

MONETIZATION FIELD MANUAL

PL 480 TITLE II AND SECTION 416(b) PROGRAMS

AGENCY FOR INTERNATIONAL DEVELOPMENT

Bureau for Food for Peace and Private Voluntary Assistance

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MONETIZATION FIELD MANUAL

PL 480 Title II and Section 416(b) Programs

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ANNEXES:

- A. State Telegram 168142 dated 6/3/87; "Revised Policy Guidelines for Monetization of Project Food Aid (Voluntary Agency and Cooperative Projects)"
- B. State Telegram 134807 dated 4/28/88; "New Title II Legislation"
- C. State Telegram 334505 dated 10/31/87; "PL 480 Title II Revised Requirements for Title II Operational Plan"
- D. State Telegram 000491 dated 1/1/88; "Guidance for Developing and Implementing Section 416 Programs"
- E. State Telegram 253712 dated 8/5/88; "New Section 416(b) Legislation"
- F. CCC Form 183: Commodity Request for Foreign Distribution
- G. A.I.D. Regulation 10: Foreign Donations of Agricultural Commodities
- H. A.I.D. Regulation 11: Transfer of Food Commodities for Use in Disaster Relief and Economic Development, and Other Assistance
- I. State Telegram 094167 dated 3/26/88; "Preparation of an Annual Progress Report"
- J. A.I.D. "Background Paper and Guide to Addressing Bellmon Amendment Concerns on Potential Food Aid Disincentives and Storage" dated July 1985
- K. OMB Circular A-122, "Cost Principles for Nonprofit Organization," July 3, 1980

ACRONYMS

- A.I.D. - Agency for International Development
- CCC - Commodity Credit Corporation
- c.i.f. - cost, insurance, freight
- CSD - FAO Consultative Subcommittee on Surplus Disposal
- FVA/FFP - Bureau for Food for Peace and Voluntary Assistance, Office of Food for Peace
- FVA/FFP/PCD - Bureau for Food for Peace and Voluntary Assistance, Office of Food for Peace, Projects and Coordination Division
- FVA/FFP/POD - Bureau for Food for Peace and Voluntary Assistance, Office of Food for Peace, Program Operations Division
- f.a.s. - free along side
- KCCO - Kansas City Commodity Office
- MYOP - Multi-Year Operational Plan
- PL 480 - Public Law 480
- PO - Plan of Operation
- PVO - Private Voluntary Organization
- USAID - United States Agency for International Development Mission
- USDA - United States Department of Agriculture
- USDA/ASCS - USDA, Agricultural Stabilization and Conservation Service
- USDA/FAS - USDA, Foreign Agriculture Service

FIELD MONETIZATION MANUAL
PL 480 and Section 416(b) Programs

I. Introduction

A. Definition

Monetization refers to the selling of agricultural commodities to obtain local currency for use in U.S. assistance programs. This manual pertains to the monetization of Title II and Section 416(b) commodities by private voluntary organizations (PVOs) and cooperatives -- hereinafter referred to as "Cooperating Sponsors."

Carefully designed monetization strategies can help improve the effectiveness of voluntary efforts in developing countries. Consequently, A.I.D. encourages its Mission officers and U.S. Embassy personnel to be receptive to monetization proposals and to assist in the planning and implementation of monetization activities as appropriate.

B. Authority

PVOs and cooperatives are allowed to monetize U.S. agricultural commodities under Title II of the Agricultural Trade and Development Assistance Act of 1954 (PL 480), as amended; and Section 416(b) of the Agricultural Act of 1949, as amended. Amendments to clarify and alter the original monetization provisions of these statutes were approved through the Food Security Act of 1985, the International Security and Development Cooperation Act of 1985, the Agricultural Aid and Trade Missions Act of 1987, and the Agricultural Act of 1949 Amendment signed in 1988.

These amendments reflect key programmatic features of monetization as follows:

- a minimum of 10 percent of the aggregate value of non-emergency Title II commodities (the so-called "subminimum" tonnage) approved annually is to be made available for monetization by PVOs and cooperatives; similarly, a minimum of 10 percent of the aggregate value of commodities furnished under Section 416(b) for carrying out Title II type programs is likewise to be allocated each fiscal year;

- individual Title II or Section 416(b) programs may be partially or fully monetized;
- sales proceeds can be used to (i) transport, store, distribute, and otherwise enhance the effectiveness of the use of the donated commodities; and to (ii) implement income generating, community development, health, nutrition, cooperative development, agricultural programs, and other development activities.

The U.S. Government communicated these and other provisions of the amendments to overseas posts in April 1988 (Title II - see Annex B) and July 1988 [Section 416(b) - see Annex E].

C. Purpose

The purpose of this manual is to facilitate the preparation of monetization proposals. It should be useful as well to all organizations working and cooperating with PVOs and cooperatives in the planning, implementation and monitoring of commodity monetization activities; and to A.I.D. Missions, Agricultural Counselors/Attaches and U.S. Embassy personnel.

D. Scope

1. General

The manual addresses operational matters which are specific to the monetization proposal; for example, commodity selection, sales arrangements and local currency uses. It also describes the Cooperating Sponsor's accounting and reporting requirements and the review and approval process for monetization proposals.

2. Title II and Section 416(b) Programs

The manual applies to Title II and Section 416(b) monetization proposals only. Government and Cooperating Sponsor participation in Title I, Title III and Title II Section 206 government-to-government sales programs and Development Assistance activities is managed through program development guidelines established for these programs.

Cooperating Sponsors should be mindful that the Title II program is more stable and predictable than the Section 416(b) program. This is largely because Title II derives its financing from the PL 480 appropriation account whereas the Section 416(b) program

is dependent on residual excess stocks which may or may not be available at any given time.

Title II commodities have been made available on a regular and consistent basis since the program's inception in 1954. This supply stability is more amenable to multi-year planning and regular commodity flow, enabling Cooperating Sponsors to improve program implementation by making field preparations well in advance of food shipment arrivals.

Section 416(b) programs, on the other hand, make use of Commodity Credit Corporation (CCC) residual excess stocks; such stocks vary greatly and it is Administration policy to deplete these stocks. The Secretary of Agriculture determines CCC stock availabilities annually prior to the beginning of the fiscal year. This commodity availability can change significantly from year to year and even throughout a single year depending on the uses of CCC stocks. Multi-year programming is authorized but annual availabilities under Section 416(b) are more erratic than those under Title II.

3. Partial and Full Monetization Proposals

The manual is applicable to both partial and full monetization proposals. Partial monetization proposals involve the sales of a portion of the commodities requested to fund eligible program costs (see Section III B). Partial monetization proposals should be incorporated into the Cooperating Sponsors' Multi-Year Operational Plan (MYOP) for Title II programs and into the Plan of Operation (PO) for Section 416(b) activities. The MYOP and PO are the basic documents which provide the background, rationale, and justification needed by Washington for program approval.

Full monetization proposals involve the sales of all requested commodities to fund economic and other development activities. These proposals, as well as partial monetization proposals supporting development activities in such areas as agricultural production, micro-enterprise development, health or nutrition, will include technical and economic analyses not usually included in MYOPs and POs.

In most cases, A.I.D. has prepared policy papers and evaluation reports related to the type of project activity that is being considered for monetization. These may provide helpful information in designing and implementing the project. Cooperating Sponsors are encouraged to request such documents through the USAID Mission or appropriate offices in A.I.D./Washington, accordingly.

Full monetization proposals should follow the basic outline of the MYOP or PO incorporating additional analyses, as appropriate.

An illustrative outline for an MYOP or a PO with a monetization proposal component is presented in Section III below.

E. Related Documents

This manual should be used in conjunction with the annexed documents dealing with monetization policy and related management issues. Annex A provides policy guidance for Title II and Section 416(b) monetization programs. Annexes B and E communicate the most recent legislative provisions concerning Title II and Section 416(b), respectively. Annexes C and D provide guidance for preparing the Title II Multi-Year Operation Plan and Section 416(b) Plan of Operation, respectively. A.I.D. Regulations #10 and #11 (Annexes D and H) and A.I.D. Handbook 9 (not annexed) provide extensive treatments of traditional food program management issues. Annex J provides a useful guide to satisfying Bellmon Determination requirements regarding food aid disincentives and storage. OMB Circular A-122 (Annex K) provides helpful cost principles for non-profit organizations to consult in developing program budgets.

II. Proposal Development

A. Cooperating Sponsor Eligibility

All Private Voluntary Organizations and Cooperatives approved by A.I.D. as "Cooperating Sponsors" for participation in Title II and Section 416(b) programs are eligible to carry out monetization. Approval as a Cooperating Sponsor involves registering with the Agency for International Development under A.I.D. Regulation 3, 22 CFR Part 203. Organizations with questions on registration should contact:

Registration Office
Office of Private and Voluntary Cooperation
Bureau for Food for Peace and Voluntary Assistance
Agency for International Development
Washington, D.C. 20523 - 0808

B. Documentation And Timing

1. Title II Monetization Proposals

Cooperating Sponsors should submit multi-year, non-emergency Title II monetization proposals to A.I.D. as a part of the Multi-

Year Operational Plan (MYOP) or its Update. MYOPs are submitted and updated each April with the Annual Estimate of Requirements (AER) report. The AER must also show the requested quantity of commodities to be monetized. This information is listed under the "Other" category of the AER report format, specifying "Monetization" as the program.

Although it is preferable that one-year, non-emergency Title II proposals for funding in the next fiscal year also be included in the April MYOP or its Update, proposals for current year funding must be submitted no later than April 15th of the current fiscal year. For example, a proposal for FY 1989 funding may be submitted after the April 15, 1988 submission date but no later than April 15, 1989. The April 15, 1989 date must be met to allow sufficient time for A.I.D./Washington and the Development Coordination Committee (DCC) Working Group to review each proposal, and for USDA to purchase the commodity. For proposals submitted in the current fiscal year for current fiscal year funding, USDA must have all orders for processed commodities, including requests for bagged whole grains, in the Kansas City Commodity Office by June 15th. Orders for bulk grains must be received by August 1st.

2. Section 416(b) Monetization Proposals

Cooperating Sponsors should incorporate a request for monetization under Section 416(b) in its Plan of Operation (PO) or Update. The scheduling of Section 416(b) monetization proposals should be the same as for Title II proposals. This is necessary to facilitate program processing and commodity shipments.

3. Emergency Monetization Proposals

Emergency monetization proposals, either Title II or Section 416(b), may be submitted at any time during a fiscal year. The Cooperating Sponsor should include, to the extent possible, the same information for an emergency monetization proposal as that called for in a non-emergency proposal.

III. Monetization Proposal

The monetization proposal is incorporated as a component of the Title II Multi-Year Operational Plan (MYOP) or the Section 416(b) Plan of Operation (PO) (see MYOP or PO illustrative outline below). Annexes C and D provide guidance on preparing the MYOP and PO, respectively. The MYOP and the PO provide a comprehensive description and analysis of the Cooperating

Illustrative Outline

Title II Multi-Year Operational Plan
or
Section 416(b) Plan of Operation

- I. Executive Summary
- II. Program Goals
- III. Program Description
 - A. Problem Statement
 - B. Program Objectives
 - C. Target Population
 - D. Intervention Description
 - 1. Ration Composition
 - 2. Complementary Program Components and Inputs
 - 3. Intervention Strategy
 - E. Linkage with Other Development Activities
 - F. Monitoring and Evaluation Plan
 - G. Phaseover/Phaseout Plan
- IV. Financial Plan
- V. Logistics Plan
- VI. Food Distribution Monitoring Plan
- VII. Disincentives Analysis
- VIII. Monetization Proposal
 - A. Summary
 - B. Uses of Sale Proceeds
 - C. Justification for Commodity Monetization
 - D. Commodity Selection
 - E. Sales Arrangement
 - F. Budget
 - G. Shipping, Port Handling, Duties and Taxes
 - H. Monitoring and Evaluation

ANNEXES: (as appropriate)

Sponsor's proposed programs, including program goals, objectives, and intervention strategies.

The monetization proposal forms the last section of the MYOP or PO and basically answers the following three questions: What are the planned uses of the proceeds? Why is food monetization being proposed? and How will the sale of the commodities be carried out? A monetization proposal will be reviewed first, in terms of the potential for development impact, and second, in terms of how well it adheres to the technical principles presented in this manual.

The discussion of monetization should be integrated into other sections of the MYOP and PO, as appropriate; -- for example, in the "Program Description" and "Financial Plan" sections. Where this occurs, reference should be made to that part of the "Monetization Proposal" section where the topic may be treated in more detail.

A. Summary

The summary should provide a two or three paragraph description of the monetization proposal. It should succinctly answer the three questions: What are the planned uses of the proceeds? Why is food monetization being proposed?; and How will the sale of the commodities be carried out? The description should also include the quantity and estimated U.S. dollar value of the commodities requested, the proposed delivery schedule, the estimated amount of local currency in U.S. dollar equivalent, and the specific uses of the sales proceeds generated.

If the monetization request accompanies a program proposal which is not submitted with the MYOP or PO, the Cooperating Sponsor must provide a full description of the program. The description will follow the outline for the MYOP or PO, including a description of the problem to be resolved, goals and objectives, etc.

B. Uses of Sales Proceeds

The Cooperating Sponsor should describe the specific uses of the local currency generated and how they relate to the goals and objectives of the Cooperating Sponsor's overall program. Local currency can be used to transport, store, distribute or otherwise enhance the effectiveness of the use of the commodities; and to implement income generating, community development, health, nutrition, cooperative development, agricultural programs, and other development activities. Annexes A, B and E provide further guidance on eligible uses.

C. Justification for Commodity Monetization

This section in the proposal should explain the Cooperating Sponsor's review of alternative sources of financing including information on why such sources are inadequate, unavailable or inappropriate to meet projected program requirements. Alternative sources of funding include the host government, recipient contributions, private donations, U.S. Development Assistance funds, U.S. Economic Support Fund (ESF) dollars or local currencies, and Title I and Title III counterpart funds (see Annex A).

The benefits of financing the program through monetization as opposed to other forms of financing should be discussed, particularly when a 100 percent monetization activity is being proposed. For example, reference might be made to using the commodities to help meet a food deficit, or to help stabilize local food prices which have become excessively high due to shortages, while generating local currency to help pay the costs of development activities that do not require dollar financing.

When funding shortfalls are anticipated for ongoing programs, the proposal should discuss the underlying causes of the shortfall; for example: "the dollar has fallen against the CFA franc by xx percent in the past twelve months"; "revenue from recipient contributions has declined by xx percent in the past two years"; "contributions have become unreliable"; or "there has been a xx percent rise in in-country transportation costs this current year."

Where funding is required to expand programs, the discussion should cross reference the previous section of the MYOP in which reasons for the program expansion have been discussed. The Cooperating Sponsor should explain here that the expansion is at the direct request of the U.S. Government, if such is the case.

D. Commodity Selection

Cooperating Sponsors may seek the advice of the USAID Mission and/or the Embassy's Agricultural Counselor/Attache or Economic Officer in choosing the commodity, determining the price and sales mechanism, and providing information to comply with the Bellmor Determination and UMR requirements. Cooperating sponsors may also confer with representatives of U.S. agricultural marketing organizations or with the appropriate recipient country agricultural marketing board and/or host country private businesses and associations to help determine the suitability of the commodity, price and sales mechanism selected.

1. Proposed Commodity

The Cooperating Sponsor should indicate the commodity proposed to be monetized, the market value of the commodity, and the estimated amount of local currency which will result from monetization. The commodity selected should have a strong local demand and add to the net availability of commodities in deficit. Commodity selection should take into account local commodity preferences which can vary by area and variety of commodity. For example, red sorghum may be acceptable in one area whereas white may be preferred in other areas in the same country.

Alternate commodities should be listed in case supplies of the selected commodity is determined inappropriate by the DCC or unavailable by USDA.

2. Commodity Availability

a. Title II Availabilities

The Secretary of Agriculture determines PL 480 commodity availabilities annually prior to October 1. In addition, A.I.D. sends PL 480 projected commodity availability information to USAID Missions annually through its guidance messages for preparing the Annual Estimate of Requirements (AER) report and the Annual Budget Submission (ABS). The AER message is usually sent in March followed by the ABS message in April. In addition, ad hoc updates are transmitted if significant changes in availability or prices occur during the year. A.I.D. communicates these data to Cooperating Sponsor Headquarters as well. Cooperating Sponsors in the field should therefore consult the USAID Mission or their headquarters office for the most current information.

b. Section 416(b) Availabilities

The Secretary of Agriculture determines Section 416(b) availabilities annually prior to the beginning of the fiscal year. This availability is revised periodically to reflect CCC stock changes. A.I.D. advises the field and PVO headquarters of availabilities upon receipt of this information from USDA.

3. Commodity Specifications

This section of the monetization proposal should provide a precise listing of commodity specifications in accordance with USDA-determined Title II availabilities. Commodity

specifications for Section 416(b) commodities are not possible since CCC will supply what is in stock.

Specifications for Title II commodities are needed to forestall time-consuming requests for clarification. For example, a request for wheat should specify the class and protein content. The grade need not be specified as standard grades are already established for Title II commodities. For wheat and sorghum, Grade No.2 is the standard. The standard for corn is No. 2 except for "corn brokens and foreign materials" which is No. 3. The standard for rice with 20 percent brokens is No. 5. The Cooperating Sponsor should also consult the prospective purchaser(s) to insure the appropriateness of the commodity.

If the Cooperating Sponsor wishes to request a commodity which does not conform to the standard specifications, the proposal should so state and should describe the deviation. Requests for higher grades or levels of protein should be specified so that the DCC can decide early in the review process whether or not to support the purchase of a commodity that might have a higher cost.

Two guides published by USDA's Federal Grain Inspection Service, "United States Standards for Rice" and "United States Standards for Grains" provide the type of information required. These guides should be available from the Agricultural Counselor/Attache or can be requested from the following address:

United States Dept. of Agriculture
Printing and Distribution Branch
Room 110, Federal Building
Hyattsville, MD 20782

A.I.D.'s recently revised "Commodity Reference Guide" can also be helpful. This guide should be available at the USAID Mission or can be requested from the following address:

Office of Policy, Program and Management
Bureau for Food for Peace and Voluntary
Assistance
Agency for International Development
Washington, D.C. 20523 - 0806

4. Bellmon Determination Analysis

Section 401(b) of PL 480 requires that before PL 480 food aid can be supplied, the Secretary of Agriculture must determine that:

- 1) adequate storage facilities are available in the recipient country at the time of exportation of the commodity to prevent the spoilage or waste of the commodity, and
- 2) the distribution of the commodities in the recipient country will not result in a substantial disincentive to or interference with domestic production or marketing in that country.

The Cooperating Sponsor should include assurances that adequate storage will be available and should submit data to show that the importation of the desired commodities will not result in a substantial disincentive to domestic food production or marketing. The USAID Mission must review and concur in this information. Annex J provides a useful guide on how to prepare a disincentive analysis. The analysis should be done in collaboration with USAID Mission personnel.

A key factor in the disincentive analysis is the volume or tonnage of food aid relative to total national consumption of the same or substitute commodities. As the proportion reaches the 10% range, the potential for disincentive effects escalates. In most programs incorporating monetization, the commodity tonnage comprises a small percentage of total national domestic consumption, usually less than 2%. An aggregate level analysis, however, might reveal that total tonnage from all food assistance sources could affect local production efforts. In such cases, monetization would not be advisable.

Other important considerations are the markets - urban or rural - into which the commodities are sold and the timing of the sale. In rural markets, the extent of commercialized food marketing may be limited suggesting that relatively small quantities of monetized commodities can significantly impact on local production and marketing incentives. The possibility of this occurring is heightened if the food aid is sold near harvest time. Careful attention should be paid to these considerations.

USAID Missions normally carry out aggregate-level analyses in preparing proposals for Title I, Title III, and Title II Section 206 programs. Consequently, Cooperating Sponsors should consult with USAID offices about the total level of food aid expected to be imported. It may also be necessary, in certain countries, to confer with the USAID Mission about other issues which could affect the disincentive analysis, such as the degree of

difference between official versus free market prices, and the price elasticities of demand and supply.

5. Usual Marketing Requirements (UMR) Analysis

The Usual Marketing Requirements (UMR) provision of PL 480 requires the President to assure that PL 480 and Section 416(b) sales programs do not unduly disrupt world commodity prices or normal patterns of commercial trade between the importing country and other friendly countries. For Section 416(b) proposals, assurances must be given that the commodities will be additional to any current PL 480 assistance.

The UMR represents the minimum quantity of a commodity that the importing country must purchase commercially to maintain the U.S. and friendly countries' exports to the importing country. Normally, it is an average of the importing country's commercial imports of a commodity over the last five years of existing import data. The UMR may be reduced, increased or waived depending on trends in commercial imports and economic conditions of the recipient country (see Handbook 9, Annex B).

USDA is responsible for calculating the UMR and determining if the proposed sale of Title II or Section 416(b) commodities should be reviewed by the FAO Consultative Subcommittee on Surplus Disposal (CSD). The CSD is a consultative forum established by the FAO in 1954 to monitor the trade effects of the flow of food aid from supplying to recipient countries on a continuing basis. The membership includes the major exporting and importing countries of basic food commodities and meets monthly in Washington D.C. Although USDA calculates the UMR, both USDA and the Department of State represent the U.S. on the CSD. The Department of State is responsible for bilateral consultations; normally, 10 working days are allowed for these consultations.

The Cooperating Sponsor should collaborate with the USAID Mission and country or regional U.S. Agricultural Counselor/Attache to recommend to USDA whether or not a UMR analysis and consultation with the CSD is necessary. The monetization proposal must include certification by the USAID Mission that:

- a. the volume of the commodity to be sold represents such a small percentage of imports that no analysis is needed; or
- b. the volume to be sold warrants an analysis; a preliminary UMR analysis has been completed; and the intended tonnage to be sold does not threaten normal patterns of trade; or

- c. the volume to be sold warrants an analysis; a preliminary UMR analysis has been completed; and USDA should review the analysis to determine if the intended tonnage should be subject to consultation before the CSD.

If a preliminary analysis has been prepared, it should be included in the monetization proposal. Where there is more than one monetization project, the analysis should be applied to the aggregate levels to be monetized for all projects.

E. Sales Arrangements

The commodities to be monetized may be sold to private firms, quasi-government entities or government agencies. The Cooperating Sponsor should indicate in the proposal whether the commodities will be sold through open competition or direct negotiation. In the case of open bidding, which is the preferred route, sponsors unfamiliar with formal bidding procedures should request assistance from their headquarters or the USAID Mission.

In situations requiring direct negotiations, the Cooperating Sponsor should identify the prospective purchaser(s) and explain why there is good reason to believe that full local market value will be obtained from the commodity sale. The explanation should include commentary on the purchaser's pricing policy and performance on other imported food sales programs.

1. Setting the Sales Price

The Cooperating Sponsor should attempt to set a sales price which represents the fair market value of the commodity and does not depress the price of locally produced commodities or undercut normal commercial practices. Ideally, the local currency yield* from monetization will cover the U. S. market value of the commodities, insurance costs and ocean-freight costs; i.e., the c.i.f. costs, after allowance has been made for local handling charges and other costs incurred by the Cooperating Sponsor in connection with the sale. In general, the highest price possible should be sought.

At a minimum, proceeds from the monetization will be the local currency equivalent of the f.a.s. dollar value of the

* Using the exchange value not less favorable than the highest rate legally obtainable in the importing country for similar commodities.

commodity.* In cases where it appears that the sales price may be as low as the f.a.s. value, the Cooperating Sponsor should request a quotation from A.I.D.'s Office of Food for Peace to insure that the f.a.s. price will be met. Requests for quotations should be addressed to:

Program Operations Division
Office of Food for Peace
Bureau for Food for Peace and Voluntary Assistance
Agency for International Development
Washington, D.C. 20523 - 0809

To determine the fair market value, several actions are advisable:

- a. World market, international commodity agreement and local market prices should be reviewed and documented as a first step. This would answer the question, "What would a prospective purchaser have to pay for a commodity if it were not available for purchase through the Cooperating Sponsor?"
- b. In most cases, the critical price determinant will be the local market quotation. Several entities might be consulted for this information including private food importers, processors and distributors, the Ministry of Agriculture, the Agricultural Marketing Board, the U.S. Agriculture Counselor/Attache or the USAID Mission.
- c. It is particularly useful to have detailed discussions with the U.S. Agriculture Counselor/Attache, who should be well informed about agricultural supply and demand, imports and exports and commodity prices. USAID and World Bank agricultural economists in the country could also be helpful.
- d. The pricing procedures used in determining the fair market value should be documented at all stages of negotiations and made a permanent part of the project file.

* f.a.s.: "free along side" costs reflects all costs incurred prior to loading the commodity on ship for export from the U.S.

2. Negotiating the Sales

a. Open Bidding

In open market economies, an open bidding process generally yields the highest sales return. The Cooperating Sponsor should place advertisements in the local media announcing the expected arrival of commodities and inviting price tenders. The advertisement should include a full description of the commodities, a "floor" sales price, terms of payment, the deadline for bid acceptance and the date, place and time of bid opening. The Cooperating Sponsor should circulate a copy of the advertisement to volume suppliers to assure maximum participation in the bidding process.

The sealed bids should be opened and read publicly at the time and place specified. USAID Mission personnel should attend the bid opening if they deem their attendance to be advisable. The Cooperating Sponsor would then enter into a sales agreement with the highest bidder, notify unsuccessful bidders by letter, and return late bids unopened.

b. Direct Negotiation

In controlled or less competitive economies, Cooperating Sponsors usually negotiate commodity sales with a sole governmental, parastatal, or private purchaser. In these situations, skillful negotiations are required to arrive at a suitable sales price. This is especially true when commodity sale prices are kept below world market prices through price controls, government subsidies or over-valued exchange rates.

The work done in preparing the Title II MYOP or Section 416(b) PO will provide the Cooperating Sponsor with an assessment of local prices. Having concluded, at that earlier stage, that chances are favorable for reaching an acceptable agreement on sales price, the Sponsor can move into the final round of negotiations with some degree of confidence even in a controlled economy situation.

Success in final negotiations will depend on the Cooperating Sponsor's technical knowledge and negotiating attitude. The Sponsor is cautioned not to appear too eager. There must be expressed intention from the outset, to terminate the negotiating process if a significant impasse is reached. For this reason commodity "calls forward" should not be issued and cannot be approved by USAID Missions until sales agreements have been negotiated. Cooperating Sponsors also retain the option to

cancel their AER requests even after these have been approved by the DCC. Nothing could be more comforting to a prospective purchaser -- and more detrimental to the Cooperating Sponsor's negotiating position -- than to learn that a food shipment has been put on the high seas while sales negotiations are still underway.

In short, a good working knowledge of food commodity pricing and handling issues is critical during sales agreement negotiations, as is the confidentiality of information. Cooperating Sponsors who do not have such expertise on their staff should consider engaging short-term consultants to assist during sales negotiations.

3. Drafting the Sales-Agreement

The Cooperating Sponsor's in-country director is responsible for ensuring comprehensive preparation of all documentation and legal review of the sales contract. Although sales agreements may vary according to country situations, the following essential provisions must be included:

- full commodity specifications and tonnage.
- agreed total sales price.
- how and when payment(s) will be made, amount(s) of payment, and a guarantee that payment will take place.
- statement of purchaser's capability to take delivery, properly store and successfully market the commodities in-country.
- stipulation that purchaser will not export commodities or products thereof.
- agreement by purchaser, having accepted the commodities when discharged at the port of entry, not to raise claims, thereafter, about "the wholesomeness or fitness" of the commodities.

Additional provisions, such as confirmation that import and sale will be exempt from duties and taxes, that the government will not permit the re-export of commodities or products thereof, and that Bellmon Determination and UMR requirements will be met, may be included in the sales agreement in the event a government entity is the purchaser or otherwise signs the sales agreement.

4. Changes in Sale Price

If the Cooperating Sponsor should want to change the sales price of the food from that originally approved in the MYOP, requests must be submitted to the USAID Mission. The USAID Mission may approve price changes up to the point where the price still generates local currency equivalent to the f.a.s. U.S. dollar value of the food (see section III.E.1. for the address of the A.I.D. office that can provide the f.a.s. value). Requests for price reductions below the f.a.s. price must be approved by the Development Coordination Committee (DCC) in Washington.

5. Implementation Schedule

The timing of the sale of the commodities to be monetized should be carefully planned to assure that the local currency will be generated when needed. The monetization proposal should therefore include an implementation schedule such as the one illustrated below that recognizes the time required for key actions to be taken in the monetization approval process.

<u>DATE</u>	<u>ACTION</u>
X/XX	Cooperating Sponsor submits proposal to Cooperating Sponsor's Headquarters and A.I.D./W.
X/XX	Cooperating Sponsor's Headquarters and DCC approve proposal.
X/XX	Cooperating Sponsor advertises sale of commodity in local new media and mails IFB to major potential purchasers.
X/XX	Cooperating Sponsor awards purchase contract to winning bidder and requests Cooperating Sponsor's Headquarters to issue call forward.
X/XX	Cooperating Sponsor's Headquarters issues call forward.
X/XX	Commodity arrives; shipper signs Bill of Lading over to purchaser; and purchaser deposits payment into Cooperating Sponsor's bank account.

F. Sales Proceeds Deposit

1. Bank Account

The Cooperating Sponsor must open a separate, interest-bearing account at a local bank to receive the proceeds from the sale of Title II or Section 416(b) commodities. As a general rule, when more than one Cooperating Sponsor participates in a combined monetization program, separate accounts should be established for each Sponsor. However, this is not mandatory if the operational details of a combined account can be worked out. To determine the most appropriate arrangement, the Cooperating Sponsor should consult the USAID Controller, or when there is no USAID Mission, the A.I.D. Representative or the Embassy. A separate account for each Cooperating Sponsor is preferred as the Sponsor will be able to identify, in reports to A.I.D., specific uses made of the generated proceeds. Records from the account will also facilitate required audit reviews.

2. Payment Terms

Sales agreements should stipulate that the full amount^{1/} of local currency specified in the agreement will be transferred to the Cooperating Sponsor's account as soon as title to the commodities has been turned over to the purchaser. The simplest way to effect this is to have the purchaser open an irrevocable local letter of credit with a local bank which specifies that the full sum of the agreed purchase value will be transferred by the purchaser to the Cooperating Sponsor upon receipt of a bill-of-lading^{2/} and a copy of the survey-discharge-outturn report. This irrevocable local letter of credit should be opened by the purchaser at the time that the sales agreement is reached and before the call forward is issued.

At times, particularly when dealing with governmental agencies, the Cooperating Sponsor may be asked to settle for partial payment at the time of delivery with remaining amounts coming in at intervals. This procedure should be resisted and agreed to

^{1/} The amount transferred will be minus the value of any commodities lost or declared unfit during the discharge survey.

^{2/} The Bill of Lading is a receipt for the commodities loaded on board a ship in the U.S. and signed by the ship's master or other duly authorized person. This document subsequently passes from one participant in the transaction to another, and is used by the importer to claim the commodities upon their arrival in the recipient country.

only when it is so firmly entrenched in local practice that insistence by the Cooperating Sponsor on full payment is unreasonable. Agreeing to these terms should be avoided because the Cooperating Sponsor loses nearly all leverage for prompt payment once commodities have been turned over to the purchaser for sale.

G. Budget

1. Budget Plan

Estimated annual receipts and expenditures of monetization proceeds generated over the life of the project should be presented here. The budget should show the major categories of expenditures and reflect the phaseover/phaseout feature of the program, as applicable. Expenditures should be made in accordance with OMB Circular A-122 - "Cost Principles for Non-Profit Organizations" (see Annex K).

The USAID Mission should approve the line item budget as a part of its proposal review. Once approved by the USAID Mission and the DCC, the budget is valid until expended in accordance with the approved budget. Substantial deviations from any line item in the approved budget of more than 15% of any line item must be approved in advance by an exchange of letters between the Cooperating Sponsor and the USAID Mission or Diplomatic Post.

2. Unforeseen Surpluses and Shortfalls of Funds

Unforeseen surpluses or shortfalls of funds may occur during the implementation of the monetization program for a variety of reasons. When surpluses occur, as might result when the Cooperating Sponsor negotiates a sales price that is higher than that projected in the MYOP or PO, surplus funds should be taken into account in submitting a follow-on proposal. If the Cooperating Sponsor does not plan to submit a follow-on proposal, the funds may be used as mutually agreed between the Cooperating Sponsor and the USAID Mission for eligible uses described in Section III B.

When a deficit results, due to perhaps an unanticipated increase in the rate of inflation or a devaluation, a revised proposal should be submitted which requests a sufficient level of commodities for monetization to compensate for the shortfall (see Section III C "Justification for Commodity Monetization") or reduces the proposal's budget and outputs. If the Cooperating Sponsor does not plan to submit a follow-on proposal, as in the

case of phasing out of a program, the Cooperating Sponsor should consider an accelerated phaseout of the program.

3. Operating Reserve

Cooperating Sponsors may include a 5% operating reserve as a "Miscellaneous" line item in program budgets to meet unforeseen expenditures.

4. Interest Earnings and Endowments

The Cooperating Sponsor should deposit sales proceeds into interest-bearing accounts. Interest earned must be applied immediately to the budget in the monetization line items. The monetization budget plan should include estimates and uses of expected interest earning, particularly for large projects where interest earnings could be sizable.

Endowments are sometimes proposed whereby the sales proceeds are deposited into an interest-bearing account and only the interest earned on the sales proceeds is used to fund the Cooperating Sponsor's activities. U.S. Government policy requires that the sales proceeds as well as the interest earned be used to meet the objectives of the program. Endowments are therefore not permitted.

5. Capital Purchases

Monetization funds may be used to purchase capital equipment such as vehicles, warehouse equipment, etc. as long as such purchases are directly linked to achieving the objectives of the program, including facilitating the distribution of food, if applicable; and are consistent with the principles in OMB Circular A-122 (see Annex K). Capital purchases must receive advance approval by the USAID Mission and procurement procedures must be used that are compatible with U.S. Government policy.

The budget section should justify why it is more economical to purchase the capital equipment rather than to procure it through alternative means such as leasing or sub-contracting. Cannibalization of existing equipment should also be considered. Proposals should include an inventory of existing capital equipment which is the same or similar to that being proposed, and a determination that needs can not be met through cannibalizing the existing stock.

Title to capital equipment must be clearly established to avoid future problems regarding ownership. Assuming ownership is established with the Cooperating Sponsor, the Cooperating Sponsor

may dispose of the equipment as directed by the USAID Mission in the event the project activity terminates or is transferred to a local institution.

6. Operating Costs

a. Title II

Title II sales proceeds may be used by the Cooperating Sponsor to cover in-country overhead, operating, administrative or personnel costs incurred in implementing developmental activities authorized under Section 207(c) of the PL 480 Act (see Section III B "Uses of Sales Proceeds" above). Operating costs should be specifically identified in the budget.

b. Section 416(b)

Section 416(b)(7) of the Agricultural Act of 1949 prohibits the use of sales proceeds to meet operating or overhead expenses except for:

- 1) the operating and overhead expenses of intergovernmental agencies and organizations insofar as they are consistent with the normal programming procedures in the distribution of commodities by those agencies or organizations; and
- 2) the personnel and administrative costs incurred by local cooperatives.

H. Shipping, Port Handling, Duties and Taxes

Monetization proposals must contain the full name and address of the purchaser, the desired delivery schedule and port of entry as well as any special shipping or port-handling instructions. Particular attention must be paid to identifying special shipping instructions of the receiving country such as fumigation requirements. Proposals for land-locked countries must indicate that the services of a freight-forwarder will be arranged by the Cooperating Sponsor to arrange inland transportation. Proposals must describe these proposed arrangements, including costs, as fully as possible.

1. Call Forward

At least three to four months before the desired delivery time -- but not before signing the sales agreement -- the Cooperating

Sponsor Headquarters may issue a "call forward" for the approved commodities for sale in the Title II MYOP. For Title II commodities, the Cooperating Sponsor's field office first submits a memorandum requesting the call forward to the appropriate USAID office for clearance. The Cooperating Sponsor then submits a request to its headquarters office to submit CCC Form 183 to A.I.D. for processing. (A sample Form 183 is included as Annex F.) After clearing the call forward request, the USAID Mission should also cable the call forward details to A.I.D./W for FFP and pass to USDA/ASCS/KCCO.

Cooperating Sponsors should specify scheduling and shipping arrangements for Section 416(b) commodities in the Foreign Donation Agreement which they enter into with the CCC and A.I.D. after receiving CCC approval for monetization. (A sample format of a Foreign Donation Agreement is included in Annex D.) The purchase or supply from inventory of the requested commodities shall be initiated upon receipt of the signed agreement by USDA/ASCS/KCCO.

Title II calls forward should be timed such that the commodities will arrive at an appropriate time in the local market crop cycle. Arrivals around harvest time should be avoided if possible.

The U.S. Government will consider a one-time call forward for multi-year program implementation involving relatively small quantities of commodities on a case-by-case basis. Factors such as the amount of commodities requested, projected commodity availabilities, and the number of years covered by the call forward will influence the decision. Proceeds generated from a one-time sale must be deposited in an interest-bearing account and all interest as well as principal must be applied to supporting program objectives.

When requesting a call forward for multi-year funding, Cooperating Sponsors should be mindful of the local inflation rate and its potential effect on the prices of the goods or services that will be bought with the sales proceeds in future years. Similarly, consideration should be given to the possibility of a devaluation of the host country's currency and how it might affect the future purchasing power of the sales proceeds.

2. Transfer of Title to Cooperating Sponsor

Title to the commodities for monetization generally passes to the Cooperating Sponsor at the time and place of delivery f.a.s. at U.S. ports. The Cooperating Sponsor is reimbursed by USDA/CCC for U.S. port handling and trans-oceanic costs.

Cooperating Sponsors are responsible for all arrangements in connection with the receipt, storage and maintenance of the commodities for monetization from the time of delivery at the U.S. port to the time of delivery to the purchaser. This includes transportation of the commodities overland to land-locked countries. The Cooperating Sponsor must arrange to have an independent surveyor attend the discharge of the commodities (see Section 6 below), and may at its option, engage an independent surveyor to supervise clearance and delivery of the cargo from customs or port areas to the purchaser and to issue appropriate delivery survey reports. The Cooperating Sponsor's commodity monitoring responsibilities cease once the full amount of the agreed purchase price has been deposited into the Cooperating Sponsor's local currency monetization account and title to the commodities has passed to purchasers or other third parties.

3. Advance Notification

At the time of export of commodities from the U.S. port, the freight forwarder is required to send copies of the ocean bill of lading to the Cooperating Sponsor, A.I.D. and USDA "by airmail or the fastest means available in sufficient time to advise of the arrival of the shipment." Cooperating Sponsor Headquarters customarily cable advice of actual export to their field offices. This information should also be passed to the purchaser to facilitate logistics planning.

4. Shipping Time

The type and quantity of commodity requested will determine the length of time it takes for a shipment to arrive after a call forward has been received. Commodities in CCC stocks are usually delivered to the recipient country's port in 3-4 months after the approved call forward is received in Washington, D.C. Processed commodities or special containers/packaging may require time.

5. Markings

Packaged PL 480 commodities for monetization will arrive in country with the following information as "abbreviated markings": description of contents, net weight, and A.I.D. contract number. The phrase "not to be sold or exchanged" will not appear. The in-country purchaser may subsequently re-package or label, at their own cost, without restriction by A.I.D. or the Cooperating Sponsor. Special orders for markings on packaged commodities prior to shipment from the U.S. can usually be arranged to avoid re-packaging or re-labeling upon arrival in the recipient country.

6. Cargo Discharge and Survey

The Cooperating Sponsor should arrange for an independent cargo surveyor to attend the discharge of the cargo, count or weigh the commodities, examine their condition and suggest the probable cause of any damage noted. Whenever possible, the cargo survey should be carried out in the presence of the Cooperating Sponsor representative and, if the purchaser is to take delivery at the port, a surveyor representing the prospective purchaser -- with all three parties signing the survey report.

Claims for any ocean carrier loss or damage are prepared by the Cooperating Sponsor in accordance with A.I.D. Regulations 10 (Section 210.10) and 11 (Section 211.9) for Section 416(b) and Title II commodities, respectively. Claims should be forwarded to the CCC along with copies of all reports and documents relating to the discharge of the commodities for monetization.

7. Shipping Losses

If substantial losses or commodity damages occur during shipping through no fault of the Cooperating Sponsor or the purchaser of the commodity, the U.S. Government will attempt, at the request of the Cooperating Sponsor, to replenish the lost commodity. Requests for replenishment are submitted through the USAID Mission.

8. Duties and Taxes

Title II commodities provided for direct feeding programs are customarily exempt from duties and taxes of the recipient country based on the rationale that they represent U.S. charitable contributions of food to be used for free distribution programs with humanitarian objectives. In the case of monetization whereby the food is sold in the commercial market, this same rationale is less appropriate unless, perhaps, the proceeds are to be used for costs which directly support the feeding programs. Title II and Section 416(b) commodities imported for monetization may therefore be taxed by the host government, even though taxation is clearly prohibited by Regulations 10 and 11 for commodities imported for distribution through direct feeding programs. However, Cooperating Sponsors may have already negotiated bilateral agreements with host governments which permit the tax-free import (or sale) of commodities. If not, although not required, Cooperating Sponsors may attempt to do so.

It is important for the Cooperating Sponsor to establish at the time it is preparing the monetization proposal whether or not it will have tax exempt status. If taxes must be paid, the Cooperating Sponsor can adjust commodity requirements

accordingly. Otherwise, if it is learned that taxes must be paid after the proposal is approved, fewer funds would be available for project uses.

Even where the Cooperating Sponsor negotiates tax exempt status, the prices at which the Cooperating Sponsor sells the commodities to the purchaser should reflect prices that would be obtained in a commercial transaction; i.e., it would include the costs of duties and taxes. Thus, the amounts normally paid for duties and taxes accrue for the benefit of the Cooperating Sponsor's program.

I. Monitoring and Evaluation

The Cooperating Sponsor should describe how it will monitor and evaluate the monetization program to insure that the monetized proceeds will be used for the approved purposes. This should be done in the "Monitoring and Evaluation" section of the MYOP or PO (see illustrative outline above) or in the Monetization Proposal section. The discussion should describe a monitoring system including the collection, analysis and utilization of information, particularly as it relates to the progress indicators which have been established to measure program success. It should also indicate that sufficient staff and budgetary resources will be allocated to support monitoring and evaluation activities.

The evaluation plan should include a description of information to be collected for the purposes of assessing program operations and impact, including the impact of the commodities monetized on the local market; and a schedule of planned evaluations and "Interim Reviews" (see "Reporting" section below).

IV. Accounting and Reporting Requirements

A. Record-Keeping

The Cooperating Sponsor must maintain records and documents for three years from the close of the U.S. fiscal year to which they pertain. These records should accurately reflect all transactions pertaining to commodity receipt, storage, inspection, sales and disbursement of sales proceeds as well as interest earned and other income generated by the operation of the approved program. Sponsors must agree to assist U.S. Government representatives, at any reasonable time, in examining these records and documents for conformity with U.S. Government guidelines on food monetization.

