

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### 7 CFR Part 1599

RIN 0551-AA64

#### McGovern-Dole International Food for Education and Child Nutrition Program

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Foreign Agricultural Service proposes to establish rules governing the foreign donation of resources, including agricultural commodities, to implement the McGovern-Dole International Food for Education and Child Nutrition Program. This program would provide agricultural commodities and financial and technical assistance to carry out preschool and school food for education programs and maternal, infant, and child nutrition programs, in foreign countries.

**DATES:** Submit comments on or before April 25, 2003.

**ADDRESSES:** Address all comments concerning this proposed rule to William S. Hawkins, Director, Program Administration Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave., SW., Stop 1031, Washington, DC 20250-1031; telephone (202) 720-3241.

You may submit comments and data by sending electronic mail (E-mail) to: [Lorie.Jacobs@usda.gov](mailto:Lorie.Jacobs@usda.gov).

#### FOR FURTHER INFORMATION CONTACT:

Lorie Jacobs, Branch Chief, Financial Analysis Branch, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture (USDA), Ag. Box 1034, Washington, DC 20250-1031; telephone (202) 720-2074; FAX (202) 690-1595. The USDA prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs and marital

or familial status. Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 820-5881 (voice) or (202) 720-7808 (TDD).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. It has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget. A cost-benefit assessment has been completed and is available to the public by contacting Lorie Jacobs at (202) 720-2074.

##### Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This proposed rule would have preemptive effect with respect to any State or local laws, regulations or policies which conflict with such provisions or which otherwise impede their full implementation; does not have retroactive effect; and does not require administrative proceedings before suit may be filed.

##### Executive Order 12372

This program 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 48 FR 29115).

##### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because FAS is not required by any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

##### Paperwork Reduction Act

This proposed rule would add new information collection requirements applicable to the McGovern-Dole International Food for Education and Child Nutrition Program. In accordance with the Paperwork Reduction Act of 1995, the Foreign Agricultural Service (FAS) requests approval of a new information collection in support of the

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

*Title:* McGovern-Dole International Food for Education and Child Nutrition Program.

*OMB Control Number:* xxxx-xxxx.

*Type of Request:* Approval of an information collection.

*Abstract:* This information is needed to administer the McGovern-Dole International Food for Education and Child Nutrition Program. The information will be gathered from applicants desiring to receive grants under the program to determine the viability of requests for resources to implement school feeding and maternal and child nutrition programs in foreign countries and other periodic reports during the course of implementing the activities.

*Estimate of Burden:* Public reporting burden for this collection of the additional information is estimated to average 74 hours per applicant.

*Respondents:* Private voluntary organizations, shipping agents, ship owners/brokers, and survey companies.

*Estimated Number of Respondents:* 156.

*Estimated Number of Responses per Respondent:* 7.

*Estimated Total Annual Burden on Respondents:* 11,607 hours.

Copies of the information collection may be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720-2568.

**Request for Comments:** Send comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to: William

S. Hawkins, Director, Program Administration Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave., SW., Stop 1031, Washington, DC 20250-1031; telephone (202) 720-3241.

All responses to this notice will be summarized. All comments will also become a matter of public record.

### **Government Paperwork Elimination Act**

FAS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

### **Background**

Section 3107 of the Farm Security and Rural Investment Act of 2002, Pub. L. 107-171, authorized the President to establish a program to be known as the McGovern-Dole International Food for Education and Child Nutrition Program. This program would provide agricultural commodities and financial and technical assistance to carry out preschool and school food for education programs and maternal, infant, and child nutrition programs, in foreign countries. By Presidential Memorandum, March 11, 2003, the President delegated the responsibility for implementing this program to the Secretary of Agriculture and it has been further delegated, within the Department of Agriculture, to the Administrator, Foreign Agricultural Service. Congress directed that \$100 million of Commodity Credit Corporation (CCC) funds be used for this program in fiscal year 2003. Thereafter, the program is subject to annual appropriations.

