC determines that the use of competitive bids would not be practicable. CCC may preclude the use of certain surveyors because of conflicts of interest or lack of demonstrated capability to properly carry out surveying responsibilities.

(4) If practicable, all surveys shall be conducted jointly by the surveyor, the consignee, and the ocean carrier, and the survey report shall be signed by all parties.

(d) *Ocean carrier loss and damage.* (1) Notwithstanding transfer of title, CCC shall have the right to file, pursue, and retain the proceeds of collection from claims arising from ocean transportation cargo loss and damage arising out of shipments of commodities provided to governmental Cooperating Sponsors; however, when the Cooperating Sponsor pays the ocean freight or a portion thereof, it shall be entitled to pro rata reimbursement received from any claims related to ocean freight charged. CCC will pay general average contributions for all valid general average incidents which may arise from the movement of commodity to the destination ports. CCC shall receive and retain all allowances in general average.

(2) Nongovernmental Cooperating Sponsors shall: file notice with the ocean carrier immediately upon discovery of any cargo loss or damage; promptly initiate claims against the ocean carriers for such loss and damage; take all necessary action to obtain restitution for losses, and (iv) provide CCC copies of all such claims. Notwithstanding the preceding sentence the nongovernmental Cooperating Sponsor need not file a claim when the cargo loss is less than $100, or in any case when the loss is between $100 and $300 and the nongovernmental Cooperating Sponsor determines that the cost of filing and collecting the claim will exceed the amount of the claim. The nongovernmental Cooperating Sponsor shall transmit to KCFMO, Chief, Debt Management Office information and documentation on such lost or damaged shipments when no claim is to be filed. When General Average has been declared, Cooperating Sponsors need not file or collect claims for loss of, or damage to, commodities.

(3) Amounts collected by nongovernmental Cooperating Sponsors on claims against ocean carriers which are less than $200 may be retained by the nongovernmental Cooperating Sponsor. On claims involving loss or damage of $200 or more, nongovernmental Cooperating Sponsors may retain from collections received by them, either $200 plus 10 percent of the difference between $200 and the total amount collected on the claim, up to a maximum of $500; or the actual administrative expenses incurred in collection of the claim, provided retention of such administrative expenses is approved by CCC. Allowable collection costs shall not include attorneys fees, fees of collection agencies, and similar costs. In no event

will CCC pay collection costs in excess of the amount collected on the claim.

(4) A nongovernmental Cooperating Sponsor also may retain from claim recoveries remaining after allowable deductions for administrative expenses of collection, the amount of any special charges, such as handling and packing costs, which the nongovernmental Cooperating Sponsor has incurred on the lost or damaged commodity and which are included in the claims and paid by the liable party.

(5) A nongovernmental Cooperating Sponsor may redetermine claims on the basis of additional documentation or information not considered when the claims were originally filed when such documentation or information clearly changes the ocean carrier's liability. Approval of such changes by CCC is not required regardless of amount. However, copies of redetermined claims and supporting documentation or information shall be furnished to CCC.

(6) A nongovernmental Cooperating Sponsor may negotiate compromise settlements of claims of any amount, provided that proposed compromise settlements of claims having a value of $5,000 or more shall require prior approval in writing by CCC. When a claim is compromised, a nongovernmental Cooperating Sponsor may retain from the amount collected, the amounts authorized in paragraph (d)(3) of this section, and in addition, an amount representing such percentage of the special charges described in paragraph (d)(4) of this section as compromised amount is to the full amount of the claim. When a claim is less than $600, a nongovernmental Cooperating Sponsor may terminate collection activity when it is determined that pursuit of such claims will not be economically sound. Approval for such termination by CCC is not required; however, the nongovernmental Cooperating Sponsor shall notify KCFMO, Chief, Debt Management Division when collection activity on a claim is terminated.

(7) All amounts collected in excess of the amounts authorized in this section to be retained shall be remitted to CCC. For the purpose of determining the amount to be retained by a nongovernmental Cooperating Sponsor from the proceeds of claims filed against ocean carriers, the word ''claim'' shall refer to the loss and damage to commodities which are shipped on the same voyage of the same vessel to the same port destination, irrespective of the kinds of commodities shipped or the number of different bills of lading issued by the carrier.