B. Internal Reviews

Cooperating Sponsors should schedule internal reviews of Title II and Section 416(b) monetization programs at intervals mutually agreed to between the Sponsor and the USAID Mission or Diplomatic Post. These should be scheduled at least once a year for multi-year programs. Reports of the reviews should be sent to the Cooperating Sponsor's Headquarters and to FVA/FFP and its respective regional bureau by the USAID Mission before submitting future commodity requests. The reviews should examine the effectiveness of management systems and procedures that have been established to meet the terms and conditions of the program agreement.

C. Audits

Even though management responsibility for Title II and Section 416(b) monetization programs rests with Cooperating Sponsors, A.I.D. and its Office of the Inspector General reserve the right to conduct a financial audit or independent review of these programs from time to time. These reviews examine the operation, management, and effectiveness of the program as well as its financial integrity. Cooperating Sponsors also should afford to A.I.D. and its authorized representatives reasonable access to inspect program operations as well as review books and records.

D. Reporting

1. Annual Reports to Congress on Title II and Section 416(b) Local Currency Usage

The President must submit annual reports to the Congress on the uses of local currencies generated under Title II and Section 416(b) sales programs. USDA/FAS, assisted by FVA/FFP/PCD, prepares the annual reports on the previous year's activities for submission to Congress by February 15th.

To meet this reporting requirement, as well as to strengthen the monitoring of local currency program activities, Cooperating Sponsors will submit an annual report through the USAID Mission to FVA/FFP/PCD not later than December 31st. Each report must include the following information:

- a. The quantity of commodities approved for sale in the fiscal year just ended;

- b. The amount of funds (including dollar equivalents for foreign currencies) generated or expected to be generated from the sale of commodities received in the fiscal year just ended;
- c. The amount of local currency proceeds that were disbursed in the fiscal year just ended and the percentage of the quantity of all commodities approved under Title II and Section 416(b) programs such disbursements represented;
- d. How the local currencies generated by monetization were used in the fiscal year just ended;
- e. The best estimate of the amount of local currency proceeds that will be used in the current fiscal year and the next fiscal year; and the percentage that these estimated sales represent of the quantity of all commodities approved under Title II and Section 416(b) for each of these fiscal years; and
- f. The program impact of the monetization and uses of local currencies during the fiscal year just ended.

2. PL 480 Title II Annual Progress Report

The PL 480 Title II Annual Progress Report due April 15th each year provides a comprehensive review of the Cooperating Sponsor's program activities over the past year. That portion of the Annual Progress Report which discusses monetization calls for the following information: how the food was sold; the price (local currency and dollar equivalent) received for the commodities; and how the local currencies were used. Information on the preparation of the Annual Progress Report is presented in State 094167 dated 3/26/88 (See Annex I).

Because similar information is required for the Annual Report to Congress due December 31st (see discussion above) and the Annual Progress Report due April 15th, the latter requirement may be met by updating the December 31st report. Alternatively, the Cooperating Sponsor may use the December 31st data as the basis for the April 15th reporting if updating the December 31st data proves to be too burdensome.

3. Multi-Year Operational Plan Update

The annual progress report to the USAID Mission and AID/W covering the receipt, sales and disbursement of sales proceeds on all monetization activities under Title II and Section 416(b) programs is submitted in conjunction with the MYOP up-date which should contain the following information:

- a. Receipts of each commodity by type and tonnage, including the name of each vessel, discharge port and date of discharge.
- b. Quantities of each type of commodity damaged or declared unfit.
- c. Status of claims for commodity losses both resolved and unresolved.
- d. Tonnage and sales price for commodities sold.
- e. Date of sale(s) and amount of local currency deposited to date in Cooperating Sponsors "monetization" account by the purchasers and amount of interest accrued by the account.
- f. Disbursements from the monetization account according to approved budget expenditure category (e.g., storage costs, tool purchases, etc.).
- g. Knowledge of any disincentive or incentive to local production/marketing or any disruption of U.S./other international commercial sales or support caused by the monetization exercise.

V. Review and Approval of Monetization Proposals

A. Role of USAID Missions

1. Multi-Year Operational Plan and Plan of Operation

The USAID Mission reviews the monetization proposal within the context of the MYOP or PO and submits comments and recommendations on the proposal to A.I.D./Washington. A key issue to be addressed is the extent to which the MYOP or PO reinforce or complement priorities outlined in the USAID Country Development Strategy Statement (CDSS), Action Plan and the Annual Budget Submission (ABS).

Evidence is sought of the Cooperating Sponsor's effectiveness in using food or the local currency generated by food monetization to meet longer term development objectives -- e.g., child survival, agricultural infrastructure development, nutritional improvement -- without overlooking the immediate needs of the hungry. The USAID Mission should pay particular attention to how well the proposal defines a development problem, sets a realistic objective for an action program, and defines how progress will be measured against current conditions.

MYOPs and POs should contain clear-cut criteria for measuring the progress of assisted groups and justification for local management and funding. USAID Missions also review the previous year's Title II Annual Progress Report to evaluate program effectiveness. (See Annexes C and D for more detailed guidance on USAID MYOP and PO Reviews.)

2. Monetization Proposal

With respect to the monetization component of the MYOP and the PO, USAID is required to comment on the adequacy of the sales-price and local currency provisions. The USAID Mission must also examine the accuracy of statements related to storage facilities and disincentive issues in keeping with the Bellmon Determination which must be made by the Secretary of Agriculture. Assurance must be given that the volume of food sales requested will not present storage problems or cause substantial disincentive effects on the production and marketing of local commodities. The USAID must also examine the UMR issue, in accordance with para 211.5, j, of A.I.D. Regulation 11, to determine whether a UMR analysis is needed.

Before the monetization proposal is forwarded to Washington for A.I.D./W and DCC approval, the USAID office must verify budget estimates contained in the proposal and be satisfied that the Cooperating Sponsor has an acceptable in-country financial accountability system in place.

B. Role of A.I.D./Washington

The USAID Mission or Embassy submits all Title II and Section 416(b) monetization proposals, with its' comments and recommendations, to FVA/FFP and USDA/FAS. The Cooperating Sponsor Field Representative concurrently submits the proposal to its' Headquarters for approval. Upon receipt of the Cooperating Sponsor's Headquarters' endorsement, FVA/FFP will log all Title II and Section 416(b) requests and forward them to divisions within FVA/FFP responsible for that specific country for action. Title II and Section 416(b) proposals not submitted via cables should be forwarded to FVA/FFP in original and three copies.

FVA/FFP is responsible for securing approval from appropriate regional and central bureaus within A.I.D./Washington and placing programs before DCC members for final review and approval. Section 416(b) Foreign Donation Agreements must be developed in final form and submitted to USDA for approval and signing by USDA/CCC.

C. Role of the Development Coordination Committee (DCC)

In Washington, U.S. Title II and Section 416(b) food assistance programs are coordinated by the interagency Development Coordination Committee (DCC), chaired by the Administrator of A.I.D. The DCC allocates and manages food assistance through its Food Aid Sub-Committee chaired by USDA; the Title I interagency Working Group is chaired by USDA and the Title II interagency Working Group is chaired by A.I.D.'s Food for Peace Office which reviews and evaluates Title II and Section 416(b) issues including monetization proposals for conformity with current regulations and guidelines.

The Title II Working Group, which normally meets bi-weekly, includes representatives from the Departments of Agriculture (USDA), State, and Treasury and the Office of Management and Budget (OMB). In reviewing proposals, the State Department is particularly concerned about the foreign policy implications of the proposed monetization, and the displacement of commercial exports to the recipient country, and disincentive effects on local agricultural production and marketing. USDA examines commodity and marketing consequences of monetization; Treasury, fiscal and monetary implications of monetization; and OMB, the impact on U.S. budget goals. In its secretariat role, A.I.D. assists the Working Group in examining the economic development objectives of MYOPs as well as any overriding humanitarian concerns.

The Working Group tends to concentrate on the following issues: the effect of food donations on local production/marketing systems and on opportunities for commercial marketing; the extent of host government and Cooperating Sponsor use of their own resources to meet MYOP requirements; the soundness of the monetization strategy; and the intended uses of monetized proceeds.

The Working Group will provide a decision on a complete proposal within 45 working days after receipt by A.I.D./Washington. The response will detail the reasons for approval or denial of the proposal. If the proposal is denied, the response will specify the conditions that would need to be met, if any, for the proposal to be approved.

The 45-working day period will begin when the new or amended MYOP or PO has been received in Washington along with the Cooperating Sponsor's approval and the USAID Mission's comments and recommendations. The requirement will be satisfied when A.I.D. sends a letter to the Cooperating Sponsor's Headquarters, stating approval or disapproval of program; or if and when A.I.D. receives a written request from the Cooperating Sponsor to terminate or suspend the approval process.

ANNEX A
UNCLASSIFIED
Department of State

OUTGOING
TELEGRAM

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ORIGIN AID-08

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STATE 168142

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ORIGIN OFFICE IIP-03

INFO AART-02 ATEA-03 AFSA-03 AFFW-04 AFCW-01 GEOP-01 FPA-02
ANPD-05 GCAN-02 AFED-02 AFPO-04 SIRP-01 AALA-01 LAGE-02
LAGA-03 LADP-04 LADR-03 AFIR-05 FVA-01 OFDA-02 PPPB-02
GC-01 GCAF-01 GEOS-02 GCLA-03 OIRI-02 ANTR-04 APPC-02
PVC-02 FVEP-01 ES-01 ANME-01 TELE-01 LACA-03 ANEA-02
ANEC-02 ANAA-01 ANSA-02 /399 A4 103

INFO LOG-08 EUR-03 AF-08 EB-00 IO-19 NEA-07 AR4-00
TRGE-08 IAP-03 DS-01 DSE-08 /005 R

DRAFTED BY: AID/FVA P. RADER/S. SINGER LLC:30510
APPROVED BY: AID/FVA/FFP:W. BOLLINGER
USLA/FAS:H. CHAMBERS (PHONE) STATE/EB/DFP:K. MCISAAC (PHONE)
OHL:D. SPECKHARD (PHONE) AID/ES:G. JOE
AID/PPC/PE:L. TANKER (DRAFT)

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FM SECSTATE WASHDC
TO AID WORLDWIDE PRIORITY

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E.O. 12350: N/A

TALS:

SUBJECT: REVISED POLICY GUIDELINES FOR MONETIZATION OF
PROJECT FOOD AID (VOLUNTARY AGENCY AND COOPERATIVE
PROJECTS)

REF: STATE 132404

1. ORIGINAL GUIDELINES CONTAINED REITEL HAVE BEEN
REVISED TO CORRECT ERROR AND MAKE CHANGE AS FOLLOWS:

CORRECTION - THE FOURTH PARAGRAPH UNDER D. USES OF LOCAL
CURRENCIES SHOULD READ AS FOLLOWS, QUOTE (SECTION 416
(B) PROHIBITS USE OF PROCEEDS FOR OPERATING AND OVERHEAD
EXPENSES AS RELEVANT HERE, (EXCEPT FOR PERSONNEL AND
ADMINISTRATIVE COSTS OF LOCAL COOPERATIVES)) UNQUOTE.
NOTE THAT THE WORD EXCEPT WAS INADVERTENTLY DROPPED.

THE LAST LINE IN PARAGRAPH B.2. EXCITED ALTERNATIVE
RESOURCES WHICH READS QUOTE NON-U.S.G. CONTRIBUTIONS TO
A PVO OR COOPERATIVE PROJECT SHOULD CONSTITUTE AT LEAST
25 PERCENT OF PROJECT COSTS UNQUOTE HAS BEEN DELETED;

THESE CHANGES HAVE BEEN INCORPORATED IN THE FOLLOWING
REVISED TEXT.

A. INTRODUCTION

MONETIZATION MEANS SELLING A PORTION OF THE COMMODITIES
GRANTED FOR PROJECT FOOD AID UNDER TITLE II OF P.L. 488
OR SECTION 416 (B) OF THE AGRICULTURAL ACT OF 1949, AS
AMENDED. LOCAL CURRENCIES GENERATED BY THIS SALE ARE
USED TO FUND ACTIVITIES -- I.E., INTERNA- TRANSPORT OR
OTHER ANCILLARY INPUTS -- WHICH SUPPORT THE OBJECTIVES
OF THE FOOD AID PROJECT. THIS POLICY GUIDANCE PERTAINS
TO PROJECTS ADMINISTERED BY PRIVATE VOLUNTARY AGENCIES
(PVOs) OR COOPERATIVES.

CURRENTLY, LEGISLATION MANDATES THAT AT LEAST 5 PERCENT
OF THE AGGREGATE VALUE OF PROJECT FOOD AID BE MONETIZED
(OR TITLE II, 5 PERCENT IS TO BE MONETIZED THROUGH
PVOs; FOR SECTION 416 (B), 5 PERCENT IS TO BE MONETIZED
THROUGH PVOs AND COOPERATIVES.) THE PRESUMPTION IS THAT

THE BULK OF GRANT FOOD AID COMMODITIES WILL CONTINUE TO
BE TARGETED FOR DIRECT DISTRIBUTION TO NEEDY
INDIVIDUALS. MONETIZATION REQUESTS FOR ANY ONE PROJECT
SHOULD BE WITHIN THE 5-15 PERCENT RANGE IN LDCs. IN THE
CASE OF LDCs WHERE THERE ARE EXTRAORDINARY LOGISTICS
AND OPERATIONAL COSTS, THIS RANGE WOULD EXTEND UP TO 30
PERCENT. THE SECTION 416 (B) LEGISLATION MANDATES
EXPLICITLY THAT GENERATED FUNDS WILL BE USED TO BENEFIT
POOR PEOPLE.

THESE GUIDELINES ESTABLISH A GENERAL POLICY FRAMEWORK
FOR MISSIONS, PRIVATE VOLUNTARY AGENCIES AND
COOPERATIVES CONSIDERING PARTIAL MONETIZATION OF PROJECT
FOOD AID. A FIELD MANUAL BASED ON THESE POLICY
GUIDELINES IS IN PROGRESS WHICH WILL PROVIDE GREATER
DETAIL ON DESIGN AND IMPLEMENTATION ISSUES.

B. PROGRAM GUIDELINES

1. COMPLEMENTARITY: THE GUIDING PRINCIPLE OF PARTIAL
MONETIZATION IS THAT THE SALES PROCEEDS GENERATED SHOULD
COMPLEMENT AND STRENGTHEN PROJECT FOOD AID. PARTIAL
MONETIZATION MUST ASSIST IN ACHIEVING THE FUNDAMENTAL
OBJECTIVES OF THE PROJECT. TO ENSURE THIS IMPACT
FUNDS GENERATED BY COMMODITIES FOR A SPECIFIC PROJECT
MUST BE USED FOR THAT PROJECT. PROJECT FOOD AID IS
PROVIDED ON A GRANT BASIS AND INTENDED TO COMPENSATE FOR
DISTRIBUTIONAL AND STRUCTURAL INEQUITIES IN DEVELOPING
COUNTRIES. THEREFORE, IT IS TARGETED TO SELECTED GROUPS
WHICH DO NOT HAVE ACCESS TO ADEQUATE FOOD SUPPLIES,
INCLUDING THOSE WHICH LACK THE INCOME TO PURCHASE FOOD.

2. ALTERNATIVE RESOURCES: ALTERNATIVE SOURCES OF FUNDS
MUST BE EXPLORED AND FOUND TO BE UNAVAILABLE. BECAUSE
OF THE TRADE-OFF BETWEEN REACHING INCREASED NUMBERS OF
BENEFICIARIES AND OBTAINING GREATER IMPACT ON REDUCED
NUMBERS, MONETIZATION OF GRANT COMMODITIES MUST BE
CONSIDERED A LAST RESOURCE FOR FUNDING COMPLIMENTARY
INPUTS FOR PROJECT FOOD AID. SALES PROCEEDS SHOULD NOT
SUBSTITUTE FOR COMMITMENTS FROM HOST GOVERNMENTS, PVOs,
OR COOPERATIVES. NORMALLY, FUNDS FROM NON-U.S.G.
SOURCES SHOULD BE SUFFICIENT TO COVER IN-COUNTRY
OVERHEAD COSTS.

PRIMARY FUNDING SOURCES INCLUDE:

- HOST GOVERNMENT CONTRIBUTIONS: HOST GOVERNMENT-OWNED
LOCAL CURRENCIES SHOULD BE INVESTIGATED AS A MEANS OF
MEETING RELATED COSTS OF PROJECT FOOD AID. IN COUNTRIES
WHICH HAVE AN ESTABLISHED FINANCIAL CAPABILITY TO
SUPPORT THE NON-FOOD COSTS OF PROJECT FOOD AID, THESE
RESOURCES SHOULD BE USED. MONETIZATION SHOULD NOT
SUBSTITUTE FOR HOST GOVERNMENT RESOURCES. THESE
GOVERNMENT RESOURCES INCLUDE GENERAL BUDGET RECEIPTS, AS
WELL AS LOCAL CURRENCIES GENERATED BY OTHER FOOD AID --
TITLE I/III FOR EXAMPLE -- OR COMMODITY IMPORT PROGRAMS.

- PVO AND COOPERATIVE FINANCING. IN THE PAST, THESE
ORGANIZATIONS HAVE USUALLY BEEN RESPONSIBLE FOR
INTERNA- TRANSPORT COSTS AND OTHER ANCILLARY COSTS OF
THEIR PROJECTS. THE FULL RANGE OF PVO AND COOPERATIVE
RESOURCES SHOULD BE DETERMINED INADEQUATE BEFORE
MONETIZATION IS PROPOSED.

- OPERATIONAL PROGRAM GRANTS (OPGs). THOUGH A SPECIFIC
OPG SHOULD NOT BE SOUGHT SOLELY TO PROVIDE LOCAL
CURRENCY TO SUPPORT A PVO OR COOPERATIVE-SPONSORED FOOD
AID PROJECT, OPGs IN RELATED SECTORS (HEALTH,
NUTRITION) MAY OFFER A WAY OF MEETING LOCAL COSTS
ASSOCIATED WITH DOLLAR FUNDING REQUIREMENTS.

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3. IMPLEMENTATION CAPACITY MONETIZATION PROGRAMS WILL GENERALLY BE IMPLEMENTED BY THE PARTICIPATING PVO OR COOPERATIVE THAT HAS TITLE TO THE FOOD. THE PARTICIPATING ORGANIZATION MUST HAVE DEMONSTRATED THE CAPACITY TO ADMINISTER THE LEVEL OF MONETIZATION PROPOSAL FOR A FOOD AID PROJECT. SPECIFICALLY, THE ORGANIZATION MUST MEET THE FOLLOWING CONDITIONS:

- TO MAXIMIZE THE U.S. GOVERNMENT RESOURCE AND ITS

IMPACT ON PROJECT GOALS, THE PVO OR COOPERATIVE MUST BE ABLE TO DEMONSTRATE THAT THE COMMODITIES WILL BE SOLD AT MARKET VALUE. THE USAID OR U.S. EMBASSY SHOULD APPROVE THE PRICE AT WHICH THE COMMODITY WILL BE SOLD TO ASSURE FULL VALUE IS RECEIVED. (NOTE: IF LOCAL MARKET PRICE IS HIGHLY SUBSIDIZED, MONETIZATION AT THAT PRICE WOULD NOT BE ACCEPTABLE.)

- PVOs OR COOPERATIVES MUST ENSURE THAT ALL RESOURCES GENERATED FROM COMMODITY SALES -- LESS LEGITIMATE TRANSACTION COSTS -- WILL BE USED FOR THE PURCHASE/PROVISION OF APPROVED ANCILLARY INPUTS AND/OR INTERNAL TRANSPORT, AND THAT THEY WILL BE ABLE TO MAINTAIN ACCURATE RECORDS OF PROCEEDS AND USES.

THE ROLE OF THE A.I.D. MISSION WILL REMAIN THAT OF OVERSIGHT AND MONITORING AS IS NORMALLY THE CASE WITH PVO AND COOPERATIVE PROJECTS.

4. DISINCENTIVES: DEPENDING ON THE VOLUME OF SALES AND CHOICE OF COMMODITIES TO BE SOLD, MONETIZATION OF GRANT COMMODITIES COULD HAVE DISINCENTIVE EFFECTS ON LOCAL PRODUCTION AND MARKETING. HOWEVER, IN MOST PARTIAL MONETIZATION CASES, WE ANTICIPATE THAT THE TONNAGE SOLD WILL COMPRISE SUCH A SMALL PERCENTAGE OF DOMESTIC CONSUMPTION THAT A DISINCENTIVE ANALYSIS NEED NOT BE COMPLETED. IN EXCEPTIONAL CASES WHERE THERE IS A HIGH VOLUME OF TONNAGE, DISINCENTIVE EFFECTS MAY OCCUR.

THE A.I.D. MISSION SHOULD CERTIFY IN ITS SUBMISSION OF THE PROPOSAL TO A.I.D./W THAT EITHER A) THE TONNAGE TO BE SOLD IS SUCH A SMALL PERCENTAGE OF DOMESTIC PRODUCTION THAT THERE IS NO SUBSTANTIAL DISINCENTIVE EFFECT ON LOCAL PRODUCTION AND MARKETING OR B) THAT THE VOLUME IS LARGE ENOUGH TO WARRANT AN ANALYSIS, THAT A DISINCENTIVE ANALYSIS HAS BEEN ACCOMPLISHED AND THERE ARE NO SUBSTANTIAL DISINCENTIVE EFFECTS. IN ADDITION, AS WITH ALL FOOD AID, THE PVO MUST CERTIFY AND THE MISSION MUST CONFIRM THAT ADEQUATE STORAGE FACILITIES ARE AVAILABLE IN THE RECIPIENT COUNTRY TO PREVENT SPOILAGE OR WASTE. THESE TWO CERTIFICATIONS CONSTITUTE THE BELMONT DETERMINATION WHICH MUST BE MADE BY THE SECRETARY OF THE U.S. DEPARTMENT OF AGRICULTURE (USDA).

5. USUAL MARKETING REQUIREMENTS (UMR): SIMILARLY, THE VOLUME OF COMMODITIES SOLD WILL GENERALLY COMPRISE SUCH A SMALL PERCENTAGE OF COMMERCIAL IMPORTS, THAT NO UMR COMPUTATION/ANALYSIS NEED BE COMPLETED TO DETERMINE THAT THERE ARE NO NEGATIVE EFFECTS ON UMRS. HOWEVER, IN

EXCEPTIONAL CASES WHEN THE LEVEL IS LARGE, A UMR ANALYSIS SHOULD BE UNDERTAKEN AND A FIVE YEAR AVERAGE IMPORT LEVEL OF THE COMMODITY TO BE SOLD SHOULD BE ESTABLISHED.

THE A.I.D. MISSION SHOULD CERTIFY IN ITS SUBMISSION TO A.I.D./W THAT EITHER A) THE VOLUME OF THE COMMODITY TO BE SOLD REPRESENTS SUCH A SMALL PERCENTAGE OF IMPORTS THAT NO ANALYSIS IS NEEDED OR B) THE VOLUME TO BE SOLD

WARRANTS AN ANALYSIS, A UMR ANALYSIS HAS BEEN COMPLETED, AND THE INTENDED TONNAGE TO BE SOLD DOES NOT THREATEN NORMAL PATTERNS OF TRADE. IN THOSE CASES WHERE A UMR ANALYSIS IS REQUIRED, THE SALES OF TITLE II AND SECTION 416 (B) ARE SUBJECT TO CONSULTATION BEFORE THE FAO CONSULTATIVE SUBCOMMITTEE ON SURPLUS DISPOSAL BASED ON THE UMR ESTABLISHED BY USDA. (NOTE: WHERE THERE IS MORE THAN ONE MONETIZATION PROJECT, THIS ANALYSIS SHOULD BE APPLIED TO THE AGGREGATE LEVELS TO BE MONETIZED FOR ALL PROJECTS.)

6. PROGRAM DURATION AND SIZE: IN ORDER TO MAINTAIN THE OBJECTIVES OF PROJECT FOOD AID, ONLY A PORTION OF PROJECT COMMODITIES SHOULD BE MONETIZED. THE APPROPRIATE LEVEL WILL VARY BY INDIVIDUAL SITUATION. EXCEPTIONALLY LARGE MONETIZATION PROPOSALS WILL BE TREATED AS EXTRAORDINARY AND WILL REQUIRE EXCEPTIONAL JUSTIFICATION. THESE WILL BE CONSIDERED ON A CASE-BY-CASE BASIS.

FOR THE PURPOSE OF COHERENT PROGRAMMING, PROJECTS INVOLVING MONETIZATION SHOULD BE PLANNED, JUSTIFIED AND REVIEWED ON THE BASIS OF LIFE-OF-PROJECT NEEDS. CONSISTENT WITH THIS, THESE PROJECTS SHOULD HAVE A SPECIFIC IMPLEMENTATION TIMETABLE, WITH CLEARLY DEFINED STARTING AND TERMINATION DATES. AS IN ALL FOOD AID PROJECTS, ANNUAL LEVELS WILL BE CONTINGENT ON COMMODITY AVAILABILITIES AND YEARLY APPROVALS.

7. DOCUMENTATION AND DESIGN REQUIREMENTS: REQUIREMENTS FOR PROJECT DOCUMENTATION AND DESIGN FOR MONETIZATION NEED NOT BE AS INVOLVED AS THOSE FOR DEVELOPMENT ASSISTANCE (DA) PROJECTS. HOWEVER, MORE INFORMATION IS NECESSARY THAN IS GENERALLY PROVIDED IN PVO OPERATIONAL PLANS (OPC) AND COOPERATIVE PROJECT PROPOSALS. AS PART OF EXPANDED OPERATIONAL PLANS OR PROJECT DOCUMENT, THE PVO OR COOPERATIVE SHOULD PROVIDE THE FOLLOWING INFORMATION:

1) A DISCUSSION OF WHY OTHER SOURCES OF FUNDS ARE UNAVAILABLE, AND A DEMONSTRATION THAT MONETIZATION WILL

NOT SUBSTITUTE FOR HOST GOVERNMENT, PVO OR COOPERATIVE RESOURCES;

2) A DESCRIPTION OF THE PURPOSE OF THE MONETIZATION PROGRAM, INCLUDING AN ANALYSIS OF THE EXPECTED IMPACTS, THAT CONSIDERS THE BENEFITS MONETIZATION WILL BRING AND HOW IT WILL ENHANCE ACHIEVEMENT OF PROJECT OBJECTIVES;

3) A DESCRIPTION OF THE PLANNED USES OF LOCAL CURRENCIES WHICH INCLUDES A LIFE-OF-PROJECT PLAN WITH INTENDED OUTPUTS, BENCHMARKS OF PROGRESS, THE RESPONSIBILITIES OF THE PVO OR COOPERATIVE, HOST GOVERNMENT, AND OTHER PARTICIPANTS AND A PLAN FOR ASSESSMENT OF PERFORMANCE; (IN THE CASE OF SECTION 416 (B)), EVIDENCE MUST BE PROVIDED THAT FUNDS GENERATED FROM MONETIZATION WILL BE UTILIZED TO BENEFIT THE POOR.)

4) A BUDGET OF PROJECTED LOCAL CURRENCIES TO BE GENERATED AND PLANNED USES;

5) A DESCRIPTION OF THE MECHANICS OF THE COMMODITY SALE INCLUDING ANY SPECIAL ORDERING OF COMMODITIES, PORT HANDLING, INLAND TRANSPORT, AND PROVISIONS FOR DISBURSMENT, CONTROL AND ACCOUNTING FOR PROCEEDS; THIS SHOULD ALSO INCLUDE A DESCRIPTION OF THE ANTICIPATED LOCAL SALES PRICE AND THE MARKETING MECHANISM THROUGH WHICH THE COMMODITIES WILL BE SOLD. (MORE DETAIL ON THESE REQUIREMENTS WILL BE GIVEN IN THE FILED MANUAL.)

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C. PROJECT ADMINISTRATION

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THE FOLLOWING CONDITIONS OF IMPLEMENTATION SHOULD BE OBSERVED:

1. OVERALL SIZE - DETERMINATION OF THE PERCENTAGE OF THE PROJECT TO BE MONETIZED SHOULD BE CALCULATED IN VALUE TERMS NOT VOLUME, I.E. DOLLAR VALUE AT CCC PRICES OF COMMODITY EXCLUSIVE OF SHIPPING COSTS.

2. DUTY-FREE STATUS - TITLE II AND SECTION 416 (B) COMMODITIES ARE IMPORTED INTO RECIPIENT COUNTRIES FREE OF IMPORT DUTIES. WHERE MONETIZATION IS CONTEMPLATED, NEGOTIATIONS WITH HOST GOVERNMENT MAY BE NECESSARY TO PRESERVE THIS DUTY-FREE STATUS. IT WOULD BE USEFUL IF PRELIMINARY DISCUSSIONS WITH HOST GOVERNMENT COULD BE UNDERTAKEN BEFORE DESIGN OF THE PROJECT AND BEFORE IT IS SUBMITTED TO WASHINGTON TO ENSURE THIS DUTY-FREE STATUS BEFORE BEGINNING THE DESIGN, REVIEW AND APPROVAL PROCESS.

3. MARKINGS ON BAGS - THE NORMAL GRANT COMMODITIES BAGS SHOULD NOT BE USED FOR MONETIZATION AS THEY ARE MARKED QUOTE NOT FOR RESALE UNQUOTE. TO SOLVE THIS PROBLEM THE PARTICIPATING PVO OR COOPERATIVE AND THE USAID MUST MAKE A SPECIAL REQUEST EITHER: (1) THAT THE COMMODITIES BE SENT IN BULK AND BAGGED IN COUNTRY WHERE THESE FACILITIES EXIST, OR (2) THAT THE COMMODITY BEER BE SPLIT WITH THE PART TO BE FREELY DISTRIBUTED IN MARKED BAGS, AND THE PART TO BE SOLD IN UNMARKED BAGS. THESE PROCEDURES ARE CURRENTLY FOLLOWED FOR SALES OF EMERGENCY COMMODITIES.

4. COMMODITY MIX - IN SOME CASES, IT MAY BE APPROPRIATE TO UTILIZE SPECIAL COMMODITIES FOR MONETIZATION WHICH ARE OF HIGHER VALUE IN LOCAL MARKETS THAN THOSE USUALLY USED IN THE PROJECT. HOWEVER, THE POTENTIAL FOR INCREASED CURRENCY GENERATIONS MUST BE BALANCED AGAINST ANY INCREASED ADMINISTRATIVE AND LOGISTICAL COSTS, AS WELL AS OVERALL COMMODITY AVAILABILITY. WHEN DETERMINING COMMODITIES TO BE MONETIZED, IT SHOULD BE KEPT IN MIND THAT TITLE II HAS A BROADER CHOICE OF COMMODITIES AVAILABLE THAN DOES SECTION 416 (B).

D. USES OF LOCAL CURRENCIES

1) INTERNAL TRANSPORT -- COSTS OF INTERNAL TRANSPORT ARE AMONG THE MOST IMPORTANT ASSOCIATED WITH PROJECT FOOD AID. THESE COSTS ARE PROHIBITIVELY EXPENSIVE IN CERTAIN AREAS OF THE WORLD WHICH LACK ADEQUATE TRANSPORT AND INFRASTRUCTURE. HOWEVER, THESE COSTS MUST BE MET IF THESE PROJECTS ARE TO SUCCEED IN REACHING TARGETED GROUPS -- PARTICULARLY THOSE FAR DISTANT FROM PORTS AND MAJOR POPULATION CENTERS. PAYMENT OF THE COSTS OF INTERNAL TRANSPORT OF GRANT COMMODITIES IS THE FIRST PRIORITY USE OF LOCAL CURRENCIES GENERATED BY MONETIZATION.

THOSE COSTS WHICH ARE APPROPRIATELY COVERED AS PART OF INTERNAL TRANSPORT EXPENSES INCLUDE ONLY THOSE COSTS WHICH ARE DIRECTLY RELATED TO TRANSPORT, HANDLING AND STORAGE OF U.S. GRANT FOOD COMMODITIES. INDIRECT COSTS AND OVERHEAD COSTS ARE NOT ACCEPTABLE INTERNAL TRANSPORT COSTS. (AS EXPRESSED IN SECTION 416 (B), PROCEEDS MAY BE USED TO ENHANCE THE EFFICIENCY OF TRANSPORTATION, DISTRIBUTION, OR USE OF FOOD, INCLUDING FOOD FOR WORK, COOPERATIVE AND AGRICULTURAL PROJECTS.)

ANCILLARY COSTS -- LOCAL CURRENCIES GENERATED BY MONETIZATION MUST BE USED DIRECTLY TO SUPPORT THE

OBJECTIVES OF PROJECT FOOD AID. EXAMPLES ARE PROVIDED BELOW. MONETIZATION IS NOT INTENDED TO MEET THE GENERAL SALARY/OVERHEAD COSTS OF THE PVO OR COOPERATIVES, BUT ONLY ANCILLARY COSTS RELATED TO THE PROJECT FOR WHICH MONETIZATION IS BEING CONSIDERED.

A SPECIAL CIRCUMSTANCE CALLING FOR A MORE LIBERAL INTERPRETATION WOULD INVOLVE FINANCING OF CERTAIN COSTS ASSOCIATED WITH PROJECT PHASE OVER FROM U.S.G. TO HOST COUNTRY SPONSORSHIP. THUS, THE PROCEEDS COULD COVER CERTAIN COSTS ASSOCIATED WITH STRENGTHENING LOCAL CAPABILITIES TO ASSUME RESPONSIBILITIES FOR ELEMENTS OF A PROJECT AS IT IS PHASED OVER. (SECTION 416 (B) PROHIBITS USE OF PROCEEDS FOR OPERATING AND OVERHEAD EXPENSES AS RELEVANT HERE, EXCEPT REPEAT EXCEPT FOR PERSONNEL AND ADMINISTRATIVE COSTS OF LOCAL COOPERATIVES.)

USES OF LOCAL CURRENCIES IN MATERNAL CHILD HEALTH PROGRAMS WOULD INCLUDE SUCH INPUTS AS SCALES, GROWTH SURVEILLANCE CHARTS, NUTRITION EDUCATION AND PILOT ORAL REHYDRATION THERAPY (ORT) PROGRAMS.

USES FOR LOCAL CURRENCIES IN SCHOOL FEEDING PROGRAMS COULD INCLUDE PURCHASE OF TOOLS AND EQUIPMENT FOR SCHOOL GARDENS, EDUCATIONAL AIDS RELATED TO NUTRITION AND EQUIPMENT FOR SCHOOL KITCHENS.

USES OF MONETIZATION IN FOOD FOR WORK COULD INCLUDE INPUTS SUCH AS SIMPLE TOOLS, CEMENT, FENCING OR COMPACTORS TO COMPLETE LABOR INTENSIVE INFRASTRUCTURE PROJECTS AND SHORT-TERM TECHNICAL SERVICES OF, E.G., ENGINEERS, FORESTERS AND AGRICULTURISTS.

CASH SUPPLEMENTS OR SUBSTITUTE CASH PAYMENTS TO WORKERS ARE APPROPRIATE UNDER SPECIAL CIRCUMSTANCES. THESE CIRCUMSTANCES ARE:

A. THE PROGRAM OR PORTION OF THE PROGRAM SUPPORTED BY PAYMENT IN CASH MUST BE INTEGRAL AND FUNDAMENTAL TO THE ACHIEVEMENT OF AGREED PROJECT FOOD AID GOALS IN THE COUNTRY CONCERNED (E.G., THE CONSTRUCTION OF INFRASTRUCTURE).

B. IT MUST BE CLEAR THAT THESE GOALS COULD NOT BE ACHIEVED OTHERWISE.

C. IT MUST BE DEMONSTRATED THAT PAYMENT IN FOOD IS NOT A SATISFACTORY ALTERNATIVE. REASONS MUST BE CLEAR AND

SPECIFIC (E.G., MIGRANT LABOR IS NECESSARY TO CONSTRUCT INFRASTRUCTURE BUT WORKERS CANNOT TRANSPORT FOOD TO THEIR DISTANT HOMES). (SHULTZ)

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INFO AAAP-03 AFEA-01 AFSA-03 AFFW-04 AFCW-03 GEOP-01 LGWB-02
CERP-01 AALA-01 LAGA-02 FVA-01 DECU-01 AMAD-01 LETN-01
PPPB-02 TG-01 GC-01 IGLC-01 BFW-01 STAG-01 STHE-01
STM-03 STPO-01 CAST-01 EFP-03 PVC-01 ED-01 AGRI-01
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ANEQ-02 ANAR-01 ANDA-03 271 AB

INFO LOG-00 EUR-00 AF-00 EB-00 IO-19 NEA-04 ARA-00
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APPROVED BY: AID/EVA/PPM/BRILEY
USDA/FAS: MCHAMBERLAIN STATE/ER/OP: CUCOCCINI
OMB: DSPECKHARD AID/ES: GJCE
TREA: KLOTZ AID/PPC/PB: CWEISKIRCH
AID/EVA/PPM: JO'NEARA AID/GC: STEPHENSON
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E. G. 12356: N/A

TAGS:

SUBJECT: NEW TITLE II LEGISLATION

REF: STATE 158142

1. PRESIDENT REAGAN SIGNED THE AGRICULTURAL AID AND TRADE MISSIONS ACT (SECTION 157) OF THE FY 1988 CONTINUING RESOLUTION ON DECEMBER 22, 1987. THIS MESSAGE COMMUNICATES THE PROVISIONS OF THE ACT PERTAINING TO TITLE II PROGRAMS.

2. THE NEW LEGISLATION INCLUDES THE FOLLOWING PROVISIONS:

A. 10 PERCENT AGGREGATE MONETIZATION REQUIREMENT IN PL 480 SECTION 207(B)

THE ACT RAISES FROM 5 PERCENT TO 10 PERCENT THE MINIMUM AGGREGATE VALUE OF TITLE II NON-EMERGENCY COMMODITIES TO BE MONETIZED EACH YEAR FOR NON-PROFIT VOLUNTARY ORGANIZATIONS OR COOPERATIVES. THIS INCREASES THE FY 1988 REQUIREMENT FROM DOLS 12.5 MILLION TO DOLS 25.1 MILLION. REQUESTS RECEIVED IN WASHINGTON AS OF 3/31/88 TOTALED ONLY DOLS 14.8 MILLION.

B. USES OF FOREIGN CURRENCIES

THE ACT ADDS TO PL 480 A SUBSECTION TO 207(C) AS FOLLOWS:

QUOTE FOREIGN CURRENCIES GENERATED FROM ANY PARTIAL OR FULL SALES OR BARTER OF COMMODITIES BY A NONPROFIT VOLUNTARY AGENCY OR COOPERATIVE SHALL BE USED --

1) TO TRANSPORT, STORE, DISTRIBUTE, AND OTHERWISE ENHANCE THE EFFECTIVENESS OF THE USE OF COMMODITIES AND THE PRODUCTS THEREOF DONATED UNDER THIS TITLE; AND

2) TO IMPLEMENT INCOME GENERATING, COMMUNITY DEVELOPMENT, HEALTH, NUTRITION, COOPERATIVE DEVELOPMENT, AGRICULTURAL PROGRAMS, AND OTHER DEVELOPMENTAL ACTIVITIES. END QUOTE

THE ACT THUS SPECIFIED A BROAD RANGE OF ECONOMIC DEVELOPMENT ACTIVITIES UNDER CATEGORY 2) ABOVE TO EMPHASIZE THE VARIETY OF ACTIVITIES THAT ARE ELIGIBLE FOR TITLE II MONETIZATION. REFTEL EMPHASIZED MORE TRADITIONAL DIRECT FEEDING ACTIVITIES. THE DCC WILL ACCOMMODATE BOTH CATEGORIES OF REQUESTS ALTHOUGH PRIORITY WILL CONTINUE TO BE GIVEN TO DIRECT FEEDING PROGRAMS AND TO MONETIZATION IN SUPPORT OF DIRECT FEEDING PROGRAMS. PER REFTEL, SECTION D -- PARTICULARLY IN POOR COUNTRIES WHERE NEEDS TEND TO BE THE GREATEST.

THE LEGISLATION PERMITS FULL AND PARTIAL MONETIZATION OF TITLE II PROGRAMS. REFTEL LIMITED PARTIAL MONETIZATION TO RANGES OF 5 PERCENT TO 15 PERCENT AND UP TO 30 PERCENT FOR LDC'S AND EDC'S, RESPECTIVELY. THESE RANGES NO LONGER APPLY. REFTEL GUIDANCE PERTAINING TO THE BELLMON DETERMINATION, UMR REQUIREMENTS, ETC. CONTINUES TO APPLY. THE NEW LEGISLATION THIS PERMITS BOTH THE BROADER RANGE OF USES OF FOREIGN CURRENCIES AND THE REMOVAL OF LIMITS ON THE PERCENTAGE OF MONETIZATION.

GIVEN THE CURRENT SHORTFALL IN MEETING THE FY 1988 AGGREGATE SUB-MINIMUM TARGET, THE DCC WILL CONSIDER MONETIZATION PROPOSALS FOR FY 1988 EVEN THOUGH THE LAST ORDERING DATE FOR FY 1988 COMMODITIES IS JUNE 18TH. PVO AND COOPERATIVE MONETIZATION PROPOSALS WILL BE GIVEN CONSIDERATION WITHIN THE FRAMEWORK OF THE LEGISLATION.

MONETIZATION PROPOSALS NOT PREPARED IN TIME FOR FY 1988 AER SUBMISSION SHOULD BE FORWARDED AS SOON AS POSSIBLE. MISSIONS ARE URGED TO REVIEW AND COMMENT ON PVO AND COOPERATIVE PROPOSALS AS EXPEDITIOUSLY AS POSSIBLE.

A.I.D. ALSO ASKS MISSIONS TO INCLUDE, TO THE EXTENT POSSIBLE, PVO AND COOPERATIVE FUTURE MONETIZATION REQUIREMENTS IN FY 1988 ABS SUBMISSIONS. THIS WILL ENABLE A.I.D. TO BETTER DETERMINE TOTAL DEMANDS AND TO JUDGE THE EXTENT TO WHICH DIRECT FEEDING VS ECONOMIC DEVELOPMENT ACTIVITIES CAN BE ACCOMMODATED.

C) COOPERATIVE PARTICIPATION

COOPERATIVES CONTINUE TO BE ELIGIBLE FOR TITLE II MONETIZATION PROGRAMS. THE LEGISLATION CLARIFIES THAT COOPERATIVE MONETIZATION PROGRAMS ARE TO BE COUNTED TOWARDS MEETING THE 10 PERCENT MINIMUM TARGET; THEY WERE INTERPRETED AS BEING EXCLUDED IN ACCOUNTING FOR PROGRAMS MEETING THE PREVIOUS 5 PERCENT MINIMUM REQUIREMENT.