In comparison to the pilot Global Food for Education Initiative, there will be an increased emphasis on education and nutrition under the McGovern-Dole International Food for Education and Child Nutrition Program. The Farm Security and Rural Investment Act of 2002 (Farm Act of 2002) indicates that funds should be used in part to improve literacy and primary education, particularly with respect to girls, and to put emphasis on identifying beneficiaries who are malnourished or undernourished. In addition, cooperating sponsors should attempt to coordinate supplementary feeding and nutrition programs with existing programs that provide health-needs interventions.

The McGovern-Dole International Food for Education and Child Nutrition Program is implemented under the authorities of the Foreign Agricultural Service and, therefore, this new program will be subject to regulations that are separate from other foreign assistance commodity grant programs operated under the authority of the Commodity Credit Corporation (CCC), *i.e.*, section 416(b) and Food for Progress. However, because there are many similarities between these programs and it would be advisable to retain the same procedures and rules to the extent practical, this proposed rule would adopt, and repeat in 7 CFR part 1599, most of the regulations currently in 7 CFR part 1499 that are applicable to the section 416(b) and Food for Progress programs. Sections 1599.7 and 1599.8, which cover procedures that apply to procuring ocean transportation, and arranging for entry and handling of commodities in the foreign country, are nearly identical to 7 CFR part 1499. Comments are encouraged regarding whether using this identical language could cause any unforeseen problems under the new program.

The legislation authorizing the new program would require certain additional information to support proposals for funding and authorizes certain expenditures not generally permitted under section 416(b) or Food for Progress. Also, certain department-wide grant regulations not presently applicable to CCC authorized grants would be applicable to the McGovern-Dole International Food for Education and Child Nutrition Program. These department-wide regulations are referenced in the proposed rule. The applicability of these department-wide rules has necessitated certain deviations from the rules applicable to section 416(b) and Food for Progress grants. Of particular note are the provisions on advances, interest earned on advances, changes to Program Budgets, and audit requirements.

Under the McGovern-Dole International Food for Education and Child Nutrition Program, FAS may pay certain costs not permitted under the earlier pilot Global Food for Education Initiative operated under the authority of section 416(b). This includes costs for transportation, storage and handling within the recipient country in non-emergency situations when certain specified findings are met. FAS may also pay administrative expenses of nongovernmental Cooperating Sponsors and other costs of nongovernmental Cooperating sponsors that enhance the effectiveness of program activities. These costs, to the extent FAS agrees to

pay them, would be detailed in the Program Operations Budget, which becomes part of the program agreement. The Farm Act of 2002 provides for participation by the Food and Nutrition Service (FNS) under the McGovern-Dole International Food for Education and Child Nutrition Program, wherein FNS may provide technical advice on the establishment and implementation of programs, including providing field expertise in recipient countries.

Costs that "enhance the effectiveness" of activities is a vague concept. FAS is proposing to give priority coverage of these costs to those that would increase the likelihood of meeting the activities objectives. Examples of costs that may enhance the effectiveness of a school feeding program may be the purchase of text books, utensils and food trays, the provision of incentives to teachers, as well as the use of consultancies to provide technical assistance in the educational improvement area when conducting teacher training. While monetization proceeds could also be requested and used to cover any program costs that are necessary to have a successful activity to enhance the effectiveness of a program, organizations need to demonstrate that monetization offers more benefits than a direct cash outlay.

Another significant difference between the McGovern-Dole International Food for Education and Child Nutrition Program and the prior pilot program is that the new authority requires that Cooperating Sponsors demonstrate that the activities undertaken with program resources must be sustainable after FAS assistance ends. Consequently, FAS will require that proposals include sufficient information to allow the Associate Administrator to make a determination that this will be the case.

The development and implementation of the McGovern-Dole International Food for Education and Child Nutrition Program helps to meet the objective of supporting international economic development and trade capacity building set forth in the USDA Strategic Plan for FY 2002-2007. Under that objective USDA provides targeted foreign food assistance to developing countries to foster economic growth and development.