(8) If a nongovernmental Cooperating Sponsor is unable to effect collection of a claim or negotiate an acceptable compromise settlement within the applicable period of limitation or any extension thereof granted in writing by the party alleged responsible for the damage, the nongovernmental Cooperating Sponsor shall assign its rights to the claim to CCC in sufficient time to permit the filing of legal action prior to the expiration of the period of limitation or any extension thereof. Generally, a nongovernmental Cooperating Sponsor should assign claim rights to CCC no later than 60 days prior to the expiration of the period of limitation or any extension thereof. In all cases, a nongovernmental Cooperating Sponsor shall keep CCC informed of the progress of its collection efforts and shall promptly assign their claim rights to CCC upon request. Subsequently, if CCC collects on or settles the claim, CCC shall, except as indicated in this paragraph pay to a nongovernmental Cooperating Sponsor the amount to which it would have been entitled had it collected on the claim. The additional 10 percent on amounts collected in excess of $200 will be payable, however, only if CCC determines that reasonable efforts were made to collect the claim prior to the assignment, or if payment is determined to be commensurate with the extra efforts exerted in further documenting the claim. If documentation requirements have not been fulfilled and the lack of such documentation has not been justified to the satisfaction of CCC, CCC will deny payment of all allowances to the nongovernmental Cooperating Sponsor.

(9) When a nongovernmental Cooperating Sponsor permits a claim to become time-barred, or fails to take timely actions to insure the right of CCC to assert such claims, and CCC determines that the nongovernmental Cooperating Sponsor failed to properly exercise its responsibilities under the Agreement, the nongovernmental Cooperating Sponsor shall be liable to the United States for the cost and freight value of the commodities lost to the program.

(e) *Fault of Cooperating Sponsor in country of distribution.* If a commodity, sale proceeds or program income is used for a purpose not permitted by the Program Agreement, or if a Cooperating Sponsor causes loss or damage to a commodity, sale proceeds, or program income through any act or omission or failure to provide proper storage, care and handling, the cooperating sponsor shall pay to the United States the value of the commodities, sale proceeds or program income lost, damaged or misused. CCC will consider normal commercial practices in the country of distribution in determining whether there was a proper exercise of the Cooperating Sponsor's responsibility. Payment by the Cooperating Sponsor shall be made in accordance with paragraph (g) of this section.

(f) *Fault of others in country of distribution and in intermediate country.* (1) In addition to survey or outturn reports to determine ocean carrier loss and damage, the Cooperating Sponsor shall, in the case of landlocked countries, arrange for an independent survey at the point of entry into the recipient country and make a report as set forth in paragraph (c)(1) of this section. CCC will reimburse the Cooperating Sponsor for the costs of survey as set forth in paragraph (c)(2)(iv) of this section.

(2) Where any damage to or loss of the commodity or any loss of sale proceeds or program income is attributable to a warehouseman, carrier or other person, the Cooperating Sponsor shall make every reasonable effort to pursue collection of claims for such loss or damage. The Cooperating Sponsor shall furnish a copy of the claim and related documents to the Agricultural Counselor or Attache. Cooperating Sponsors who fail to file or pursue such claims shall be liable to CCC for the value of the commodities or sale proceeds or program income lost, damaged, or misused: *Provided*, however, that the Cooperating Sponsor may elect not to file a claim if the loss is less than $500. The Cooperating Sponsor may retain $150 of any amount collected on an individual claim. In addition, Cooperating Sponsors may, with the written approval of the Agricultural Counselor or Attache, retain amounts to cover special costs of collection such as legal fees, or pay such collection costs with sale proceeds or program income. Any proposed settlement for less than the full amount of the claim requires prior approval by the Agricultural Counselor or Attache. When the Cooperating Sponsor has exhausted all reasonable attempts to collect a claim, it shall request the Agricultural Counselor or Attache to provide further instructions.

(3) The Cooperating Sponsor shall pursue any claim by initial billings and at least three subsequent demands at not more than 30 day intervals. If these efforts fail to elicit a satisfactory response, the Cooperating Sponsor shall pursue legal action in the judicial system of country unless otherwise agreed by the Agricultural Counselor or Attache. The Cooperating Sponsors

must inform the Agricultural Counselor or Attache in writing of the reasons for not pursuing legal action; and the Agricultural Counselor or Attache may require the Cooperating Sponsor to obtain the opinion of competent legal counsel to support its decision prior to granting approval. If the Agricultural Counselor or Attache approves a Cooperating Sponsor's decision not to take further action on the claim, the Cooperating Sponsor shall assign the claim to CCC and shall provide to CCC all documentation relating to the claim.

(4) As an alternative to legal action in the judicial system of the country with regard to claims against a public entity of the government of the cooperating country, the Cooperating Sponsor and the cooperating country may agree in writing to settle disputed claims by an appropriate administrative procedure or arbitration.