D) PERIODS FOR REVIEW AND APPROVAL

NEW SECTION 208 (A) PROVIDES THAT IN EFFECT THE DCC FOOD AID SUBCOMMITTEE WORKING GROUP WILL DECIDE ON A TITLE II PROPOSAL SUBMITTED FOR REVIEW AND APPROVAL WITHIN 45 DAYS AFTER RECEIPT BY THE A.I.D. OFFICE IN WASHINGTON, DC. THE RESPONSE SHALL DETAIL THE REASONS FOR APPROVAL OR DENIAL. IF THE PROPOSAL IS DENIED, THE RESPONSE SHALL SPECIFY THE CONDITIONS THAT WOULD NEED TO BE MET FOR THE PROPOSAL TO BE APPROVED. FURTHER GUIDANCE WILL FOLLOW ON THIS PROVISION.

E) DEADLINE FOR SUBMISSION OF COMMODITY ORDERS

NEW SECTION 208 (C) PROVIDES FURTHER THAT PURCHASE ORDERS SHALL BE TRANSMITTED TO THE COMMODITY CREDIT CORPORATION NOT LATER THAN 15 DAYS AFTER RECEIPT OF A CALL FORWARD THAT MEETS THE REQUIREMENTS OF TITLE II.

3. THESE PROVISIONS ARE EFFECTIVE IMMEDIATELY AND WILL

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BE REFLECTED IN A FIELD MANUAL FOR MONETIZATION PROGRAMS
AND IN AN UPDATE OF A.I.C. HANDBOOK 9, BOTH OF WHICH ARE
EXPECTED TO BE ISSUED WITHIN THE NEXT MONTH OR TWO.
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INFO ARAF-02 AFEA-03 AFSA-03 AFFM-04 AFCV-03 AFDP-06 AKOP-03
AALA-01 LAEM-02 LACE-03 LASA-03 LADP-04 FYA-01 PPPB-02
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INFO LOG-00 EUR-00 AF-00 EB-00 IO-16 NEA-07 ARA-00
L-03 CAP-00 /034 B

DRAFTED BY: AID/FVA/FFP/11:V. PEARSON;BEM:2382D

APPROVED BY: AID/FVA/FFP:T. REESL

AID/ES:G JOE

OMB/IAD:G MOSER (INFO)

USDA/FAS:M CHAMBLISS (INFO)

STATE/EB/DFP:C BILLO (INFO)

AID/PPC/PB:L TAMMER (INFO)

AID/FVA/PPE:L STAMBERG (DRAFT)

AID/FVA/PPE:J GILMORE (DRAFT)

AID/SER/IRM/PE:J ELGIN (PROMO)

AID/FVA/FFP:J VOGLER INFO

AID/AFR/DP:HMERKILL DFT

AID/LAC/DP:H JOHNSON DFT

AID/PPC/PB:L TAMMER DFT

AID/ANE/DP:BSIDMAN DFT

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E.O. 12356: N/A

TAGS: N/A

SUBJECT: PL 488, TITLE II - REVISED REQUIREMENTS FOR
TITLE II OPERATIONAL PLAN

1. AT THE TWO RECENT FOOD FOR PEACE CONFERENCES IN NEW DELHI AND ABIDJAN, CONSIDERABLE TIME AND ATTENTION WAS DEVOTED TO DISCUSSION OF THE BASIC DOCUMENT UPON WHICH ALL TITLE II PVO PROGRAMS ARE BASED - THE PLAN OF OPERATION. THERE WAS GENERAL AGREEMENT THAT BOTH AID AND COOPERATING SPONSORS FOR SOME TIME HAVE TENDED TO NEGLECT THE IMPORTANCE OF THE PLAN OF OPERATION.

2. CURRENTLY, SECTION 211.5 OF AID REGULATION 11 SETS OUT THE REQUIREMENT FOR THE PLAN OF OPERATION AS FOLLOWS.

(A) PLAN OF OPERATION. EACH COOPERATING SPONSOR SHALL SUBMIT TO THE USAID OR DIPLOMATIC POST FOR THE APPROVAL OF AID/V, WITHIN SUCH TIMES AND ON THE FORMS PRESCRIBED BY AID/V, A DESCRIPTION OF THE PROGRAM IT IS SPONSORING OR PROPOSES TO SPONSOR. THIS DESCRIPTION WILL PROVIDE BASIC INFORMATION FOR PREPARATION AND AMENDMENT OF FOOD FOR PEACE PROGRAM AGREEMENTS AND INDIVIDUAL COUNTRY FOOD FOR PEACE PROGRAM AGREEMENTS AND WILL INCLUDE PROGRAM PURPOSES AND GOALS, CRITERIA FOR MEASURING PROGRAM

EFFECTIVENESS, AND OTHER SPECIFIC PROVISIONS IN ADDITION TO THOSE SET FORTH IN THIS PART. FURTHER, THIS DESCRIPTION WILL INCLUDE INFORMATION FROM WHICH IT MAY BE DETERMINED THAT THE DISTRIBUTION OF COMMODITIES IN THE RECIPIENT COUNTRY WILL NOT RESULT IN A SUBSTANTIAL DISINCENTIVE TO DOMESTIC PRODUCTION AND THAT ADEQUATE STORAGE FACILITIES ARE AVAILABLE IN THE RECIPIENT COUNTRY AT THE TIME OF EXPORTATION OF THE COMMODITY TO PREVENT THE SPOILAGE OR WASTE OF THE COMMODITY.

3. WE PROPOSE TO ELIMINATE THE ABOVE FINAL TWO SENTENCES OF THE CURRENT REQUIREMENT OF SECTION 211.5 AND SUBSTITUTE THE FOLLOWING LANGUAGE.

-- THIS PLAN OF OPERATION WILL BE CONSIDERED A PART OF THE FOOD FOR PEACE PROGRAM AGREEMENT AFTER IT IS APPROVED BY AID. WITHIN THE OVERALL OBJECTIVES OF THE APPROVED PROGRAM, ELEMENTS OF THE PROGRAM MAY BE CHANGED BY WRITTEN AGREEMENT OF THE AUTHORIZED REPRESENTATIVES OF THE COOPERATING SPONSOR, ON THE ONE HAND, AND AID AND CCC, WITHIN THEIR RESPECTIVE AREAS OF RESPONSIBILITY, ON THE OTHER, WITHOUT FORMAL AMENDMENT OF THE AGREEMENT. IN CASE OF THE CONFLICT BETWEEN THE TEXT OF THE AGREEMENT AND THE APPROVED PLAN OF OPERATION THE TEXT OF THE AGREEMENT PREVAILS. THIS PLAN OF OPERATION WILL ALSO PROVIDE THE BASIC INFORMATION FOR PREPARATION OF INDIVIDUAL COUNTRY FOOD FOR PEACE PROGRAM AGREEMENTS DEVELOPED AND RENEWED ANNUALLY FOR PERIOD DESIGNATED WITH THE CO-SPONSORS' COUNTERPART AND HOST GOVERNMENT.

IN ADDITION TO ANY OTHER REQUIREMENT OF LAW OR REGULATION, THE OPERATION PLAN WILL INCLUDE THE FOLLOWING INFORMATION:

(A) A DESCRIPTION OF PROGRAM GOALS AND CRITERIA FOR MEASURING PROGRESS TOWARD REACHING THE GOALS. EACH PROGRAM SHOULD BE DESIGNED TO ACHIEVE MEASURABLE OBJECTIVES WITHIN A SPECIFIED PERIOD OF TIME.

(B) PROGRAM DESCRIPTION:

- (1) PROBLEM STATEMENT: WHAT ARE THE CHARACTERISTICS, EXTENT AND SEVERITY OF PROBLEMS THAT THE PROGRAMS WILL ADDRESS.

(2) SPECIFICATION OF OBJECTIVES: CLEAR CONCISE STATEMENT OF SPECIFIC OBJECTIVES FOR EACH PROGRAM AND CRITERIA FOR MEASURING PROGRESS TOWARD REACHING OBJECTIVES. IF THERE ARE SEVERAL OBJECTIVES, INDICATE PRIORITIES.

-- (3) DESCRIPTION OF THE TARGET POPULATION BY PROGRAM, INCLUDING ECONOMIC/NUTRITION RELATED CHARACTERISTICS, THAT IS SUFFICIENT TO PERMIT A DETERMINATION OF RECIPIENT ELIGIBILITY FOR TITLE II COMMODITIES. DESCRIPTION OF THE EDUCATIONAL AND EMPLOYMENT CHARACTERISTICS OF THE TARGET GROUP, AS MAY BE RELEVANT TO PROGRAM OBJECTIVES. THE RATIONALE FOR SELECTION OF THE TARGET GROUP. THE RATIONALE FOR SELECTION OF GEOGRAPHICAL AREAS WHERE PROGRAMS WILL BE CARRIED OUT. CALCULATION OF COVERAGE: PERCENT OF TOTAL TARGET POPULATION REACHED.

- (4) DESCRIPTION OF INTERVENTION INCLUDING:

-- (A-) RATION COMPOSITION: DESCRIPTION OF RATIONS, RATIONALE FOR SIZE AND COMPOSITION, ASSESSMENT OF EFFECTIVENESS (DILUTION, SHARING, ACCEPTANCE).

- (B-) COMPLEMENTARY PROGRAM COMPONENTS AND INPUTS: IDENTIFICATION OF EXISTING OR POTENTIAL COMPLEMENTARY PROGRAM COMPONENTS, I.E., EDUCATION, GROWTH MONITORING, TRAINING, ETC., THAT ARE NECESSARY TO ACHIEVE PROGRAM IMPACT, INCLUDING DETERMINATION OF FINANCIAL COSTS AND SOURCES OF FUNDING.

-- (C-) INTERVENTION STRATEGY: DESCRIBE HOW THE FOOD AND OTHER PROGRAM COMPONENTS WILL ADDRESS PROBLEMS.

(5) LINKAGES WITH OTHER DEVELOPMENT ACTIVITIES, SUCH AS HEALTH OR AGRICULTURAL EXTENSION SERVICES: DESCRIBE SPECIFIC AREAS OF COLLABORATION RELATIVE TO PROGRAM

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-- (6) MONITORING AND EVALUATION: EVALUATION PLAN, INCLUDING DESCRIPTION OF INFORMATION TO BE COLLECTED FOR PURPOSES OF ASSESSING PROGRAM OPERATIONS AND IMPACT, DESCRIPTION OF MONITORING SYSTEM FOR COLLECTION, ANALYSIS AND UTILIZATION OF INFORMATION, PLANS FOR EVALUATION, AS WELL AS PLANS FOR CONDUCTING INTERNAL REVIEWS (211.5 (c)).

*attached
reference*

-- (7) TITLE II PROGRAMS ARE BASED ON THE ASSUMPTION OF TIME-LIMITED SUPPORT. THE PLAN OF OPERATION SHOULD COVER A MULTI-YEAR TIME FRAME, NORMALLY THREE TO FIVE YEARS. SUCH A PERIOD SHOULD ALLOW ENOUGH TIME FOR A PROGRAM TO BECOME FULLY OPERATIONAL AND TO PERMIT EVALUATION OF IMPACT AND EFFECTIVENESS AS WELL AS

SPECIFIC MEASUREMENT OF PROGRESS IN ACHIEVING THE STATED PROGRAM GOALS. PLANS FOR AND CONSIDERATIONS INVOLVING PHASE-OVER/PHASE-OUT SHOULD BE DISCUSSED.

(c) DETAILS OF HOST GOVERNMENT, COOPERATING SPONSOR AND OTHER NON-USG SUPPORT FOR THE PROPOSED PROGRAM, WITH SPECIFIC BUDGETARY INFORMATION ON HOW THESE FUNDS ARE TO BE USED (E.G. COMPLEMENTARY INPUTS, TRANSPORT, ADMINISTRATION). WHERE RELEVANT, DISCUSSION OF HOW RECIPIENT CONTRIBUTIONS ARE TO BE HANDLED.

(d) STATEMENT AS TO HOW THE REQUIREMENTS FOR PUBLIC RECOGNITION, CONTAINER MARKINGS, AND USE OF FUNDS SET FORTH IN 211.5 (g), (h) AND (i) BELOW, AND SECTION 211.6 (a) AND (b) WILL BE MET.

(e) A LOGISTICS PLAN THAT DEMONSTRATES THE ADEQUACY AND AVAILABILITY IN A RECIPIENT COUNTRY OF PORT FACILITIES, TRANSPORTATION AND STORAGE FACILITIES TO HANDLE THE FLOW OF COMMODITIES TO RECIPIENTS TO PREVENT SPOILAGE OR WASTE. A FURTHER AFFIRMATION MUST BE MADE AT THE TIME OF EXPORTATION OF THE COMMODITY.

(f) SUFFICIENT INFORMATION CONCERNING THE PLAN OF DISTRIBUTION AND THE TARGET GROUP OF RECIPIENTS SO THAT A DETERMINATION CAN BE MADE AS TO WHETHER THE PROPOSED FOOD DISTRIBUTION WOULD RESULT IN A SUBSTANTIAL DISINCENTIVE TO DOMESTIC FOOD PRODUCTION.

(g) DESCRIPTION OF THE METHOD TO BE USED TO SUPERVISE AND MONITOR THE DISTRIBUTION OF COMMODITIES.

(h) INFORMATION TO SHOW APPROVAL OF FOREIGN GOVERNMENT TO IMPORT THE DONATED COMMODITIES DUTY FREE.

4. THE AID AND PL 488 BUDGET AND PROGRAMMING CYCLES STRETCH OVER A LONG PERIOD MAKING IT DIFFICULT TO SMOOTHLY INTRODUCE NEW PROGRAM REQUIREMENTS SUCH AS THIS. HOWEVER IT IS OUR INTENTION TO MINIMIZE SUCH POTENTIAL DISRUPTION BY INSURING THAT ALL PROGRAM SPONSORS HAVE ADEQUATE TIME TO PREPARE AND PRESENT THEIR NEW PLANS OF OPERATION. THE NEW MULTI-YEAR PLAN OF OPERATION WILL BE REQUIRED FOR ALL REGULAR TITLE II PVO PROGRAMS AS PART OF THE SUBMISSION ALONG WITH THE AER TO THE USAID OR MISSIONS AND AID/WASHINGTON IN THE SPRING OF 1986 FOR FISCAL YEAR 1987 PROGRAM PROPOSALS. IN SUBSEQUENT YEARS, WHEN NEW MULTI-YEAR PLANS OF OPERATION ARE REQUIRED, THEY SHOULD BE PREPARED AND SUBMITTED FURTHER IN ADVANCE OF THE YEAR IN WHICH THEY ARE TO

BEGIN, IN ORDER TO PERMIT ADEQUATE TIME FOR SUBSTANTIVE REVIEW AND APPROVAL. IN ANY EVENT, WE WILL EXPECT OPERATIONAL PLANS TO BE SUBMITTED TO AID/WASHINGTON NO

LATER THAN THE MISSION ACTION PLAN COVERING THE FOLLOWING FISCAL YEAR'S PROGRAM. ONCE A MULTI-YEAR OPERATIONAL PLAN HAS BEEN APPROVED, ONLY AN UPDATING WILL BE REQUIRED ON AN ANNUAL BASIS, UNLESS THERE HAS BEEN A SIGNIFICANT CHANGE FROM THE APPROVED PLAN IN PROGRAM DIRECTIVES, METHODOLOGY, DESIGN OR MAGNITUDES. UPDATES SHOULD BE SUBMITTED EACH YEAR FOR REVIEW WITH THE AERS.

5. GENERALLY SPEAKING, THE RESPONSE TO EMERGENCY SITUATIONS USING TITLE II RESOURCES DOES NOT PERMIT THE SAME DEGREE OF DETAIL AND CERTAINTY OF ANALYSIS THAT WILL BE EXPECTED IN PLANNING TITLE II REGULAR NON-EMERGENCY PROGRAMS. HOWEVER, PLANS OF OPERATION ARE REQUIRED FOR ALL PVO EMERGENCY PROGRAMS ALONG WITH THE AER AND, EFFECTIVE IMMEDIATELY, THEY SHOULD BE PREPARED FOLLOWING THIS NEW FORMAT. ALL OF THE ABOVE BASIC ISSUES SET FORTH IN THE PLAN OF OPERATION FORMAT MUST BE ADDRESSED WHEN PROPOSING TITLE II EMERGENCY PROGRAMS AS WELL AS REGULAR NON-EMERGENCY PROGRAMS.

6. AID/V WILL REQUIRE THAT A FULLY DEVELOPED OPERATIONAL PLAN ACCOMPANY ALL TITLE II PVO PROGRAM REQUESTS FOR REGULAR OR EMERGENCY PROGRAMS. FVA/FFP WILL EXPECT ALL USAIDS AND/OR MISSIONS TO COMMENT ON THE SUBSTANCE AND ADEQUACY OF THE PVO OPERATIONAL PLANS WHEN SUBMITTED TO AID/V ALONG WITH A PROGRAM REQUEST AND TO ADDRESS THE PLAN'S RELATIONSHIP TO AND CONSISTENCY WITH THE MISSION'S COUNTRY DEVELOPMENT STRATEGY. THE INFORMATION IN THIS CABLE HAS BEEN PROVIDED TO THE PVO HEADQUARTERS. PLEASE PROVIDE COPIES TO THE LOCAL TITLE II COOPERATING SPONSORS. SHULTZ

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416 PROGRAMS. AID/W WILL CONTINUE TO ADVISE MISSIONS OF SECTION 416 COMMODITY AVAILABILITY SITUATION. END SUMMARY

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INFO AAF-03 AFEA-03 AFSA-03 AFFW-04 AFCW-03 AFDP-06 SEOP-01
FPA-02 ANDP-03 ANPD-05 GCAN-02 AFPO-04 SERP-01 AALA-01
LACE-02 LASA-02 LADP-04 LADR-03 AFTR-05 FVA-01 OFDA-02
PPPB-02 GC-01 GCAF-01 SEOS-02 GCLA-03 PPDC-01 OIRM-02
GCCM-02 ANTR-06 APPC-02 PVC-02 FVPP-01 ES-01 AGRI-01
COM-02 ANME-03 OMB-02 RELO-01 LACA-03 ANEA-02 ANEG-02
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1. BACKGROUND

A. SECTION 416 (B) OF THE AGRICULTURAL ACT OF 1949, AS AMENDED, AUTHORIZES THE COMMODITY CREDIT CORPORATION (CCC) TO MAKE OVERSEAS DONATIONS OF AGRICULTURAL COMMODITIES ACQUIRED THROUGH CCC'S PRICE SUPPORT

OPERATIONS OR IN OTHER WAYS.

(1) ELIGIBLE AGRICULTURAL COMMODITIES MAY BE DONATED FOR THE PURPOSE OF CARRYING OUT PROGRAMS OF ASSISTANCE, IN DEVELOPING COUNTRIES AND FRIENDLY COUNTRIES, SUCH AS ARE CARRIED OUT UNDER PL 480 TITLE II. IN OTHER WORDS, THE PURPOSES OF SECTION 416 (B) PROGRAMS, LIKE TITLE II PROGRAMS, CAN COVER THE SPECTRUM FROM HUMANITARIAN RELIEF TO ECONOMIC DEVELOPMENT. (LIMITATIONS ON MONETIZED 416 (B) PROGRAMS ARE DISCUSSED IN PARA 4 BELOW).

(2) COMMODITIES MAY BE DONATED THROUGH FRIENDLY FOREIGN GOVERNMENTS AND PUBLIC AND NONPROFIT PRIVATE HUMANITARIAN AGENCIES INCLUDING COOPERATIVES, AS WELL AS INTERNATIONAL ORGANIZATIONS QUOTE COOPERATING SPONSORS UNQUOTE).

(3) MISSIONS ARE REMINDED THAT IN ACCORDANCE WITH SECTION 416 (B) (1) ANY DONATIONS UNDER THIS SUBSECTION MUST BE COORDINATED THROUGH THE DCC AND IN ACCORDANCE WITH SECTION 416 (B) (6) MUST BE IN ADDITION TO THE LEVEL OF PL 480 ASSISTANCE PROGRAMMED UNDER THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACTION OF 1954.

REGULATION 12, WHICH OUTLINES THE PROCEDURES/CONDITIONS GOVERNING COMMODITY DONATIONS, IS CURRENTLY BEING BROUGHT UP TO DATE.

B. LEGISLATIVE CHANGES, RECENT EVALUATIONS OF SECTION 416 (B) PROGRAMS IN A NUMBER OF COUNTRIES, PLUS DELAYS/PROBLEMS EXPERIENCED DURING FY 87 IN ADMINISTERING SOME SECTION 416 (B) PROGRAMS INDICATE A NEED TO UPDATE WASHINGTON GUIDANCE TO THE FIELD FOR DEVELOPING AND NEGOTIATING PROGRAMS AND TO IMPROVE WASHINGTON PROCESSING. SINCE SOME MISSIONS AND PVOS ARE IN THE PROCESS OF DEVELOPING PROPOSALS, WE FEEL IT IS IMPORTANT TO PROVIDE COOPERATING SPONSORS AND MISSIONS WITH REVISED GUIDELINES TO ADDRESS FOLLOWING CONCERNS:

.A). THERE IS A NEED TO DEFINE MORE CLEARLY INFORMATION REQUIRED BY WASHINGTON TO REVIEW A PROGRAM PROPOSAL. THIS SHOULD EXPEDITE PROCESSING AND REDUCE DELAYS RESULTING FROM NEED TO SECURE ADDITIONAL INFORMATION.

.B). THE FAST CHANGING CCC COMMODITY STOCK SITUATION THAT RESULTS FROM THE VARIED USES OF THESE STOCKS,

RESULTED IN SOME COMMODITIES BEING UNAVAILABLE UNDER SECTION 416 PROGRAM IN LATTER PART OF FY 87. SUCH COMMODITY AVAILABILITY CHANGES WILL LIKELY OCCUR DURING THE COURSE OF A FISCAL YEAR SINCE OTHER USES OF CCC STOCKS TAKE PRIORITY OVER SECTION 416 (B). MISSIONS AND COOPERATING SPONSORS SHOULD REALIZE THAT SECTION 416 (B) INVOLVES SHORTER-TERM PLANNING THAN TITLE II PL 480. ADMINISTRATION AND CONGRESSIONAL POLICY IS TO REDUCE EXCESS CCC

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APPROVED BY: AID/FVA/FFP:JO'HEARA

OMB:DSPECKARD: .S11B)

USDA/FAS:MCHAMBLISS: .DRAFT)

TREAS:JKOTEZ .SUB)

STATE/EB:RQUAN .DRAFT)

GC:CSTEPHENSON (DRAFT)

PPC:CWEISKIRCH (DRAFT)

FVA/FFP/POD:JMARKUNAS (SUB)

FVA/FFP/LAC:JGILMORE .SUB

FVA/FFP/PPH:L TANNER (INFO)

FVA/FFP/ANE:R HECHTMAN (DFT)

FV/V/FFP/AFR:G MOSER .SUBS)

AFK'OP:P RADER .INFO)

LAC/DR:R QUEENER (INFO)

ANE/DP:G WEIN .INFO)

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AMEMBASSY KINGSTON

AMEMBASSY ADDIS ABABA

AMEMBASSY MAPUTO

AMEMBASSY KHARTOUM

AMEMBASSY MEXICO

AMEMBASSY SUVA

AMEMBASSY BANGKOK

AMEMBASSY BELIZE

AMEMBASSY LA PAZ

AMEMBASSY SANTIAGO

AMEMBASSY LIMA

AMEMBASSY PORT OF SPAIN

AMEMBASSY MBABANE

AMEMBASSY BRIDGETOWN

AMEMBASSY SAN JOSE

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E.O. 12356: N/A

TAGS: N/A

SUBJECT: GUIDANCE FOR DEVELOPING AND IMPLEMENTING SECTION 416 PROGRAMS

REFS: (A) STATE 386501, DATED 27 OCT 83 (B) REGULATION 12

SUMMARY: PURPOSE OF THIS MESSAGE IS TO OUTLINE FOR MISSIONS PROCESS INSTITUTED IN WASHINGTON FOR HANDLING SECTION 416 PROGRAM REQUESTS; INFORMATION NEEDED IN ORDER FOR WASHINGTON TO CONSIDER PROGRAMS; REPORTING REQUIREMENTS FOR DONATIONS AND SA-ES/BARTER PROGRAM; AND THE BASIC AGREEMENT TO BE USED FOR ALL FUTURE SECTION

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STOCKS. THIS FACT MUST BE BORNE IN MIND WHEN DEVELOPING PROPOSALS.

(C). PLAN OF OPERATIONS DEVELOPED BY THE VARIOUS COOPERATING SPONSORS VARY CONSIDERABLY IN CONTENT AND FORMAT. THIS DICTATES THE NEED TO DEVELOP A SIMPLIFIED STANDARD AGREEMENT AND PLAN OF OPERATION (SEE PARA 7 BELOW) TO BE USED BY ALL COOPERATING SPONSORS COVERING THE MINIMUM INFORMATION NEEDED BY WASHINGTON FOR PROGRAM APPROVAL. ADDITIONAL OPERATIONAL DETAILS CAN ALSO BE COVERED IN THE PLAN OF OPERATION. SIDE LETTERS OR MEMORANDUM OF UNDERSTANDING SHOULD BE KEPT TO A MINIMUM SINCE THESE WOULD HAVE TO BE APPROVED BY USDA AND AID.

(D) IN ACCORDANCE WITH STATE 055694, AUGUST 28, 1987, THE DONATION OF AGRICULTURAL COMMODITIES UNDER SECTION 416 (B) (OR TITLE 11) DOES NOT CONSTITUTE ENTERING INTO AN INTERNATIONAL AGREEMENT WITHIN THE MEANING OF THE CASE-ZARLOCKI ACT, (10 U.S.C. 112B), REGARDLESS OF AMOUNT. THEREFORE, THESE ARE NOT REQUIRED TO BE TOUCHED TO STATE LIT, BUT ARE FORWARDED TO FVA/FFP/PCD AND USDA.

(E). BY ESTABLISHING BETTER MANAGEMENT AND MONITORING SYSTEMS IN WASHINGTON AND IN THE FIELD, WE EXPECT TO REDUCE THE TIME REQUIRED FOR MISSIONS AND WASHINGTON RESPONSE TO PROPOSALS AND REVIEW/APPROVAL OF AGREEMENTS.

(F). LACK OF ADEQUATE REPORTING HAS BEEN A PROBLEM IN OUR ABILITY TO MONITOR AND EVALUATE PROGRESS FOR POSSIBLE FUTURE YEAR PROGRAMMING DECISIONS AND IN PROVIDING INFORMATION WASHINGTON NEEDS TO RESPOND TO CONGRESSIONAL REPORTING REQUIREMENTS. MORE ATTENTION NEEDS TO BE GIVEN TO COMPLIANCE WITH REPORTING REQUIREMENTS BOTH IN THE FIELD AND WASHINGTON.

C. USDA AND AID RECENTLY PROCESSED A REVISED (REF A)

MEMORANDUM OF UNDERSTANDING (MOU) OUTLINING RESPONSIBILITIES OF BOTH AGENCIES ADMINISTERING SECTION 416 (B) PROGRAMS. THIS MOU CONTINUES AID'S ROLE AS THE AGENT OF CCC FOR THIS PROGRAM. THE MOU WILL BE INCORPORATED IN THE AID FOOD FOR PEACE HANDBOOK 9 WHICH IS IN THE PROCESS OF BEING REVISED AND HOPEFULLY WILL BE TRANSMITTED TO THE FIELD EARLY CALENDAR YEAR 1988. MEANTIME, THIS CABLE PROVIDES INTERIM GUIDANCE FOR PROCESSING FUTURE YEAR PROGRAMS. WASHINGTON IS ALSO IN THE PROCESS OF REVISING (REF B) REGULATION 10 GOVERNING THE IMPLEMENTATION OF THE PROGRAM, WHICH WILL BE PUBLISHED IN THE FEDERAL REGISTER AND INCORPORATED IN THE HANDBOOK.

2. PROCESS

A. TO FACILITATE BETTER CONTROL AND ASSIGNMENT OF RESPONSIBILITIES, ALL PROPOSALS ARE TO BE SUBMITTED TO AID/WASHINGTON, MARKED ATTENTION FVA/FFP/PCD WITH INFO TAGS FOR FVA/FFP/PCD, FVA/FFP/IANE, LAC, OR AFRI, AND PASS USDA/FAS. FVA/FFP/PCD WILL LOG ALL SECTION 416 (B) PROPOSALS/REQUESTS, AFTER WHICH THEY ARE SENT FOR ACTION TO DIVISIONS WITHIN FVA/FFP RESPONSIBLE FOR THAT SPECIFIC COUNTRY. THE ONE EXCEPTION IS SECTION 416 (B) SUGAR QUOTA PROGRAM WHICH WILL CONTINUE TO BE PROCESSED BY FVA/FFP/PCD FOLLOWING GUIDANCE CONTAINED IN STATE 100664, DATED APRIL 4, 1987 AND STATE 100637, DATED APRIL 13, 1987. SECTION 416 (B) PROPOSALS NOT SUBMITTED VIA CABLES SHOULD BE FORWARDED TO FVA/FFP/PCD IN

ORIGINAL AND 3 COPIES. ALL PROPOSALS SHOULD BE FORWARDED TO WASHINGTON IN COMPLETE OR PARTIAL FORM BEFORE BEING REJECTED BY FIELD MISSIONS.

B. FVA/FFP IS RESPONSIBLE FOR SECURING APPROVAL WITHIN AID AND PLACING PROGRAMS BEFORE CCC MEMBERS FOR FINAL REVIEW AND APPROVAL. AGREEMENTS MUST BE DEVELOPED IN FINAL FORM AND SUBMITTED TO USDA FOR APPROVAL AND SIGNING BY USDA/CCC.

C. IT SHOULD BE RECOGNIZED THAT IT CAN TAKE 45-60 DAYS AFTER RECEIPT OF FORMAL PROPOSAL AND BACKUP INFORMATION BEFORE PROGRAM REVIEW IS COMPLETED, AND AGREEMENT IS SIGNED, AND COMMODITY PROCUREMENT BEGUN.

3. COMMODITY SITUATION

A. SECTION 416 (B) SETS FORTH MINIMUM TONNAGE LEVELS TO BE MADE AVAILABLE EACH YEAR. SECTION 416 (B) IS NOT A DOLLAR AUTHORIZATION. THE COMMODITY AVAILABILITY FOR

SECTION 416 (B) IS INITIALLY DETERMINED BY THE SECRETARY OF AGRICULTURE AT THE BEGINNING OF EACH FISCAL YEAR. THIS DETERMINATION, REQUIRED BY LEGISLATION, IS A FUNCTION OF BOTH THE CCC SUPPLY SITUATION AND ESTIMATE OF DEMANDS ON CCC STOCKS DURING THE FISCAL YEAR. LEGALLY SECTION 416 (B) IS A LOW PRIORITY USE OF CCC STOCKS AND THE INITIAL DETERMINATION IS NOT A GUARANTEE OF CONTINUED AVAILABILITY FOR THE FULL YEAR. THE CCC STOCK SITUATION CAN BE, AND OFTEN IS, VERY CHANGEABLE. THE REDUCTION IN DAIRY STOCKS WHICH RESULTED IN NO AVAILABILITY OF DAIRY PRODUCTS FOR SECTION 416 (B) IN LATE FY 1987 AND IN FY 1988 IS AN EXAMPLE OF THIS FACT.

CURRENTLY AVAILABLE UNDER SECTION 416 ARE WHEAT, CORN, SORGHUM AND SOYBEANS. WHILE WHEAT AND SOYBEAN QUANTITIES ARE LIMITED, CCC STOCKS OF CORN AND SORGHUM REMAIN LARGE.

PLEASE NOTE THAT NO DAIRY PRODUCTS OR RICE HAVE BEEN DETERMINED TO BE AVAILABLE. AS REGARDS TO WHEAT, SUBCLASS OR PROTEIN LEVEL CAN NOT BE GUARANTEED. THE AVAILABILITY OF CERTAIN CLASSES OF WHEAT MAY BE LIMITED THROUGHOUT THE YEAR DUE TO DOMESTIC DEMAND. USDA WILL CONTINUALLY MONITOR AVAILABILITY SITUATION AND SUPPLY UPDATED INFORMATION AT LEAST QUARTERLY. WE WILL ADVISE THE FIELD BY CABLE.

B. IN THE PAST SOME PROBLEMS HAVE BEEN POSED BY LAST MINUTE COMMODITY CHANGES, REQUIRING AGREEMENT AMENDMENTS. THEREFORE, IT IS IMPORTANT THAT OPERATIONAL PLANS CONTAIN REALISTIC SCHEDULES OF DELIVERY IN-COUNTRY. MISSION AND COOPERATING SPONSORS SHOULD BE AWARE THAT COMMODITIES PROVIDED UNDER THE AGREEMENT MUST BE CALLED FORWARD IN ACCORDANCE WITH THE SHIPPING SCHEDULE CONTAINED IN THE ATTACHMENT A TO THE AGREEMENT (PLAN OF OPERATION) IN ORDER TO BE ASSURED OF AVAILABILITY OF CCC STOCKS AND IN ORDER TO AVOID TIME-CONSUMING AMENDMENTS TO AGREEMENT.

C. MISSIONS SHOULD REMEMBER THAT UNDER USUAL CONDITIONS USDA REQUIRES 60 DAYS TO DELIVER BULK COMMODITIES AND 75 DAYS TO DELIVER BAGGED COMMODITIES TO US PORT FROM DATE OF COPY OF SIGNED AGREEMENT IS RECEIVED IN ASCS PROCUREMENT OFFICE, KANSAS CITY. MISSION PROPOSED SCHEDULE SHOULD REFLECT THIS TIME LAG.

D. IT IS BECOMING INCREASINGLY IMPORTANT TO HAVE CONTROLLED TIMEFRAME FOR PROCESSING PROGRAMS AND SHIPPING COMMODITIES. IN THE FUTURE, SECTION 416 (B)

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COMMODITIES WILL BE HANDLED IN SAME MANNER AS TITLE I AND II, THAT IS MISSIONS AND RECIPIENTS SHOULD PLAN FOR PROGRAMMING ON FISCAL YEAR BASIS.

E. MISSIONS ARE ALSO REMINDED THAT CARGO PREFERENCE LAW REQUIRES THAT 70 PERCENT OF THE TONNAGE UNDER THIS PROGRAM BE SHIPPED ON US FLAG VESSELS FOR SHIPMENTS APRIL 1, 1987 THROUGH MARCH 31, 1988. BEGINNING APRIL 1, 1988 THIS PERCENTAGE INCREASES TO 75 PERCENT.

4. INFORMATION REQUIRED FOR WASHINGTON CONSIDERATION

A. REGULATION 10 OUTLINES INFORMATION TO BE SUPPLIED IN THE PLAN OF OPERATIONS TO BE SUBMITTED TO AID FOR REVIEW/APPROVAL. ONE AREA WE HAVE EXPERIENCED PROBLEMS IN THE PAST IS WITH RESPECT TO BELLMON AND USUAL MARKET REQUIREMENT (UMR) INFORMATION. GIVEN THE FACT THAT MANY COUNTRIES ARE RECEIVING LARGE FOOD AID ASSISTANCE FROM VARIOUS SOURCES (TITLE I, II AND OTHER DONORS) AS WELL AS SECTION 416 (B), IT IS IMPORTANT THAT MISSIONS AND COUNTRY OFFICIALS REVIEW COMMODITY NEEDS IN TERMS OF ALL RESOURCES, SUPPLYING COMP-ETE DETAILS AS TO WHEN COMMODITIES ARE NEEDED AND TYPES REQUIRED.

B. AS A REMINDER, IN ADDITION TO GUIDANCE CONTAINED IN EXISTING REGULATION 10, FOR THE PLAN OF OPERATION THE FOLLOWING INFORMATION SHOULD BE SUPPLIED FOR ALL PROPOSALS:

.1). INFORMATION AS TO WHETHER REPORTING REQUIREMENTS HAVE BEEN MET. ALSO, MISSIONS SHOULD PROVIDE SUMMARY OF PROGRESS TO DATE IN ACHIEVING PROGRAM OBJECTIVES OF EXISTING SECTION 416 (B) ACTIVITIES AND IDENTIFY ANY AREAS REQUIRING ATTENTION, SUCH AS MONITORING AND EVALUATION.

(2). FOR EACH COMMODITY REQUESTED FOR ANY MONETIZED COMMODITIES AND ANY GOVERNMENT-TO-GOVERNMENT PROGRAMS, WASHINGTON NEEDS SUPPLY, DEMAND, AND TRADE INFORMATION (PREVIOUS 5-YEAR COMMERCIAL IMPORTS BY YEAR BY COUNTRY OF ORIGIN AND ESTIMATE FOR CURRENT YEAR) FOR DETERMINING USUAL MARKETING REQUIREMENTS. IF THIS INFO HAS ALREADY BEEN SUPPLIED FOR PROCESSING TITLE I OR TITLE II PROGRAMS, MISSION NEED ONLY UPDATE INFORMATION, AND PROVIDE CITATION OF DOCUMENT THAT CONTAINS ORIGINAL DATA. MISSION IS REMINDED THAT USDA DEVELOPS UMR LEVELS, WHICH THE DEPARTMENT OF STATE CONSULTS ON WITH OTHER EXPORTING COUNTRIES. NORMALLY 10 WORKING DAYS ARE ALLOWED FOR THESE CONSULTATIONS.

.3). DATA NEEDED TO FACILITATE USDA MAKING REQUIRED BELLMON DETERMINATION (THAT IS COUNTRY HAS THE CAPACITY TO HANDLE, STORE, AND DISTRIBUTE COMMODITIES WITHOUT SIGNIFICANT LOSS; AND THAT THE COMMODITIES REQUESTED WILL NOT RESULT IN SUBSTANTIAL DISINCENTIVE TO OR INTERFERENCE WITH DOMESTIC PRODUCTION OR MARKETING). BELLMON INFORMATION MUST BE CONFIRMED BY HOST GOVERNMENT AS WELL AS US MISSION.

.4). WHERE COMMODITIES ARE TO BE SOLD, AGREEMENT (ATTACHMENT A, PLAN OF OPERATION) MUST INDICATE PRICE COMMODITIES TO BE SOLD (REFERENCE TO QUOTE CURRENT MARKET PRICE UNQUOTE WOULD BE SUFFICIENT IF NO SPECIFIC PRICE IS TO BE ESTABLISHED) AND THAT GENERATIONS ARE TO BE DEPOSITED INTO A SPECIAL ACCOUNT. PLAN OF OPERATION MUST OUTLINE HOW

PROCEEDS ARE TO BE USED IN A MANNER CONSISTENT WITH LEGISLATION (E.G. PER SECTION 416 (B) .7). FOR MISSION USE WE QUOTE THE LEGISLATION:

QUOTE

416 (B) 7) ELIGIBLE COMMODITIES, AND PRODUCTS THEREOF, FURNISHED UNDER THIS SUBSECTION MAY BE SOLD OR BARTERED ONLY WITH THE APPROVAL OF THE SECRETARY AND SOLELY AS FOLLOWS:

(A) SALES AND BARTER THAT ARE INCIDENTAL TO THE DONATION OF THE COMMODITIES OR PRODUCTS.

(B) SALES AND BARTER TO FINANCE THE DISTRIBUTION, HANDLING, AND PROCESSING COSTS OF THE DONATED COMMODITIES OR PRODUCTS IN THE IMPORTING COUNTRY OR IN A COUNTRY THROUGH WHICH SUCH COMMODITIES OR PRODUCTS MUST BE TRANSSHIPPED, OR OTHER ACTIVITIES IN THE IMPORTING COUNTRY THAT ARE CONSISTENT WITH PROVIDING FOOD ASSISTANCE TO NEEDY PEOPLE.

(C) SALES AND BARTER OF COMMODITIES AND PRODUCTS FURNISHED TO INTERGOVERNMENTAL AGENCIES OR ORGANIZATIONS, INsofar AS THEY ARE CONSISTENT WITH NORMAL PROGRAMMING PROCEDURES IN THE DISTRIBUTION OF COMMODITIES BY THOSE AGENCIES OR ORGANIZATIONS.

(D) 1) SALES OF COMMODITIES AND PRODUCTS FURNISHED TO NON-PROFIT AND VOLUNTARY AGENCIES, OR COOPERATIVES, FOR

FOOD ASSISTANCE UNDER AGREEMENTS THAT PROVIDE FOR THE USE, BY THE AGENCY OR COOPERATIVE, OF FOREIGN CURRENCY PROCEEDS GENERATED FROM SUCH SALE OF COMMODITIES OR PRODUCTS FOR THE PURPOSES ESTABLISHED IN CLAUSE .11) OF THIS SUBPARAGRAPH.

.11) FOREIGN CURRENCY PROCEEDS GENERATED FROM THE SALES OF COMMODITIES AND PRODUCTS UNDER THIS SUBPARAGRAPH SHALL BE USED BY NONPROFIT AND VOLUNTARY AGENCIES, OR COOPERATIVES, FOR ACTIVITIES CARRIED OUT BY THE AGENCY OR COOPERATIVE THAT WILL ENHANCE THE EFFECTIVENESS OF TRANSPORTATION, DISTRIBUTION, AND USE OF COMMODITIES AND PRODUCTS DONATED UNDER THIS SUBSECTION, INCLUDING FOOD FOR WORK PROGRAMS AND COOPERATIVE AND AGRICULTURAL PROJECTS.

.111) EXCEPT AS OTHERWISE PROVIDED IN CLAUSE .VI), SUCH AGREEMENTS, TAKEN TOGETHER FOR EACH FISCAL YEAR, SHALL PROVIDE FOR SALES OF COMMODITIES AND PRODUCTS FOR FOREIGN CURRENCY PROCEEDS IN AMOUNTS THAT ARE, IN THE AGGREGATE, NOT LESS THAN 5 PERCENT OF THE AGGREGATE VALUE OF ALL COMMODITIES AND PRODUCTS FURNISHED FOR CARRYING OUT PROGRAMS OF ASSISTANCE UNDER THIS SUBSECTION IN SUCH FISCAL YEAR. THE MINIMUM ALLOCATION REQUIREMENTS OF THIS CLAUSE APPLY WITH RESPECT TO COMMODITIES AND PRODUCTS MADE AVAILABLE UNDER THIS SUBSECTION FOR CARRYING OUT PROGRAMS OF ASSISTANCE UNDER TITLE II OF THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954, AND NOT WITH RESPECT TO COMMODITIES AND PRODUCTS MADE AVAILABLE TO CARRY OUT THE FOOD FOR PROGRESS ACT OF 1985.

(IV) FOREIGN CURRENCY PROCEEDS GENERATED FROM THE SALES OF COMMODITIES OR PRODUCTS UNDER THIS SUBPARAGRAPH SHALL BE EXPENDED WITHIN THE COUNTRY OF ORIGIN WITHIN ONE YEAR OF ACQUISITION OF SUCH CURRENCY, EXCEPT THAT THE SECRETARY MAY PERMIT THE USE OF SUCH PROCEEDS .1) IN COUNTRIES OTHER THAN THE COUNTRY OF ORIGIN AS NECESSARY TO EXPEDITE THE TRANSPORTATION OF COMMODITIES AND

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PRODUCTS FURNISHED UNDER THIS SUBSECTION, AND (1) AFTER ONE YEAR OF ACQUISITION AS APPROPRIATE TO ACHIEVE THE PURPOSE OF CLAUSE (1).