USDA uses an interagency process to review food aid policies and programs to ensure the necessary coordination and management of these programs, and will continue to use this process for the McGovern-Dole International Food for Education and Child Nutrition Program. FAS will cooperate with USAID, FNS and other Federal Agencies in the

development and implementation of the McGovern-Dole International Food for Education and Child Nutrition Program.

The Farm Act of 2002 stipulates that funds may be used to pay for the packaging, enrichment, preservation, and fortification of agricultural commodities under the McGovern-Dole International Food for Education and Child Nutrition Program. This proposed rule contains that information in Section 1599.6 (a) Apportionment of Costs and Advances, in order to emphasize the intent of the Farm Act of 2002 to allow for coverage of these costs.

#### List of Subjects in 7 CFR Part 1599

Agricultural commodities, Exports, Foreign aid.

Accordingly, the Foreign Agricultural Service proposes that chapter XV of title 7 of the Code of Federal Regulations be amended by adding a new part 1599 to read as follows:

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

- 1599.1 What special definitions apply?
- 1599.2 What is the general purpose and scope of the regulations?
- 1599.3 Are there eligibility requirements for Cooperating Sponsors?
- 1599.4 How do I apply?
- 1599.5 When is a usual marketing requirement included?
- 1599.6 How are costs and advances apportioned?
- 1599.7 What procedures apply to procuring ocean transportation?
- 1599.8 Who arranges for entry and handling in the foreign country?
- 1599.9 What are the restrictions on commodity use and distribution?
- 1599.10 Are there special requirements for agreements between Cooperating Sponsor and Recipient Agencies?
- 1599.11 What procedures apply to sales and barter of commodities provided and the use of proceeds?
- 1599.12 What procedures apply to the processing, packaging and labeling of commodities in the foreign country?
- 1599.13 How does the Cooperating Sponsor dispose of commodities unfit for authorized use?
- 1599.14 How is liability established for loss, damage, or improper distribution of commodities?
- 1599.15 Are there special record keeping and reporting requirements?
- 1599.16 What are the Cooperating Sponsor's audit requirements?
- 1599.17 When may FAS suspend a program?
- 1599.18 Are there sample documents and guidelines available for developing proposals and reports?

**Authority:** 7 U.S.C. 1736–1; Presidential Memorandum, March 11, 2003 (68 FR 12569).

#### § 1599.1 What special definitions apply?

*Activity*—a Cooperating Sponsor's use of agricultural commodities and financial and technical assistance provided under Program Agreements.

*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.

*Associate Administrator*—Associate Administrator, Foreign Agricultural Service.

*CCC*—the Commodity Credit Corporation.

*Commodities*—U.S. agricultural commodities or products.

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

*Director, CCC-OD*—the Director, CCC Operations Division, Foreign Agricultural Service, USDA.

*Director, PAD*—the Director, Program Administration Division, Foreign Agricultural Service, USDA.

*Director, PPDED*—the Director, Program Planning, Development & Evaluation Division, Foreign Agricultural Service, USDA.

*FAS*—Foreign Agricultural Service, USDA.

*Force Majeure*—damage caused by perils of the sea or other waters; collisions; wrecks; stranding 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.

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

*KCMO/DMD*—Debt Management Division, Kansas City Management Office, Farm Services Agency, USDA, P.O. Box 419205, Kansas City, Missouri, 64141–6205.

*Ocean freight differential*—the amount, as determined by FAS, 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 by FAS and Cooperating Sponsors to implement the McGovern-Dole International Food for Education and Child Nutrition Program.

*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.

*USDA*—the United States Department of Agriculture.

#### § 1599.2 What is the general purpose and scope of the regulations?

(a) This part establishes the general terms and conditions governing the donation of commodities and financial and technical assistance to Cooperating Sponsors under the McGovern-Dole International Food for Education and Child Nutrition Program. This part does not apply to donations to intergovernmental agencies or organizations (such as the World Food Program) unless FAS and such intergovernmental agency or organization enter into an agreement incorporating this part. Cooperating Sponsors should also familiarize themselves with regulations at 7 CFR part 3019—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

(b) In addition to the regulations in this part 1599, grants awarded to non-governmental Cooperating Sponsors by FAS are subject to 7 CFR 3015.205, 7 CFR part 3019 and 7 CFR part 3052.