(g) *Determination of value.* The Cooperating Sponsor shall determine the value of commodities misused, lost or damaged on the basis of the domestic market price at the time and place the misuse, loss or damage occurred. When it is not feasible to determine such market price, the value shall be the f.o.b. or f.a.s. commercial export price of the commodity at the time and place of export, plus ocean freight charges and other costs incurred by the U.S. Government in making delivery to the Cooperating Sponsor. When the value is determined on a cost basis, the Cooperating Sponsor may add to the value any provable costs it has incurred prior to delivery by the ocean carrier. In preparing the claim statement, these costs shall be clearly segregated from costs incurred by the Government of the United States. With respect to claims other than ocean carrier loss or damage claims, the Cooperating Sponsor may request the Agricultural Counselor or Attache to approve a commercially reasonable alternative basis to value the claim.

(h) *Reporting losses to the Agricultural Counselor or Attache or CCC designated representative.* (1) The Cooperating Sponsor shall promptly notify the Agricultural Counselor or Attache or CCC designated representative, in writing, of the circumstances pertaining to any loss, damage, or misuse of commodities valued at $500 or more occurring within the country of distribution or intermediate country. The report shall be made as soon as the Cooperating Sponsor has adequately investigated the circumstances, but in no event more than ninety days from the date the loss became known to the Cooperating Sponsor. The report shall identify the party in possession of the commodities and the party responsible for the loss, damage or misuse; the kind and quantities of commodities; the size and type of containers; the time and place of misuse, loss, or damage; the current location of the commodity; the Program Agreement number, the CCC contract numbers, or if unknown, other identifying numbers printed on the commodity containers; the action taken by the Cooperating Sponsor with respect to recovery or disposal; and the estimated value of the commodity. The report shall explain why any of the information required by this paragraph cannot be provided. The Cooperating Sponsor shall also report the details regarding any loss or misuse of sale proceeds or program income.

(2) The Cooperating Sponsor shall report quarterly to the Agricultural Counselor or Attache any loss, damage to or misuse of commodities resulting in loss of less than $500. The Cooperating Sponsor shall inform the Agricultural Counselor or Attache or CCC designated representative if it has reason to believe there is a pattern or trend in the loss, damage, or misuse of such commodities and submit a report as described in paragraph (h)(1) of this section, together with any other relevant information the Cooperating Sponsor has available to it. The Agricultural Counselor or Attache may require additional information about any commodities lost, damaged or misused.

(i) *Handling claims proceeds.* Claims against ocean carriers shall be collected in U.S. dollars (or in the currency in which freight is paid) and shall be remitted (less amounts authorized to be retained) by Cooperating Sponsors to CCC. Claims against Cooperating Sponsors shall be paid to CCC in U.S. dollars. With respect to commodities lost, damaged or misused, amounts paid by Cooperating Sponsors and third parties in the country of distribution shall be deposited with the U.S. Disbursing Officer, American Embassy, preferably in U.S. dollars with instructions to credit the deposit to an appropriate CCC account as determined by CCC, or in local currency at the highest rate of exchange legally obtainable on the date of deposit with instructions to credit the deposit to an appropriate CCC account as determined by CCC. With respect to sale proceeds and program income, amounts recovered may be deposited in the same account as the sale proceeds and may be used for purposes of the program.

§ 1499.16 Records and reporting requirements.

(a) *Records and reports—general requirements.* The Cooperating Sponsor shall maintain records for a period of three (3) years from the date of export of the commodities that accurately reflect the receipt and use of the commodities and any proceeds realized from the sale of commodities. The Government of the Exporting Country may, at reasonable times, inspect the Cooperating Sponsor'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 Cooperating Sponsor's commodity storage and distribution sites and to locations of activities supported with proceeds realized from the sale of the commodities.

(b) *Evidence of export.* The Cooperating Sponsor's freight forwarder shall, within thirty (30) days after export, submit evidence of export of the agricultural commodities to the Chief, Export Operations Division, KCCO. If export is by sea or air, the Cooperating Sponsor's freight forwarder shall submit five copies of the carrier's on board bill of lading or consignee's receipt authenticated by a representative of the U.S. Customs Service. The evidence of export must show the kind and quantity of agricultural commodities exported, the date of export, and the destination country.