(V) THE PROVISIONS OF CLAUSE (11) OF THIS SUBPARAGRAPH ESTABLISHING MINIMUM ANNUAL ALLOCATIONS FOR SALES AND USE OF PROCEEDS SHALL NOT APPLY TO THE EXTENT THAT THERE HAVE NOT BEEN SUFFICIENT REQUESTS FOR SUCH SALES AND USE OF PROCEEDS NOR TO THE EXTENT REQUIRED UNDER PARAGRAPH (3).

(E) SALES AND BARTER TO COVER EXPENSES INCURRED UNDER PARAGRAPH (5). A).

NO PORTION OF THE PROCEEDS OR SERVICES REALIZED FROM SALES OR BARTER UNDER THIS PARAGRAPH MAY BE USED TO MEET OPERATING AND OVERHEAD EXPENSES, EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (C) AND EXCEPT FOR PERSONNEL AND ADMINISTRATIVE COSTS INCURRED BY LOCAL COOPERATIVES.

UNQUOTE

IT SHOULD BE NOTED THAT THE LIMITS ON THE USES OF PROCEEDS ARE DIFFERENT FOR PVO'S AND COOPERATIVES, FOR INTERNATIONAL ORGANIZATIONS AND FOR BILATERAL PROGRAMS. FOR GOVERNMENT-TO-GOVERNMENT PROGRAMS (INCLUDING SUGAR QUOTA AGREEMENTS), PROCEEDS MUST BE USED FOR ACTIVITIES CONSISTENT WITH PROVIDING FOOD ASSISTANCE TO NEEDY PEOPLE. MISSION WILL WANT TO ASSURE COMMODITIES ARE SOLD IN MANNER SIMILAR TO TITLE I OR II COMMODITIES (FAIR MARKET VALUE), SO AS TO GENERATE A REASONABLE LEVEL OF LOCAL CURRENCY AND NOT HAVE A NEGATIVE IMPACT ON LOCAL MARKETING. GENERALLY, PRICE SHOULD BE COMPETITIVE WITH OTHER AVAILABLE SOURCES OF THE COMMODITY.

WHERE FEASIBLE, GENERATED CURRENCIES SHOULD BE DEPOSITED INTO AN INTEREST BEARING ACCOUNT FOR CONTROL AND MONITORING. THE ACCRUED INTEREST WILL BE ADDED TO THE PRINCIPAL AND DISBURSED FOR APPROVED PROJECTS.

(3). UNLESS MISSIONS ADVISE OTHERWISE, AGREEMENTS WILL BE SIGNED IN WASHINGTON BY AID/W, USDA/CCG AND HOST GOVERNMENT'S US EMBASSY. IF THERE IS A REASON WHY THE AGREEMENT MUST BE SIGNED IN THE FIELD, WASHINGTON SHOULD BE ADVISED AT TIME PROPOSAL SUBMITTED AND MISSION SHOULD REALIZE THAT SUCH ARRANGEMENTS MAY REQUIRE ADDITIONAL TIME, GENERALLY ABOUT 10 DAYS.

5. SIMPLIFIED AGREEMENT

A. THERE ARE ATTACHED SAMPLE REVISED SECTION 416 (B) AGREEMENTS WHICH CONTAIN STANDARD LANGUAGE FOR ALL COUNTRIES, WITH AN ATTACHMENT A PLAN OF OPERATION, WHICH CONTAINS COUNTRY-SPECIFIC INFORMATION (INCLUDING BRIEF DESCRIPTION OF THE PROGRAM). THE PROPOSAL/REQUEST SHOULD INCLUDE PROPOSED LANGUAGE TO BE INCORPORATED IN ATTACHMENT A (PLAN OF OPERATION). PROPOSED LANGUAGE

SHOULD BRIEFLY SUMMARIZE THE PROGRAM, INCLUDING DETAILS ON HOW PROCEEDS ARE TO BE USED IF SOME OR ALL OF COMMODITY (IES) IS MONETIZED. A SAMPLE FOR DIRECT DONATIONS AS WELL AS A MONETIZATION PROGRAM ARE PROVIDED AT THE END OF THIS MESSAGE FOR FIELD USE. THESE FORMATS SHOULD BE USED UNTIL REGULATION 10 IS REVISED. THE REVISION WILL REPLACE MANY STANDARD PROVISIONS IN THE REGULATION AND WILL FURTHER SIMPLIFY THE AGREEMENTS.

B. BELLMON INFORMATION WILL BE REVIEWED AND APPROVED

PRIOR TO AGREEMENT SIGNATURE. HOWEVER, AS IS THE CASE FOR TITLE I AGREEMENTS, THE AGREEMENT WILL NOT REPEAT NOT INCLUDE AW DETAILS ON BELLMON DETERMINATION.

C. TO ASSIST MISSION, PARA 7 BELOW CONTAINS SAMPLE FY 88 SECTION 416 (B) AGREEMENTS.

6. REPORTING REQUIREMENT

A. REGULAR 416 (B) - DONATION PROGRAM

UNDER EXISTING REGULATIONS (AID REGULATION 10) REPORTING REQUIREMENTS FOR COMMODITY DONATIONS ARE LIMITED TO COOPERATING SPONSOR SEMI-ANNUAL REPORTING ON RECEIPT AND DISTRIBUTION OF COMMODITIES. THIS LIMITED REPORTING PROVIDES INSUFFICIENT INFORMATION FOR DETERMINING IF PROGRAM IS ACHIEVING OBJECTIVES SET FORTH IN THE PROPOSAL. THEREFORE, WASHINGTON IS REVIEWING EXISTING REGULATION 10 TO DETERMINE WHAT MODIFICATIONS IN REPORTING MAY BE REQUIRED. FOR THE TIME BEING, COOPERATING SPONSOR SHOULD INCLUDE IN THE SEMI-ANNUAL REPORT A STATEMENT ON SUMMARY OF PROGRESS IN ACHIEVING PROGRAM OBJECTIVES, INCLUDING BOTH POSITIVE AND NEGATIVE ASPECTS, IF ANY. MISSIONS SHOULD FORWARD THESE SEMI-ANNUAL REPORTS TO WASHINGTON ALONG WITH MISSION COMMENTS, AS APPROPRIATE, CONFIRMING OVERALL PROGRESS.

B. REGULAR 416 (B) - SALES/BARTER

COMMODITIES WHICH ARE SOLD OR BARTERED REQUIRE ADDITIONAL REPORTING. WASHINGTON IS REVISING REGULATION 10 TO INCORPORATE LEGISLATIVE CHANGES GOVERNING REPORTING ON SALES OR BARTER (SECTION 416 (B) (9)). FOR SALES AND BARTER, EACH RECIPIENT OF COMMODITIES MUST SUBMIT TO THE SECRETARY OF AGRICULTURE DOCUMENTATION TO BE SUBMITTED TO WASHINGTON, ATTENTION FVA/FFP/PCD, AT LEAST ONE REPORT ANNUALLY NOT LATER THAN DECEMBER 31 FOLLOWING THE END OF THE FISCAL YEAR IN WHICH THE COMMODITIES ARE RECEIVED. THE SECRETARY OF AGRICULTURE,

IN TURN, IS REQUIRED TO SUBMIT TO CONGRESS BY FEBRUARY 15 EACH YEAR A REPORT ON SALES AND BARTER AND USE OF FOREIGN CURRENCY PROCEEDS UNDER SECTION 416 (9) PROGRAMS DURING THE PRECEDING FISCAL YEAR. THE LEGISLATION REQUIRES THAT THE REPORT TO CONGRESS MUST INCLUDE INFORMATION ON:

QUOTE

I. THE QUANTITY OF COMMODITIES FURNISHED FOR SUCH SALE OR BARTER;

II. THE AMOUNT OF FUNDS (INCLUDING DOLLAR EQUIVALENTS FOR FOREIGN CURRENCIES) AND VALUE OF SERVICES GENERATED FROM SUCH SALES AND BARTER IN SUCH FISCAL YEAR;

III. HOW SUCH FUNDS AND SERVICES WERE USED;

IV. THE AMOUNT OF FOREIGN CURRENCY PROCEEDS THAT WERE USED UNDER AGREEMENTS UNDER SUBPARAGRAPH (D) OF PARAGRAPH (7) IN SUCH FISCAL YEAR, AND THE PERCENTAGE OF THE QUANTITY OF ALL COMMODITIES AND PRODUCTS FURNISHED UNDER THIS SUBSECTION IN SUCH FISCAL YEAR SUCH USE REPRESENTED;

V. THE SECRETARY'S BEST ESTIMATE OF THE AMOUNT OF FOREIGN CURRENCY PROCEEDS THAT WILL BE USED, UNDER AGREEMENTS UNDER SUBPARAGRAPH (D) OF PARAGRAPH (7), IN THE THEN CURRENT FISCAL YEAR AND THE NEXT FOLLOWING FISCAL YEAR IF ALL REQUESTS FOR SUCH USE ARE AGREED

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TO), AND THE PERCENTAGE THAT SUCH ESTIMATED USE REPRESENTS OF THE QUANTITY OF ALL COMMODITIES AND PRODUCTS THAT THE SECRETARY ESTIMATES WILL BE FURNISHED UNDER THIS SUBSECTION IN EACH SUCH FISCAL YEAR;

SAMP-E REGULAR 416 DIRECT FEEDING
COMMODITIES OTHER THAN DAIRY PRODUCTS)

OGSM:

VI. THE EFFECTIVENESS OF SUCH SALES, BARTER, AND USE DURING SUCH FISCAL YEAR IN FACILITATING THE DISTRIBUTION OF COMMODITIES AND PRODUCTS UNDER THIS SUBSECTION;

COUNTRY:

VII. THE EXTENT TO WHICH SALES, BARTER, OR USES --

UNITED STATES GOVERNMENT
AGRICULTURAL COMMODITY FOREIGN DONATION AGREEMENT
(SECTION 416 .B))

. I) DISPLACE OR INTERFERE WITH COMMERCIAL SALES OF UNITED STATES AGRICULTURAL COMMODITIES AND PRODUCTS THAT OTHERWISE WOULD BE MADE,

THE AGENCY FOR INTERNATIONAL DEVELOPMENT (A.I.D.), THE COMMODITY CREDIT CORPORATION (CCC) AND THE GOVERNMENT OF _____, HEREIN REFERRED TO AS THE COOPERATING SPONSOR, AGREE AS FOLLOWS:

. II) AFFECT USUAL MARKETINGS OF THE UNITED STATES,

(II) DISRUPT WORLD PRICES OF AGRICULTURAL COMMODITIES OR NORMAL PATTERNS OF TRADE WITH FRIENDLY COUNTRIES, OR

1. CCC AGREES TO DONATE TO THE COOPERATING SPONSOR AGRICULTURAL COMMODITIES OF THE KIND AND AMOUNT SPECIFIED IN SECTION 2 PURSUANT TO THE AUTHORITY OF SECTION 416 .B) OF THE AGRICULTURAL ACT OF 1949, AS AMENDED. CCC SHALL DELIVER SUCH COMMODITIES ONLY IN ACCORDANCE WITH THE DELIVERY SCHEDULE SPECIFIED IN SECTION 2.

(IV) DISCOURAGE LOCAL PRODUCTION AND MARKETING OF AGRICULTURAL COMMODITIES IN THE COUNTRIES IN WHICH COMMODITIES AND PRODUCTS ARE DISTRIBUTED UNDER THIS SUBSECTION; AND

2. AGRICULTURAL COMMODITIES TO BE DONATED TO THE COOPERATING SPONSOR ARE AS FOLLOWS:

VIII. THE SECRETARY'S RECOMMENDATIONS, IF ANY, FOR CHANGES TO IMPROVE THE CONDUCT OF SALES, BARTER, OR USE ACTIVITIES UNDER PARAGRAPH (7).

		DELIVERY		
	QUANTITY	MONTH TO	FOREIGN PORT	
PRODUCT PACKAGE	MTS (LBS/000)	U.S. PORT	DESIGNATION	

UNQUOTE

B. EACH AGREEMENT AUTHORIZING MONETIZATION WILL SPECIFY THE TIMING OF COOPERATING SPONSOR REPORTS, AND SPECIFY THE INFORMATION REQUIRED BY LAW TO BE FURNISHED BY THE COOPERATING SPONSOR. COOPERATING SPONSOR REPORTING SHOULD BE ESTABLISHED IN SUCH A MANNER SO THAT THE REPORT IS FORWARDED ALONG WITH MISSION REACTIONS AND CONFIRMATION TO ARRIVE IN WASHINGTON BY NO LATER THAN DATE SPECIFIED IN AGREEMENT IN ORDER TO ALLOW TIME FOR FVA/FFP/PCD TO PREPARE FEBRUARY REPORT TO CONGRESS. BY AID-USDA AGREEMENT (MOU) THIS REPORT IS SUBMITTED TO USDA BY EACH PARTY 15.

TOTAL

NOTE: THE COOPERATING SPONSOR WILL PROMPTLY INFORM CCC OF ANY DESIRED CHANGE IN THE ABOVE DELIVERY SCHEDULE BY NOTIFYING THE CHIEF, EXPORT OPERATIONS BRANCH, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE/USDA, KANSAS CITY COMMODITY OFFICE (KCCO), P.O. BOX 419205, KANSAS CITY, MISSOURI, 64141-0205, TELEPHONE (816) 926-6658, AND CCC WILL ENDEAVOR TO COORDINATE A MUTUALLY ACCEPTABLE REVISED DELIVERY SCHEDULE. CCC IS NOT REQUIRED TO DELIVER COMMODITIES LATER THAN THE DELIVERY DATES SPECIFIED ABOVE UNLESS A REVISED DELIVERY SCHEDULE IS AGREED UPON.

C. REGARDING SALES OR BARTER, IN GENERAL WE HAVE FOUND LOCAL CURRENCY PROGRAMMING REQUIRES INCREASED MONITORING AND REPORTING TO ASSURE CONFORMANCE WITH TERMS OF AGREEMENT. IN ORDER FOR WASHINGTON TO BE RESPONSIVE TO THE CONGRESSIONAL ANNUAL REPORTING REQUIREMENTS, AT A MINIMUM SEMI-ANNUAL REPORTS WILL BE REQUIRED OR WHERE MISSION'S OR COOPERATING SPONSORS ANTICIPATE PROBLEMS, SUGGEST QUARTERLY REPORTS MIGHT BE DESIRABLE. IN SUMMARY, THESE REPORTS SHOULD BE FORWARDED TO FVA/FFP/PCD AND IN LINE WITH LEGISLATION DETAIL THE FOLLOWING: THE QUANTITY OF COMMODITIES FURNISHED FOR SALES/BARTER, AMOUNT OF FOREIGN CURRENCY PROCEEDS GENERATED (IN US DOLLARS), THE AMOUNT OF FUNDS DEPOSITED, AMOUNT OF FUNDS DISBURSED FOR PURPOSES SPECIFIED IN AGREEMENT ATTACHMENT A, BEST ESTIMATE OF AMOUNT OF FUNDS TO BE DISBURSED DURING FOLLOWING FISCAL YEAR, AND THE EFFECTIVENESS OF LOCAL CURRENCY USAGE/PROGRAMMING.

3. THE PAYMENT OF ALL COSTS ASSOCIATED WITH THE REPROCESSING, PACKAGING, TRANSPORTING, HANDLING AND

OTHER CHARGES INCURRED IN THE DISTRIBUTION OF THE AGRICULTURAL COMMODITIES WILL BE APPORTIONED AS FOLLOWS:

7. IN CASE A PROPOSAL INCLUDES BOTH DIRECT FEEDING AND SALES, MISSION SHOULD USE PERTINENT PARTS OF RESPECTIVE SAMP-E AGREEMENTS, PROVIDED BELOW.

A. CCC AGREES TO DONATE THE AGRICULTURAL COMMODITIES WITHOUT CHARGE AND TO PAY THE FOLLOWING COSTS: OCEAN TRANSPORTATION, SURVEY FEES, AND REPACKAGING OF DAMAGED COMMODITIES; PROCESSING, HANDLING, AND TRANSPORT COSTS TO U.S. PORT(S) OF ALLOCATION.

8. SAMPLE AGREEMENTS: SPECIFIC PROVISIONS MAY BE DIFFERENT TO REFLECT FOB DELIVERY OF BULK COMMODITIES,

B. THE COOPERATING SPONSOR AGREES TO PAY THE FOLLOWING COSTS: INLAND TRANSPORTATION, HANDLING AND DISTRIBUTION WITHIN THE COOPERATING SPONSOR AGREES TO ARRANGE FREIGHT FORWARDING AND BOOKING.

APPORTIONMENT OF COSTS, ETC.)

4. NOTWITHSTANDING SECTION 210.5 .D) .2) .1), AID REGULATION 10, THE COOPERATING SPONSOR AGREES TO ARRANGE OCEAN TRANSPORTATION AND FREIGHT FORWARDING SO AS TO COMPLY WITH THE REQUIREMENTS OF CCC

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REGARDING THE QUANTITIES OF COMMODITIES MADE AVAILABLE UNDER THIS AGREEMENT THAT MUST BE CARRIED ON U.S. FLAG VESSELS.

FOR THE GOVERNMENT OF

REQUEST AND ACCEPTANCE

5. THE COOPERATING SPONSOR AGREES TO USE THE AGRICULTURAL COMMODITIES ONLY IN ACCORDANCE WITH THIS AGREEMENT AND THE APPROVED PLAN OF OPERATION, A COPY OF WHICH IS ATTACHED HERETO AS ATTACHMENT A.

THE ASSISTANCE DESCRIBED IN THIS AGREEMENT IS REQUESTED AND THE TERMS AND CONDITIONS OF THIS AGREEMENT AND OF A.I.D. REGULATION 10, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, ARE ACCEPTED.

6. THE QUALITY OF AGRICULTURAL COMMODITIES TO BE DONATED BY THE CCC AND THE PACKAGING DESCRIPTIONS WILL BE IN ACCORDANCE WITH THE SPECIFICATIONS IN ATTACHMENT B TO THIS AGREEMENT.

COOPERATING SPONSOR

BY:

7. EXCEPT AS OTHERWISE PROVIDED HEREIN, THE TERMS AND CONDITIONS SET FORTH IN AID REGULATION 10 ARE INCORPORATED INTO AND MADE A PART OF THIS AGREEMENT, AND ALL REFERENCES THEREIN TO DAIRY PRODUCTS SHALL BE DEEMED TO APPLY ALSO TO THE DONATION OF OTHER AGRICULTURAL COMMODITIES UNDER THIS AGREEMENT.

TITLE:

DATE:

8. IN LIEU OF SECTION 210.10(G), A.I.D. REGULATION 10, THE FOLLOWING SHALL APPLY:

ATTACHMENT A

SECTION 416 (B)

PLAN OF OPERATION - DIRECT FEEDING

THE AMOUNT TO BE PAID FOR MISUSED, LOST OR DAMAGED, SHALL BE DETERMINED ON THE BASIS OF THE MARKET PRICE AT THE TIME AND PLACE THE MISUSE, LOSS OR DAMAGE OCCURRED OR, IN CASES WHERE IT IS NOT

SECTION 416 (B) PROGRAM FOREIGN DONATION PROPOSED PLAN OF OPERATION

FEASIBLE TO OBTAIN OR DETERMINE SUCH MARKET PRICE, THE 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 GOVERNMENT OF THE UNITED STATES IN MAKING DELIVERY TO THE COOPERATING SPONSOR. WHEN THE VALUE IS DETERMINED ON A COST BASIS, THE NON PROFIT PRIVATE HUMANITARIAN ORGANIZATION, COOPERATIVE, OR INTERGOVERNMENTAL ORGANIZATION 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 U.S. GOVERNMENT. WITH RESPECT TO CLAIMS OTHER THAN OCEAN CARRIER LOSS AND/OR DAMAGE CLAIMS, THE VALUE OF MISUSED, LOST OR DAMAGED COMMODITY MAY BE DETERMINED ON SOME OTHER JUSTIFIABLE BASIS, AT THE REQUEST OF THE COOPERATING SPONSOR AND/OR UPON THE RECOMMENDATION OF THE USAID OR DIPLOMATIC POST.

1. NAME AND ADDRESS OF APPLICANT:

2. COUNTRY IN WHICH THE COMMODITIES WILL BE USED:

3. KIND AND QUANTITY OF COMMODITIES REQUESTED:

4. DELIVERY SCHEDULE:

5. PROGRAM DESCRIPTION:

(DESCRIBE PROGRAM FOR WHICH FOOD WILL BE DISTRIBUTED AND THE TARGET GROUP.)

6. DISTRIBUTION METHODS:

7. DESCRIBE RECORDS TO BE USED TO CONTROL DISTRIBUTION OF THE AGRICULTURAL COMMODITIES FROM THE TIME TITLE IS TRANSFERRED TO THE APPLICANT/COOPERATING SPONSOR UNTIL IT REACHES THE ELIGIBLE RECIPIENT:

8. DESCRIBE PARTICIPATION IN THE PROGRAM BY ANY OTHER ORGANIZATION OR GOVERNMENT AGENCY OF THE FOREIGN COUNTRY.

9. DESCRIBE PORT AND STORAGE FACILITIES IN THE COUNTRY THROUGH WHICH SECTION 416 (B) COMMODITIES WILL BE RECEIVED:

10. EXPLAIN ARRANGEMENTS TO BE USED TO ASSURE THAT THE AGRICULTURAL COMMODITIES WILL NOT DISPLACE NORMAL COMMERCIAL PURCHASES BY PROPOSED RECIPIENTS.

9. THIS AGREEMENT SHALL BE SUBJECT TO SUSPENSION OR TERMINATION UPON FINDING BY CCC THAT (1) ADEQUATE STORAGE FACILITIES ARE NOT AVAILABLE IN THE RECIPIENT COUNTRY, OR THAT (2) THE DISTRIBUTION OF THE COMMODITY IN THE RECIPIENT COUNTRY WILL RESULT IN A SUBSTANTIAL DISINCENTIVE TO OR INTERFERENCE WITH DOMESTIC PRODUCTION OR MARKETING IN THE COUNTRY.

11. IN ADDITION TO THE REPORTING REQUIREMENTS CONTAINED IN AID REGULATION 10, THE GOVERNMENT OF _____ OR NON PROFIT HUMANITARIAN ORGANIZATION OR COOPERATIVE) WILL FURNISH THE USG SUCH INFORMATION AND REPORTS RELATING TO THE AGREEMENT AS IT MAY REQUEST.

FOR THE GOVERNMENT OF THE UNITED STATES

12. USUAL MARKETING REQUIREMENTS: (GOVERNMENT TO GOVERNMENT PROGRAM ONLY)

AGENCY FOR INTERNATIONAL DEVELOPMENT COMMODITY CREDIT COOPERATION

THE GOVERNMENT OF _____ WILL ENDEAVOR TO IMPORT ON A COMMERCIAL BASIS OF AT LEAST _____ METRIC TONS OF _____ FROM ALL ORIGINS DURING U.S. FISCAL YEAR _____ AS SOON AS POSSIBLE AFTER THE END OF U.S. FISCAL YEAR _____ THE GOVERNMENT OF _____

BY:

BY:

TITLE: DEPUTY ASSISTANT ADMINISTRATOR AND COORDINATOR FOOD FOR PEACE

TITLE: GENERAL SALES MANAGER, FAS AND VICE PRESIDENT COMMODITY CREDIT CORPORATION

DATE:

DATE:

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AGREES TO FURNISH CCC INFORMATION ON ACTUAL COMMERCIAL IMPORTS MADE DURING THE YEAR OF _____ IN ORDER TO CONFIRM THE ABOVE ESTABLISHED UMR, PLEASE PROVIDE SUPPORTIVE COMMERCIAL IMPORT DATA FOR PREVIOUS 5-YEAR BY COUNTRY OF ORIGIN AND ESTIMATES FOR CURRENT FISCAL YEAR.)

13. ASSURANCES:

THE GOVERNMENT OF _____ HAS AGREED NOT TO EXPORT _____ NOR THE SAME PRODUCT UNDER A DIFFERENT NAME) DURING U.S. FISCAL YEAR

14. - DESCRIBE THE TRANSPORTATION SYSTEM WHICH WILL BE USED TO MOVE THE AGRICULTURAL PRODUCTS FROM THE RECEIVING POINT TO THE POINT DISTRIBUTION IS MADE TO RECIPIENT.

15. - DESCRIBE ANY REPROCESSING OR REPACKING THAT WILL OCCUR IN-COUNTRY.

16. - EXPLAIN HOW COSTS OF ADMINISTRATION, STORAGE, TRANSPORTATION, PROCESSING, REPACKAGING, ISSUANCE OF INFORMATIVE MATERIAL WILL BE FINANCED.

17. - EXPLAIN METHODS OF EDUCATING RECIPIENTS ON THE SOURCE OF THE PRODUCT, PROGRAM REQUIREMENTS, AND

COMMODITY PREPARATION AND USE.

18. - DESCRIBE OTHER CONTRIBUTIONS AND WHAT ROLE THEY PLAY IN THE PROGRAM.

19. - DESCRIBE METHOD TO BE USED TO SUPERVISE AND MONITOR DISTRIBUTION OF THE COMMODITY TO ASSURE INTENDED USE IS ACCOMPLISHED.

20. - PROVIDE INFORMATION THAT THE COOPERATING SPONSOR HAS RECEIVED APPROVAL FROM THE GOVERNMENT TO IMPORT DONATED COMMODITIES FREE FROM ALL CUSTOM DUTIES, TOLLS, TAXES, ETC.

SAMPLE SECTION 416 .B) MONETIZATION

-- OGSN/416 (B) DDP:

-- COUNTRY:

UNITED STATES GOVERNMENT
AGRICULTURAL COMMODITY FOREIGN DONATION AGREEMENT
(SECTION 416 .B))

THE AGENCY FOR INTERNATIONAL DEVELOPMENT (A.I.D.), THE COMMODITY CREDIT CORPORATION (CCC), AND (COOPERATING SPONSOR) AGREE AS FOLLOWS:

1. CCC AGREES TO DONATE TO THE COOPERATING SPONSOR AGRICULTURAL COMMODITIES OF THE KIND AND AMOUNT SPECIFIED IN SECTION 2 PURSUANT TO THE AUTHORITY OF SECTION 416.B) OF THE AGRICULTURAL ACT OF 1949, AS AMENDED. CCC SHALL DELIVER SUCH COMMODITIES ONLY IN ACCORDANCE WITH THE DELIVERY SCHEDULE SPECIFIED IN SECTION 2.

2. AGRICULTURAL COMMODITIES TO BE DONATED TO THE COOPERATING SPONSOR ARE AS FOLLOWS:

PRODUCT	PACKAGE	MTS (LBS/200)	DELIVERY		U.S. PORT DESTINATION
			MONTH	TO FOREIGN PORT	

TOTAL

NOTE: THE COOPERATING SPONSOR WILL PROMPTLY INFORM CCC OF ANY DESIRED CHANGE IN THE ABOVE DELIVERY SCHEDULE BY NOTIFYING THE CHIEF, EXPORT OPERATIONS BRANCH, AGRICULTURAL

STABILIZATION AND CONSERVATION SERVICE, USDA, KANSAS CITY COMMODITY OFFICE (KCCO), P.O. BOX 419205, KANSAS CITY, MISSOURI, 64141-0205, TELEPHONE (816) 926-6658, AND CCC WILL ENDEAVOR TO COORDINATE A MUTUALLY ACCEPTABLE REVISED DELIVERY SCHEDULE. CCC IS NOT REQUIRED TO DELIVER COMMODITIES LATER THAN THE DELIVERY DATES SPECIFIED ABOVE UNLESS A REVISED DELIVERY SCHEDULE IS AGREED UPON.

3. THE PAYMENT OF ALL COSTS ASSOCIATED WITH THE REPROCESSING, PACKAGING, TRANSPORTING, HANDLING AND OTHER CHARGES INCURRED IN THE DISTRIBUTION OF THE AGRICULTURAL COMMODITIES WILL BE APPORTIONED AS FOLLOWS:

A. CCC AGREES TO DONATE THE AGRICULTURAL COMMODITIES WITHOUT CHARGE AND TO PAY THE FOLLOWING COSTS: OCEAN TRANSPORTATION, SURVEY FEES, AND REPACKAGING OF DAMAGED COMMODITIES; PROCESSING, HANDLING, AND TRANSPORT COSTS TO U.S. PORTS) OF ALLOCATION.

B. THE COOPERATING SPONSOR AGREES TO PAY THE FOLLOWING COSTS: INLAND TRANSPORTATION, HANDLING AND DISTRIBUTION WITHIN _____ THE COOPERATING SPONSOR AGREES TO ARRANGE FREIGHT FORWARDING AND BOOKING.

4. NOTWITHSTANDING SECTION 210.5 .D) (2) .1), AID REGULATION 10, THE COOPERATING SPONSOR AGREES TO ARRANGE OCEAN TRANSPORTATION AND FREIGHT FORWARDING SO AS TO COMPLY WITH THE REQUIREMENTS OF CCC REGARDING THE QUANTITIES OF COMMODITIES MADE AVAILABLE UNDER THIS AGREEMENT THAT MUST BE CARRIED ON U.S. FLAG VESSELS.

5. THE COOPERATING SPONSOR AGREES TO USE THE AGRICULTURAL COMMODITIES ONLY IN ACCORDANCE WITH THIS AGREEMENT AND THE APPROVED PLAN OF OPERATION, A COPY OF WHICH IS ATTACHED HERETO AS ATTACHMENT A.

6. THE QUALITY OF AGRICULTURAL COMMODITIES TO BE DONATED BY THE CCC AND THE PACKAGING DESCRIPTIONS WILL BE IN ACCORDANCE WITH THE SPECIFICATIONS IN ATTACHMENT B TO THIS AGREEMENT.

7. EXCEPT AS OTHERWISE PROVIDED HEREIN, THE TERMS AND CONDITIONS SET FORTH IN AID REGULATION 10 ARE INCORPORATED INTO AND MADE A PART OF THIS AGREEMENT,

AND ALL REFERENCES THEREIN TO DAIRY PRODUCTS SHALL BE DEEMED TO APPLY ALSO TO THE DONATION OF OTHER AGRICULTURAL COMMODITIES UNDER THIS AGREEMENT.

8. IN LIEU OF SECTION 210.10.G), A.I.D. REGULATION 10, THE FOLLOWING SHALL APPLY:

THE AMOUNT TO BE PAID FOR _____ MISUSED, LOST OR DAMAGED, SHALL BE DETERMINED ON THE BASIS OF THE MARKET PRICE AT THE TIME AND PLACE THE MISUSE, LOSS OR DAMAGE OCCURRED OR, IN CASES WHERE IT IS NOT FEASIBLE TO OBTAIN OR DETERMINE SUCH MARKET PRICE, THE F.A.S. COMMERCIAL EXPORT PRICE OF THE COMMODITY

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AT THE TIME AND PLACE OF EXPORT, PLUS OCEAN FREIGHT CHARGES AND OTHER COSTS INCURRED BY THE GOVERNMENT OF THE UNITED STATES IN MAKING DELIVERY TO THE COOPERATING SPONSOR. WHEN THE VALUE IS DETERMINED ON A COST BASIS, THE NON-PROFIT PRIVATE HUMANITARIAN ORGANIZATION, COOPERATIVE, OR INTERGOVERNMENTAL ORGANIZATION 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 U.S. GOVERNMENT. WITH RESPECT TO CLAIMS OTHER THAN OCEAN CARRIER LOSS AND/OR DAMAGE CLAIMS, THE VALUE OF MISUSED, LOST OR DAMAGED COMMODITY MAY BE DETERMINED ON SOME OTHER JUSTIFIABLE BASIS, AT THE REQUEST OF THE COOPERATING SPONSOR AND/OR UPON THE RECOMMENDATION OF THE USAID OR DIPLOMATIC POST.

9. IN LIEU OF SECTION 210.6 .B) .4), .B) .5), OR .B) .6) OR ANY OTHER PROVISIONS OF A.I.D. REGULATION 10 PROHIBITING THE SALE OF AGRICULTURAL COMMODITIES DONATED UNDER THIS AGREEMENT, THE COOPERATING SPONSOR MAY SELL SUCH COMMODITIES WITHIN FOR THE PURPOSE OF GENERATING LOCAL CURRENCY TO BE USED IN ACCORDANCE WITH THE APPROVED PLAN OF OPERATION . ATTACHMENT A).

10. IN LIEU OF SECTION 210.11 .A) AND .C), A.I.D. REGULATION 10, THE FOLLOWING SHALL APPLY:

A. THE COOPERATING SPONSOR SHALL MAINTAIN AN INTEREST-BEARING SPECIAL ACCOUNT INTO WHICH IT SHALL DEPOSIT THE PROCEEDS GENERATED FROM THE SALE OF COMMODITIES PROVIDED UNDER THIS AGREEMENT; INTEREST SHALL BE PROGRAMMED AS THOUGH IT WERE PRINCIPAL. THE COOPERATING SPONSOR SHALL MAINTAIN RECORDS AND DOCUMENTS FOR A PERIOD OF

THREE YEARS FROM THE DATE OF THE EXPORT OF THE AGRICULTURAL COMMODITIES IN A MANNER WHICH WILL ACCURATELY REFLECT ALL TRANSACTIONS PERTAINING TO THE RECEIPT, STORAGE, DISTRIBUTION, AND SALES OF THE AGRICULTURAL COMMODITIES.

B. COOPERATING SPONSOR SPECIAL ACCOUNT AND LOCAL CURRENCY PROCEEDS REPORTING REQUIREMENTS ARE SPECIFIED IN THE APPROVED PLAN OF OPERATION . ATTACHMENT A). IN ADDITION, THE COOPERATING SPONSOR SHALL SUBMIT A SEMI-ANNUAL LOGISTICS REPORT TO THE CHIEF, PROJECTS AND COORDINATION DIVISION, FOOD FOR PEACE (AID), STATE ANNEX 8, ROOM 319, DEPARTMENT OF STATE, WASHINGTON, D.C. 20523, USA AND A COPY TO THE AGENCY FOR INTERNATIONAL DEVELOPMENT MISSION IN , AND TO THE OFFICE OF THE AGRICULTURAL ATTACHE, COVERING THE RECEIPT OF AGRICULTURAL COMMODITIES MADE AVAILABLE BY THE CCC UNDER THIS AGREEMENT. THE FIRST REPORT SHALL BE SUBMITTED BY , AND COVER THE PERIOD FROM THE DATE OF THIS AGREEMENT, AND QUARTERLY THEREAFTER. REPORTS WILL BE SUBMITTED UNTIL FUNDS ARE COMPLETELY DISBURSED FROM THE SPECIAL ACCOUNT. THE REPORT MUST CONTAIN THE FOLLOWING DATA:

(1) RECEIPTS OF AGRICULTURAL COMMODITY INCLUDING THE NAME OF EACH VESSEL, DISCHARGE PORT(S), 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 IN TRANSIT FOR, ON UNITED STATES FLAG

VESSELS;

.2) QUANTITY OF AGRICULTURAL COMMODITIES SOLD, PROCEEDS GENERATED, AND PROCEEDS DEPOSITED INTO THE SPECIAL ACCOUNT DURING THE REPORTING PERIOD AND INTEREST . IN LOCAL CURRENCY AND US DOLLAR EQUIVALENT);

.3) ESTIMATED COMMODITY INVENTORY AT THE END OF THE REPORTING PERIOD;

.4) QUANTITY OF COMMODITY ON ORDER AND IN TRANSIT DURING THE REPORTING PERIOD;

(5) STATUS OF CLAIMS FOR COMMODITY LOSSES BOTH RESOLVED AND UNRESOLVED DURING THE REPORTING PERIOD;

(6) QUANTITY OF COMMODITY DAMAGED OR DECLARED UNFIT DURING THE REPORTING PERIOD; AND

.7) DISBURSEMENTS FROM THE SPECIAL ACCOUNT FOR THE PURPOSES SPECIFIED IN THE PLAN OF OPERATION . IN LOCAL CURRENCY AND US DOLLAR EQUIVALENT).

11. SECTION 210.7 .B) OF AID REGULATION 10 IS DELETED IN ITS ENTIRETY. THIS WAIVES THE REQUIREMENT THAT REPACKAGED SECTION 416 .B) AGRICULTURAL COMMODITIES MUST BE PACKED IN CONTAINERS MARKED FURNISHED BY THE PEOPLE OF THE UNITED STATES OF AMERICA AND NOT TO BE SOLD OR EXCHANGED.

12. THIS AGREEMENT SHALL BE SUBJECT TO SUSPENSION OR TERMINATION UPON FINDING BY CCC THAT .1) ADEQUATE STORAGE FACILITIES ARE NOT AVAILABLE IN THE RECIPIENT COUNTRY, OR THAT (2) THE DISTRIBUTION OF THE COMMODITY IN THE RECIPIENT COUNTRY WILL RESULT IN A SUBSTANTIAL DISINCENTIVE TO OR INTERFERENCE WITH DOMESTIC PRODUCTION OR MARKETING IN THE COUNTRY.

FOR THE GOVERNMENT OF THE UNITED STATES

AGENCY FOR INTERNATIONAL DEVELOPMENT COMMODITY CREDIT CORPORATION

BY

BY:

TITLE: DEPUTY ASSISTANT ADMINISTRATOR AND COORDINATOR FOOD FOR PEACE

TITLE: GENERAL SALES MANAGER, FAS AND VICE PRESIDENT COMMODITY CREDIT CORPORATION:

DATE:

DATE:

REQUEST AND ACCEPTANCE

THE ASSISTANCE DESCRIBED IN THIS AGREEMENT IS REQUESTED AND THE TERMS AND CONDITIONS OF THIS AGREEMENT AND OF A.I.D. REGULATION 10, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, ARE ACCEPTED.

COOPERATING SPONSOR

BY:

TITLE:

DATE:

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SAMPLE

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STATE 000491 3799 089603 AID
DONATED COMMODITIES FREE FROM ALL CUSTOM DUTIES,
TOLLS, TAXES, ETC. WHITEHEAD

ATTACHMENT A

SECTION 416 . . B1

PLAN OF OPERATION - INCLUDES SALES OR BARTER

SECTION 416 B1 FOREIGN DONATION PROGRAM PROPOSED PLAN OF
OPERATION

1. NAME AND ADDRESS OF APPLICANT:
2. COUNTRY IN WHICH THE COMMODITIES WILL BE USED:
3. KIND AND QUANTITY OF COMMODITIES REQUESTED:
4. DELIVERY SCHEDULE:
5. PROGRAM DESCRIPTION: (SAMPLE LANGUAGE)

WHEAT WILL BE IMPORTED, STORED TEMPORARILY AT THE
PORT, AND SOLD AT THE LOCAL MARKET PRICE . CURRENTLY
ESTIMATED AT DOLS /MT) DIRECTLY TO WHEAT MILLERS
WHO WILL TRANSPORT IT TO THEIR PROCESSING FACILITIES
WHERE IT WILL BE MILLED INTO FLOUR AND THEN WILL
ENTER NORMAL COMMERCIAL CHANNELS FOR PROCESSING INTO
FOOD PRODUCTS (BREAD, NOODLES, ETC.). THE FUNDS
DERIVED FROM THE SALE OF THE WHEAT TO MILLERS WILL BE
USED FOR AGRICULTURAL DEVELOPMENT ACTIVITIES.

6. USE OF FUNDS

THE LOCAL CURRENCY GENERATED BY THE SALE OF THE
COMMODITIES WILL BE DEPOSITED INTO AN
INTEREST-BEARING SPECIAL ACCOUNT IN THE BANK.
FUNDS GENERATED WILL BE USED FOR THE FOLLOWING
ACTIVITIES, WHICH ARE CONSISTENT WITH PROVIDING FOOD
ASSISTANCE TO NEEDY PEOPLE, AND FOR DISTRIBUTION AND
RELATED COSTS:

7. EXPLAIN ARRANGEMENTS TO BE USED TO ASSURE THAT THE
AGRICULTURAL COMMODITIES WILL BE IN ADDITION TO
PL-480 ASSISTANCE AND WILL NOT DISPLACE NORMAL
COMMERCIAL PURCHASES BY PROPOSED RECIPIENTS.

8. THE GOVERNMENT OF WILL FURNISH THE USG
SUCH INFORMATION AND REPORTS RELATING TO THE
AGREEMENT AS IT MAY REQUEST.

9. USUAL MARKETING REQUIREMENTS -
GOVERNMENT-TO-GOVERNMENT PROGRAMS ONLY THE GOVERNMENT
OF WILL ENDEAVOR TO IMPORT ON A COMMERCIAL-
BASIS AT LEAST METRIC TONS OF FROM
ALL ORIGINS DURING U.S. FISCAL YEAR AS SOON
AS POSSIBLE AFTER THE END OF U.S. FISCAL YEAR
THE AGREES TO FURNISH CCC INFORMATION ON
ACTUAL COMMERCIAL IMPORTS MADE DURING THE YEAR
OF IN ORDER TO CONFIRM THE ABOVE
ESTABLISHED UMR, PLEASE PROVIDE SUPPORTIVE COMMERCIAL
IMPORT DATA FOR PREVIOUS 5-YEAR BY COUNTRY OF ORIGIN
AND ESTIMATES FOR CURRENT FISCAL YEAR.)

10. NON EXPORT ASSURANCE: (GOVERNMENT-TO-GOVERNMENT ONLY)

THE GOVERNMENT OF HAS AGREED NOT TO
EXPORT NOR THE SAME PRODUCT UNDER A
DIFFERENT NAME) DURING U.S. FISCAL YEAR

11. PROVIDE INFORMATION THAT THE COOPERATING SPONSOR HAS
RECEIVED APPROVAL FROM THE GOVERNMENT TO IMPORT

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ANNEX E
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ORIGIN OFFICE FVPP-21
INFO AFEA-03 AFSA-03 AFFW-04 AFCW-03 AFDP-06 AFCD-02 ANEA-02
ANDP-03 ANSA-03 AAAF-03 ANAA-01 BIFA-01 OL-01 LADP-04
LACO-01 L4SA-02 LACA-03 AALA-01 SAST-01 PPPB-02 IG-01
GC-01 FVA-01 ANME-03 ANEG-02 PVC-02 ES-01 OFDA-02 STEH-03
STN-03 STFA-01 STAG-02 IGLC-01 SEOP-01 SEOS-01 IGAD-02
FFP-03 SFRP-01 SECS-02 RELO-01 AHAD-01 TELE-01 AGRI-01
OMB-02 /096 AB

INFO LOG-00 EUR-00 AF-00 EB-00 IO-19 NEA-04 ARA-00
TRSE-00 EAP-00 /023 R

DRAFTED BY: AID/FVA/PPM:F:FAD:0225D
APPROVED BY: AID/FVA/PPM:B RILEY
USDA/FAS: MCHAMBLISS (RAFT) STATE/EB/OP: CJACOBINI (DRAFT)
OMB: DSFECKHARD (DRAFT) TREA: JKOTZE (DRAFT)
AID/PPC/PB: CHEISKIRCH (RAFT) AID/ES: GJOE
AID/FVA/FFP: JO FEARA (RAFT) AID/GC/CP: TRIEDLER (RAFT)
FVA/PVC: T MCKAY (RAFT)
AFR/DP: P RADER (RAFT)
ANE/DP: G WEIN (RAFT)
LAC/DP: R QUEENER (DRAFT)

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TAGS:

SUBJECT: NEW SECTION 416 (B) LEGISLATION

REF: A) STATE 134007; B) STATE 000491

1. THIS IS A DCC CABLE. PRESIDENT REAGAN SIGNED THE AGRICULTURAL ACT OF 1949 AMENDMENT ON APRIL 4, 1988. THIS MESSAGE COMMUNICATES THE PROVISIONS OF THE AMENDMENT PERTAINING TO SECTION 416 (B) PROGRAMS AUTHORIZED UNDER THE AGRICULTURAL ACT OF 1949. REF A COMMUNICATED ALMOST IDENTICAL PROVISIONS APPROVED RECENTLY FOR TITLE II PROGRAMS.