#### § 1599.3 Are there eligibility requirements for Cooperating Sponsors?

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 FAS' satisfaction:

(1) Organizational experience and resources available to implement and manage the type of program proposed, *i.e.*, targeted food assistance, activities that improve the food security, health and nutrition of women and children, and 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. FAS may require

that an entity submit a financial statement demonstrating that it has the financial means to implement an effective donation program.

#### **§ 1599.4 How do I apply?**

To apply for this program, a Cooperating Sponsor shall submit an SF-424, a Program Introduction, a Plan of Operation, and a Budget Proposal to the Director, PPDED and to the Agricultural Counselor or Attaché responsible for the country where activities are to be implemented. Electronic submissions of these items are preferred, particularly through the FAS on-line system. If on-line submission is not available, e-mail or hard copy are acceptable.

(a) Submit an SF-424.

(b) Program Introduction shall include the following:

(1) Information about the organization's past food aid activities with particular emphasis on school feeding, maternal child health or other relevant development activities, its experience within the country where the program is proposed, and any other relevant information to demonstrate its capability to implement the program in the country, with particular emphasis on the organizations ability to:

(i) Identify and assess the needs of beneficiaries, especially malnourished or undernourished mothers and their children who are 5 years of age or younger, and school-age children who are malnourished, undernourished, or do not regularly attend school;

(ii) In the case of preschool and school-age children, target low-income areas where children's enrollment and attendance in school is low or girls' enrollment and participation in preschool or school is low;

(iii) Incorporate developmental objectives for improving literacy and primary education (especially with girls); and,

(iv) In the case of maternal and child nutrition activities, coordinate supplementary feeding and nutrition programs with existing or newly established maternal, infant, and child programs that meet maternal, prenatal, postnatal, and newborns health needs;

(2) Reasons for the need for the food aid and in particular a school feeding program in the country. The organization shall include statistics on poverty, food deficits, and related items such as literacy rates for the target population; percentage of school age children attending schools, especially females; malnutrition rates; public expenditures on primary education; country's current school feeding operations, if they exists, along with

current funding resources; any information regarding teacher training, community infrastructure (PTAs), health, nutrition, and water and sanitation information; and lastly, other potential donors;

(3) Verification that the national government is committed to or is working 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;

(4) Steps to graduate the program from food aid and address sustainability, or sustainable program components, which will continue after the end of food aid donations. In addressing graduation or sustainability, address how the program will sustain the benefits of the education, enrollment, and attendance of children in schools in the targeted communities when the provision of commodities and assistance to a recipient country under FFE terminates; and estimate the time required until the recipient country or eligible organizations will be able to provide sufficient assistance without additional assistance under FFE; or in the absence of sustainability explain how the program will provide other long term benefits to targeted populations of the recipient country;

(5) Information on methods used to involve indigenous institutions as well as local communities and governments in the development and implementation of the programs and activities to foster local capacity building and leadership;

(6) An explanation of how each requested expenditure identified in § 1599.6(b)(4)(i) would enhance the effectiveness of the activities implemented under this subpart. For purposes of this section, "expenditures that would enhance the effectiveness of the activities implemented under this subpart" are those expenditures which would increase the likelihood of meeting the objectives of the activities as stated in the Plan of Operation. Examples of costs that may enhance the effectiveness of a school feeding program may be the purchase of utensils and food trays, text books, and incentives for teachers, as well as the use of consultancies to provide technical assistance in the educational improvement area when conducting teacher training. These costs may include a limited amount to procure locally produced foods.

(7) If your proposal includes monetization or barter, demonstrate that monetization or bartering of

commodities offers more benefits than a direct cash outlay.

(c) A Plan of Operation shall provide the following information:

(1) Country of donation.