(c) *Reports.* (1) The Cooperating Sponsor shall submit a semiannual logistics report to the Agricultural Counselor or Attache and to the Director, CCC Program Support Division, FAS/USDA, Washington, DC 20250–1031, covering the receipt of commodities. The first report shall be submitted by the date specified in the Program Agreement, and cover the time period specified in the Program Agreement. Reports thereafter will cover each subsequent six (6) month period until all commodities have been distributed or sold. The report must contain the following data:

(i) Receipts of agricultural commodities including the name of each vessel, discharge port(s) or point(s) of entry, the date discharge was completed, the condition of the commodities on arrival, any significant loss or damage in transit; advice of any claim for, or recovery of, or reduction of freight charges due to loss or damage in transit on U.S. flag vessels;

(ii) Estimated commodity inventory at the end of the reporting period;

(iii) Quantity of commodity on order during the reporting period;

(iv) Status of claims for commodity losses both resolved and unresolved during the reporting period;

(v) Quantity of commodity damaged or declared unfit during the reporting period; and

(vi) Quantity and type of the commodity that has been directly distributed by the Cooperating Sponsor, distribution date, region of distribution, and estimated number of individuals benefiting from the distribution.

(2) If the Program Agreement authorizes the sale or barter of commodities by the Cooperating Sponsor, the Cooperating Sponsor shall also submit a semiannual monetization report to the Agricultural Counselor or Attache and to the Director, CCC Program Support Division, FAS/USDA, Washington, DC 20250–1031, a monetization report covering the deposits into and disbursements from the special account for the purposes specified in the Program Agreement. The first report shall be submitted by the date specified in the Program Agreement, and cover the time period specified in the Program Agreement. Reports thereafter will cover each subsequent six (6) month period until all commodities have been distributed, bartered, or sale proceeds disbursed. The report must contain the following information and include both local currency amounts and U.S. dollar equivalents:

(i) Quantity and type of commodities sold;

(ii) Proceeds generated from the sale;

(iii) Proceeds deposited to the special account including the date of deposit;

(iv) Interest earned on the special account;

(v) Disbursements from the special account, including date, amount and purpose of the disbursement;

(vi) Any balance carried forward in the special account from the previous reporting period; and

(vii) In connection with a section 416(b) Program Agreement only, a description of the effectiveness of sales and barter provisions in facilitating the distribution of commodities and products to targeted recipients, and a description of the extent, if any, that sales, barter or use of commodities:

(A) Affected the usual marketings of the United States;

(B) Displaced or interfered with commercial sales of the United States;

(C) Disrupted world commodity prices or normal patterns of trade with friendly countries;

(D) Discouraged local production and marketing of commodities in the recipient country;

(E) Achieved the objectives of the Program Agreement; and

(F) Could be improved in future agreements.

(3) The Cooperating Sponsor shall furnish the Government of the Exporting Country such additional information and reports relating to the agreement as the Government of the Exporting Country may reasonably request.

§ 1499.17 Audits.

Nongovernmental Cooperating Sponsors shall assure that audits are performed to assure compliance with Program Agreements and the provisions of this part. An audit undertaken in accordance with OMB Circular A–133, shall fulfill the audit requirements of this section. Audits shall be performed at least annually until all commodities have been distributed and sale proceeds expended. Both the auditor and the auditing standards to be used by the Cooperating Sponsor must be acceptable to CCC. The Cooperating Sponsor is also responsible for auditing the activities of recipient agencies that receive more than $25,000 of provided commodities or sale proceeds. This responsibility may be satisfied by relying upon independent audits of the recipient agency or upon a review conducted by the Cooperating Sponsor.

§ 1499.18 Suspension of the program.

All or any part of the assistance provided under a Program Agreement, including commodities in transit, may be suspended by CCC if:

(a) The Cooperating Sponsor fails to comply with the provisions of the Program Agreement or this part;

(b) CCC determines that the continuation of such assistance is no longer necessary or desirable; or

(c) CCC determines that storage facilities are inadequate to prevent spoilage or waste, or that distribution of commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the recipient country.

§ 1499.19 Sample documents and guidelines for developing proposals and reports.

CCC has developed guidelines to assist the Cooperating Sponsors in developing proposals and reporting on program logistics and commodity sales. Cooperating Sponsors may obtain these guidelines from the Director, PDD.

§ 1499.20 Paperwork reduction requirement.

The paperwork and record keeping requirements imposed by this part have been previously submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995. OMB has assigned control number 0551–0035 for this information collection.

Signed this November 18, 1996, in Washington, D.C.

Christopher E. Goldthwait,

General Sales Manager, FAS, and Vice President, Commodity Credit Corporation.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AGL–8]

Establishment of Class E Airspace; Grafton, ND, Grafton Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Grafton, ND. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 35 has been developed for the Grafton Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, July 10, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Grafton, ND (61 FR 36315). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written