2. THE NEW LEGISLATION INCLUDES THE FOLLOWING PROVISIONS:

A. ELIGIBLE COMMODITIES

AMENDED SECTIONS 416 (B) (2) (A), 416 (B) (10) (B) (1) AND 416 (B) (7) CLARIFY THE TYPES OF COMMODITIES ELIGIBLE FOR DISTRIBUTION UNDER SECTION 416 (B) TO INCLUDE WHEAT, RICE AND FEED GRAINS, AS WELL AS PRODUCTS DERIVED FROM THESE AND ALL OTHER TYPES OF COMMODITIES ELIGIBLE FOR

DISTRIBUTION UNDER SECTION 416 (B). THIS PROVISION CLARIFIES THAT COMMODITIES FOR USE AS ANIMAL FEED AS WELL AS PROCESSED PRODUCTS ARE ELIGIBLE.

B. PVO PARTICIPATION

AMENDED SECTION 416 (B) (3) PROVIDES THAT IF ELIGIBLE COMMODITIES ARE MADE AVAILABLE TO THE GOVERNMENT OF A QUOTE FRIENDLY COUNTRY UNQUOTE, NONPROFIT AND VOLUNTARY AGENCIES AND COOPERATIVES CAN ALSO BE ELIGIBLE TO RECEIVE COMMODITIES TO CONDUCT FOOD AID PROGRAMS IN THE SAME COUNTRY. THE INTENT OF THIS PROVISION IS TO INSURE

THAT PVO'S AND COOPERATIVES ARE GIVEN DUE CONSIDERATION AS MECHANISMS FOR PROGRAMMING SECTION 416 (B) COMMODITIES.

C. MULTIYEAR AGREEMENTS

AMENDED SECTION 416 (B) (4) PROVIDES THAT, SUBJECT TO THE AVAILABILITY OF COMMODITIES EACH FISCAL YEAR, THE SECRETARY OF AGRICULTURE ON REQUEST SHALL APPROVE MULTIYEAR SECTION 416 (B) AGREEMENTS TO MAKE AGRICULTURAL COMMODITIES AVAILABLE FOR DISTRIBUTION OR SALE IF THE AGREEMENTS OTHERWISE MEET THE REQUIREMENTS OF SECTION 416 (B). THE INTENT OF THIS SECTION IS TO STIMULATE GREATER USE OF MULTIYEAR AGREEMENTS. AT THE SAME TIME, THE CONGRESS RECOGNIZES THAT MULTI-YEAR AGREEMENTS ARE CONTINGENT ON COMMODITY AVAILABILITIES. MULTI-YEAR PROPOSALS SHOULD BE SUBMITTED TAKING INTO ACCOUNT USDA'S ESTIMATES OF CURRENT AND FUTURE YEAR COMMODITY AVAILABILITIES, ACCORDINGLY. PARA 10 DISCUSSES THE FY 1989 COMMODITY OUTLOOK.

D. 10 PERCENT AGGREGATE MONETIZATION REQUIREMENT

AMENDED CLAUSE (111) OF SECTION 416 (B) (7) (D) RAISES THE MINIMUM AGGREGATE VALUE OF SECTION 416 (B) COMMODITIES TO BE MONETIZED EACH FISCAL YEAR BY NON-PROFIT VOLUNTARY ORGANIZATIONS OR COOPERATIVES FROM 5 PERCENT OF THE AGGREGATE VALUE OF ALL COMMODITIES AND PRODUCTS FURNISHED UNDER SECTION 416 (B) IN A FISCAL YEAR TO 10 PERCENT OF SUCH AGGREGATE VALUE OR OF THE MINIMUM TONNAGE REQUIRED TO BE FURNISHED, WHICHEVER IS GREATER. THE FY 1988 REQUIREMENT IS PRESENTLY DOLS 23.2 MILLION. OF THIS AMOUNT, PROGRAM APPROVALS AS OF 7/27/88 TOTALED ONLY DOLS 9.8 MILLION.

AT PRESENT, FUTURE AVAILABILITIES OF SECTION 416 (B) COMMODITIES ARE UNCLEAR. SINCE SECTION 416 (B) USES ONLY

COMMODITY CREDIT CORPORATION STOCKS EXCESS TO ALL OTHER REQUIREMENTS, FUTURE AVAILABILITIES WON'T BE KNOWN UNTIL LATER THIS SUMMER. A MAJOR DETERMINANT OF ANY AVAILABILITIES WILL BE THE EXTENT AND IMPACT OF THE CONTINUING DROUGHT IN THE U.S. USDA WILL ADVISE OF FUTURE AVAILABILITIES AS SOON AS MORE INFORMATION BECOMES AVAILABLE.

E. USES OF FOREIGN CURRENCIES

THE ACT REVISES SUBSECTION (11) OF SECTION 416 (B) (7) (D) TO READ AS FOLLOWS:

QUOTE (11) FOREIGN CURRENCIES GENERATED FROM PARTIAL OR FULL SALES OR BARTER OF COMMODITIES BY A NONPROFIT AND VOLUNTARY AGENCY OR COOPERATIVE SHALL BE USED --

(1) TO TRANSPORT, STORE, DISTRIBUTE, AND OTHERWISE ENHANCE THE EFFECTIVENESS OF THE USE OF COMMODITIES AND THE PRODUCTS THEREOF DONATED UNDER THIS SECTION; AND

(2) TO IMPLEMENT INCOME GENERATING, COMMUNITY DEVELOPMENT, HEALTH, NUTRITION, COOPERATIVE DEVELOPMENT, AGRICULTURAL PROGRAMS, AND OTHER DEVELOPMENTAL ACTIVITIES. END QUOTE

THE ACT THUS SPECIFIES A BROAD RANGE OF ECONOMIC DEVELOPMENT ACTIVITIES UNDER CATEGORY (11) ABOVE TO EMPHASIZE THE VARIETY OF ACTIVITIES THAT ARE ELIGIBLE FOR SECTION 416 (B) MONETIZATION BY PVO'S AND COOPERATIVES. REF B EMPHASIZED MORE TRADITIONAL DIRECT FEEDING ACTIVITIES. THE DCC WILL ACCOMMODATE BOTH CATEGORIES OF REQUESTS ALTHOUGH SHOULD RESOURCES BECOME

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SCARCE PRIORITY WILL BE GIVEN TO DIRECT FEEDING PROGRAMS AND TO MONETIZATION IN SUPPORT OF DIRECT FEEDING PROGRAMS, PER REF B, SECTION D PARTICULARLY IN POOR COUNTRIES WHERE NEEDS TEND TO BE THE GREATEST.

F. FULL AND PARTIAL MONETIZATION

THE LEGISLATION PERMITS FULL AND PARTIAL MONETIZATION OF SECTION 416 (B) PROGRAMS. REF B LIMITED PARTIAL MONETIZATION TO RANGES OF 5 PERCENT TO 15 PERCENT AND UP TO 30 PERCENT FOR LDC'S AND LLDC'S RESPECTIVELY. THESE RANGES NO LONGER APPLY. REF B GUIDANCE PERTAINING TO THE BELLMON DETERMINATION, UMR REQUIREMENTS, ETC. CONTINUES TO APPLY. THE NEW LEGISLATION THUS PERMITS BOTH THE BROADER RANGE OF USES OF FOREIGN CURRENCIES AND

THE REMOVAL OF LIMITS ON THE PERCENTAGE OF MONETIZATION.

G. PERIODS FOR REVIEW AND APPROVAL

NEW SECTION 416 (B) (3) (C) (I) PROVIDES THAT, FOR PVO AND COOPERATIVE REQUESTS, THE DDC FOOD AID SUBCOMMITTEE WORKING GROUP WILL DECIDE ON A SECTION 416 (B) PROPOSAL SUBMITTED FOR REVIEW AND APPROVAL WITHIN 45 WORKING DAYS AFTER RECEIPT BY THE A.I.D. OFFICE IN WASHINGTON, D.C. THE RESPONSE SHALL DETAIL THE REASONS FOR APPROVAL OR DENIAL. IF THE PROPOSAL IS DENIED, THE RESPONSE SHALL SPECIFY THE CONDITIONS THAT WOULD NEED TO BE MET FOR THE PROPOSAL TO BE APPROVED.

THE 45-WORKING DAY PERIOD WILL BEGIN WHEN THE NEW OR AMENDED PLAN OF OPERATION HAS BEEN RECEIVED IN WASHINGTON ALONG WITH THE COOPERATING SPONSOR'S HEADQUARTERS' APPROVAL AND THE USAID MISSIONS' COMMENTS AND RECOMMENDATIONS. THE REQUIREMENT WILL BE SATISFIED WHEN A.I.D. SENDS A LETTER TO THE COOPERATING SPONSORS' HEADQUARTERS, STATING APPROVAL OR DISAPPROVAL OF THE PROGRAM; OR IF AND WHEN A.I.D. RECEIVES A WRITTEN REQUEST FROM THE COOPERATING SPONSOR TO TERMINATE OR SUSPEND THE APPROVAL PROCESS.

H. DEADLINE FOR SUBMISSION OF COMMODITY ORDERS

NEW SECTION 416 (B) (3) (C) (III) PROVIDES FURTHER THAT COMMODITY REQUESTS SHALL BE TRANSMITTED TO THE COMMODITY CREDIT CORPORATION NOT LATER THAN 15 DAYS AFTER RECEIPT OF A CALL FORWARD THAT MEETS THE REQUIREMENTS OF SECTION 416 (B).

3. THESE PROVISIONS ARE EFFECTIVE IMMEDIATELY AND WILL BE REFLECTED IN A FIELD MANUAL FOR MONETIZATION PROGRAMS AND AN UPDATE OF A.I.D. HANDBOOK 9, BOTH OF WHICH ARE EXPECTED TO BE ISSUED WITHIN THE NEXT TWO MONTHS.
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ANNEX F

Exh F, HR 9 (TM 9:6)

CCC-183
(1-17-73)

U. S. DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service

Form Approved - OMB No. 40-R3549

**COMMODITY REQUEST FOR FOREIGN DISTRIBUTION
(Voluntary Agency)**

SECTION A - REQUEST FOR COMMODITY AND DELIVERY INSTRUCTIONS

1. FROM (NAME AND ADDRESS OF REQUESTING AGENCY)		2. DESTINATION (COUNTRY)	3. PERIOD OF EXPORT	4. QUARTER REQUESTED
5. SEND CONSIGNEE'S RECEIPT TO:				
6. Agency Number				
7. Commodity - Pack Size				
8. Quantity (lbs.)				
9. Port(s) of Discharge				
10. Agency Markings				

11. REMARKS - Specific Port of Export (If required, state reason)

On behalf of the agency named above, the undersigned hereby request the commodity shown above for distribution and use outside the U. S. in accordance with Food Donation Programs under Title II PL-480, 83rd Congress, as amended.

12. SIGNATURE OF AGENCY REPRESENTATIVE	13. DATE
--	----------

SECTION B - USDA APPROVAL. The above request is approved subject to the provisions of the Applicable Food Donation Program and related Notice of Availability.

14. APPROVED FOR USDA	15. DATE	16. CCC NO.
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ORIGINAL

Thursday
May 24, 1984

REGULATION 10

Part III

**International
Development
Cooperation Agency**

Agency for International Development

22 CFR Part 210

Donation of Dairy Products To Assist
Needy Persons Overseas (416 Program);
Interim Rule of Requirements



**INTERNATIONAL DEVELOPMENT
COOPERATION AGENCY**

Agency for International Development

22 CFR Part 210

(A.I.D. Reg. 10)

**Donation of Dairy Products To Assist
Needy Persons Overseas (416
Program); Interim Rule of
Requirements**
AGENCY: Agency for International
Development, IDCA.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth procedures for the dairy products overseas donation program to be administered by the Agency for International Development (AID), as agent for the Commodity Credit Corporation (CCC), under the authority of Section 416 of the Agricultural Act of 1945, as amended (Section 416). This program is now being conducted by CCC, an agency within the United States Department of Agriculture (USDA), pursuant to the regulations at 7 CFR Part 1497. Upon publication of this Interim Rule, those regulations will be terminated by CCC. The foreign donation of dairy products will assist needy persons overseas and reduce surplus stocks of dairy products in CCC inventory.

DATES: Effective Date: Interim rule effective May 24, 1984.

Comments on these Interim rules must be received on or before July 23, 1984.

ADDRESS: Comments should be submitted to: Ms. Jessie C. Vogler, Office of Food for Peace, Bureau for Food for Peace and Voluntary Assistance, Agency for International Development, Washington, D.C. 20523. Telephone: (703) 235-9193.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy A. Sheehan, Chief, Food Donations Division, Office of Food for Peace, Bureau for Food for Peace and Voluntary Assistance, Agency for International Development, Washington, D.C. 20523. Telephone: (703) 235-9173.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under A.I.D.'s required procedures. It has been determined that these program provisions will not result in any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since A.I.D. is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Section 416 of the Agricultural Act of 1949 (Section 416) authorizes the donation of surplus dairy products, acquired through the Commodity Credit Corporation (CCC) price support operation, for food assistance overseas. CCC may pay, with respect to the commodities donated, certain costs including reprocessing, packaging, transporting, handling, and costs of overseas delivery. Section 416 provides that the foreign donation of commodities thereunder shall be in addition to assistance provided under the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480).

Regulations were issued by CCC on December 2, 1982 (47 FR 54285, 7 CFR Part 1497) setting forth procedures for the donation by CCC pursuant to Section 416 of dairy products to assist needy people overseas. As this program was being implemented, it was realized that the various responsibilities involved in its operation could best be met by the sharing of functions between the USDA and AID, which agency has for many years been handling foreign donation under Pub. L. 480 and other legislation. Accordingly, on August 9, 1983, a Memorandum of Understanding was entered into by CCC and AID which provided for the designation of AID as agent for CCC in performing certain services for CCC in connection with making dairy products available to needy people overseas under the authority of Section 416. The Memorandum sets forth the various responsibilities to be shared between AID and CCC. Under this rule, the Section 416 Foreign Donation Program Agreements with the cooperating sponsors will be signed by both AID and CCC.

This rule is being issued pursuant to the Memorandum of Understanding between CCC and AID which was entered into prior to the recent amendments to Section 416 made by the Agricultural Program Adjustment Act of 1984 (Pub. L. 98-258, approved April 10, 1984). In view of these amendments, changes in the Memorandum and the AID regulations are presently under study.

Regulation 10, which has been concurred in by CCC, sets forth general guidelines and procedures applicable to overseas donations of dairy products under Section 416. It is intended that

specific details regarding the donation of dairy products, such as commodity types, processing and transportation requirements, delivery schedule, recipients and apportionment of costs and responsibilities related to the donation, will be arranged with cooperating sponsors following submission of a program proposal by such sponsors. Cooperating sponsors, as defined in the regulations, are encouraged to contact the Chief, Title II Food Donation Division, Office of Food for Peace, (FVA/FFP/II), Agency for International Development for information and assistance in preparing proposals and thereby expedite consideration of the proposals. Telephone: (AC 703) 235-9173.

The Director, Office of Food for Peace, Bureau for Food for Peace and Voluntary Assistance (FVA/D/FF), or his/her designee and the General Sales Manager, U.S.D.A., and Vice President, CCC, or his/her designee will be responsible for approving program agreement/proposals.

It has been determined that the provisions of 5 U.S.C. 553 do not apply to this rule since the subject matter of the rule involves foreign affairs functions of the United States and a matter relating to grants. Accordingly, the regulation will be made effective upon publication in the Federal Register. Nevertheless, comments are requested within 60 days after publication and the interim rule will be scheduled for review in order that a final document discussing any comments received and any desirable amendments may be published in the Federal Register.

List of Subjects in 22 CFR Part 210

Dairy products, Exports, Foreign aid.

22 CFR Ch. II is amended by establishing a new Part 210 as A.I.D. Regulation 10 to read as follows:

**PART 210—DONATION OF DAIRY
PRODUCTS TO ASSIST NEEDY
PERSONS OVERSEAS (SECTION 416
FOREIGN DONATION PROGRAM)**

- | Sec. | |
|-------|--|
| 210.1 | General purpose and scope. |
| 210.2 | Definitions. |
| 210.3 | Eligibility requirements for nonprofit private humanitarian organizations. |
| 210.4 | Cooperating sponsor agreements. |
| 210.5 | Availability of commodities. |
| 210.6 | Obligations of cooperating sponsor. |
| 210.7 | Processing, repackaging and labeling of commodities. |
| 210.8 | Arrangements for entry and handling in foreign country. |
| 210.9 | Disposition of commodities unfit for authorized use. |

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- Sec.
210.10 Liability for loss and damage or improper distribution of commodity—claims and procedures.
210.11 Records and reporting requirements of cooperating sponsor.
210.12 Additional responsibilities of cooperating sponsor.
210.13 Termination of program.
210.14 Waiver and amendment authority.
210.15 OMB control number assigned pursuant to the Paperwork Reduction Act.

Appendix I—Dairy Product Foreign Donation Program Proposed Plan of Operation (Section 416).

Appendix II—Dairy Product Donation Agreement (Section 416).

Authority: Sec. 416 of the Agricultural Act of 1949, as amended, 7 U.S.C. 1431 (Section 416 Foreign Donation Program).

§ 210.1 General purpose and scope.

(a) *Terms and conditions.* This Part 210 contains the regulations prescribing the terms and conditions governing the donation of dairy products for use outside the United States through foreign governments and public and nonprofit private humanitarian organizations such as U.S. nonprofit voluntary agencies or intergovernmental organizations (the World Food Program and United Nations Relief and Works Agency shall not be subject to these regulations except as may be specifically provided herein) pursuant to Section 416 of the Agricultural Act of 1949, as amended (Section 416).

(b) *Legislation.* The legislation implemented by the regulation (Section 416) provides that dairy products acquired by Commodity Credit Corporation (CCC) may be "donated through foreign governments and public and nonprofit private humanitarian organizations for assistance of needy persons outside the United States, and the Commodity Credit Corporation may pay, with respect to commodities so donated, reprocessing, packaging, transporting, handling, and other charges, including the cost of overseas delivery."

(c) These regulations are promulgated pursuant to the designation by CCC of the Agency for International Development (A.I.D.) as its agent to carry out certain responsibilities pertaining to the administration of the program to donate CCC dairy products outside the U.S. under the authority of Section 416.

§ 210.2 Definitions.

"A.I.D." means the Agency for International Development or any successor agency, including, when applicable, each USAID. "USAID" means an office of A.I.D. located in a foreign country. "AID/W" means the

office of A.I.D. located in Washington, D.C.

"CCC" means the Commodity Credit Corporation, a corporate agency and instrumentality of the United States within the U.S. Department of Agriculture.

"Cooperating Sponsor" means a foreign government, or a public or nonprofit private humanitarian organization, including the American Red Cross, and humanitarian intergovernmental organizations that enters into an agreement with the U.S. Government for the use of Section 416 Foreign Donation Program commodities, and which is directly responsible under the agreement for administration and implementation of and reporting on the use of the commodities made available for the program. The Cooperating Sponsor, except a foreign government and intergovernmental organizations, must be organized under the laws of the U.S. and maintain an office in the U.S.

"Diplomatic Posts" means the offices of the Department of State located in foreign countries, and may include Embassies, Legations, and Consular offices.

"Duty Free" means exempt from all customs duties, tolls, taxes or governmental impositions levied on the act of importation.

"Humanitarian" means an organization that is carrying out or intends to carry out activities designed to provide assistance to needy people.

"Non-profit" means that the residue of income over operating expenses accruing in any activity, project, or program is used solely for the operation of such activity, project or program.

"Private" means a non-governmental organization that receives private funding.

"Recipients" means persons who are in need of food assistance because of their economic condition.

"USDA" means the U.S. Department of Agriculture.

§ 210.3 Eligibility requirements for nonprofit private humanitarian organizations.

(a) All private and voluntary organizations registered with the Agency for International Development under A.I.D. Regulation 3, 22 CFR Part 203, are eligible to participate in the Section 416 Foreign Donation Program.

(b) All organizations that have received dairy products for overseas distribution outside the U.S. from the Commodity Credit Corporation under the authority of Section 416 prior to the issuance of these regulations are eligible to continue to participate in the Section 416 Foreign Donation Program.

(c) Organizations not eligible under (a) or (b) above may apply for registration by contacting the Registration Officer, Office of Private and Voluntary Cooperation (FVA/PVC), Bureau for Food for Peace and Voluntary Assistance, Agency for International Development (A.I.D.), Washington, D.C. 20523.

(d) In exceptional circumstances, one or more Conditions of Registration (AID Regulation 3, 22 CFR Part 203) may be waived by the Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance (FVA), of A.I.D., on the recommendation of the Office of Food for Peace following the registration review by the Office of Private and Voluntary Cooperation (FVA/PVC).

(e) Certain categories of organizations engaged exclusively in religious activities, and private foundations, which do not meet Condition No. 1 of A.I.D. Regulation 3 will not be registered but may, in exceptional circumstances, become participants in the Section 416 program. The Office of Food for Peace will conduct a review of such applications, and forward recommendations to the Assistant Administrator of the Bureau for Food for Peace and Voluntary Assistance (FVA) for a decision regarding participation.

(f) Organizations approved for participation in the Section 416 Foreign Donation Program or foreign governments must submit to A.I.D. a program plan of operation. For details see Appendix I—Sample Format of a Dairy Product Foreign Donation Proposed Plan of Operation (Section 416).

§ 210.4 Cooperating Sponsor agreements.

(a) The Cooperating Sponsor shall enter into a written agreement with A.I.D. and CCC by signing a Section 416 Foreign Donation Program Agreement which shall incorporate by reference the terms and conditions set forth in this part.

(b) Appendix II of this Regulation is a Sample Format of the Section 416 Foreign Donation Program Agreement.

§ 210.5 Availability of commodities.

(a) Commodities shall be available for distribution and use in accordance with the provisions of the Section 416 Foreign Donation Program Agreement and this part. Unless provided otherwise in the Section 416 Foreign Donation Program Agreement, the quality of dairy products donated by the CCC and the packaging description will be in accordance with dairy product specifications determined by CCC and such specifications shall be

made a part of the Section 416 Foreign Donation Program Agreement.

(b) Unless the Section 416 Foreign Donation Program Agreement provides otherwise, title to the dairy products shall pass to the Cooperating Sponsor at the time and place of delivery from a vessel at the U.S. ports.

(c)(1) The Commodity Credit Corporation (CCC) will pay reprocessing, packaging, transporting, handling, and other charges incurred in making commodities available to Cooperating Sponsors, as agreed upon in the Section 416 Foreign Donation Program Agreement.

(2) All costs and expenses incurred subsequent to the transfer of title to Cooperating Sponsors shall be borne by them except that CCC may pay or make reimbursement for transportation costs from U.S. ports to designated ports or points of entry abroad when specifically provided in the Section 416 Foreign Donation Program Agreement or upon the determination by CCC that it is in the best interest of the program to do so.

(d) Shipment of commodities and the payment of ocean freight shall be made in accordance with the following procedures:

(1)(i) When the Cooperating Sponsor agrees to pay ocean transportation costs and perform freight forwarding and booking functions, the Kansas City Commodity Office (KCCO) USDA will furnish the Cooperating Sponsor with a Notice of Commodity Availability (CCC-512) which will name the receiving country, quantity, and date at U.S. port. The Cooperating Sponsor will arrange ocean transportation and freight forwarding in compliance with the Cargo Preference Act of 1954, Public Law 664 which requires that at least 50 percent of the cargo tonnage under this agreement be carried on U.S.-flag vessels. Non-Vessel Operating Common Carriers (NVOCC) may not be employed to carry U.S.-flag shipments. Approval of ocean transportation arrangements shall be obtained from ASCS/KCCO/USDA, P.O. Box 205, Kansas City, Mo. 64141, Telephone: (913) 238-3057.

(ii) The Cooperating Sponsor will also complete the CCC-512 indicating name of steamship company, vessel name, vessel flag and estimated time of arrival at U.S. port, sign and return the completed form to KCCO/USDA, with a copy to P.L. 480 Operations Division, Foreign Agricultural Service, USDA. KCCO/USDA will then issue instructions to have the commodity shipped free alongside vessel to U.S. port for consignment to the Cooperating Sponsor as specified in the CCC-512. Unless provided for otherwise in Section 3 of the Section 416 Foreign Donation

Program Agreement, U.S. ports will be selected on the basis of the lowest cost to CCC except where mutually agreeable to both the Cooperating Sponsor and KCCO/USDA.

(2)(i) When CCC agrees to pay ocean transportation costs and the Cooperating Sponsor agrees to perform freight forwarding and booking functions, the KCCO/USDA will furnish the Cooperating Sponsor with a Notice of Commodity Availability (CCC-512) which will name the receiving country, quantity and date at U.S. port. The Cooperating Sponsor will arrange ocean transportation and freight forwarding in compliance with the Cargo Preference Act of 1954, which requires that at least 50 percent of the cargo tonnage under this agreement be carried on U.S.-flag vessels. Non-Vessel Operating Common Carriers (NVOCC) may not be employed to carry U.S.-flag shipments. Approval of ocean transportation arrangements shall be obtained from ASCS/KCCO/USDA, P.O. Box 205, K.C., Mo. 64141, Telephone: (913) 238-3057.

(ii) The Cooperating Sponsor will also complete the CCC-512 indicating ocean freight rate as stated in the Federal Maritime Commission (FMC) tariff (with tariff identification), name of steamship company, name of vessel, flag of vessel, and estimated time of arrival at U.S. port, sign, and return the completed form to KCCO/USDA, with a copy to P.L. 480 Operations Division, Foreign Agricultural Service, USDA. KCCO/USDA will then issue instructions to have the commodity shipped free alongside vessel to U.S. port for consignment to the Cooperating Sponsor as specified in the CCC-512. Unless provided for otherwise in Section 3 of the Section 416 Foreign Donation Program Agreement, U.S. ports will be selected on the basis of lowest landed cost to CCC, except where mutually agreeable to the Cooperating Sponsor and KCCO/USDA.

(iii) CCC will pay the Cooperating Sponsor or the ocean carrier, as may be agreed upon, for ocean transportation costs within 30 days of receipt of the following documentation: (A) one copy of completed CCC-512 (as indicated above); (B) three copies of freighted "on board" bill of lading signed by originating carrier; (C) two copies of booking note and/or contract covering ocean transportation of subject cargo; (D) request for payment, indicating amount due and certification that payment has been made to ocean carrier or request for direct payment to ocean carrier.

(3) When CCC agrees to pay ocean transportation costs and to perform freight forwarding and booking

functions, CCC will arrange to ship at least 50 percent of the cargo on U.S. flag vessels in accordance with the Cargo Preference Act of 1954.

§ 210.6 Obligations of the cooperating sponsor.

(a) *Plan of Operation.* Each cooperating sponsor shall submit to the AID or Diplomatic Post a description of the programs it is sponsoring or proposes to sponsor. This description will, when approved, provide the basic information for preparation of the Section 416 Foreign Donation Program Agreements and will be incorporated into such an agreement by reference. Within the overall objectives of the approved program, elements of the program may be changed by written agreement of authorized representatives of the Cooperating Sponsor, AID, and CCC. In case of conflict between the Agreement and the approved plan of operation, the Agreement shall prevail. The plan of operation should clearly specify how a given Section 416 Foreign Donation Program is to be conducted. In addition to any other requirements of law or regulation, the plan will include the following information:

(1) A description of program goals and criteria for measuring progress toward reaching the goals.

(2) A geographic, economic, medical or other appropriate description of the recipient target group that is sufficient to readily determine recipient eligibility to receive Section 416 commodities and to assure that commodities provided under Section 416 will not displace or substitute for commercial sales in the recipient country.

(3) Statements as to what public recognition and container markings will be employed in the distribution of the commodities.

(4) A logistics plan that demonstrates the adequacy of port facilities, transportation facilities and storage/warehousing facilities to handle the flow of commodities to recipients without undue risk of spoilage or waste.

(5) Sufficient information concerning the plan of distribution and the target group of recipients so that a determination can be made as to whether the proposed food distribution would result in a substantial disincentive to domestic food production.

(6) Statements detailing the support of the Host Government of the country accruing the commodity or any other support for the proposed program.

(7) Kind and quantity of dairy products requested and delivery schedule.

(8) Explanation of the methods of educating recipients on the source of dairy products, program requirements, and preparation and use of dairy products, particularly steps to be taken to assure that there will be no unintended harmful effects from the distribution of the dairy products. Therefore, examples of educational materials for the field or guidelines should be presented which include food handling precautions to prevent contamination and spoilage such as refrigeration of cheese and butter products, immediate preparation of foods before eating, discarding of leftovers if no refrigeration is available, and information about proper use and preparation of NFDM in its dry and reconstituted form. Specifically in child feeding programs where NFDM is distributed in bulk directly to families, projects at a minimum should include education on (i) promotion of exclusive breastfeeding for 4-6 months and continuation of breastfeeding after solid foods are introduced, (ii) use of NFDM as a protein supplement, (iii) the importance of combining NFDM with energy rich foods, ie oil, fats, porridges, stews, etc., and (iv) precautions to be taken to prevent contamination of foods prepared with NFDM, and (v) precautions to be taken when NFDM is reconstituted as a milk drink, when there is evidence that it may be used this way.

(9) Description of the method to be used to supervise and monitor the distribution of the dairy products to assure that they are distributed to the intended needy recipients.

(10) Provide information to show approval of foreign government to import the donated dairy products duty free.

(b) Other Requirements.

(1) The terms and conditions of the Section 416 Foreign Donation Program Agreement and of this part, except as otherwise specifically provided, are deemed to be accepted by the Cooperating Sponsor in submitting the program plan of operation.

(2) The Cooperating Sponsor agrees to use the dairy products only in accordance with the Section 416 Foreign Donation Program Agreement, and this regulation.

(3) The donation of the dairy products by CCC and the payment by CCC of any costs specified in Section 3 of the Section 416 Foreign Donation Program Agreement is made with the understanding that the Cooperating Sponsor will carry out its obligations as provided in the Agreement and this part. The Cooperating Sponsor shall be liable to CCC for any failure to export the

dairy products from the U.S., the reentry of any of the dairy products into the United States, or any use of the dairy products which is inconsistent with the Section 416 Foreign Donation Program Agreement. For any such failure, the Cooperating Sponsor shall reimburse CCC for all costs paid by CCC in making the dairy products available to the Cooperating Sponsor, including the acquisition cost to CCC at the time CCC acquired the dairy products under its dairy price support program. However, the Cooperating Sponsor shall not be liable to CCC with respect to any dairy products which, before or after export from the United States, are lost or damaged, destroyed or deteriorated to the extent that the dairy products cannot be used for the purposes described in the Section 416 Foreign Donation Program Agreement unless such loss or damage was due to the fault or negligence of the Cooperating Sponsor.

(4) Cooperating Sponsors shall distribute dairy products only to eligible recipients. Distribution, shall be made without regard to nationality, race, color, sex, or religious or political beliefs of recipients.

(5) Funds derived from voluntary contributions by recipients may be used for payment of program costs by Cooperating Sponsors. Contributions may not be required by a Cooperating Sponsor from a recipient as a condition for participation in a program. Funds accruing from contributions shall be used for payment of program costs such as transportation, storage, handling, insect and rodent control, rebagging of damaged or infested commodities and other program expenses specifically authorized by AID to carry out the program for which the commodities were furnished.

(6) Overseas donations of dairy products under Section 416 are intended as food aid. Dairy products may not be donated under circumstances resulting in more than incidental commercial sales of the products after they have been donated, nor may the commodities be sold in order to generate funds for any purpose.

(7) In the case of foreign government Cooperating Sponsors, data showing commercial and non-commercial imports of dairy products for the past five years by country of origin shall be provided. A Section 416 Foreign Donation Program Agreement with a foreign government may include a usual marketing requirement.

(8) In the case of landlocked countries, transportation in the intermediate country to a designated inland point of entry in the recipient country shall be

arranged by the Cooperating Sponsor unless otherwise provided in the Section 416 Foreign Donation Program Agreement.

(9) If a Cooperating Sponsor books cargo for ocean transportation and is unable to have a vessel at U.S. port of export for loading in accordance with the agreed shipping schedule and CCC thereby incurs additional expenses, the Cooperating Sponsor shall reimburse CCC for such expenses if CCC determines that the expenses were incurred as a result of the fault or negligence of the Cooperating Sponsor.

§ 210.7 Processing and repackaging and labeling of commodities.

(a) Cooperating Sponsors may arrange for processing dairy products into different end products and for packaging or repackaging dairy products prior to distribution. When commercial facilities are used for processing, packaging or repackaging, Cooperating Sponsors shall enter into written agreements for such services. Copies of the executed agreements shall be provided to the USAID or Diplomatic Post in the country of distribution. No part of the commodities delivered to the processing, packaging, or repackaging company shall be used to defray costs of processing packaging or repackaging.

(b) If prior to distribution the Cooperating Sponsor arranges for packaging or repackaging donated dairy products, the cartons, sacks, or other containers in which the dairy products are packed shall be plainly labeled in the language of the country in which the commodities are to be distributed with the following information:

(1) Name of Commodity.

(2) Furnished by the people of the United States of America.

(3) Not to be sold or exchanged. Emblems or other identification of cooperating sponsors may also be added.

§ 210.8 Arrangements for entry and handling in foreign country.

(a) Dairy products shall be admitted duty free and exempt from all taxes.

(b) Cooperating Sponsors shall make all necessary arrangements for receiving the dairy products and assume full responsibility for storage and maintenance of dairy products from time of delivery at port or point of entry abroad. The Cooperating Sponsor shall be responsible for the maintenance of commodities in such manner as to assure distribution of the dairy products in good condition to needy recipients.

(c) If the packages of dairy products are damaged prior to or during

discharge, and therefore, must be repackaged to ensure that the dairy products arrive at the distribution point in wholesome condition. CCC will only reimburse Cooperating Sponsors who are private nonprofit organizations for approved expenses incurred for such repackaging. No prior approval is required for costs equalling \$500 or less.

§ 210.9 Disposition of commodities unfit for authorized use.

Damaged commodities are to be disposed of in accordance with AID Regulation 11, § 211.8 (22 CFR Part 211). Such a disposition should be reported to the Chief, Claims and Collections Division, KCMO, P.O. Box 205, Kansas City, Missouri 64141.

§ 210.10 Liability for loss and damage or improper distribution of commodity—claims and procedures.

(a) Notwithstanding the transfer of title to the Cooperating Sponsor f.a.s. vessel, CCC shall have the right to file, pursue and retain the proceeds of collections from claims arising from ocean transportation cargo loss and damage, including loss and damage occurring between the time of transfer of title and loading aboard a vessel. CCC assumes general average contributions in all valid general average incidents which may arise from the movement of commodity to the destination port. CCC shall receive and retain all allowances in general average. The Cooperating Sponsor shall promptly notify CCC of any situation involving the loss, damage, or deterioration of the dairy product, and of any declaration of general average. Instructions shall be issued by and all loss documents should be forwarded to: Chief, Claims and Collections Division, Kansas City Management Office, P.O. Box 205, Kansas City, Missouri 64141. These instructions must be followed by the Cooperating Sponsor. The Cooperating Sponsor shall promptly furnish such office any assignment or rights which may be requested. Where the Cooperating Sponsor pays the ocean freight or a portion thereof, it shall be entitled to pro rata reimbursement received from only claims related to ocean freight charged.

(b) The Cooperating Sponsor shall promptly provide written notice to AID or the Diplomatic Post, of the circumstances pertaining to any loss, damage, or misuse of commodities occurring within the recipient country or intermediate country. Proceeds from any resultant claims actions shall be forwarded to AID for the account of CCC.

(c) Unless the instructions issued by CCC referred to in paragraph (a) of this section provide otherwise for certain designated Cooperating Sponsors, CCC, Claims and Collections Division, will arrange for the services of an independent cargo surveyor to survey the discharge of Section 416 commodities at the foreign discharge port.

(d) Cooperating Sponsors shall send copies of all reports and documents pertaining to the discharge of commodities to Chief, Claims and Collections Division, Kansas City Management Office, P.O. Box 205, Kansas City, Missouri 64141.

(e) CCC will reimburse Cooperating Sponsors for the costs incurred by them in obtaining the services of a independent surveyor to conduct examinations of the cargo and tender their report.

(f) The handling of claims prior to loading of the dairy products on ocean vessels and claims against ocean carriers shall be handled according to procedures established by CCC. Claims arising after discharge shall be handled according to procedures established by AID for handling inland Pub. L. 480, Title II claims (AID Regulation 11, 22 CFR Part 211.9).

(g) When payment is made for commodities misused, lost or damaged, the value shall be determined on the basis of the General Agreement on Tariffs and Trade (GATT) minimum prices for dairy products in question, plus ocean freight charges and other costs incurred by the Government of the United States 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 they have 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 and/or damage claims, the value of misused, lost or damaged commodities may be determined on some other justifiable basis, at the request of the Cooperating Sponsor and/or upon the approval of the USAID or Diplomatic Post, AID/W.

§ 210.11 Records and reporting requirements of cooperating sponsor.

(a) The Cooperating Sponsor shall maintain records and documents for a period of three years from the date of export of the dairy products in a manner which will accurately reflect all transactions pertaining to the receipt,

transportation, storage and distribution of the dairy products.

(b) The Cooperating sponsor shall cooperate with and give reasonable assistance to United States Government representatives to enable them at any reasonable time to examine any activities and transactions of the Cooperating Sponsor pertaining to the receipt processing, repackaging, distribution and use of the dairy products under this program.

(c) The Cooperating Sponsor shall submit a report semi-annually covering the receipt and distribution of dairy products made available by CCC under the Section 416 Foreign Donation Program Agreement. The first report should cover the first full six months following the date of the Section 416 Foreign Donation Program Agreement and reports thereafter should cover each subsequent six month period. A report is not required if dairy products are not received or distributed during any six month reporting period. This report must contain the following data:

- (1) Receipts of each type of commodity.
- (2) Quantity of each type of commodity distributed.
- (3) Inventory of each type of commodity at the end of the reporting period.
- (4) Numbers of recipients.
- (5) Beginning inventory of each type of commodity.
- (6) Quantity of each type of commodity on order or in transit.
- (7) Status of claims for commodity losses both resolved and unresolved.
- (8) Quantities of each type of commodity damaged or declared unfit.

§ 210.12 Additional responsibilities of cooperating sponsor.

(a) The Cooperating Sponsor shall, within thirty (30) days after export, furnish evidence of export of the dairy products. If export is by water or air, two copies of the onboard carrier bill of lading or consignee's receipt authenticated by a representative of the U.S. Customs Service shall be furnished. The evidence of export must show the kind and quantity of dairy products exported, the date of export and the destination country.

(b) The Cooperating Sponsor warrants that it has not employed any person to solicit or secure the Section 416 Foreign Donation Program Agreement upon any agreement for a commission, percentage, brokerage, or contingent fee and that no consideration or payment has been made or will be made. Breach of this warranty shall give the United States Government the right to annul the

Section 416 Foreign Donation Program Agreement

§ 210.13 Termination of program.

All or any part of the assistance provided under the Section 416 Foreign Donation Program, including commodities in transit, may be terminated by the United States Government at its discretion if the Cooperating Sponsor fails to comply with the provisions of the Section 416 Foreign Donation Program Agreement, or this part, or if it is determined by A.I.D. that the continuation of such assistance is no longer necessary.

§ 210.14 Waiver and amendment authority.

(a) A.I.D., with the concurrence of CCC, may waive, withdraw, or amend, at any time, any or all of the provisions of this part if such provision is not statutory and it is determined to be in the best interest of the U.S. Government to do so.

(b) The Section 416 Foreign Donation Program Agreement may be amended upon written agreement by AID, CCC, and the Cooperating Sponsor.

§ 210.15 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements in Part 210 have been approved by the Office of Management and Budget under control number 0412-0517.

Appendix I—Dairy Product Foreign Donation Proposed Plan of Operation (Section 416)

Agency for International Development, Bureau for Food for Peace and Voluntary Assistance, Office of Food for Peace, Title II Food Donation Division, Washington, D.C.

Dairy Product Foreign Donation Proposed Plan of Operation (Section 416)

Public and private nonprofit humanitarian organizations (applicant) must submit to the Agency for International Development, Bureau for Food for Peace and Voluntary Assistance, Office of Food for Peace, Title II Food Donation Division, Washington, D.C. 20523, a program plan giving the following information:

1. Name and address of applicant. The applicant must be organized under the laws of the United States and must maintain an office in the United States.
2. Country in which the dairy products will be used to assist needy people. (Submit a separate proposal for each country.)
3. Kind of dairy products requested. (The quality specifications and packing description of the dairy products will be the specifications and packing description shown in Attachment B, unless Commodity Credit Corporation (CCC) and the applicant agree to the reprocessing or repackaging of the dairy products.)
4. Quantity of dairy products requested stated in pounds. The quantity requested shall be limited to the amount to be shipped

from the U.S. during a twelve month period beginning with the first proposed shipment

5. Delivery schedule. (Show amount of dairy products for each delivery period, i.e. January—40,000 pounds, March—40,000 pounds, etc.)

6. Intended use of the dairy products

- a. Describe each program (i.e., maternal child health, school feeding, other child feeding, etc.), the problem that the program addresses, and the program's proposed response to this problem.

- b. Describe overall objectives and purpose of each program.

- c. Will the program be countrywide or limited to certain provinces, states, cities, or other administrative or geographical areas?

- d. Describe the distribution method to be used to make the dairy products available to needy recipients.

7. Describe participation in the program by any other organization or government agency of the foreign country.

8. Explain arrangements to be used to assure that the dairy products donated under Section 416 will (a) be in addition to the level of assistance programmed under the Agricultural Trade Development and Assistance Act of 1954 (Title II of Pub. L. 480), and (b) not displace dairy products normally purchased on the commercial market for use by the proposed recipients.