(2) Kind, quantity and delivery schedule of commodities requested.

(3) Activity objectives. Briefly state what the goals to be accomplished for the program are.

(4) Program description shall include the following:

(i) Fully describe the steps involved in program implementation;

(ii) Method for choosing beneficiaries of activities;

(iii) Program administration, including a description of the Cooperating Sponsors plan to develop, implement, monitor, report on, and provide accountability for activities. The Cooperating Sponsor shall also include, 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;

(iv) Activity budgets, including costs that will be borne by the Cooperating Sponsor, other organizations or local governments. If a nongovernmental Cooperating Sponsor requests FAS to fund costs identified in § 1599.6

(b)(4)(i), the Cooperating Sponsor shall include a detailed description of:

(A) The costs for which funding is requested; and,

(B) The amount of funding requested for each cost;

(v) 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;

(vi) 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. The Cooperating Sponsor shall also include a description of the steps that the government of the host country is taking to improve the preschool and school systems in the country;

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

(viii) Criteria for measuring progress towards achieving the objectives of activities and evaluating program outcome, including health, nutrition and education.

(5) Use of funds or goods and services generated. If 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 cooperating sponsor shall provide the following information:

- (i) The quantity and type of commodities to be sold or bartered;
  - (ii) Extent to which any sale or barter of the agricultural commodities provided would displace or interfere with any sales that may otherwise be made;
  - (iii) 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;
  - (iv) The steps taken to use, to the extent possible, the private sector in the process of selling commodities;
  - (v) The specific uses of sale proceeds or program income and a timetable for their expenditure; and
  - (vi) 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.
- (6) Distribution methods:
- (i) 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;
  - (ii) A description of any reprocessing or repackaging of the commodities that will take place; and
  - (iii) 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.
- (7) 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.
- (8) 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.
- (d) Budget Proposals shall include funds requested, from either cash or monetization resources, to fund administrative, ITSH, technical and financial assistance costs. Budget proposals shall be submitted in a spreadsheet format.
- (e) After submission and approval by FAS, a Program Agreement will be developed. The Program Agreement,

which will incorporate the terms and conditions set forth in this Part, the commodities provided by FAS, 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 FAS determines that such special terms or conditions are necessary to effectively carry out the particular Program Agreement. The Plan of Operation, Budget Proposal, and Commodity specifications will be incorporated into the Program Agreement as Attachments.

**§ 1599.5 When is a usual marketing requirement included?**

(a) A foreign government Cooperating Sponsor shall provide to the Director, PPDED, 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) FAS 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.

**§ 1599.6 How are costs and advances apportioned?**

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

(b) When the Associate Administrator approves in advance and in writing, FAS 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;
- (2) Maritime survey costs;
- (3) Transportation from designated ports or points of entry abroad to designated storage and distribution sites, and reasonable storage and distribution costs if the recipient

country is a low income, net food-importing country that:

(i) Meets the poverty criteria established by the International Bank for Reconstruction and Development for Civil Works Preference; and

(ii) Has a national government that is committed to or is working toward, through a national action plan, the goals of the World Declaration on Education for All and the Dakar Framework for Action of the World Education Forum; and

(4) The costs of a nongovernmental Cooperating Sponsor:

(i) In the recipient country that enhance the effectiveness of the activities including packaging, enrichment, preservation and fortification of agricultural commodities; and

(ii) For administrative or monitoring expenses specified in the program agreement.

(5) The administrative expenses of any Federal agency implementing or assisting in the implementation of the McGovern-Dole International Food for Education and Child Nutrition Program, including the administrative costs of the Food and Nutrition Service to provide technical advice on the establishment and implementation of programs, including providing field expertise in recipient countries.

(c) FAS 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 FAS' delivery of commodities at U.S. ports or intermodal points.

(e) A Cooperating Sponsor seeking agreement by FAS to bear the storage and distribution costs identified in paragraph (b)(3) or the costs identified in paragraph (b)(4) of this section shall submit to the Director, PPDED, a Program Operation Budget detailing such costs. If approved, the Program Operation Budget shall become part of the Program Agreement. The nongovernmental Cooperating Sponsor may make adjustments between line items of an approved Program Operation Budget up to 10 percent of the total amount of the budget as last approved without any further approval. Adjustments beyond these limits must be specifically approved by the Director, PPDED.

(f) The Cooperating Sponsor may request advance of up to 100 percent of the amount of an approved Program Operating Budget if FAS determines that the Cooperating Sponsor's financial management system meets the

requirements of 7 CFR 3019.21.

However, FAS 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 on advance of funds must be returned to FAS.

(h) The Cooperating Sponsor shall return to FAS any funds not obligated as of the 180th day after being advanced, together with 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, PPDED, accounting for all funds advanced and all interest earned.

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

(k) Program income may be used to further eligible activity objectives.

#### **§ 1599.7 What procedures apply to procuring ocean transportation?**

(a) *Cargo preference.* Shipments of commodities are subject to the requirements of sections 901(b) and 901b of the Merchant Marine Act, 1936, regarding carriage on U.S.-flag vessels. A Cooperating Sponsor shall comply with the instructions of FAS regarding the quantity of commodities that must be carried on U.S. flag vessels.

(b) *Freight procurement requirements.* When FAS is financing any portion of the ocean freight, whether on U.S. flag or non-U.S. flag vessels, and the Cooperating Sponsor arranges ocean transportation:

(1) The Cooperating Sponsor shall arrange ocean transportation through competitive bidding and shall obtain approval of all invitations for bids from the Director, CCC-OD.

(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. 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, CCC-OD, or other official specified in the Program Agreement, copies of all offers received with the time of receipt indicated thereon. The Director, CCC-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, CCC-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 CCC-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 17.4 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 FAS, total commissions earned on U.S. and foreign flag bookings by all parties arranging vessel fixtures, shall not exceed 2-1/2 percent of the total freight costs.

(2) Address commissions are prohibited.

(e) *Contract terms.* When FAS 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. FAS 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 Associate Administrator 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 FAS the difference between the contracted ocean freight rate and the freight rate offered by such foreign-flag vessel.

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

(1) FAS will provide that KCCO furnishes the Cooperating Sponsor, or its agent, a Notice of Commodity Availability (Form FAS-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 FAS-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, CCC-OD. If FAS agrees to pay any part of the ocean transportation for liner cargoes, the Cooperating Sponsor shall also indicate on the Form FAS-512 the applicable Federal Maritime Commission tariff rate, and tariff identification.

(3) FAS will arrange for KCCO to 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 Cooperating Sponsor shall submit the following documents to the Director, CCC-OD:

(i) One signed copy of completed Form FAS-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 signed copy of the Federal Grain Inspection Service (FGIS) Official Stowage Examination Certificate (Vessel Hold Certificate);

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

(C) One signed 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 signed notice of arrival at first discharge port submitted by the Cooperating Sponsor;

(vii) For all liner cargoes, a copy of the tariff page;

(viii) 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.

(ix) Each request to FAS for payment must provide a document, on letterhead and signed by an official or agent of the requester, 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 requester's taxpayer identification number; and the type of the account into which funds will be deposited.

(2) *In cases of force majeure.* To receive payment in cases where the Associate Administrator 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) *FAS payment of ocean freight or ocean freight differential.* (1) *General rule.* FAS 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, FAS 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. FAS 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 FAS will not pay any remaining balance where the Associate Administrator determines that the vessel's arrival at first port of discharge was prevented by force majeure.

(3) *No demurrage.* FAS will not pay demurrage.

**§ 1599.8 Who arranges 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 FAS 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 FAS may approve. If the Cooperating Sponsor contracts directly with the suppliers of such services, the Cooperating Sponsor may seek reimbursement by submitting documentation to FAS indicating actual costs incurred. All supporting documentation must be sent to the Director, CCC-OD. FAS, 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 FAS, or in foreign currency.