9. Describe records to be used to control distribution of the dairy products to provide accountability from the time title is transferred to the applicant until it reaches the eligible recipient.

10. Describe the port facilities in the country through which the dairy products will be received. Describe in such detail to show that adequate facilities are available to handle the dairy product.

11. Describe the transportation and storage system which will be used to move the dairy products from the receiving port to the point distribution is made to the recipient. State if applicant will retain control of dairy products during transportation and storage. If not, describe controls to assure delivery of the dairy products from time of unloading at port to the distribution point where products will be made available to the recipients.

12. Describe any reprocessing or repacking that will occur in the country, giving location and name of firm that will perform the reprocessing or packing.

13. Explain how costs of administration, storage, transportation, processing, repackaging, special labels, issuance of informative materials, etc. will be financed.

14. Explain methods of educating recipients on the source of the dairy products, program requirements, and preparation and use of the dairy products. Include plans for program publicity, including factors that may adversely affect publicity. Therefore, examples of educational materials for the field or guidelines should be presented which include food handling precautions to prevent contamination and spoilage such as refrigeration of cheese and butter products, immediate preparation of foods before eating, discarding of leftovers if no refrigeration is available, and information about proper use and preparation of NFD in its dry and reconstituted form. Specifically in child

feeding programs where NFD is distributed in bulk directly to families, projects at a minimum should include education on (a) promotion of exclusive breastfeeding for 4-6 months and continuation of breastfeeding after solid foods are introduced, (b) use of NFD as a protein supplement, (c) the importance of combining NFD with energy rich foods, re oil, fats, porridges, stews, etc., and (d) precautions to be taken to prevent contamination of foods prepared with NFD and (e) precautions to be taken when NFD is reconstituted as a milk drink, when there is evidence that it may be used this way.

15. Describe other contributions such as financial, human resources, other food commodities, etc., including the source, estimates of the amount and role the contributions will play in the program.

16. Describe method to be used to supervise and monitor distribution of the dairy products to assure that the intended use of dairy products is accomplished.

17. Provide information to show that the applicant has received approval from the government in the country to import the donated dairy products free from all custom duties, tolls, taxes, etc.

Appendix II—Dairy Product Foreign Donation Program Agreement (Section 416)

Country _____

United States Government—Dairy Product Foreign Donation Program Agreement (Section 416)

In order to effect the distribution of dairy products for the assistance of needy persons outside the United States, the Agency for International Development (A.I.D.), the Commodity Credit Corporation (CCC), and the (Cooperating Sponsor) agree as follows:

1. CCC agrees to donate to the Cooperating Sponsor dairy products of the kind and amounts specified in Section 2 of this agreement pursuant to the authority of Section 416 of the Agricultural Act of 1949, as amended. CCC shall deliver such dairy products in accordance with the delivery schedule specified in Section 2.

2. Dairy products to be donated to the Cooperating Sponsor are as follows:

Commodity	Quantity pounds/metric tons	Delivery month to U.S. port ¹	Foreign port designation

¹ Port where title transfers if other than U.S. port.

Note.—Should the above schedule change, the Cooperating Sponsor will promptly inform and coordinate a revised delivery schedule by contacting the Agricultural Stabilization and Conservation Service, Kansas City Commodity Office, USDA, P.O. Box 205, Kansas City, Missouri, 64141. Telephone: (913) 238-3057.

3. The payments of all costs associated with the reprocessing, packaging, transporting, handling and other charges incurred in the distribution of the dairy products will be apportioned as follows:

A. CCC agrees to donate the dairy products without charge and to pay the following

costs: (These costs will be determined during the negotiation of program approval.)

B. The Cooperating Sponsor agrees to pay the following costs: (These costs are determined during the negotiation of program approval.)

4. The Cooperating Sponsor agrees to use the dairy products only in accordance with this Agreement and the approved program.

5. The term and conditions set forth in AID Regulation 10 and the approved Plan of Operation are incorporated into and made a part of this agreement.

Agency for International Development

By _____

Title: Assistant Administrator, Bureau of
Food for Peace and Voluntary Assistance
and/or as delegated.

Date: _____

Commodity Credit Corporation

By _____

Title: General Sales Manager, FAS and
Vice President, Commodity Credit
Corporation and/or as delegated

Date: _____

Request and Acceptance

The assistance described in this agreement is requested and the terms and conditions of this Agreement and of AID Regulation 10, except as otherwise specifically provided herein, are accepted.

Cooperating Sponsor

By _____

Title: _____

Date: _____

Dated: April 17, 1984.

M. Peter McPherson,

Administrator.

[FR Doc. 84-14005 Filed 5-23-84; 6:43 am]

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Rules and Regulations

Federal Register

Vol. 49, No. 102

Thursday, May 24, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1497

Donation of Dairy Products Overseas

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule will remove the interim rule (47 FR 54285, 7 CFR Part 1497) published by Commodity Credit Corporation (CCC) on December 2, 1982, setting forth the procedures for the donation of dairy products to assist needy persons overseas. Under an agreement with CCC, AID as agent for CCC will perform certain services for CCC in connection with the donation of dairy products overseas. AID's regulation, which replaces CCC's regulation on this subject, appears in this Federal Register in Part III of this issue.

EFFECTIVE DATE: May 24, 1984.

FOR FURTHER INFORMATION CONTACT: Mary T. Chambliss, Director, Program Analysis Division, Export Credits, Foreign Agriculture Service, U.S. Department of Agriculture, Washington, D.C. 20250, Telephone: (202) 447-3573.

SUPPLEMENTARY INFORMATION: On December 2, 1982, CCC published an Interim Rule (47 FR 54285, 7 CFR Part 1497) setting forth procedures for the donation of dairy products to assist needy persons overseas under the authority of Section 416 of the Agricultural Act of 1948, as amended (Section 416). On August 9, 1983, a Memorandum of Understanding was entered into between CCC and the Agency for International Development (AID) which provided for the designation of AID as the agent for CCC in performing certain services for CCC

in connection with making dairy products available to needy people overseas under the authority of Section 416. Pursuant to the Memorandum of Understanding, AID has published an Interim Rule which appears in Part III of this Federal Register, setting forth detailed procedures relating to the implementation of the Section 416 foreign donation program. This AID regulation, concurred in by CCC, will now govern the Section 416 foreign donation program. Accordingly, CCC is hereby removing 7 CFR Part 1497.

This rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice, since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Since the Section 416 foreign donation program will now be implemented pursuant to the AID regulations, 7 CFR Part 1497 no longer serves any functional purpose and is unnecessary. Therefore, CCC finds upon good cause that compliance with the public comment and delayed effectiveness provisions of 5 U.S.C. 553 is unnecessary, impracticable and contrary to the public interest.

List of Subjects in 7 CFR Part 1497

Dairy products, Exports, Foreign aid. Accordingly, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1497--[REMOVED]

1. Part 1497 is removed.
Authority: Sec. 416 of the Agricultural Act of 1948, as amended (7 U.S.C. 1431).

Signed at Washington, D.C. on May 8, 1984.
Richard A. Smith,
Administrator, Foreign Agricultural Service
and Vice President of the Commodity Credit Corporation.

(FR Doc. 84-14028 Filed 5-23-84; 8:46 am)
BILLING CODE 3410-05-01

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

(Docket No. 84-NM-35-AD; Amdt. 39-4872)

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection of the auxiliary power unit (APU) feeder cable on certain Boeing 737 aircraft. This action is necessary to detect interference with the elevator control cable which could result in a severed primary control cable. A severed elevator control cable combined with another elevator system failure could result in loss of the airplane.

DATE: Effective June 4, 1984.

ADDRESS: The referenced service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM-120S, Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington, telephones (206) 431-2928. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68968, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: There have been five reported cases of interference between the elevator control cable and the APU feeder cable, all of which have resulted in abrasion and arcing between the two, leading to cable severance.

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AID REGULATION 11

The text of AID Regulation 11, as amended, is given below, based on publication in the Federal Register as follows:

<u>Portion(s) Affected</u>	<u>Effective Date</u>	<u>Citation</u>
Entire regulation	February 13, 1968	33 F.R. 2918
Sections 211.3; 211.5(k)	October 7, 1970	34 F.R. 15751
Section 211.9 (in entirety)	September 19, 1974	39 F.R. 33668
Regulation Revised (in entirety)	November 1, 1976	41 F.R. 47919-47927
Regulation Revised (in entirety)	June 13, 1979	44 F.R. 34034-34045

DEPARTMENT OF STATE**Agency for International Development****22 CFR Part 211****[A.I.D. Regulation 11]****Transfer of Food Commodities for Use in Disaster Relief and Economic Development, and Other Assistance**

Sec.

- 211.1 General purpose and scope.
- 211.2 Definitions.
- 211.3 Cooperating sponsor agreements.
- 211.4 Availability of commodities.
- 211.5 Obligations of cooperating sponsors.
- 211.6 Processing, repackaging, and labeling commodities.
- 211.7 Arrangements for entry and handling in foreign country.
- 211.8 Disposition of commodities unfit for authorized use.
- 211.9 Liability for loss and damage or improper distribution of commodity.
- 211.10 Records and reporting requirements of cooperating sponsor.
- 211.11 Termination of program.
- 211.12 Waiver and amendment authority.

Authority: Secs. 105, 201, 202, 203, and 301 of Agricultural Trade Development and Assistance Act of 1954, as amended, 7 U.S.C. 1705, 1721, 1722, 1723, and 1693; 68 Stat. 454, as amended.

§ 211.1 General purpose and scope.

(a) *Terms and conditions.* This Part 211 contains the regulations prescribing the terms and conditions governing the transfer of agricultural commodities to foreign governments, U.S. voluntary agencies, or intergovernmental

organizations (except the World Food Program and United Nations Relief and Works Agency) pursuant to Title II, the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480, 83rd Congress, as amended).

(b) *Legislation.* The legislation implemented by the regulations in this part is as follows:

(1) Section 2(3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides that in furnishing food aid, the President shall:

relate United States food assistance to efforts by aid-receiving countries to increase their own agricultural production, with emphasis on development of small, family farm agriculture, and improve their facilities for transportation, storage, and distribution of food commodities.

(2) Section 201 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

(a) The President is authorized to determine requirements and furnish agricultural commodities on behalf of the people of the United States of America, to meet famine or other urgent or extraordinary relief requirements; to combat malnutrition, especially in children; to promote economic and community development in friendly developing areas, and for needy persons and nonprofit school lunch and preschool feeding programs outside the United States. The Commodity Credit Corporation shall make available to the President such agricultural commodities determined to be available under section 401 as he may request.

(b) The minimum quantity of agricultural commodities distributed under this title—(1) for fiscal years 1978 through 1980 shall be 1,600,000 metric tons, of which not less than 1,300,000 metric tons shall be distributed through nonprofit voluntary agencies and the World Food Program; (2) for fiscal year 1981 shall be 1,650,000 metric tons, of which not less than 1,350,000 metric tons shall be distributed through nonprofit voluntary agencies and the World Food Program; and (3) for fiscal year 1982 and each fiscal year thereafter shall be 1,700,000 metric tons, of which not less than 1,400,000 metric tons shall be distributed through nonprofit voluntary agencies and the World Food Program; unless the President determines and reports to the Congress, together with his reasons, that such quantity cannot be used effectively to carry out the purposes of this title: *Provided*, That such minimum quantity shall not exceed the total quantity of commodities determined to be available for disposition under this Act pursuant to section 401, less the quantity of commodities required to meet famine or other urgent or extraordinary relief requirements.

(3) Section 202 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

(a) The President may furnish commodities for the purposes set forth in section 201 through such friendly governments and such agencies, private or public, including intergovernmental organizations such as the World Food Program and other multilateral

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organizations in such manner and upon such terms and conditions as he deems appropriate. The President shall, to the extent practicable, utilize nonprofit voluntary agencies registered with, and approved by, the Advisory Committee on Voluntary Foreign Aid. If no United States nonprofit voluntary agency registered with and approved by the Advisory Committee on Voluntary Foreign Aid is available, the President may utilize a foreign nonprofit voluntary agency which is registered with and approved by the Advisory Committee. Insofar as practicable, all commodities furnished hereunder shall be clearly identified by appropriate markings on each package or container in the language of the locality where they are distributed as being furnished by the people of the United States of America. Except in the case of emergency, the President shall take reasonable precaution to assure that commodities furnished hereunder will not displace or interfere with sales which might otherwise be made.

(b)(1) Assistance to needy persons under this title shall be directed, insofar as practicable, toward community and other self-help activities designed to alleviate the causes of need for such assistance.

(2) In order to assure that food commodities made available under this title are used effectively, indigenous workers shall be employed, to the extent feasible, to provide information on nutrition and conduct food distribution programs in the most remote villages.

(3) In distributing food commodities under this title, priority shall be given, to the extent feasible, to those who are suffering from malnutrition by using means such as (A) giving priority within food programs for preschool children to malnourished children, and (B) giving priority to the poorest regions of countries.

(4) Section 203 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

The Commodity Credit Corporation may, in addition to the cost of acquisition, pay with respect to commodities made available under this title costs for packaging, enrichment, preservation, and fortification, processing, transportation, handling, and other incidental costs up to the time of their delivery free on board vessels in U.S. ports. Ocean freight charges from U.S. ports to designated ports of entry abroad; transportation from United States ports to designated points of entry abroad in the case (1) of landlocked countries, (2) where ports cannot be used effectively because of natural or other disturbances, (3) where carriers to a specific country are unavailable, or (4) where a substantial savings in cost or time can be effected by the utilization of points of entry other than ports; and charges for general average contributions arising out of the ocean transport of commodities transferred pursuant thereto.

(5) Section 204 of the Agricultural Trade Development and Assistance Act

of 1954, as amended, provides in part as follows:

Programs of assistance shall not be undertaken under this title during any calendar year which call for an appropriation of more than \$750,000,000⁴⁴ to reimburse the Commodity Credit Corporation for all costs incurred in connection with such programs (including the Corporation's investment in commodities made available) plus any amount by which programs of assistance undertaken under this title in the preceding calendar year have called or will call for appropriations to reimburse the Commodity Credit Corporation in amounts less than were authorized for such purpose during such preceding year.

In addition to other funds available for such purposes under any other act, funds made available under this title may be used in an amount not exceeding \$7,500,000 annually to purchase foreign currencies accruing under title I of this Act in order to meet costs (except the personnel and administrative costs of cooperating sponsors, distributing agencies, and recipient agencies; and the costs of construction or maintenance of any church owned or operated edifice or any other edifices to be used for sectarian purposes) designed to assure that commodities made available under this title are used to carry out effectively the purposes for which such commodities are made available or to promote community and other self-help activities designed to alleviate the causes or the need for such assistance: *Provided, however,* That such funds shall be used only to supplement and not substitute for funds normally available for such purposes from other non-United States Government sources.

(6) Section 206 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides in part as follows:

Except to meet famine or other urgent or extraordinary relief requirements, no assistance under this title shall be provided under an agreement permitting generation of foreign currency proceeds unless (1) the country receiving the assistance is undertaking self-help measures in accordance with section 109 of this Act, (2) the specific uses to which the foreign currencies are to be put are set forth in a written agreement between the United States and the recipient country, and (3) such agreement provides that the currencies will be used for increasing the effectiveness of the programs of food distribution and increasing the availability of food commodities provided under this title to the neediest individuals in recipient countries. The President shall include information on currencies used in accordance with the section in the reports required under section 408 of this Act and section 657 of the Foreign Assistance Act of 1961.

(7) Section 401 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

(a) After consulting with other agencies of the Government affected and within policies laid down by the President for implementing this Act, and after taking into account productive capacity, domestic requirements, farm and consumer price levels, commercial exports and adequate carryover, the Secretary of Agriculture shall determine the agricultural commodities and quantities thereof available for disposition under this Act, and the commodities and quantities thereof which may be included in the negotiations with each country. No commodity shall be available for disposition under this Act if such disposition would reduce the domestic supply of such commodity below that needed to meet domestic requirements, adequate carryover, and anticipated exports for dollars as determined by the Secretary of Agriculture at the time of exportation of such commodity, unless the Secretary of Agriculture determines that some part of the supply thereof should be used to carry out urgent humanitarian purposes of this Act.

(b) No agricultural commodity may be financed or otherwise made available under the authority of this Act except upon a determination by the Secretary of Agriculture that (1) adequate storage facilities are available in the recipient country at the time of exportation of the commodity to prevent the spoilage or waste of the commodity, and (2) the distribution of the commodity in the recipient country will not result in a substantial disincentive to domestic production in that country.

(8) Section 402 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides, in part, as follows:

The term "agricultural commodity" as used in this Act shall include any agricultural commodity produced in the United States or product thereof produced in the United States: *Provided, however,* That the term "agricultural commodity" shall not include alcoholic beverages, and for the purposes of title II of this Act, tobacco or products thereof. Subject to the availability of appropriations therefor, any domestically produced fishery product may be made available under this Act.

(9) Section 404 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

The programs of assistance undertaken pursuant to this Act shall be directed toward the attainment of the humanitarian objectives and national interest of the United States.

(10) Section 405 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

The authority and funds provided by this Act shall be utilized in a manner that will assist friendly countries that are determined to help themselves toward a greater degree of self-reliance in providing enough food to meet

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the needs of their people and in resolving their problems relative to population growth.

§ 211.2 Definitions.

(a) "AID" means the Agency for International Development or any successor agency, including, when applicable, each USAID. "USAID" means an office of AID located in a foreign country. "AID/W" means the Office of AID located in Washington, D.C.

(b) "CCC" means the Commodity Credit Corporation, a corporate agency and instrumentality of the United States within the U.S. Department of Agriculture.

(c) "Cooperating sponsor" means the foreign government, the U.S. registered nonprofit voluntary agency, the American National Red Cross, or the intergovernmental organization, which enters into an agreement with the U.S. Government for the use of agricultural commodities and/or funds (including local currencies), and which is directly responsible under the agreement for administration and implementation of and reporting on programs involving the use of the commodities and/or funds made available to meet the requirements of eligible recipients. The term also includes foreign nonprofit voluntary agencies registered with the Advisory Committee on Voluntary Foreign Aid entering into such agreements following a determination of unavailability of a U.S. registered nonprofit voluntary agency to provide the assistance.

(d) "Diplomatic Posts" means the offices of the Department of State located in foreign countries, and may include Embassies, Legations, and Consular offices.

(e) "Disaster relief organizations" means organizations which are authorized by AID/W, USAID, or by a Diplomatic Post to assist disaster victims.

(f) "Disaster victims" means persons who, because of flood, drought, fire, earthquake, other natural or manmade disasters, or extraordinary relief requirements, are in need of food, feed, or fiber assistance.

(g) "Duty free" means exempt from all customs duties, duties, tolls, taxes or governmental impositions levied on the act of importation.

(h) "Food for Peace Program Agreement" constitutes the agreement between the cooperating sponsor(s) and the U.S. Government. The Food for Peace Program Agreement may be specific, listing the kinds and quantities of commodities to be supplied, program objectives, criteria for eligibility of

recipients, plan for distribution of commodities, and other specific program provisions in addition to the provisions set forth in this part; or it will state that the cooperating sponsor will comply with this part and such other terms and conditions as set forth in other AID programing documents.

(i) "Institutions" means nonpenal, public or nonprofit private establishments that are operated for charitable or welfare purposes where needy persons reside and receive meals, including, but not limited to, homes for the aged, mentally and physically handicapped, refugee camps, and leprosy asylums.

(j) "Intergovernmental organizations" means agencies sponsored and supported by the United Nations organization or by two or more nations, one of which is the United States of America.

(k) "Maternal-child feeding, primary school and other child feeding programs":

(1) Maternal and preschool feeding programs means programs conducted for women of child bearing age, for mothers with preschool children, and for children below the usual enrollment age for the primary grade at public schools.

(2) School feeding programs refers to programs conducted for the benefit of children enrolled in primary schools.

(3) Other child feeding programs refers to programs designed to reach preschool or primary school age, needy children in child care centers, orphanages, institutions, nurseries, kindergartens, and similar activities.

(l) "Nonprofit" means that the residue of income over operating expenses accruing in any activity, project, or program is used solely for the operation of such activity, project, or program.

(m) "Primary School" means a public or nonprofit facility, or an activity within such facility, which has as its primary purpose the education of children at education levels which are generally comparable to those of elementary schools in the United States.

(n) "Recipient agencies" means schools, institutions, welfare agencies, disaster relief organizations, and public or private agencies whose food distribution functions are sponsored by the cooperating sponsor and who receive commodities for distribution to eligible recipients. A cooperating sponsor may be a recipient agency.

(o) "Recipients" means persons who are in need of food assistance because of their economic condition or who are otherwise eligible to receive commodities for their own use in accordance with the terms and

conditions of the Food for Peace Program Agreement.

(p) "Refugees" means persons who fled or were forced to leave their country of nationality or residence and are living in a country other than that of which they hold or have held citizenship or in a part of their country of nationality or residence other than that which they normally consider their residence, and become eligible recipients.

(q) "USDA" means the U.S. Department of Agriculture.

(r) "Voluntary Agency" means the American National Red Cross and any U.S. or foreign voluntary nonprofit agency registered with, and approved by, the Advisory Committee on Voluntary Foreign Aid of the Agency for International Development.

(s) "Welfare agencies" means public or nonprofit private agencies that provide care, including food assistance, to needy persons who are not residents of institutions.

§ 211.3 Cooperating sponsor agreements.

(a) *Food for Peace Program Agreement.* The cooperating sponsor shall enter into a written agreement with AID by assigning a Food for Peace Program Agreement which shall incorporate by reference or otherwise the terms and conditions set forth in this part.

(b) *Individual Country Food for Peace Program Agreement.* Voluntary agencies or intergovernmental organizations shall, in addition to the Food for Peace Program Agreement, enter into a separate written Food for Peace Agreement with the foreign government of each cooperating country. This agreement shall incorporate by reference or otherwise the terms and conditions set forth in this part; Provided, however, that where such written agreement is not feasible or practicable, the USAID or Diplomatic Post shall assure AID/W that the program can be effectively operated without such an agreement.

§ 211.4 Availability of Commodities.

(a) *Distribution and use of commodities.* Commodities shall be available for distribution and use in accordance with the provisions of the Food for Peace Program Agreement and this part.

(b) *Transfer of title and delivery.* (1) Unless the Food for Peace Program Agreement provides otherwise, title to the commodity shall pass to the cooperating sponsor at the time and place of delivery f.o.b. or f.a.s. vessels at the U.S. ports except that in the case of

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voluntary agencies and intergovernmental organizations, title may pass at the discretion of USDA at other points in the United States.

(2) Voluntary agencies and intergovernmental organizations shall make the necessary arrangements to accept commodities at the points of delivery designated by the USDA.

(c) *Processing, handling, transportation and other costs.* (1) The United States will pay processing, handling, transportation, and other incidental costs incurred in making commodities available to cooperating sponsors free on board (f.o.b.) or free along side (f.a.s.) vessel at U.S. ports, or free at inland destinations in the United States except as otherwise provided in this paragraph (c).

(2) Voluntary agencies and intergovernmental organizations shall reimburse the United States for expenses incurred at their request and for their accommodation which are in excess of those which the United States would have otherwise incurred in making delivery (i) at the lowest combination of inland and ocean transportation costs to the United States as determined by the United States or (ii) in sizes and types of packages announced as available.

(3) All costs and expenses incurred subsequent to the transfer of title in the United States to cooperating sponsors except as otherwise provided herein shall be borne by them. Upon the determination that it is in the interests of the program to do so, the United States may pay or make reimbursement for ocean transportation costs from U.S. ports to the designated ports of entry aboard; or to designated points of entry abroad in the case (i) of landlocked countries, (ii) where ports cannot be used effectively because of natural or other disturbances, (iii) where carriers to a specific country are unavailable, or (iv) where a substantial savings in cost or time can be effected by the utilization of points of entry other than ports.

(d) *Transportation authorization.* A transportation authorization will be issued to cover the ocean freight paid directly by the United States. When CCC contracts for ocean carriage, disbursement to the carriers shall be made by CCC upon presentation of Standard Form 1113 and three copies of 1113A (Public Voucher for Transportation Charges), together with three copies of the related onboard ocean bill of lading, one copy of which must contain the following certification signed by an authorized representative of the steamship company:

I certify that this document is a true and correct copy of the original onboard ocean bill of lading under which the goods herein described were loaded on the above-named vessel and that the original and all other copies thereof have been clearly marked as not to be certified for billing.

.....
(Name of steamship co.)
By
(Authorized representative)

Such vouchers should be submitted to: Director Ocean Transportation Division, Office of the General Sales Manager, U.S. Department of Agriculture, Washington, D.C. 20250. Except for duty, taxes and other costs exempted in § 211.7 (a) and (b) of this part, voluntary agencies booking their own vessels will be reimbursed as provided in AID Regulation 2 (Part 202 of this chapter) for ocean freight authorized by the United States upon presentation to AID/W (or to a U.S. Bank holding an AID Letter of Commitment) of proof of payment to the ocean carrier.

(e) *Shipping instructions—(1) Shipments booked by CCC.* Request for shipment of commodities shall originate with the cooperating sponsor and shall be submitted to USAID or Diplomatic Post for clearance and transmittal to AID/W. AID/W shall, through cables, airgrams or letters to USAID or Diplomatic Posts, provide cooperating sponsors (and where applicable voluntary agency headquarters) with names of vessels, expected times of arrival (ETAs), and other pertinent information on shipments booked by CCC. At the time of exportation of commodities, applicable ocean bills of lading shall be sent airmail, or by the fastest means available, by the freight forwarder, representing CCC, to USDA, to USAID or Diplomatic Posts (and where applicable to USAID Controller, voluntary agency headquarters, and voluntary agency field representatives), and to the consignee in sufficient time to advise of the arrival of the shipment.

(2) *Shipments booked by voluntary agency or intergovernmental organization.* Requests for shipment of commodities shall originate with the cooperating sponsor and shall be cleared by the USAID or Diplomatic Post before transmittal to the voluntary agency's or intergovernmental organization's headquarters for concurrence and issuance. USAID or Diplomatic Post shall promptly clear voluntary agency and intergovernmental organization requests for shipment of commodities or, if there is reason for delay or disapproval, advise the cooperating sponsor and AID/W within seven (7) days of receipt of requests for

shipment. After the voluntary agency or intergovernmental organization headquarters concurs in the request and issues the order, the original will be sent promptly to USDA with a copy to the USAID or Diplomatic Posts.

Headquarters of voluntary agencies and intergovernmental organizations which book their own shipments shall provide their representatives and the USAID or Diplomatic Posts with the names of vessels, expected times of arrival (ETAs) and other pertinent information on shipments booked. At the time of exportation of commodities, applicable ocean bills of lading shall be sent airmail or by the fastest means available by the freight forwarder, representing the voluntary agency or intergovernmental organization, to USDA to the USAID or Diplomatic Post (and where applicable to USAID Controller and voluntary agencies' representatives), and to the consignee in the country of destination in sufficient time to advise of the arrival of the shipment. However, voluntary agencies will also forward cable advice of actual exportation to their program directors in countries within the Caribbean area which are supplied by vessels having a rapid and short run from U.S. port to destination.

(f) *Tolerances.* Delivery by the United States to the cooperating sponsor at point of transfer of title within a tolerance of 5 percent (2 percent in the case of quantities over 10,000 metric tons) plus or minus, of the quantity ordered for shipment shall be regarded as completion of delivery. There shall be no tolerance with respect to the ocean carrier's responsibility to deliver the entire cargo shipped and the United States assumes no obligation for failure by an ocean carrier to complete delivery to port of discharge.

§ 211.5 Obligations of cooperating sponsor.

(a) *Plan of operation.* Each cooperating sponsor shall submit to the USAID or Diplomatic Post for the approval of AID/W, within such times and on the forms prescribed by AID/W, a description of the programs it is sponsoring or proposes to sponsor. This description will provide basic information for preparation and amendment of Food for Peace Program Agreements and Individual Country Food for Peace Program Agreements and will include program purposes and goals, criteria for measuring program effectiveness, and other specific provisions in addition to those set forth in this Part. Further, this description will include information from which it may

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be determined that the distribution of commodities in the recipient country will not result in a substantial disincentive to domestic production and that adequate storage facilities are available in the recipient country at the time of exportation of the commodity to prevent the spoilage or waste of the commodity.

(b) *Program supervision.* Cooperating sponsors shall provide adequate supervisory personnel for the efficient operation of the program, including personnel to plan, organize, implement control, and evaluate programs involving distribution of commodities, and, in accordance with AID guidelines, to make internal reviews, including warehouse inspections, physical inventories, and end-use checks. Maximum use of volunteer personnel shall be encouraged, but U.S. voluntary agencies shall be represented by a U.S. citizen, resident in the country of distribution or other nearby country approved by AID/W, who is appointed by and responsible to the voluntary agency for distribution of commodities in accordance with the provisions of this part. Intergovernmental organizations foreign nonprofit voluntary agencies and the American National Red Cross shall be represented by a person appointed by and responsible to these organizations for the supervision and control of the program in the country of distributions in accordance with the provisions of this part.

(c) *Internal Reviews—(1) Voluntary Agencies.* At intervals mutually agreed upon in writing by USAIDs or the Diplomatic Post and the voluntary agency as appropriate for good management, the voluntary agencies shall conduct or arrange to have conducted comprehensive internal reviews or a series of examinations which, when combined, will represent a complete review of the Title II program(s) under their jurisdiction. Copies of reports of these comprehensive examinations shall be submitted to USAIDs or Diplomatic Posts as required in § 211.10(b)(3).

(2) *Other Cooperating Sponsor.* In the case of programs administered by cooperating governments and intergovernmental organizations, responsibility for conducting internal audit examinations shall be determined by AID/W on a case by case basis. For records and reporting requirements for emergency programs see § 211.10(5).

(d) *Commodity requirements.* Each cooperating sponsor shall submit to the USAID or Diplomatic Post, within such times and on the form prescribed by AID/W, estimates of requirements

showing the quantities of commodities required for each program proposed. Requirements shall be summarized for all programs in the country on a form prescribed by AID/W.

(e) *Determination of eligibility.* Cooperating sponsors shall be responsible for determining that the recipients and recipient agencies to whom they distribute commodities are eligible in accordance with the terms and conditions of the Food for Peace Program Agreement and this part. Cooperating sponsor shall impose upon recipient agencies responsibility for determining that the recipients to whom they distribute commodities are eligible. Commodities shall be distributed free of charge except as provided in paragraph (i) of this section, or as otherwise authorized by AID/W.

(f) *No discrimination.* Cooperating sponsors shall distribute commodities only to eligible recipient agencies and eligible recipients without regard to nationality, race, color, sex, or religious or political beliefs, and shall impose similar conditions upon distribution by recipient agencies.

(g) *Public recognition.* To the maximum extent practicable, and with the cooperation of the host government, adequate public recognitions shall be given in the press, by radio, and other media that the commodities have been furnished by the people of the United States. At distribution centers the cooperating sponsor shall, to the extent feasible, display banners, posters, or similar media which shall contain information similar to that prescribed for containers in § 211.6(c). Recipients' individual identification cards shall, insofar as practicable be imprinted to contain such information.

(h) *Containers—(1) Markings.* Unless otherwise specified in the Food for Peace Program Agreement, when commodities are packaged for shipment from the United States, bags and other containers shall be marked with the CCC contract number or other identification, the AID emblem and the following information stated in English and, as far as practicable, in the language of the country receiving the commodity:

- (i) Name of the commodity.
- (ii) Furnished by the people of the United States of America.
- (iii) Not to be sold or exchanged (where applicable). Emblems or other identification of voluntary agencies and intergovernmental organizations may also be added.

(2) *Disposal of containers.* Cooperating sponsors may dispose of containers, other than containers

provided by carriers, in which commodities are received in countries having approved Title II programs, by sale or exchange, or distribute the containers free of charge to eligible food or fiber recipients for their personal use. If the containers are to be used commercially, the cooperating sponsor must arrange for the removal or obliteration of U.S. Government markings from the containers prior to such use.

(i) *Use of funds.* In addition to funds accruing to cooperating sponsors from the sale of containers, funds may also be available from charges made in maternal, preschool, school and other child feeding programs where payment by the recipients will be encouraged on the basis of ability to pay. Funds from these sources shall be used for payment of program costs such as transportation, storage, (including the improvement of storage facilities and the construction of warehouses) handling, insect and rodent control, rebagging of damaged or infested commodities, and other program expenses specifically authorized by AID to carry out the objectives of the program for which the commodities were furnished. Funds may also be used for payment of indigenous and/or third country personnel employed by cooperating sponsors or recipient agencies in support of Title II programs. However, such funds may not be used to purchase land for sectarian purposes, to acquire or construct church buildings, or to make alterations in existing church-owned buildings. Actual out-of-pocket expenses incurred in effecting any sale of containers may be deducted from the sales proceeds.

(j) *No displacement of sales.* Except in the case of emergency or disaster situations, the donation of commodities furnished for these programs shall not result in increased availability for export by the foreign country on the same or like commodities and shall not interfere with or displace sales in the recipient country which might otherwise take place. A country may be exempt from this proviso if circumstances warrant. Missions should seek AID/W guidance on this matter.

(k) *Commodities borrowed or exchanged.* After the date of the program approval by AID/W, but before arrival at the distribution point of the commodities authorized herein, the cooperating sponsor may, with prior approval of the USAID or Diplomatic Post, borrow same or similar commodities from local sources to meet program requirements provided that: (1) Such of the commodities borrowed as are used in accordance with the terms of

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the applicable Food for Peace Program Agreement will be replaced with commodities authorized herein on an equivalent value basis at the time and place that the exchange takes place as determined by mutual agreement between the cooperating sponsor and the USAID or Diplomatic Post except, that at the request of the cooperating sponsor the USAID or Diplomatic Post may determine that such replacement may be made on some other justifiable basis; (2) packaged commodities which are borrowed shall be appropriately identified in the language of the country of distribution as having been furnished by the people of the United States; and (3) suitable publicity shall be given to the exchange of commodities as provided in paragraph (g) of this section and containers for borrowed commodities shall be marked to the extent practicable in accordance with § 211.6(c).

(l) *Commodity Transfer.* After the date of program approval by AID/W, but before distribution of the commodities authorized herein by the recipient agency, the USAID or the Diplomatic Post, or the cooperating sponsor with prior approval of the USAID or Diplomatic Post, may transfer commodities between approved Title II programs to meet emergency disaster requirements or to improve efficiency of operation; for example, to meet temporary shortages due to delays in ocean transportation, or to provide for rapid distribution of stocks in danger of deterioration. Transfers may also be made to disaster organizations for use in meeting exceptional circumstances. Commodity transfers shall be made at no cost to the U.S. Government and with the concurrence of the cooperating sponsor or disaster organization concerned. The USAID or the Diplomatic Post may, however, provide funds to pay the costs of transfers to meet extraordinary relief requirements in which case AID/W shall be advised promptly of the details of the transfer. Commodities transferred as described above shall not be replaced by the U.S. Government unless AID/W authorizes such replacement.

(m) *Disposal of excessive stock of commodities.* If commodities are on hand which cannot be utilized in accordance with the applicable Food for Peace Program Agreement, the cooperating sponsor shall promptly advise USAID or the Diplomatic Post of the quantities, location, and condition of such commodities, and, where possible shall propose an alternate use of the excess stocks. USAID or Diplomatic Post shall determine the most

appropriate use of the excess stocks, and with prior AID/W concurrence, shall issue instructions for disposition. Transportation costs and other charges attributable to transferring commodities from one program to another within the country shall be the responsibility of the cooperating sponsor, except that in case of disaster or emergency, AID/W may authorize the use of disaster or emergency funds to pay for the costs of such transfers.

§ 211.6 Processing, repackaging, and labeling commodities.

(a) *Commercial processing and repackaging.* Cooperating sponsors may arrange for processing commodities into different end products and for packaging or repackaging commodities prior to distribution. When commercial facilities are used for processing, packaging or repackaging, cooperating sponsors shall enter into written agreements for such services. Except in the case of commodities and/or containers provided to foreign governments for sale under section 206 of the Act, the agreements must have the prior approval of USAID or Diplomatic Post in the country of distribution. Copies of the executed agreements shall be provided to the USAID or Diplomatic Post. Agreements for such services shall provide as a minimum that:

- (1) No part of the commodities delivered to the processing, packaging, or repackaging company shall be used to defray processing, packaging, repackaging, or other costs, except as provided in paragraph (a)(2) of this section.
- (2) When the milling of grain is authorized in the cooperating country, the United States will not pay any part of the processing costs, directly or indirectly, except that with the prior approval of AID/W, the value of the offal may be used to offset such part of the processing costs as it may cover.
- (3) The party providing such services shall:
 - (i) Fully account to the cooperating sponsor for all commodities delivered to the processor's possession and shall maintain adequate records and submit periodic reports pertaining to the performance of the agreement;
 - (ii) Be liable for the value of all commodities not accounted for as provided in § 211.9(g);
 - (iii) Return or dispose of the containers in which the commodity is received from the cooperating sponsor according to instructions from the cooperating sponsor; and
 - (iv) Plainly label cartons, sacks, or other containers containing the end

product in accordance with paragraph (c) of this section.

(b) *Use of cooperating sponsor facilities.* When cooperating sponsors utilize their own facilities to process, package, or repackage commodities into different end products, and when such products are distributed for consumption off the premises of the cooperating sponsor, the cooperating sponsor shall plainly label the containers as provided in paragraph (c) of this section, and banners, posters, or similar media which shall contain information similar to that prescribed in paragraph (c) of this section, shall be displayed at the distribution center. Recipients' individual identification cards shall to the maximum extent practicable be imprinted to contain such information.

(c) *Labeling.* If prior to distribution the cooperating sponsor arranges for packaging or repackaging donated commodities the cartons, sacks, or other containers in which the commodities are packed shall be plainly labeled with the AID emblem, in the language of the country in which the commodities are to be distributed with the following information:

- (1) Name of commodity;
- (2) Furnished by the people of the United States of America; and
- (3) Not to be sold or exchanged (where applicable). Emblems or other identification of voluntary agencies and intergovernmental organizations may also be added.

(d) *Where commodity containers are not used.* When the usual practice in a country is not to enclose the end product in a container, wrapper, sack, etc., the cooperating sponsor shall, to the extent practicable, display banners, posters, or other media, and imprint on individual recipient identification cards information similar to that prescribed in paragraph (a) of this section.

§ 211.7 Arrangements for entry and handling in foreign country.

(a) *Costs at discharge ports.* Except as otherwise agreed upon by AID/W and provided in the applicable shipping contract or in paragraph (d) and (e) of this section, the cooperating sponsor shall be responsible for all costs, other than those assessed by the delivering carrier either in accordance with its applicable tariff for delivery to the discharge port or in accordance with the applicable charter or booking contract. The cooperating sponsor shall be responsible for all costs for (1) distributing the commodity as provided in the Food for Peace Program Agreement to end users, and (2) for

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demurrage, detention, and overtime, and (3) for obtaining independent discharge survey reports as provided in § 211.9. The cooperating sponsor shall also be responsible for wharfage, taxes, dues, and port charges assessed against the cargo whenever assessed and collected by local authorities from the consignee, and for lighterage (when not a custom of the port), and lightening costs when assessed as a charge separate from the freight rate.

(b) *Duty, taxes, and consular invoices.* Commodities shall be admitted duty free and exempt from all taxes. Consular invoices shall not be required unless specific provisions made in the Food for Peace Program Agreement. If required, they shall be issued without cost to the cooperating sponsor or to the Government of the United States.

(c) *Storage facilities and transportation in foreign countries.* Cooperating sponsors shall make all necessary arrangements for receiving the commodities and assume full responsibility for storage and maintenance of commodities from time of delivery at port of entry abroad or, when authorized, at other designated points of entry abroad agreed upon between the cooperating sponsor and AID. Before recommending approval of a program to AID/W, USAID, or Diplomatic Post shall obtain from the cooperating sponsor, assurance that provision has been made for internal transportation, and for storage and handling which are adequate by local commercial standards. The cooperating sponsor shall be responsible for the maintenance of commodities in such manner as to assure distribution of the commodities in good condition to recipient agencies or eligible recipients.

(d) *Inland transportation in intermediate countries.* In the case of landlocked countries, transportation in the intermediate country to a designated inland point of entry in the recipient country shall be arranged by the cooperating sponsor unless otherwise provided in the Food for Peace Program Agreement or other program document. Voluntary agencies and intergovernmental organizations shall handle claims arising from loss or damage in the intermediate country, in accordance with § 211.9(e). Other cooperating sponsors shall assign any rights that they may have to any claims that arise in the intermediate country to USAID which shall pursue and retain the proceeds of such claims.

(e)(1) *Authorization for Reimbursement of Costs.* If, because of packaging damage, it is determined by a voluntary agency or intergovernmental

organization that commodities must be repackaged to ensure that the commodities arrive at the distribution point in a wholesome condition, voluntary agencies and intergovernmental organizations may incur expenses for such repackaging up to \$500.00 and such costs will be reimbursed to the voluntary agency or intergovernmental organization by CCC. If costs will exceed \$500.00 the authority to repackage and incur the costs must be approved by the USAID or Diplomatic Post in advance of repackaging unless such prior approval is specifically waived in writing by the USAID or Diplomatic Post.

(2) *Method of Reimbursement.* (i) *Repackaging Required Because of Damage Occurring Prior to or During Discharge from the Ocean Carrier.* Costs of such reconstitution or repackaging should be included, as a separate item in claims filed against the ocean carrier (see 211.9(c)). Full reimbursement of such costs up to \$500.00 will be made by CCC, Kansas City Commodity Office, upon receipt of invoices or other documents to support such costs. For amounts expended in excess of \$500.00, reimbursement will be made upon receipt of supporting invoices or other documents establishing the costs of repackaging and showing the prior approval of the USAID or Diplomatic Post to incur the costs (unless approval waived, see § 211.7(e)(1) of this chapter).

(ii) *Repackaging Required Because of Damage Caused After Discharge of the Cargo from the Ocean Carrier.* Costs of such repackaging will be reimbursed to the agency or organization by CCC (USDA-ASCS Financial Management Division, 14th & Independence Avenue, Washington, D.C. 20250) upon receipt of documentation as set forth in § 211.7(e)(2) of this chapter.

§ 211.8 Disposition of commodities unfit for authorized use.

(a) *Prior to delivery to cooperating sponsor at discharge port or point of entry.* If the commodity is damaged prior to delivery to the cooperating sponsor (other than a voluntary agency or an intergovernmental organization) at discharge port or point of entry overseas, the USAID or Diplomatic Post shall immediately arrange for inspection by a public health official or other competent authority. If the commodity is determined to be unfit for human consumption, the USAID or Diplomatic Post shall dispose of it in accordance with the priority set forth in paragraph (b) of this action. Expenses incidental to the handling and disposition of the

damaged commodity shall be paid by USAID or the Diplomatic Post from the sales proceeds, from CCC Account No. 20 FT 401 or from special Title II, Pub. L. 480 Agricultural Commodity Account. The net proceeds of sales shall be deposited with the U.S. Disbursing Officer American Embassy, for the credit of CCC Account No. 20 FT 401.