**§ 1599.9 What are the 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) In the event that its participation in the program terminates, the nongovernmental Cooperating Sponsor will safeguard any undistributed commodities and sales proceeds and dispose of such commodities and proceeds as directed by FAS.

**§ 1599.10 Are there special requirements for agreements 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, PPDED. 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 a result of the recipient agency's failure to exercise reasonable care;

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

**§ 1599.11 What procedures apply to sales and barter of commodities provided and the use of proceeds?**

(a) Commodities may be sold or bartered without the prior approval of FAS 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 FAS 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) FAS 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 Counselor 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 Director, PPDED, 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, PPDED, of any property, real or personal, so acquired.

**§ 1599.12 What procedures apply to the processing, packaging and labeling of commodities in the foreign country?**

(a) Cooperating Sponsors may arrange for the processing of commodities provided under the 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, 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) FAS will reimburse Cooperating Sponsors that are nonprofit private voluntary organizations or cooperatives for expenses incurred for repackaging if the packages of commodities 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.

**§ 1599.13 How does the Cooperating Sponsor dispose 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 FAS from the sale proceeds or from an appropriate FAS account designated by FAS. The net proceeds of sales shall be deposited with the U.S. Disbursing Officer, American Embassy, in an account designated by FAS; 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 FAS 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. 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 USDA sponsored program for use as livestock feed. FAS 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 account as designated by FAS. 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, KCMO/DMD, of action taken to dispose of commodities unfit for authorized use.

**§ 1599.14 How is liability established for loss, damage, or improper distribution of commodities?**

(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. FAS 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 FAS may deem proper. The Cooperating Sponsor shall take such action as directed by FAS and shall reimburse FAS for expenses incurred if FAS 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, KCMO/DMD, 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, KCMO/DMD, 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, KCMO/DMD, 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 KCMO/DMD, Chief, Debt Management Office of all reports and documents pertaining to the discharge of commodities.

(iv) FAS 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. FAS 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 FAS determines that such action was justified in the circumstances.

(3) Survey contracts shall be let on a competitive bid basis unless FAS determines that the use of competitive bids would not be practicable. FAS 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. FAS 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 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 KCMO/DMD, Chief, Debt Management Office information and documentation on such lost or damaged shipments when no claim is to be filed. In the event of a declaration of General Average:

(i) The Cooperating sponsor shall assign all claim rights to CCC and shall provide CCC all documentation relating to the claim, if applicable;

(ii) CCC shall be responsible for settling general average and marine salvage claims;

(iii) FAS has sole authority to authorize any dispositions of commodities which have not commenced ocean transit or of which the ocean transit is interrupted;

(iv) FAS will receive and retain any monetary proceeds resulting from such disposition;

(v) CCC will initiate, prosecute, and retain all proceeds of cargo loss and damage against ocean carriers and any allowance in general average; and

(vi) FAS will pay any general average or marine salvage claims determined to be due.

(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 FAS 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 FAS is not required regardless of amount. However, copies of redetermined claims and supporting documentation or information shall be furnished to FAS.

(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 FAS. 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 FAS is not required; however, the nongovernmental Cooperating Sponsor shall notify KCMO/DMD, 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, FAS may require the Cooperating Sponsor to pay to the United States the value of the commodities, sale proceeds or program income lost, damaged or misused, or undertake other remedies FAS deems appropriate. FAS 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. FAS 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 FAS 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 forward all documentation relating to the claim to CCC.

(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 FAS designated representative.* (1) The Cooperating Sponsor shall promptly notify the Agricultural Counselor or Attache or FAS 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 procurement 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 above-required information can not 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 FAS 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 account as determined by FAS, 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 FAS account as determined by FAS. 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.