(b) *After delivery to cooperating sponsor.* If after arrival in a foreign country it appears that the commodity, or any part thereof, may be unfit for the use authorized in the Food for Peace Program Agreement, the cooperating sponsor shall immediately arrange for inspection of the commodity by a public health official or other competent authority approved by USAID or the Diplomatic Post. If no competent local authority is available, the USAID or Diplomatic Post may determine whether the commodities are unfit for human consumption, and if so may direct disposal in accordance with paragraphs (b) (1) through (4) of this section. The cooperating sponsor shall arrange for the recovery for authorized use of that part designated during the inspection as suitable for program use. If, after inspection, the commodity (or any part thereof) is determined to be unfit for authorized use the cooperating sponsor shall notify USAID or the Diplomatic Post of the circumstances pertaining to the loss or damage as prescribed in § 211.9(f). With the concurrence of USAID or the Diplomatic Post, the commodity determined to be unfit for authorized use shall be disposed of in the following order of priority:

(1) By transfer to an approved Food for Peace Program for use as livestock feed. AID/W 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:

(2) 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:

(3) By donation to a governmental or charitable organization for use as animal feed or for other nonfood use; and

(4) If the commodity is unfit for any use or if disposal in accordance with subparagraph (b) (1), (2), or (3) of this section is not possible, the commodity shall be destroyed under the observation of a representative of USAID or Diplomatic Post, if practicable, in such manner as to prevent its use for any purpose. Expenses incidental to the handling and

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disposition of the damaged commodity shall be paid by the cooperating sponsor unless it is determined by the USAID or the Diplomatic Post that the damage could not have been prevented by the proper exercise of the cooperating sponsor's responsibility under the terms of the Food for Peace Program Agreement. Actual expenses incurred in effecting any sale may be deducted from the sales proceeds and the net proceeds shall be deposited with the U.S. Disbursing Officer, American Embassy, with instructions to credit the deposit to CCC Account No. 20 FT 401. The cooperating sponsor shall promptly furnish USAID or the Diplomatic Post a written report of all circumstances relating to the loss and damage and shall include in this report, or a supplemental report, a certification by a public health official or other competent authority of the exact quantity of the damaged commodity disposed of because it was determined to be unfit for human consumption.

§ 211.9 Liability for loss and damage or improper distribution of commodities.

(a) *Fault cooperating sponsor prior to loading on ocean vessel.* If a voluntary agency or intergovernmental organization books cargo for ocean transportation and is unable to have a vessel at the U.S. port of export for loading in accordance with the agreed shipping schedule, the voluntary agencies and intergovernmental organizations shall immediately notify the USDA. The USDA will determine whether the commodity shall be (1) moved to another available outlet; (2) stored at the port for delivery to the voluntary agencies or intergovernmental organization until a vessel is available for loading; or (3) disposed of as the USDA may deem proper. When additional expenses are incurred by CCC as a result of a failure of the voluntary agency or intergovernmental organization, or their agent; (4) to meet the agreed shipping schedule, or (5) to make necessary arrangements to accept commodities at the points of delivery designated by CCC, and it is determined by CCC that the expenses were incurred because of the fault or negligence of the voluntary agency or intergovernmental organization, or their agents, the voluntary agency or intergovernmental organization shall reimburse CCC for such expenses or take such action as directed by CCC.

(b) *Fault of others prior to loading on ocean vessel.* Upon the happening of any event creating any rights against a warehouseman, carrier, or other person for the loss of or damage to a

commodity occurring between the time title is transferred to a voluntary agency or intergovernmental organization and the time the commodity is loaded on board vessel at designated port of export, the voluntary agencies or intergovernmental organizations shall immediately notify CCC and promptly assign to CCC any rights to claims which may accrue to them 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 and prosecute, and retain the proceeds of all claims for such loss or damage.

(c) *Ocean carrier loss and damage—*
(1) *Survey and outturn reports.* (i) Cooperating sponsors shall arrange for an independent cargo surveyor to attend the discharge of the cargo and to count or weigh the cargo and examine its condition, unless USAID or the Diplomatic Post determines that such examination is not feasible, or if CCC has made other provisions for such examinations and reports. The surveyor shall prepare a report of his findings showing the quantity and condition of the commodities discharged. The report shall also show the probable cause of any damage noted, and set forth the time and place when the examination was made. If practicable, the examination of the cargo shall be conducted jointly by the surveyor, the consignee, and the ocean carrier, and the survey report shall be signed by all parties. Customs receipts, port authority reports, shortlanding certificates, cargo boat notes, stevedore's tallies, etc., where applicable, shall be obtained and furnished with the report of the surveyor. The cooperating sponsor shall obtain a certification by public health official or similar competent authority as to (a) the condition of the commodity in any case where a damaged commodity appears to be unfit for its intended use; and (b) a certificate of disposition in the event the commodity is determined to be unfit for its intended use. Such certificates shall be obtained as soon as possible after discharge of the cargo. In any case where the cooperating sponsor can provide a narrative chronology or other commentary to assist in the adjudication of ocean transportation claims, such information should be forwarded. Cooperating sponsors shall prepare such a statement in any case where the loss is estimated to be in excess of \$5,000.00. All documentation shall be in English or supported by an English translation and shall be forwarded as set forth in paragraph (c)(1)(iii) and (iv) of this section. The cooperating sponsor may, at his 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 the names and addresses of individuals who were present at the time of discharge and during survey and can verify the quantity lost or damaged. In the case of bulk grain shipments, the cooperating sponsor shall obtain the services of an independent surveyor to (c) observe the discharge of the cargo, (b) report on discharging techniques and furnish information as to whether cargo was carefully discharged in accordance with the customs of the port, (c) estimate the quantity of cargo, if any, lost during discharge through carrier negligence, (d) advise quality of sweepings, (e) obtain copies of port and/or vessel records, if possible, showing quantity discharged, (f) provide immediate notification to cooperating sponsor if additional services are necessary to protect cargo interests or if surveyor has reason to believe that the correct quantity was not discharged. The cooperating sponsor, in the case of damage to bulk grain shipments, shall obtain and provide the same documentation regarding quality of cargo as set forth in § 211.8(a) of this chapter and paragraph (c)(1)(i) of this section. In the case of shipments arriving in container vans, cooperating sponsors shall require the independent surveyor to list the container van numbers and sea 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.

(iii) Cooperating Sponsors shall send copies of all reports and documents pertaining to the discharge of commodities to USDA.

(iv) CCC will reimburse the voluntary agencies and intergovernmental organizations for the costs incurred by them in obtaining the services of an independent surveyor to conduct examinations of the cargo and render the report set forth above. Reimbursement will be made when the surveyor's invoice or other documents that establish the survey cost are furnished to CCC. However, CCC will not reimburse voluntary agencies or intergovernmental organizations for the costs of only a delivery survey, in the absence of a discharge survey, or for any other survey not taken contemporaneously with the discharge of the vessel, unless such deviation from the documentation requirements of

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§ 211.9(c)(1) is justified to the satisfaction of CCC.

(2) *Claims against ocean carriers.* (i) Irrespective of transfer of title to the commodities, CCC shall have the right to initiate and prosecute, and retain the proceeds of, all claims against ocean carriers for cargo loss and damage or cargo for which CCC contracts for ocean transportation.

(ii)(a) Unless otherwise provided in the Food for Peace Program Agreement or other program document, voluntary agencies and intergovernmental organizations shall file notice of any cargo loss and damage with the carrier immediately upon discovery of any such loss and damage and shall promptly initiate claims against the ocean carriers for cargo loss and damage, and shall take all necessary action to obtain restitution for losses within any applicable periods of limitations and shall transmit to CCC copies of all such claims. However, the voluntary agencies or intergovernmental organizations need not file a claim when the cargo loss is not in excess of \$25, or in any case when the loss is in excess of \$25, but not in excess of \$100 and it is determined by the voluntary agencies or intergovernmental organizations that the cost of filing and collecting the claim will exceed the amount of the claim. The voluntary agencies and intergovernmental organizations shall transmit to CCC copies of all claims filed with the ocean carriers for cargo loss and damage, as well as information and/or documentation on shipments when no claim is to be filed. When General Average has been declared, action will be taken by the voluntary agencies of intergovernmental organizations to file or collect claims for loss or damage to commodities. (See paragraph (c)(2)(iii) of this section.)

(b) *Determination of value.* When payment is made for commodities misused, lost or damaged, the value shall be determined on the basis of the domestic market price at the time and place the misuse, loss or damage occurred, or, in case it is not feasible to obtain or determine such market price, 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 Government of the United States in making delivery to the cooperating sponsor. When the value is determined on a cost basis, the voluntary agencies or intergovernmental organizations may add to the value any provable costs they have 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 and/or damage claims, at the request of the cooperating sponsor and/or upon the recommendation of the USAID or diplomatic Post, AID W may determine that such value may be determined on some other justifiable basis. When replacements are made, the value of commodities misused, lost or damaged, shall be their value at the time and place the misuse, loss, or damage occurred and the value of the replacement commodities shall be their value at the time and place replacement is made.

(c) Amounts collected by voluntary agencies and intergovernmental organizations on claims against ocean carriers not in excess of \$100 may be retained by the voluntary agencies or intergovernmental organizations.

On claims involving loss or damage having a value in excess of \$100 the voluntary agencies or intergovernmental organizations may retain from collections received by them, the larger of (1) the amount of \$100 plus 10 percent of the difference between \$100 and the total amount collected on the claim, up to a maximum of \$350, or (2) actual administrative expenses incurred in collection the claim; provided retention of such expenses is approved by CCC. Collection costs shall not be deemed to include attorneys fees, fees of collection agencies, and the like. In no event will collection costs in excess of the amount collected on the claim be paid by CCC. The voluntary agencies or intergovernmental organizations may also retain from claim recoveries remaining after allowable deductions for administrative expenses of collection, the amount of any special charges, such as handling, packing, and insurance costs, which the voluntary agency or intergovernmental organization has incurred on the lost or damaged commodity and which are included in the claim and paid by the liable party.

(d) The voluntary agencies and intergovernmental organizations 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 carriers liability. Approval of such changes by CCC is not required regardless of amount. However copies of redetermined claims and supporting documentation or information shall be furnished to CCC.

(e) Voluntary agencies of intergovernmental organizations may negotiate compromise settlements of

claims regardless of the amount thereof, except that proposed compromise settlements of claims having a value in excess of \$5,000 shall not be accepted until such action has been approved in writing, by CCC. When a claim is compromised, the voluntary agency or intergovernmental organization may retain from the amount collected, the amounts authorized in (c)(2)(ii)(c) of this section and in addition, an amount representing the percentage of the special charges described in (c)(2)(ii)(c) of this section as the compromised amount is to the full amount of the claim. When a claim is not in excess of \$600, the voluntary agencies or intergovernmental organizations may terminate collection activity on the claim according to the standards set forth in 4 CFR 104.3 (1972). Approval of such termination by CCC is not required but the voluntary agencies or intergovernmental organizations shall notify CCC when collection activity on a claim is terminated.

(f) All amounts collected in excess of the amounts authorized herein to be retained shall be remitted to CCC. For the purpose of determining the amount to be retained by the voluntary agencies or intergovernmental organizations 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. If a voluntary agency or intergovernmental organization 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 liable party or parties, the rights of the voluntary agencies or intergovernmental organizations to the claim shall be assigned 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. Voluntary agencies or intergovernmental organizations shall promptly assign their claim rights to CCC upon request. In the event CCC effects collection or other settlement of the claim after the rights of the voluntary agency or intergovernmental organization to the claim have been assigned to CCC, CCC shall, except as shown below, pay to the voluntary agency or intergovernmental organization the amount the agency or organization would have been entitled to retain had they collected the same amount. However, the additional 10

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percent on amounts collected in excess of \$100 will be payable only if CCC determines that reasonable efforts were made to collect the claim prior to the assignment, or if payment is deemed to be commensurate with the extra efforts exerted in further documenting claims. Further, if CCC determines that the documentation requirements of § 211.9(c)(1) have not been fulfilled and the lack of such documentation has not been justified to the satisfaction of CCC, CCC reserves the right to deny payment of all allowances to the voluntary agency.

(g) When voluntary agencies or intergovernmental organizations fail to file claims, or permit claims to become time-barred, or fail to provide for the right of CCC to assert such claims, as provided in this § 211.9 and it is determined by CCC that such failure was due to the fault or negligence of the voluntary agency or intergovernmental organization, the agency or organization shall be liable to the United States for the cost and freight (C&F) value of the commodities lost to the program.

(iii) If a cargo loss has been incurred on a voluntary agency or intergovernmental organization shipment, and general average has been declared, the voluntary agency or intergovernmental organization shall furnish to the Chief Claims and Collections Division, Kansas City ASCS, Commodity Office, P.O. Box 8377, Shawnee Mission, Kansas, ZIP 66208, with a duplicate copy to AID/W-PDC/FFP/POD, (a) copies of booking confirmations and the applicable on-board bill(s) of lading, (b) the related outturn or survey report(s), (c) evidence showing the amount of ocean transportation charges paid to the carrier(s), and (d) an assignment to CCC of the cooperating sponsor's rights to the claim(s) for such loss.

(d) *Fault of cooperating sponsor in country of distribution.* If the cooperating sponsor improperly distributes a commodity or knowingly permits it to be used for a purpose not permitted under the Food for Peace Program Agreement or this part, or causes loss or damage to a commodity through any act or omission or fails to provide proper storage, care, and handling, the cooperating sponsor shall pay to the United States the value of the commodities lost, damaged, or misused (or may, with prior USAID approval, replace such commodities with similar commodities of equal value), unless it is determined by AID that such improper distribution or use, or such loss or damage, could not have been prevented by proper exercise of the cooperating

sponsor's responsibility under the terms of the agreement. Normal commercial practices in the country of distribution shall be considered in determining that there was a proper exercise of the cooperating sponsor's responsibility. Payment by the cooperating sponsor shall be made in accordance with paragraph (b) of this section.

(e) *Fault of others in country of distribution and in intermediate country.* (1) In addition to survey and/or outturn reports to determine ocean carrier loss and damage, the cooperating sponsor shall, in the case of land-locked countries, arrange for an independent survey at the point of entry into the country and to make a report as set forth in § 211.9(c)(1). CCC will reimburse the cooperating sponsor for the costs of survey as set forth in § 211.9(c)(1)(iv).

(2) Upon the happening of any event creating any rights against a warehouseman, carrier or other person for the loss of, damage to, or misuse of any commodity, the cooperating sponsor shall make every reasonable effort to pursue collection of claims against the liable party or parties for the value of the commodity lost, damaged, or misused and furnish a copy of the claim and related documents to USAID or Diplomatic Post. Cooperating sponsors who fail to file or pursue such claims shall be liable to AID for the value of the commodities lost, damaged, or misused: *Provided, however,* That the cooperating sponsor may elect not to file a claim if the loss is less than \$300 and such action is not detrimental to the program. Cooperating sponsors may retain \$100 of any amount collected on a claim. In addition, cooperating sponsors may, with the written approval of the USAID or Diplomatic Post, retain special costs such as legal fees that they have incurred in the collection of a claim. Any proposed settlement for less than the full amount of the claim must be approved by the USAID or Diplomatic Post prior to acceptance. When the cooperating sponsor has exhausted all reasonable attempts to collect a claim, it shall request the USAID or Diplomatic Post to provide further instructions.

(f) *Reporting losses to USAID or Diplomatic Post.* The cooperating sponsor shall promptly notify USAID or the Diplomatic Post in writing of the circumstances pertaining to any loss, damage, or misuse occurring within the country of distribution or intermediate country and shall include information as to the name of the responsible party; kind and quantities of commodities; size, and type of containers; the time and place of misuse, loss, or damage; the

current location of the commodity; and the Food for Peace Program Agreement number, the CCC contract numbers, if known, 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. If any of the above information is not available, an explanation of its unavailability shall be made by the cooperating sponsor. Proceeds from sale and the disposition of the proceeds if any, should also be reported.

(g) *Handling claims proceeds.* Claims against ocean carriers shall be collected in U.S. dollars (or in currency in which freight is paid, or a pro rata share of each) and shall be remitted (less amounts authorized to be retained) by voluntary agencies and intergovernmental organizations to CCC. Claims against voluntary agencies and intergovernmental organizations shall be paid to CCC or AID/W in U.S. dollars. Amounts paid by other 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 CCC Account No. 12X4336, or in local currency at the official exchange rate applicable to dollar imports at the time of deposit with instructions to credit the deposit to Treasury sales account 20FT401.

(h) *General average.* CCC shall (1) be responsible for settling general average and marine salvage claims, (2) retain the authority to make or authorize any disposition of commodities which have not commenced ocean transit or of which the ocean transit is interrupted, and receive and retain any monetary proceeds resulting from such disposition, (3) in the event of a declaration of general average, initiate and prosecute, and retain all proceeds of, cargo loss and damage claims against ocean carriers and (4) receive and retain any allowance in general average. CCC will pay any general average or marine salvage claims determined to be due.

§ 211.10 Records and reporting requirements of cooperating sponsor.

(a) *Records.* Cooperating sponsors shall maintain records and documents in a manner which will accurately reflect all transactions pertaining to the receipt, storage, distribution, sale and inspection of commodities. This shall include a periodic summary report and records of receipt and disbursement of any funds accruing from the operation of the

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program. Such records shall be retained for a period of 3 years from the close of the U.S. fiscal year to which they pertain.

(b) *Reports.* Cooperating sponsors shall submit reports to the USAID or Diplomatic Post, at such times and on such forms as prescribed by AID. The following is a list of the principal types of reports that are to be submitted:

(1) Periodic summary reports showing receipt, distribution, and inventory of commodities and proposed schedules of shipments or call forwards.

(2) In the case of Title II sales agreements under section 206 of the Act, the foreign government is directly responsible for reporting on programs involving the use of funds for purposes specified in the agreement.

(3) Reports relating to progress and problems in the implementation and operation of the program, and inspection reports, as may be required from time to time by AID/W, or as may be agreed upon between the USAID or Diplomatic Post and the cooperating sponsor and approved by AID/W.

(4) Reports of all comprehensive internal reviews prepared in accordance with § 211.5(c) shall be submitted to the USAID or Diplomatic Post for review as soon as completed and in sufficient detail to enable the USAID or Diplomatic Post to assess and to make recommendations as to the ability of the cooperating sponsors to effectively plan, manage, control and evaluate the Food for Peace programs under their administration.

(5) *Emergency programs.* At the time that an emergency program under Pub. L. 480, Title II is initiated, either on a government-to-government basis or through an intergovernmental organization or a voluntary agency, the Mission should (i) make a determination regarding the ability of the cooperating sponsor to perform the record-keeping required by § 211.10, and (ii) in those instances in which those specific record-keeping requirements cannot be followed, due to emergency circumstances, specify exactly which essential information will be recorded in order to account fully for Title II commodities.

(c) *Inspection and audit.* Cooperating sponsors shall cooperate with and give reasonable assistance to U.S. Government representatives to enable them at any reasonable time to examine activities of the cooperating sponsors, processors, or others, pertaining to the receipt, distribution, processing, repackaging, and use of commodities by recipients; to inspect commodities in storage, or the facilities used in the

handling or storage of commodities; to inspect and audit records, including financial records and reports pertaining to storage, transportation, processing, repackaging, distribution and use of commodities; the deposit of and use of any Title II generated local currencies; to review the overall effectiveness of the program as it relates to the objectives set forth in the Food for Peace Program Agreement; and to examine or audit the procedure and methods used in carrying out the requirements of this Part. Inspections and audits of Title II emergency programs will take into account the circumstances under which such programs are carried out.

§ 211.11 Termination of program.

All or any part of the assistance provided under the program, including commodities in transit, may be terminated by AID at its discretion if the cooperating sponsor fails to comply with the provisions of the Food for Peace Program Agreement, this part, or if it is determined by AID that the continuation of such assistance is no longer necessary or desirable. Under such circumstances title to commodities which have been transferred to the cooperating sponsor shall at the written request of USAID, the Diplomatic Post, or AID/W, be retransferred to the U.S. Government by the cooperating sponsor. Any excess commodities on hand at the time the program is terminated shall be disposed of in accordance with § 211.5(1). If it is determined that any commodity to be supplied under the Food for Peace Program Agreement is no longer available for Food for Peace Programs, such authorization shall terminate with respect to any commodities which, as of the date of such determination have not been delivered f.o.b. or f.a.s. vessel, provided every effort will be made to give adequate advance notice to protect cooperating sponsors against unnecessarily booking vessels.

§ 211.12 Waiver and amendment authority.

AID may waive, withdraw, or amend, at any time, any or all of the provisions of this Part 211 if such provision is not statutory and if AID determines it is in the best interest of the U.S. Government to do so. Any cooperating sponsor which has failed to comply with the provisions of this part or any instructions or procedures issued in connection herewith, or any agreements entered into pursuant hereto may at the discretion of AID be suspended or disqualified from further participation in any distribution program. Reinstatement

may be made at the option of AID. Disqualification shall not prevent AID from taking other action through other available means when considered necessary.

Dated: May 31, 1979.

Robert H. Nooter,
Acting Administrator.

[FR Doc. 79-18317 Filed 6-12-79; 8:45 am]

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E.O. 12356: N/A
TAGS: N/A

SUBJECT: PL 480 TITLE II ANNUAL PROGRESS REPORT
REQUIREMENTS FOR PVO FOOD AID ASSISTANCE PROGRAMS

REF (A) 55 STATE 334505

1. SUMMARY. THIS CABLE OUTLINES FOR MISSIONS AND COOPERATING SPONSORS OF PL 480 TITLE II PROGRAMS A FRAMEWORK FOR AN ANNUAL TITLE II PROGRESS REPORT REQUIRED FROM EACH COOPERATING SPONSOR BY MAY 15, 1988. FY 1988 AER GUIDANCE FOR INDIVIDUAL COUNTRIES WILL BE ISSUED SHORTLY. THE DUE DATE FOR AER SUBMISSIONS IS ALSO MAY 15. THE PROGRESS REPORT SHALL INCLUDE: (1) A REVIEW OF THE ACHIEVEMENTS OF THE PROGRAM OVER THE PAST 12 MONTHS IN RELATION TO SPECIFIED GOALS AND OBJECTIVES; (2) REVISIONS IN PROGRAM DESIGN/IMPLEMENTATION AND MULTI YEAR OPERATIONAL PROGRAM PLANS RESULTING FROM THIS ANALYSIS OR FROM CHANGING CIRCUMSTANCES IN THE COUNTRY. MISSIONS ARE EXPECTED TO REVIEW ALL TITLE II PROGRESS REPORTS AND COMMENT ON THEM TO FVA/FFP/ANE IN AN ATTACHMENT TO THE REPORT OR VIA CABLE. THIS DOCUMENT IS INCREASINGLY IMPORTANT GIVEN A TIGHT BUDGET SITUATION AND MORE CAREFUL SCRUTINY OF PROGRAM RESULTS BY THE DCC TITLE II WORKING GROUP. WE UNDERSTAND THAT THE

DEADLINES ARE SHORT AND APPRECIATE YOUR BEST EFFORTS. FOR THOSE COUNTRIES ON PHASEOUT SCHEDULES (EGYPT, SRI LANKA, TUNISIA, WEST BANK/GAZA), AN ABBREVIATED PROGRESS REPORT WILL BE SUFFICIENT. MOROCCO'S PROGRESS REPORT SHOULD ADDRESS STATUS OF COMPENSATORY FEEDING START-UP, INCLUDING DISPOSITION OF COMMODITIES, MONETIZATION, CRS/COM MANAGEMENT, AND PROGRESS IN EACH PROGRAM CATEGORY. END SUMMARY.

2. AS YOU ARE AWARE, SECTION 211.5 OF A.I.D. REGULATION 11 SETS OUT THE REQUIREMENTS FOR A PLAN OF OPERATION FOR ALL PL 480 TITLE II COOPERATING SPONSORS. THIS SAME INFORMATION, PLUS MORE DETAILED GUIDANCE, IS CONTAINED

IN REF (A) AND INDIVIDUAL COUNTRY TITLE II PROGRAM GUIDELINE CABLES OF LAST YEAR. THE PROGRESS REPORT IS A SELF-EVALUATION BY THE COOPERATING SPONSOR OF THE PAST YEAR'S ACHIEVEMENTS. THIS ANNUAL PROGRESS REPORT SHOULD SERVE AS A HELPFUL WORKING DOCUMENT FOR BOTH THE COOPERATING SPONSORS AND MISSIONS IN REVIEWING PROGRAM OPERATIONS AS COMPARED WITH THE GOALS AND OBJECTIVES CONTAINED IN THE MULTIYEAR OPERATIONAL PLAN. FOR THOSE PROGRAMS WITHOUT A MULTIYEAR OPERATIONAL PROGRAM PLAN, SUCH AS CRS/PHILIPPINES, THIS IS AN OPPORTUNITY TO DEVELOP A MORE SUBSTANTIAL PLAN BASED ON PROGRESS REPORT FINDINGS AND FOR THOSE WITH AN APPROVED MYOP IT IS AN OPPORTUNITY TO REVISE OR UPDATE IT.

3. PROGRESS REPORTING. THE PROGRESS REPORT SHOULD PROVIDE AN OVERVIEW OF PROGRAM RESULTS OVER THE PAST 12 MONTHS, SUMMARIZING IN SPECIFIC TERMS HOW THE PROGRAM IS PROGRESSING AND WHETHER IT IS ACHIEVING ITS OBJECTIVES AND BENCHMARKS AS PLANNED. IF THE MYOP WAS WELL CONCEIVED AND IF THE DATA COLLECTION MECHANISMS HAVE BEEN INSTALLED AND ARE OPERATING, IT SHOULD BE EASY TO REPORT WHAT OBJECTIVES AND BENCHMARKS HAVE BEEN ACHIEVED. OF SPECIAL IMPORTANCE THIS YEAR IS AN ASSESSMENT OF THE ADEQUACY OF GOALS AND QUANTIFIABLE OBJECTIVES AND BENCHMARKS SPECIFIED IN MYOPS AND HOW WELL DATA COLLECTION SYSTEMS ARE FUNCTIONING. ALL REPORTS SHOULD INCLUDE FOR EACH COOPERATING SPONSOR PROJECT:

A. STATEMENT OF PROGRAM/PROJECT OBJECTIVES AS INDICATED IN THE MULTIYEAR OPERATIONAL PROGRAM PLAN.

B. STATEMENT OF BENCHMARKS FOR PROJECT PERFORMANCE FOR THIS YEAR.

C. DISCUSSION OF PROJECT PROGRESS AND ACHIEVEMENTS

COMPARED TO STATED OBJECTIVES AND BENCHMARKS. SPECIFICALLY INDICATE WHAT DATA HAVE BEEN USED TO SUPPORT YOUR CONCLUSIONS AND HOW THIS INFORMATION WAS COLLECTED.

DISCUSSION SHOULD INCLUDE THE FOLLOWING ISSUES:

(1) DEVELOPMENT IMPACT: INDICATE WHAT IMPACT THE PROJECT IS HAVING ON RELEVANT INDICATORS SUCH AS NUTRITION, CHILD SURVIVAL, EMPLOYMENT OR SCHOOL ATTENDANCE.

(2) COVERAGE OF TARGET POPULATION AND ASSESSMENT OF TARGETING STRATEGIES USED TO ACCOMPLISH OBJECTIVES.

(3) ROLE AND ADEQUACY OF THE RATION FOR REACHING PROJECT OBJECTIVES.

(4) ASSESSMENT OF EFFECTIVENESS OF PROGRAM IMPLEMENTATION.

(5) COMPLEMENTARY INPUTS FROM A.I.D. AND OTHER SOURCES. ADEQUACY AND EFFECTIVENESS OF COMPLEMENTARY INPUTS, I.E., TRAINING, GROWTH MONITORING, EDUCATION, MANPOWER FROM HOST GOVERNMENT, DONORS, COOPERATING SPONSOR, FOR REACHING PROJECT OBJECTIVES.

(6) TO WHAT EXTENT IS THE PROGRAM INTEGRATED WITH USAID, HOST COUNTRY, OTHER COOPERATING SPONSORS PROGRAMS?

(7) LOGISTICS OPERATION: IDENTIFY ANY PARTICULAR PROBLEMS CONCERNING THE TIMELINESS OF FOOD ARRIVALS TO COUNTRY, INTERNAL TRANSPORTATION, STORAGE, AND/OR

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DISTRIBUTION. DESCRIBE ANY SPECIAL FOOD DISTRIBUTION MECHANISMS OR STRATEGIES USED, FOR EXAMPLE, DURING THE RAINY SEASON.

(8) COST CONSIDERATIONS: PLEASE INDICATE IF PROGRAM COSTS HAVE INCREASED OR DECREASED DURING THE PAST YEAR. HOW HAVE INCREASED COSTS BEEN COVERED? IF YOU MONETIZED FOOD DURING THE PAST YEAR, INDICATE HOW THE FOOD WAS SOLD, THE PRICE RECEIVED FOR THE COMMODITIES, AND HOW THE LOCAL CURRENCIES WERE USED. ALSO DISCUSS ANY APPROVED USES OF RECIPIENT CONTRIBUTIONS AND EMPTY CONTAINER FUNDS.

D. INDICATE PROGRESS ON FOLLOWUP TO RECOMMENDATIONS OF RECENT (LAST 3 YEARS) EVALUATIONS.

E. DISCUSSION OF CONSTRAINTS TO ACHIEVING PROJECT OBJECTIVES AND THIS YEAR'S BENCHMARKS.

F. DESCRIPTION OF STRATEGIES USED OR PLANNED FOR OVERCOMING CONSTRAINTS.

G. DESCRIPTION OF ANY MODIFICATIONS NEEDED IN PROJECT DESIGN AND/OR IMPLEMENTATION. DO OBJECTIVES OR BENCHMARKS NEED TO BE REVISED, CONSIDERING THIS YEAR'S ACCOMPLISHMENT AND CONSTRAINTS? PLEASE SPECIFY ANY FUTURE PHASEDOWN/OUT PLANS AND ANY CHANGES IN CURRENT PHASEDOWN STRATEGIES.

4. ALL REPORTS ARE TO BE SENT TO FVA/FFP/ANE NO LATER THAN MAY 15. THEY WILL SERVE AS AN IMPORTANT PART OF THE WASHINGTON REVIEW PROCESS FOR ALL TITLE II REQUESTS. IT WILL ALSO BE THE BASIS OF OUR DISCUSSIONS WITH THE DCC TITLE II WORKING GROUP. GIVEN THE TIGHT TITLE II BUDGET SITUATION IN FY 89 AND THE CLOSER DCC SCRUTINY OF PROGRAM CONTENT AND RESULTS, THE PROGRESS REPORT IS AN INCREASINGLY CRITICAL DOCUMENT IN RESOURCE ALLOCATION DECISIONS.

5. FVA/FFP/ANE REQUESTS THAT MISSIONS REVIEW THE ANNUAL PROGRESS REPORT WITH THE COOPERATING SPONSOR AND SEND THEIR COMMENTS TO FVA/FFP/ANE AS AN ADDENDUM TO THE REPORT OR IN CABLE FORM NO LATER THAN MAY 15, 1988. SHULTZ

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ANNEX J

Background Paper and Guide to Addressing
Bellmon Amendment Concerns
on Potential Food Aid Disincentives and Storage

Agency for International Development
Bureau for Food for Peace and Private Voluntary Assistance
Washington, D. C.

July 31, 1985

Background Paper and Guide to Addressing Bellmon Amendment
Concerns on Potential Food Aid Disincentives and Storage

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Background Paper and Guide to Addressing Bellmon Amendment
Concerns on Potential Food Aid Disincentives
and Adequacy of Storage Facilities

I. Summary

This paper provides a background discussion of the potential disincentive effects of food aid on the recipient country's domestic production and marketing. It also presents guidelines to strengthen Country Team analyses supporting the "Bellmon Determination" made by the Secretary of Agriculture. This determination must conclude that, at the time of export of PL 480 commodities, local facilities will be adequate to store the commodities and no substantial disincentive to domestic production and marketing will result. The determination is required for all food aid programs - Titles I, II and III.

The purpose of this paper is to insure that there is sufficient information for the Secretary of Agriculture to make a "Bellmon" determination. It's anticipated that substantial disincentive issues will be found in only a few countries. Thus, for most countries, analyses should include only enough information and data to show that substantial disincentives aren't likely to occur. As many missions already submit sufficient analyses, little if any additional analysis beyond what is now being done will be required.

Present Bellmon reporting procedures will continue. However, Missions requesting PL 480 programs will also report annually in their "Action Plan" submissions if the volume of food aid or any other factors lead the Country Team to suspect the possibility of substantial disincentive effects attributable to food aid. If disincentive effects are suspected, the Country Team should indicate that a detailed analysis will be completed prior to the fiscal year the commodities will be shipped. This will allow time to complete the analysis and identify appropriate self-help measures or other corrective actions without unduly delaying PL 480 negotiations.

If a country has been identified as needing more detailed analysis because of possible disincentive issues, Country Teams are encouraged to undertake the analysis in conjunction with the CDSS/CDSS Update preparation when possible. If PL 480 negotiations are to be used to encourage policy changes, these should be fully discussed in the CDSS/CDSS Update.

The paper is organized as follows: Research findings are first discussed which indicate the conditions characteristic of disincentive situations. Next, the paper outlines analytical requirements and describes the information to be included in the analysis. Ways are then suggested for designing food aid programs to produce "incentive effects" and minimize disincentive effects on local agricultural production and marketing. The paper concludes with a listing of specific criteria for judging the adequacy of storage and handling facilities.^{1/}

The analysis required depends upon the relative share of PL 480 food aid to total staple food consumption. As the proportion rises, the potential for possible disincentive effects rises and the level of analysis should increase. Where the proportion approaches 10 percent or more over the past five years, a thorough examination may be required. Statements in the annual Action Plan regarding the disincentive question should include reference to this percentage.

It's recognized that other variables in addition to the volume of food aid bear on whether PL 480 food aid will have a positive or negative impact on local agricultural production. Such variables might include the extent to which food consumption is commercialized, the timeliness of food aid (and commercial import) arrivals, the price elasticities of demand and supply, the ability of low income households to acquire food, and the degree of substitution among different food commodities. Thus, there may be situations where even though the PL 480 food aid is minor, disincentive effects may still occur. In such cases, more detailed analysis is encouraged.

In addition to strengthening the Bellmon Determination, the analysis should be useful in preparing the Mission's country development strategy, assessing the host country's agriculture sector, developing a policy dialogue, defining self-help measures and identifying local currency uses. The increasing integration of food aid with non-food aid broadens the relevance and importance of the analysis, especially for those country programs where increased food and agricultural production are primary objectives.

II. Background

Since the early 1960's, considerable controversy has arisen over the potential disincentive effects of food aid on local agricultural production and marketing. Congressional concern about disincentives resulted in the 1977 Bellmon Amendment, Section 401(b), to Public Law 480. Congress' special concern over the adequacy of food storage and handling facilities in PL 480 recipient countries was also addressed in this amendment.

Section 401(b) of PL 480 requires that before PL 480 food aid can be supplied, the Secretary of Agriculture must determine that:

- 1) adequate storage facilities are available in the recipient country at the time of exportation of the commodity to prevent the spoilage or waste of the commodity, and
 - 2) the distribution of the commodities in the recipient country will not result in a substantial disincentive to or interference with domestic production or marketing in that country.
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Posts have complied with the amendment by submitting data, analyses and findings based on examinations of these concerns prior to PL 480 food shipments.

Although the Bellmon Determination has been a feature of food aid programming since 1977, analyses supporting the Bellmon Determinations have varied in quality and content. This guidance responds to the need for specific criteria to judge potential disincentive effects and the adequacy of storage facilities. It is also consistent with the USG's priority for increasing the developmental impact of PL 480.^{2/}

III. The Disincentive Issue

Critics concerned over the potential disincentive effects of food aid argue that the increase in food supplies provided by food aid:

- 1) depresses prices received by host country farmers, and
- 2) causes inadequate host government agricultural policies.

Together these lead to decreases in food production from what otherwise would have occurred.

In addition to this basic argument, critics charge that food aid may cause a change in eating habits that creates a permanent dependency on food imports. This occurs by shifting demand from domestic to imported foods which can't be competitively produced at home.

Lastly, critics are concerned that food aid may act as a disincentive when it fails to reach those most in need. It's pointed out that low income groups spend a high proportion of any incremental income or other resource transfer on food. Therefore, when food aid is targeted to these groups, its potential price depressing effect is offset by the demand of the poor for food. If, instead, the food ends up in the hands of more well-to-do consumers, the freed income is usually spent on non-food consumption. In this case, critics argue that a disincentive effect results because additional demand for food is not created to offset the potential price depressing effect of the additional food supply.

A review of the development literature suggests that food aid has had far less disincentive effects upon food production than critics claim.^{3/} On the price disincentive issue, empirical studies show that in a number of countries, including some of the larger recipients in the 1960s, food aid either had no disincentive effect or the disincentive effect was offset by incentive effects on other crops. In some cases, the food aid was only partly additional to normal commercial levels,^{4/} and the effect on market prices for locally produced grain was not significant. In other cases, the potential disincentive effect

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was offset by policy interventions which created additional demand for food among low-income groups or supported incentive prices for producers with sales proceeds of the food aid.^{5/}

The literature does not reflect a consistent, rigorous definition of what constitutes an adverse "policy effect" attributed to food aid. Broadly defined, this effect occurs when food aid encourages or enables the recipient government to neglect agricultural production and investment. More specifically, this neglect is often reflected in the relatively low share of government investment going to agriculture. In other cases, the effect is the lack of thoughtful sector planning and programming, inefficient regulation of grain marketing, insufficient technical assistance to producers, an unwillingness to permit secure land tenure, or failure to shift the terms of trade in favor of agriculture when unfavorable and inappropriate terms exist.

Studies find that while food aid has at times been associated with inappropriate policies, it is not a cause of them.^{6/} Rather, a government's decision not to support food and agricultural development is primarily affected by political and economic factors that are more influential than the availability of food aid (e.g., national security, comparative advantage and national development philosophy).

The causal link is similarly not clear as regards the effects of food aid on taste preference changes. Such changes are found in countries which have not been significant recipients of food aid; e.g., the Ivory Coast and Nigeria. Many of the changes are due to urbanization and gradual modernization, changes in the relative terms of trade between basic food commodities, and the association of traditional foods with a low level or "obsolete" lifestyle. Such taste changes often began with the higher income groups which did not directly benefit from food aid. Finally, displacement of local production may not be harmful if the freed local resources are used more advantageously in alternative production that promotes growth, employment, and a more equitable income distribution.^{7/}

Attempts to assess the effectiveness of targeted food aid programs have focussed mainly on their nutritional impact. Little attention has been given to measuring the extent to which they increase the demand for local foods through indirect income effects.^{8/} However, in recent years, there has been a considerable increase in research to assess how low-income households adjust food acquisition to changes in household incomes and prices.^{9/} These studies show large variations in the marginal propensity to consume calories. Some show that the proportion of additional income spent on more calories is high. Others show that in addition to expanding calorie consumption, a considerable portion of additional income is spent on upgrading the diet; that is, substituting toward more

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expensive calories or to protein. Generally, additional income is spent on more cereals for groups where calorie intake is seriously substandard. For low-income groups whose basic food needs are being met, the additional income is more likely to be spent on upgrading the diet.^{10/}

Thus, the available evidence suggests that the disincentive effect linked to food aid has occurred in relatively few countries. However, the possibility for disincentive effects always exists and sometimes they do occur. Greater assurance against such occurrences can be best achieved by designing PL 480 programs which minimize disincentive effects or offset them with positive incentives.

IV. Analytical Requirements

A. Submission of Analysis

Missions requesting PL 480 programs will report annually in their "Action Plan" if the volume of food aid or any other factors (see Section IV C) lead the Country Team to suspect the possibility of substantial disincentive effects attributable to food aid. These statements should include reference to the average share of PL 480 food aid to total staple food consumption over the past five years. There is no need to examine the country's storage and handling capability at this time.

If disincentive effects are suspected, the Country Team should indicate in the Action Plan that a detailed analysis will be completed prior to the fiscal year the commodities will be shipped. This will allow time to complete the analysis and identify appropriate self-help measures or other corrective actions without unduly delaying PL 480 negotiations.

If a country has been identified as needing more detailed analysis because of possible disincentive issues, Country Teams are encouraged to undertake the analysis in conjunction with the CDSS/CDSS Update preparation when possible. This would be beneficial to both efforts by shedding light on important aspects of agricultural sector policy. If PL 480 negotiations are to be used to encourage policy changes, these should be fully discussed in the CDSS/CDSS Update.

Present reporting procedures will continue whereby the analysis regarding both the disincentives and storage and handling considerations is submitted closer to shipment and arrival dates. These procedures by program type are as follows:

- Title I Programs: The analysis should be sent with the Country Team's recommendations on the recipient country's program request.

- Title III and Title II Section 206: the analysis will be included with the Project Paper (PP).
- Title II Programs: the analysis is submitted with the call forward.
- Emergency Programs: the analysis, which should be tailored to the dimension of the particular program, will be submitted with the post's emergency program request. Emergency situations may not allow time to address the disincentive question in depth. Therefore, even after the request is approved, Country Teams are encouraged to give further consideration as to whether immediate or longer term disincentive effects are likely, and if so, how they might be avoided.

Country Teams must complete a Bellmon determination analysis before each PL 480 agreement, or amendment adding commodities, is signed. In addition, the analysis for multi-year agreements and amendments must be updated annually. Supporting data and analysis (see Section IV D) should be sent as an annex to PPs or as attachments to Title I requests, Title II call forwards and emergency requests.

B. Determination Recommendation

If a positive disincentive determination is recommended and approved, it will continue to apply to the current fiscal year. However, the analysis assessing the adequacy of storage and port handling facilities must be updated for each purchase authorization or periodic call forward issued under the agreement.

The Secretary of Agriculture is responsible for making the determination and has delegated the authority for reviewing the supporting analysis and recommending the determination to the General Sales Manager of the Exports Credit Program Area of USDA's Foreign Agricultural Service. Comments and issues may be raised through the interagency review process by other members of the DCC Subcommittee on Food Aid (AID, State, OMB, Treasury and Commerce) and presented to USDA for consideration. On the basis of the Country Team's analysis and the USDA/EC review, a recommendation for a formal determination is made to the General Sales Manager. If the General Sales Manager concurs in the findings, a standard reporting letter is sent to Congress. The letter includes the General Sales Manager's determination and indicates the basis of the determination.

If changed circumstances suggest the possibility of an unfavorable determination at any time after an agreement is signed, the analysis should be updated and revised. Such changed circumstances might include congested port conditions, an unexpected drop in local prices due to a better than

forecast harvest, or the sudden imposition of unwarranted government price controls.

If a negative determination is recommended because substantial disincentive effects are likely to result, the program can't proceed until appropriate actions are taken to preclude these effects from occurring. Similarly, if inadequate storage facilities are the basis for a negative determination, the storage problem must be addressed before food shipments can begin.