**§ 1599.15 Are there special recordkeeping and reporting requirements?**

(a) *Records and reports—general requirements.* The Cooperating Sponsor shall maintain records for a period of three (3) years from the final date specified in the program agreement. FAS 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, PPDED, FAS/USDA, Washington, DC 20250-1034, covering the receipt of commodities. Cooperating sponsors must submit reports on Form CCC-620 and submit the first report by May 16 for agreements signed during the period, October 1 through March 31, or by November 16 for agreements signed during the period, April 1 through September 30. The first report must cover the time period from the date of signing and subsequent reports must be provided at six months intervals covering the period from the due date of the last report until all commodities have been distributed or sold and such distribution or sale reported to FAS. 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 benefitting from the distribution.

(2) Program Agreements will require Cooperating Sponsors to report periodically, against collected, established baseline indicators, on the

number of meals served, enrollment levels, total attendance numbers, including female attendance levels, learning developments, nutrition and health progress of mothers and children, and progress towards sustaining the feeding program.

(3) 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, PPDED, FAS/USDA, Washington, DC 20250-1034, covering the deposits into and disbursements from the special account for the purposes specified in the Program Agreement. Cooperating Sponsors must submit reports on Form CCC-621 and submit the first report by May 16 for agreements signed during the period, October 1 through March 31, or by November 16 for agreements signed during the period, April 1 through September 30. The first report must cover the time period from the date of signing and subsequent reports must be provided at six months intervals covering the period from the due date of the last report until all funds generated from commodity sales have been distributed and such distribution reported to FAS. 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; and
- (vi) Any balance carried forward in the special account from the previous reporting period.

(4) The Cooperating Sponsor shall furnish FAS such additional information and reports relating to this agreement as FAS may reasonably request.

#### **§ 1599.16 What are the Cooperating Sponsor's audit requirements?**

Non-governmental Cooperating Sponsors are subject to the audit requirements of OMB Circular A-133 as implemented in USDA by 7 CFR part 3052, "Audits of States, Local Governments, and Non-Profit Organizations." 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.

#### **§ 1599.17 When may FAS suspend a program?**

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

- (a) The Cooperating Sponsor fails to comply with the provisions of the Program Agreement or this part;
- (b) FAS determines that the continuation of such assistance is no longer necessary or desirable; or
- (c) FAS 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.

#### **§ 1599.18 Are there sample documents and guidelines available for developing proposals and reports?**

FAS has developed guidelines to assist the Cooperating Sponsors with effective reporting on program logistics and commodity sales. Cooperating Sponsors may obtain these guidelines from the Director, PPDED.

Signed March 19th, 2003, in Washington, DC.

**Kenneth J. Roberts,**

*Acting Administrator, Foreign Agricultural Service.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. 97-CE-27-AD]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. MU-2B Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

**SUMMARY:** This document proposes to revise an earlier proposed airworthiness directive (AD) that would apply to certain Mitsubishi Heavy Industries, Ltd. (Mitsubishi) MU-2B series airplanes. The earlier NPRM would have required you to repetitively inspect

the cockpit windshield and cabin window surfaces for damage (damage would be defined as crazing, scratches, and cracks). If any of the windshield or window surfaces have damage that exceeds certain limits, the proposed AD would have required you to replace the windshield or window. If the damage does not exceed certain limits, then the proposed AD would have allowed you to blend out the damage following maintenance manual procedures. The earlier NPRM resulted from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Japan. The manufacturer has issued revision C to the current service information and issued service information applicable to additional MU-2B model airplanes. The manufacturer has also informed us that they will not provide replacement parts free of charge. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these additional actions.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before May 2, 2003.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-27-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9-ACE-7-Docket@faa.gov. Comments sent electronically must contain "Docket No. 97-CE-27-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from:

- Mitsubishi Heavy Industries America, Inc., 15303 Dallas Parkway, suite 685, LB-77, Dallas, Texas 75248; telephone: (972) 980-5001; facsimile: (972) 980-5091; or
- Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems Works, 10, OYE-CHO, MINATO-KU, Nagoya, Japan, telephone: NAGOYA (611) 2141, telex: 4464561HISI.

You may also view this information at the Rules Docket at the address above.

#### **FOR FURTHER INFORMATION CONTACT:**

Direct all questions to:

- For the airplanes manufactured in Japan (Type Certificate A2PC): Mr.