If consultation with the recipient government doesn't result in adequate corrective action, termination of PL 480 assistance would be considered. If a purchase authorization (PA) has already been signed, shipments under the PA will be honored. However, before signing another PA or a new agreement, satisfactory changes to eliminate or offset any storage or disincentive effects must be negotiated.

Monitoring for possible disincentive effects after an agreement is signed is particularly important for the Title III and Title II, Section 206 programs. These programs can span several years under one agreement. Country Teams should therefore update the analysis each year in conjunction with the annual program review.

C. Level of Analysis

The specific criteria outlined in Section V below provide a framework for assessing the potential disincentive effects of proposed food aid programs. A standard narrative report format may be used with sections addressing the disincentive areas outlined below. Alternatively, a question-answer format may be used. In either case, narrative responses as opposed to yes-and-no type answers are required.

The depth of analysis needed will depend upon the relative significance of PL 480 food aid as measured by the proportion of PL 480 food aid to total staple food consumption. Although the Bellmon Amendment relates directly to PL 480 food aid, Country Teams must keep in mind the possible impact of total food aid flows in undertaking the disincentive analysis.

Where the PL 480 proportion is minor, the potential for disincentive effects is slight. In these cases, findings and conclusions regarding each disincentive area can be briefly discussed. Sufficient data and analysis should be included in the responses to show that substantial disincentives aren't likely to occur.

As the proportion rises, the potential for possible disincentive effects rises and the level of analysis should increase. If the proportion has been above 2 percent over the past 5 years, Country Teams should be alert to the possibility

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of disincentive effects. Where the proportion approaches 10 percent or more, a more thorough examination may be required.

The analysis should follow the outline of the guidance presented in Section V below and be supported by rigorous economic analysis to the extent possible. Where it's found that PL 480 food aid isn't a cause of disincentives but is nevertheless associated with existing policies^{11/}, Country Teams are encouraged to consider self-help measures which help alleviate or offset the disincentives.

It's recognized that other variables in addition to the volume of food aid influence whether PL 480 food aid will have a positive or negative impact on local food production. Such variables include the extent to which food consumption is commercialized, the price elasticities of demand and supply, the ability of low income households to acquire food, and the degree of substitution among different food commodities.

Thus, there may be situations where even though the PL 480 food aid is minor and the policy climate is appropriate, disincentive effects may still occur. For example, food aid may arrive at a period of unexpected surplus or food aid may have an unusually strong effect on prices because only a small proportion of production is commercially marketed. In such cases, more detailed analysis is encouraged.

Country Teams without technical staff to undertake the more detailed analyses can request such assistance through AID/W and USDA.

A recent survey of 99 developing countries found that in 1976-78, cereal food aid (from all sources) as a percent of total staple food consumption was as follows:

<u>Percent</u>	<u>No. of Countries</u>
0-2%	58
2-5%	23
6-10%	10
more than 10%	7
data unavailable	1
TOTAL	<u>99</u>

These figures show that the volume of cereal food aid as a proportion of total cereal consumption is relatively small in most developing countries (Huddleston, 1982). Countries with food aid comprising more than 10% of total staple food consumption included Sri Lanka, Egypt, Jordan, Sudan, Mauritania, Guinea-Bissau, and Somalia. Countries in the 6% to 10% category included South Korea, Bangladesh, Jamaica, Haiti, Lebanon, Tunisia, Gambia, Lesotho, Fiji and Mauritius.

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D. Supporting Data

Attachment A provides an example of a data format that may be useful to Country Teams in preparing their analysis. At a minimum, Country Teams should include a summary price data table such as the one included as Attachment B. Commodity data should be included for each PL 480 commodity provided and its close substitutes. When a cereal commodity is being provided, data for all major locally produced and imported cereal staples should be examined.

With the exception of the price statistics, much of the data will likely have already been compiled by the Country Team in the preparation of other documentation such as the CDSS, ABS, agricultural attache reports, sector analyses, PL 480 agreements and project papers. Data may also be found in local government reports, World Bank and other donor studies, and other secondary sources in the country.

If price data are unavailable and/or unreliable, posts should consider ways in which PL 480 resources and possibly Development Assistance resources can be used to strengthen the recipient country's food data collection and reporting capacity.^{12/} Under such data constraints, Country Teams should still make their best efforts, using estimates, to undertake the price analysis.

V. Disincentive/Incentive Analysis

The suggested disincentive/incentive analysis begins with a brief description of the economy and the agricultural sector. Special attention is given to identifying the country's comparative advantage in the agricultural sector. The following aspects of disincentive effects are then examined, taking into account the influence of other donor food aid and commercial imports: prices, government policies, taste preferences and targeting of distribution. Lastly, the analysis examines the extent to which PL 480 incentive measures might offset any possible disincentive effects.

The intent of the analysis is to insure there is sufficient information for the Secretary of Agriculture to make a "Bellmon" determination. A negative determination should be made when the Country Team concludes that the PL 480 food aid is a major contributor to agricultural disincentive effects and it isn't possible to negotiate self-help measures that alleviate the disincentives sufficiently to permit a positive determination. If a negative determination is believed warranted, Country Teams should follow the procedures outlined in Section IV B.

An outline of the suggested analysis would appear as follows:

Outline: Suggested Disincentive/Incentive Effects Analysis

- Agricultural Sector Overview
- Price Effects
- Government Policy Effects
 - Administered Prices
 - Marketing
 - Agricultural Development and Investment Policies
- Changes in Food Consumption Patterns
- Distribution Effects
- Food Aid Incentive Measures

Attachments: Supporting Data Worksheets

A. Agricultural Sector Overview

An understanding of the country's economic structure and development potential enables the analyst to better judge government policy and resource allocation decisions, and their relevance to possible disincentive effects.

A basic consideration is whether or not the country produces what it's best suited to produce in terms of its comparative advantage. This bears significantly on the disincentive/incentive question as to whether food aid has a disincentive effect.

In some cases a food self-sufficiency approach may be warranted. In others, the potential for food production may be limited but should be developed with an appropriate balance struck between dependence on food imports and locally produced foods. In still others, extensive production of a food crop may not make good economic sense; indeed it may be appropriate to increase food imports and reduce dependence on domestic food production. The overview should indicate the appropriateness of the strategy taken with respect to the near term (1-5 years) and the long term.

If the country has a comparative advantage in the production of the same or closely substitutable commodity as that supplied as food aid, the potential for disincentive effects on the locally produced commodity are greater. On the other hand, if the country doesn't have a comparative advantage in these commodities, the potential for disincentive effects is much less. The country should produce those commodities which offer greater production and income potential to the nation and the farmer. Where an alternative commodity is encouraged, food aid should have a net neutral or net positive effect on agricultural production and farmer welfare.

Even where the country produces cash as opposed to food crops, consideration should be given to the impact on food availability and consumption. In these cases, food aid

programs can include self-help measures to strengthen the country's food security system, improve food access, and support nutrition programs.

B. Food Needs and Price Effects

Price depressing effects attributed to food aid can occur either through an excess of supply in an uncontrolled price system or through the support of low producer prices in an administered price system. This section examines food needs and the possibility of food aid price disincentive effects due to excess supply. The following section, "Government Economic Policy," considers price disincentive effects in terms of government-administered price systems.

Food aid can depress domestic food prices if it adds to normal supplies rather than meets a shortfall. This may occur if there are serious miscalculations in production shortfalls; food aid is provided even though it is not justified in some years; or because the arrival of food aid may be out of phase with the recipient's production cycle.

To determine if food aid imports are excessive, the analyst should examine past trends as well as current and projected differences between domestic production and consumption of the locally affected commodity. Supply and demand data should be presented as follows:

- actual data for each of the past five years for which actual data are available;
- estimated data for the current year and for earlier years for which actual data are unavailable; and
- projected data for years beyond the current year that food aid will be requested.

Use of historical time-series data extending beyond five years is encouraged to establish more reliable bases for projecting trends.

The following considerations should be taken into account in determining which local commodities will be affected by the PL 480 commodities:

- First, consider the impact the food aid commodity may have on close substitutes produced and marketed locally. For example, if wheat/wheat flour is being supplied, other common food grains such as corn, sorghum, rice, etc., which are seen by consumers as substitutes for wheat/wheat flour should be included in the analysis. Similarly, the local incentives for all oilseeds must be examined if PL 480 soybean oil is to be supplied.

- Second, consider product differentiation. For example, certain types of U.S. sorghum or corn may be less desirable than the local variety with the latter commanding a price premium in the market. Such price differences should be recognized in comparing the food aid commodity and the local product.
- Lastly, consider alternative uses the PL 480 commodity may have. For example, it may be used for food and non-food purposes or solely for non-food consumption; e.g., for livestock feed or for industrial uses. In these instances, the analysis should indicate the extent to which the commodity is used for food as opposed to such other purposes. The supply and demand analysis and the disincentive effects analysis should take into account both food and non-food uses.

The analysis of variations in production and consumption trends should indicate past maximum food import needs and suggest projected needs. To determine the influence of food imports on prices, production costs and deflated domestic prices of the locally affected commodity should be compared with import levels and import prices (valued at realistic exchange rates). Correlations between high food import levels and low domestic prices can suggest excessive import levels.

The share of PL 480 food aid to total domestic consumption is important in indicating the potential food aid has for causing price disincentive effects. The analyst should calculate the percent of each PL 480 food aid commodity provided to total domestic consumption of the same or substitutable commodity for each of the past five years. If this proportion has been 2% or more over the past five years, have there been any unusual movements in inflation-adjusted price trends that would indicate U.S. food aid has led to substantial declines in food prices? On the other hand, without U.S. food aid, would domestic food prices tend to rise above normal levels suggested by the trend analysis?

To comply with Section 103(c) of PL 480 and the FAO Principles of Surplus Disposal, the analysis should show that the U.S. food aid will fill an unmet need and will not displace usual commercial imports or disrupt normal trade patterns.

C. Government Policy Effects

Section III above described ways in which policy effects can adversely affect food and agricultural production. These effects can be divided into three main areas: pricing, marketing, and agricultural development and investment policies. When disincentive effects are found, Country Teams should consider further the extent to which these are the result of poor government policies or PL 480 food aid.

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1. Administered Prices

To promote local food production, the farmer must receive a price which covers production costs and provides an incentive profit. When host governments price and distribute substantial quantities of food below this level, disincentive price effects on locally produced food will likely result.

- a. If administered prices are a major concern, identify the key actors and agencies involved in establishing prices.
- b. Are pricing decisions based on reliable data and sound technical analysis of the costs of production, producer returns, regional prices and landed cost prices of imports (CIF, most competitive commercial source, plus duties and unloading charges)? If the foreign exchange rate is over- or under-valued, local currency prices should be shadow-priced to reflect the disequilibrium. Is there evidence that any significant difference between landed cost price of imports and domestic prices has affected local production?
- c. Are producer prices announced sufficiently in advance of the planting season to affect farmers' planting decisions?
- d. Will PL 480 food aid provide significant support to an administered price system having disincentive effects on local production and marketing? Conversely, will PL 480 food aid support an administered price system having incentive effects or help move the pricing system toward greater use of market forces to determine prices?

2. Marketing

Substantial government interference with marketing occurs when food aid is sold and distributed through public marketing institutions which cause excessive curtailment of private sector trade. That is, parastatal operating margins are set and subsidized at levels below those at which private traders can compete. Official margins should be set to permit private trade and at the same time maintain price stability. The analysis should indicate if substantial quantities of commodities are distributed through a public marketing agency.

- a. If so, is the institution efficiently managed and operated on a financially self-sustaining basis? How do official wholesale prices for food compare with free market wholesale prices for comparable, locally produced foods and with the landed cost of commercial imports?
 - b. If publicly marketed food imports are subsidized, is there evidence that these have caused or may cause substantial interference with private sector trade? If yes, roughly how much?
- 87

- c. Will PL 480 food aid strengthen monopolistic/monopsonistic official food organizations to the detriment of private marketing?

3. Agricultural Development and Investment Policies

A government receiving substantial food aid may give lower development and investment priority to its agricultural sector if food is readily available at relatively little cost from the donor community. In some countries, a major development thrust to increase food production may not be warranted if comparative advantage suggests that self-reliance through trade is a better strategy. However, whatever limited potential there is to improve food production should be developed if it's economically and technically realistic to do so. The following questions should be considered in assessing development and investment policy efforts:

- a. Does the government have a development objective of largely domestic food self-sufficiency or of reliance on trade?
 - b. If so, is this objective reflected reasonably in macro-economic policies such as realistically valued foreign exchange rates, domestic terms of trade which are neutral toward or favor agriculture, and development policies which include infrastructure and research support for agriculture? If a self-sufficiency approach is being pursued, does it deserve support and have any chance of success?
 - c. If a food through trade approach is being pursued, to what extent does potential for the country to produce its own food suffer? Is this potential being insufficiently exploited because of the trade dependence?
 - d. What proportion of government recurrent and capital budget expenditures have been allocated to agriculture in each of the past three years? Are the level and trend of these expenditures consistent with stated government food and agricultural policies?
 - e. If the agricultural sector offers reasonably good development potential, but budget expenditures to agriculture for the past 3 years have been low and food aid has constituted a significant proportion of total domestic consumption, is there any evidence from knowledge of government decision-making that the availability of food aid has weakened the government's commitment to agricultural development?
 - f. Will the provision of PL 480 food aid, including its self-help provisions, lead to a lower or a higher allocation of domestic budget resources for agricultural development?
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4. Food Aid and Disincentives - Cause or Association?

Disincentive situations may occur because of government development philosophy and policies which would likely prevail even in the absence of food aid. It's therefore important to determine whether PL 480 food aid is a cause of significant production and marketing disincentives or is associated with them because of strongly subscribed government policies.

- a. If the analysis finds that production and marketing disincentives exist, to what extent can they be attributed to government policies as opposed to the availability of PL 480 food aid?
- b. Would the policies prevail and with the same commitment if food import needs were met on a commercial basis only?
- c. Over the longer run, are poor policies likely to lead to a dependence on PL 480 food aid?
- d. If PL 480 food aid is associated with rather than a cause of disincentives, how can the PL 480 program (and DA/ESF programs) be designed to alleviate or offset disincentive effects?

D. Changes in Food Consumption Patterns

Local food production may be adversely affected by food aid when it contributes to changes in taste preferences for foods which cannot be produced locally and which cannot be imported at costs lower than those of producing and marketing them locally. On the other hand, where the recipient country does not have a comparative advantage in food production, the commodity may provide a less expensive substitute for the locally produced commodity. In these cases, food aid is a legitimate means for developing markets for U.S. agricultural products.

- a. Is the commodity supplied by U.S. food aid produced locally and part of the normal diet?
 - b. Does accommodating the taste preference through food aid lie within the country's food strategy and comparative advantage?
 - c. Will the food aid be distributed to groups that heretofore have not established a preference for the commodity supplied? If so, will this be an addition to or a substitute for locally produced foods?
 - d. If taste preferences are changing, why are they changing? To what extent are other donor food aid shipments and commercial imports influential in promoting these changes?
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E. Distribution Effects (Title II Programs)

The need to target the distribution of food aid to the poor is most easily met through Title II programs. These programs distribute food free or at subsidized prices to vulnerable population groups and permit the consumption of food that would not otherwise occur because of the poor's lack of purchasing power. In this instance, available evidence suggests that there won't be any substantial disincentive effects on local food prices and production because additional demand is created to offset the additional supply.

On the other hand, when more affluent consumers are the recipients of food aid they may spend freed income on non-food items and/or more costly imported foods. In this instance, even though the food provided is additional, it is less likely to be offset by additional food demand and price depressing effects can occur.

The analysis should address the following questions in assessing the possibility for adverse distribution effects:

- a. Does the host government have a distribution plan which targets PL 480 food aid or uses sales proceeds to target local foods to the poor? Does the host government have the capability to transport and distribute food to the poor?
- b. Is the PL 480 food aid consumed in disproportionately greater quantities by the poor and is it therefore "self-targeting"?
- c. If not, is the food aid sold at a non-subsidized price and the counterpart funds used to support policies favorable to agriculture?

VI. Food Aid Incentive Measures

If examination of the above criteria indicates possible disincentives to agricultural production or marketing, it may be possible to include incentive measures in the PL 480 agreement to change or offset bad policies and still justify a positive determination. In general, the nature and significance of incentive measures should be determined by the policy environment and the Country Mission's capability to promote policy change.

Incentive features can be structured as self-help measures, projects financed with sales proceeds, components of Food for Development programs, issues to be discussed through policy dialogue, and the programming of food aid itself (e.g., as wages, security stocks, etc.).^{13/} Such measures linked specifically to increasing local food production might include the following:

- Improve food sector data collection and reporting capacity;
- Strengthen agricultural sector policy analysis, planning and implementation capacity;
- Establish incentive prices for locally produced food based on landed cost of imports and production costs;
- Assure timely announcement of price adjustments to affect farmers' planting decisions where prices are controlled or at least floor prices maintained;
- Support maximum private sector trade and access to international markets consistent with government goals for marketing and stabilization efforts;
- Improve management and financial viability of food marketing agencies; reduce or eliminate food subsidy programs except for those most in need;
- Upgrade efficiency and effectiveness of food production and marketing functions including research, extension, cooperatives, management, transportation, physical infrastructure, and access to inputs;
- Promote development of private sector food processing capability which improves nutritional content and eases preparation of indigenous foods.
- Support development activities and targeted food subsidy programs (e.g., food-for-work programs) which generate income and improve the ability of the poor to acquire food;
- Encourage greater production of low-cost nutritionally acceptable local foods if they can be grown economically in order to increase nutritional quality to low-income groups;
- Increase allocation of recurrent and capital budget expenditures to agriculture where warranted by sufficient food production potential.

VII. Food Storage Facilities and Handling Capabilities

U.S. concern over food storage and handling in LDCs was raised in the March 1977 hearings of the House Committee on International Relations. Concern was expressed in particular about food storage conditions in Bangladesh. Substantial amounts of food had spoiled because Bangladesh had inadequate storage facilities. This concern over food storage and handling was concurrent with that over disincentive effects. Consequently, both are addressed in the Bellmon Amendment.

In response to these concerns, posts must include, with the disincentive analysis, a statement attesting to the adequacy of

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food storage, handling and distribution capabilities. The assessment should include three sections reporting on port, storage and transport capabilities as follows:

A. Port

1. Facilities - briefly describe adequacy of port physical facilities in terms of the wharf, warehousing, equipment (particularly offloading capacity) and maintenance.
2. Operations - comment upon the efficiency of port operations and management.
3. Projected Arrivals - note to what extent port congestion might be a problem at the time of projected PL 480 food aid arrival. Are imports, commercial and concessional, coordinated and planned to arrive at low points in domestic supply, but in a smooth fashion?

B. Storage

Describe the adequacy of port, central and regional storage facilities in terms of structure, capacity and management. Note specifically the expected adequacy of storage at the time of projected PL 480 food aid arrival.

C. Transport

Describe the adequacy of transport capabilities - road, railway and waterway as applicable - with respect to equipment, operational status and maintenance facilities. Comment in particular, on transport availability at the projected time of PL 480 food aid arrival.

FOOTNOTES

- 1/ Although this paper focuses mainly on the potential disincentive effects of food aid, this is not meant to suggest that food aid storage and handling concerns are relatively less important. Rather, attention is given to the disincentives question because it is a more complex matter warranting further explanation and specific guidance.
- 2/ U.S.G. approaches for increasing PL 480's developmental effectiveness are outlined in the recent U.S. International Development Cooperation Agency Report to Congress on the Developmental Impact of Public Law 480, March 30, 1982.
- 3/ Two recent articles which provide particularly comprehensive examinations of food aid and development issues are Maxwell and Singer (1979) and Clay and Singer (1982); see selected references attached.
- 4/ See Abbott (1976, 1979), Abbott and McCarthy (1982), and Hall (1980).
- 5/ See Dudley and Sandilands (1975) and Mason (1966).
- 6/ Maxwell and Singer (1979) note that "...the weight of evidence seems to favor those who argue that in many countries food aid is sucked in by poor agricultural policy rather than itself being responsible for the vacuum which it fills." This conclusion is reached inter alia by Witt (1964); Isenman and Singer (1977), and Merrill (1977).
- 7/ Cases quoted are shifts to cotton production in Pakistan (Mason, 1966) or to barley in Columbia (Dudley and Sandilands, 1975).
- 8/ See for example the comprehensive survey on supplementary feeding projects by Beaton and Ghassemi (1979) and the African case studies by Stevens (1979). From a national perspective, Title II levels are usually so insignificant relative to the total food supply that disincentive effects are not likely to occur. Moreover, because Title II programs - MCH, school feeding and food-for-work - distribute food to those with low incomes who would not otherwise be purchasing sufficient food, there will be little likelihood that disincentive effects would occur even at the community level.
- 9/ See, for example, Williamson Gray (1982), Timmer and Adelman (1979), Pinstrup-Anderson (1976), and Strauss (1983).

- 10/ See Huddleston (1984), Kennedy and Pinstrip-Anderson (1983) and Beaton and Ghassemi (1979).
- 11/ The distinction between "cause" and "association" is discussed on pages 7-8 and 30-31.
- 12/ Technical assistance from the U.S. Bureau of the Census can be requested through AID/S&T/DIU to support the establishment or strengthening of the recipient country's data collection and analysis capability. Other donors should also be encouraged to provide technical assistance, training, etc., as appropriate.
- 13/ The Bellmon Amendment does not require that PL 480 food aid programs include measures to induce incentive effects. However, their inclusion is consistent with the developmental thrust of PL 480 and they add a further measure of assurance that disincentive effects will not occur. Thus, incorporating incentive effects in the design of PL 480 programs is encouraged.

Attachment A

Local Production and Marketing Disincentives Analysis
Supporting Data

19XX
(000 MT)

I. Food Supply and Consumption

- A. Total annual domestic needs
 - 1. Beginning stocks
 - 2. (Of which security stock)
 - 3. Local Production
 - 4. Imports
 - a. Commercial Imports
 - b. Food Aid
 - c. (Of which U.S. food aid)
 - 5. Exports
 - 6. Total Supply
 - 7. Consumption (food, feed, industrial use, seed and waste)
 - 8. Ending Stocks
 - 9. (Of which security stock)

II. Food Prices (per kg.)

19XX
(xx per kg)

- A. Private Sector
 - 1. Local Production
 - a. Farm gate price
 - b. Internal transport and handling costs from main producing area to main consuming area
 - c. Wholesaler costs_{x/}, and profit margins
 - d. Wholesale price
 - e. Retail price
 - 2. Commercial imports
 - a. CIF (from most competitive commercial source)
 - b. Duties
 - c. Internal transport and handling to main deficit consuming area, usually the principal cities

x/ Data for all categories - IIA 1&2, IIB 1&2 - should also reflect processing costs at stage at which processing is performed.

19XX
(xx per kg)

- d. Wholesaler costs and profit margins
- e. Wholesale price
- f. (Foreign exchange shadow price)
- g. Retail price
- h. (Foreign exchange shadow price)

B. Public Sector

- 1. Local Production
 - a. Official farm gate price
 - b. Internal transport and handling costs from main producing area to main deficit consuming area, usually the principal cities
 - c. Operating margins
 - d. Total costs (a, b, & c)
 - e. Wholesale price
 - f. Retail price
- 2. PL 480 Food aid
 - a. CIF (from U.S. port)
 - b. Duties
 - c. Internal transport and handling
 - d. Operating margins
 - e. Total Costs (a, b, & c)
 - f. Wholesale price
 - g. (Foreign exchange shadow price)
 - h. Retail price
 - i. (Foreign exchange shadow price)

19XX
(xx per Kg)

C. Price Differentials

- 1. Free market farm gate price and official farm gate price (II A 1a and II B 1a)
- 2. CIF price from most competitive commercial source including duties and internal transport and handling charges and equivalent official farm gate price (II a, b & c and II B 1a & b)

19XX
(xx per kg)

3. Commercial import wholesale price and official wholesale price for local production (II A 2f and II B 1e)
4. Commercial import wholesale price and food aid wholesale price (II A 2f and II B 2g)
5. Official subsidies
 - a. Local Production (II B 1d - II B 1f)
 - b. Food aid (II B 2e - II B 2i)

19XX
(X-Million)

III. Balance of Payments

- A. Exports
- B. Imports
 1. Food
 - a. Commercial

19XX
(X-Million)

- b. Food aid
- C. Net Services and Unrequited transfers
- D. Current Account Balance
- E. Capital Account Balance
- F. Overall Balance

IV. Exchange Rate

- A. Official
- B. Unofficial
- C. Shadow price rate

Attachment B

Local Production and Marketing Disincentives Analysis
Sample Price Data Reporting Format

Egypt Title I Program
Estimated Prices of Wheat and Wheat Flour, 1978/79 Averages
(U.S. \$ Equivalent/Metric Ton)

	<u>Wheat</u>	<u>Wheat Flour</u>	<u>Domestic Wheat</u>
FOB (PL 480)	137	225	
CIF	158	278	
Landed Cost Includes Handling	190	334	
Domestic Producer Price			100 ¹ / ₁
Native Balady Flour	221		221
Cost of Flour from PL 480 Wheat	217 ² / ₂		
Actual Price to Bakers	41	97	41
Subsidy	176 (217-41)	237 (334-97)	180 (221-41)
Price of Bread	50	130	50

¹/ This is the price for improved quality Egyptian wheat. Price for local wheat varieties is about the equivalent of \$91 per ton.

²/ Calculated price based on an extraction rate of 87.5 percent and a mill charge of \$3.33 per metric ton.

Attachment C

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Tuesday
July 8, 1980

Note: This reprint incorporates
corrections published at 48 FR 17185,
Tuesday, March 17, 1981.

Part III

Office of
Management and
Budget

Circular A-122, "Cost Principles for
Nonprofit Organizations"

ORIGINAL A-122

REPRODUCTION OF
ORIGINAL A-122

OFFICE OF MANAGEMENT AND BUDGET
Circular A-122, "Cost Principles for Nonprofit Organizations"

[Note: This reprint incorporates corrections published at 46 FR 17185, Tuesday, March 17, 1981.]

AGENCY: Office of Management and Budget.

ACTION: Final Policy.

SUMMARY: This notice advises of a new OMB Circular dealing with principles for determining costs of grants, contracts, and other agreements with nonprofit organizations.

The Circular is the product of an interagency review conducted over a two-year period. Its purpose is to provide a set of cost principles to replace existing principles issued by individual agencies. These have often contained varying and conflicting requirements, and created confusion among agency administrators, auditors, and nonprofit officials. The new Circular will provide a uniform approach to the problem of determining costs, and promote efficiency and better understanding between recipients and the Federal Government.

EFFECTIVE DATE: The Circular becomes effective on issuance.

FOR FURTHER INFORMATION CONTACT: Palmer A. Marcantonio, Financial Management Branch, Office of Management and Budget, Washington, D.C. 20503, (202) 395-4773.

SUPPLEMENTARY INFORMATION: Before the Circular became final there was extensive coordination with the affected nonprofit organizations, professional associations, Federal agencies and others. All interested persons were given an opportunity to comment on the proposed Circular through informal consultations and a notice in the *Federal Register*. In response to our requests for comment, we received about 100 letters from Federal agencies, nonprofit organizations, associations, and other interested members of the public. These comments were considered in the final version of the Circular. There follows a summary of the major comments and the action taken on each.

In addition to the changes described, other changes have been made to improve the clarity and readability of the Circular. To the extent possible, we have tried to make the language of this Circular consistent with that of cost principles for educational institutions (Circular A-21), and State and local governments (Circular 74-4).

Summary of Significant Changes:

Set forth are changes that have been made in the final Circular as a result of

public comments. The more significant changes to the basic Circular and Attachment A include:

1. Paragraph 2, "Supersession" was added to the basic Circular to make it clear that this Circular supersedes cost principles issued by individual agencies.

2. Paragraph 4 of the basic Circular has been amended to make it clear that the absence of an advance agreement on any element of cost will not in itself affect the reasonableness of allocability of that element. Also, this paragraph was amended to make it clear that where an item of cost requiring prior approval is specified in the budget, approval of the budget constitutes approval of the cost.

3. Paragraph 5 of the basic Circular has been changed to remove any doubt as to which nonprofit organizations would not be covered by the Circular. Now, Appendix C to the Circular lists all exclusions.

4. Paragraph 8 was added to the basic Circular to permit Federal agencies to request exceptions from the requirements of the Circular.

5. Paragraph E.2. was added to Attachment A to cover the negotiation and approval of indirect cost rates, and to provide for cognizance arrangements.

The more significant changes to Attachment B to the Circular include:

1. Paragraph 6, *Compensation for Personal Services*, was modified to:

- Permit Federal agencies to accept a substitute system for documenting personnel costs through means other than personnel activity reports.

- Clarify provisions covering the allowability of costs for unemployment compensation or workers' compensation, and costs of insurance policies on the lives of trustees, officers, or other employees.

- Make unallowable any increased costs of pension plans caused by delayed funding.

- Delete a paragraph dealing with review and approval of compensation of individual employees.

2. Paragraph 7, *Contingencies*, was changed to make it clear that the term "contingency reserves" excludes self-insurance reserves or pension funds.

3. Paragraph 10 was modified to provide that the value of donated services used in the performance of a direct cost activity shall be allocated a share of indirect cost only when (a) the aggregate value of the service is material, (b) the services are supported by a significant amount of the indirect cost incurred by the organization, and (c) the direct cost activity is not pursued primarily for the benefit of the Federal Government. Provisions were also added to this paragraph for the

cognizant agency and the recipient to negotiate when there is no basis for determining the fair market value of the services rendered, and to permit indirect costs allocated to donated services to be charged to an agreement or used to meet cost sharing or matching requirements.

4. Paragraph 13, *Equipment and Other Capital Expenditures*, was changed. Capital equipment is now defined as having an acquisition cost of \$500 and a useful life of more than two years.

5. Paragraph 24, *Meetings, Conferences*. The prior approval requirement for charging meetings and conferences as a direct cost was deleted. A sentence was added to make it clear such costs were allowable provided they meet the criterion for the allowability of cost shown in Attachment A.

6. Paragraph 26, *Organization Costs*, was amended to provide that organization costs may be allowable when approved in writing by the awarding agency.

7. Paragraph 28, *Page Charges in Professional Journals*, was revised to provide that page charges may be allowable.

8. Paragraph 36, *Public Information Service Costs*, was modified to make public information costs allowable as direct costs with awarding agency approval.

9. Paragraph 42, *Rental Costs*, was rewritten to:

- Make it clear that rental costs under leases which create a material equity on the leased property are allowable only up to the amount that the organization would have been allowed had it purchased the property; e.g., depreciation or use allowances, maintenance, taxes, insurance, etc.

- Clarify the criteria for material equity leases.

10. Paragraph 50, *Travel Costs*, was amended to delete the prior approval requirement for domestic travel. In addition to the above, a number of editorial changes were made to the original document.

Suggested Changes Not Considered Necessary.

Comment. Several respondents questioned the provision that, for "less than arm's length" leases, rental costs are allowable only up to the amount that would be allowed had title to the property been vested in the grantee organization. In their opinion this rule will result in unnecessary cost to the Federal Government, since it would encourage an organization to lease space on the commercial market at a higher rate.

Response. The cost principles are designed to cover most situations; however, there are always exceptions that must be considered on a case-by-case basis. The Circular contains a provision for Federal agencies to request exceptions.

Comment. Several respondents questioned why interest is not an allowable cost, since it is an ordinary and necessary cost of doing business.

Response. It has been a longstanding policy not to recognize interest as a cost. However, this policy has recently been revised for State and local governments in Circular 74-4, with respect to the cost of office space. The revision provides that "rental" rates for publicly owned buildings may be based on actual costs, including depreciation, interest, operation and maintenance costs, and other allowable costs. This revision was under consideration for some time. It was studied extensively by OMB, the General Accounting Office and others, and considerable analysis went into its formulation. Suggestions for extending it to nonprofit organizations would have to be examined with equal care. This has not yet been done, and we were reluctant to further delay issuance of this Circular.

Comment. Several respondents questioned why public information costs were not allowable as an indirect cost.

Response. Public information costs are often direct services to an organization's other programs. They are allowable, however, as a direct charge when they are within the scope of work of a particular agreement.

Comment. One respondent suggested that smaller grantees be excluded from complying with the Circular.

Response. Similar rules for the 50 selected items of cost would be needed regardless of the size of the grantee. To the extent possible, the Circular provides simplified methods for smaller grantees.

Comment. One respondent said the requirements of the Cost Accounting Standards Board should be applied to cover contracts with nonprofit organizations.

Response. It is unlikely that the type of grantees covered by this Circular would have contracts large enough to be covered by the CASB. In the event that they do, however, the regulations of the CASB would apply.

Comment. One respondent said the allocation of indirect cost to donated services would pose a tremendous difficulty to the organization. The organization relies on a corps of approximately 8,000 committee members to carry out obligations in response to Government requests. There is no

employer relationship in the arrangements for this assistance, nor are there committee members normally reimbursed for such services. Further, it was pointed out the committee members spend many thousands of hours outside the organization's premises conducting research.

Response. It would appear that this type of committee arrangement would not be considered in the determination of the organization's indirect cost rate provided that Federal agreements do not bear an unreasonable share of indirect cost. However, the cognizant agency will be responsible for evaluating the allocation of indirect cost where there are committee-type arrangements on a case-by-case basis.

Comment. One respondent suggested that wherever possible the language in the *Federal Procurement Regulations* be used for nonprofit organizations.

Response. The language in the *Federal Procurement Regulations* was designated primarily for commercial firms, and is not necessarily well suited to nonprofit organizations. At the suggestion of the General Accounting Office, the nonprofit cost principles were written to conform as closely as possible to those of educational institutions (Circular A-21), and State and local governments (Circular 74-4).

John J. Lordan,
Chief, Financial Management Branch.

[Circular No. A-122]

June 27, 1980

To The Heads of Executive Departments and Establishments

Subject: Cost principles for nonprofit organizations.

1. *Purpose.* This Circular establishes principles for determining costs of grants, contracts and other agreements with nonprofit organizations. It does not apply to colleges and universities which are covered by Circular A-21; State, local, and federally recognized Indian tribal governments which are covered by Circular 74-4; or hospitals. The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of cost sharing or matching on grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by Federal agencies. Provision for profit or other increment above cost is outside the scope of this Circular.

2. *Supersession.* This Circular supersedes cost principles issued by

individual agencies for nonprofit organization.

3. *Applicability.* a. These principles shall be used by all Federal agencies in determining the costs of work performed by nonprofit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. All of these instruments are hereafter referred to as awards. The principles do not apply to awards under which an organization is not required to account to the Government for actual costs incurred.

b. All cost reimbursement subawards (subgrants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a nonprofit organization, this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial concerns shall apply; if a subaward is to a college or university, Circular A-21 shall apply; if a subaward is to a State, local, or federally recognized Indian tribal government, Circular 74-4 shall apply.

4. *Definitions.* a. "Nonprofit organization" means any corporation, trust, association, cooperative, or other organization which (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations. For this purpose, the term "nonprofit organization" excludes (i) colleges and universities; (ii) hospitals; (iii) State, local, and federally recognized Indian tribal governments; and (iv) those nonprofit organizations which are excluded from coverage of this Circular in accordance with paragraph 5 below.

b. "Prior approval" means securing the awarding agency's permission in advance to incur cost for those items that are designated as requiring prior approval by the Circular. Generally this permission will be in writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitutes approval of that cost.

5. *Exclusion of some nonprofit organizations.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to commercial concerns for purpose of applicability of cost principles. Such nonprofit organizations shall operate under Federal cost principles applicable to commercial concerns. A listing of these

organizations is contained in Attachment C. Other organizations may be added from time to time.

6. *Responsibilities.* Agencies responsible for administering programs that involve awards to nonprofit organizations shall implement the provisions of this Circular. Upon request, implementing instruction shall be furnished to the Office of Management and Budget. Agencies shall designate a liaison official to serve as the agency representative on matters relating to the implementation of this Circular. The name and title of such representative shall be furnished to the Office of Management and Budget within 30 days of the date of this Circular.

7. *Attachments.* The principles and related policy guides are set forth in the following Attachments:

Attachment A—General Principles
Attachment B—Selected Items of Cost
Attachment C—Nonprofit

Organizations Not Subject to This Circular

8. *Requests for exceptions.* The Office of Management and Budget may grant exceptions to the requirements of this Circular when permissible under existing law. However, in the interest of achieving maximum uniformity, exceptions will be permitted only in highly unusual circumstances.

9. *Effective Date.* The provisions of this Circular are effective immediately. Implementation shall be phased in by incorporating the provisions into new awards made after the start of the organization's next fiscal year. For existing awards the new principles may be applied if an organization and the cognizant Federal agency agree. Earlier implementation, or a delay in implementation of individual provisions is also permitted by mutual agreement between an organization and the cognizant Federal agency.

10. *Inquiries.* Further information concerning this Circular may be obtained by contacting the Financial Management Branch, Budget Review Division, Office of Management and Budget, Washington, D.C. 20503, telephone (202) 395-4773.

James T. McIntyre, Jr.,
Director.

[Circular No. A-122]

Attachment A

General Principles

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A. Basic Considerations

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E. Negotiation and Approval of Indirect Cost Rates

1. Definitions
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[Circular No. A-122]

Attachment A

General Principles

A. Basic Considerations.

1. *Composition of total costs.* The total cost of an award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

2. *Factors affecting allowability of costs.* To be allowable under an award, costs must meet the following general criteria:

a. Be reasonable for the performance of the award and be allocable thereto under these principles.

b. Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.

c. Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the organization.

d. Be accorded consistent treatment.

e. Be determined in accordance with generally accepted accounting principles.

f. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period.

g. Be adequately documented.

3. *Reasonable costs.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award.

b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.

c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and

clients, the public at large, and the Government.

d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

4. *Allocable costs.*

a. A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Government award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award.

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received, or

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

b. Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

5. *Applicable credits.*

a. The term applicable credits refers to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing or received by the organization relate to allowable cost they shall be credited to the Government either as a cost reduction or cash refund as appropriate.

b. In some instances, the amounts received from the Federal Government to finance organizational activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the organization in determining the rates or amounts to be charged to Federal awards for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds.

(c) For rules covering program income (i.e., gross income earned from federally supported activities) see Attachment D of OMB Circular A-110.

6. *Advance understandings.* Under any given award the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with organizations that receive a preponderance of their support from Federal agencies. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, it is often desirable to seek a written agreement with the cognizant or awarding agency in advance of the incurrence of special or unusual costs. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element.

B. Direct Costs

1. Direct costs are those that can be identified specifically with a particular final cost objective: i.e., a particular award, project, service, or other direct activity of an organization. However, a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstances, has been allocated to an award as an indirect cost. Costs identified specifically with awards are direct costs of the awards and are to be assigned directly thereto. Costs identified specifically with other final cost objectives of the organization are direct costs of those cost objectives and are not to be assigned to other awards directly or indirectly.

2. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives.

3. The cost of certain activities are not allowable as charges to Federal awards (see, for example, fund raising costs in paragraph 19 of Attachment B). However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct cost for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

4. The costs of activities performed primarily as a service to members, clients, or the general public when significant and necessary to the organization's mission must be treated as direct costs whether or not allowable and be allocated an equitable share of indirect costs. Some examples of these types of activities include:

a. Maintenance of membership rolls, subscriptions, publications, and related functions.

b. Providing services and information to members, legislative or administrative bodies, or the public.

c. Promotion, lobbying, and other forms of public relations.

d. Meetings and conferences except those held to conduct the general administration of the organization.

3. Maintenance, protection, and investment of special funds not used in operation of the organization.

f. Administration of group benefits on behalf of members or clients including life and hospital insurance, annuity or retirement plans, financial aid, etc.

C. Indirect Cost.

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in paragraph B.2. above. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefiting cost objectives. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose,

in like circumstances, has been assigned to an award as a direct cost.

2. Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of costs which may be classified as indirect cost in all situations. However, typical examples of indirect cost for many nonprofit organizations may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

D. Allocation of Indirect Costs and Determination of Indirect Cost Rates.

1. General.

a. Where a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in paragraph 2 below.

b. Where an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefiting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fund raising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in paragraphs 2 through 5 below.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of the costs.

2. Simplified allocation method.

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual awards. The rate should be expressed as the percentage which the total amount of

allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in paragraph B.3. above.

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as major subcontracts or subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in paragraph 29 of Attachment B.

d. Except where a special rate(s) is required in accordance with paragraph D.5 below, the indirect cost rate developed under the above principles is applicable to all awards at the organization. If a special rate(s) is required, appropriate modifications shall be made in order to develop the special rate(s).

3. Multiple allocation base method.

a. Where an organization's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefiting functions by means of a base which best measures the relative benefits.

b. The groupings shall be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision desired.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefiting functions. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Government and the organization. In general, any cost element or cost related factor associated with the organization's work is potentially adaptable for use as an allocation base provided (i) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like) and (ii) it is common to the benefiting functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with

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paragraph D.5. below, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be total direct costs (excluding capital expenditures and other distorting items such as major subcontracts and subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in paragraph 29, Attachment B. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool.

4. Direct allocation method.

a. Some nonprofit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fund raising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable provided each joint cost is prorated using a base which accurately measures the benefits provided to each award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates shall be computed in the same manner as that described in paragraph D.2 above.

5. *Special indirect cost rates.* In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single award or it may consist of work under a group of awards performed in a common environment. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills

involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used provided it is determined that (i) the rate differs significantly from that which would have been obtained under paragraph D.2, 3, and 4 above, and (ii) the volume of work to which the rate would apply is material.

E. Negotiation and Approval of Indirect Cost Rates.

1. *Definitions.* As used in this section, the following terms have the meanings set forth below:

a. "Cognizant agency" means the Federal agency responsible for negotiating and approving indirect cost rates for a nonprofit organization on behalf of all Federal agencies.

b. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. "Provisional rate" or billing rate means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on awards pending the establishment of a final rate for the period.

f. "Indirect cost proposal" means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. "Cost objective" means a function, organizational subdivision, contract, grant, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. Negotiation and approval of rates.

a. Unless different arrangements are agreed to by the agencies concerned, the Federal agency with the largest dollar value of awards with an organization will be designated as the cognizant agency for the negotiation and approval of indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the

assignment will not be changed unless there is a major long-term shift in the dollar volume of the Federal awards to the organization. All concerned Federal agencies shall be given the opportunity to participate in the negotiation process, but after a rate has been agreed upon it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates in accordance with paragraph D.5 above, it will, prior to the time the rates are negotiated, notify the cognizant agency.

b. A nonprofit organization which has not previously established an indirect cost rate with a Federal agency shall submit its initial indirect cost proposal to the cognizant agency. The proposal shall be submitted as soon as possible after the organization is advised that an award will be made and, in no event, later than three months after the effective date of the award.

c. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, shall not be negotiated if (i) all or a substantial portion of the organization's awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Government and non-government work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates shall be negotiated where neither predetermined nor fixed rates are appropriate.

g. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the nonprofit organization. The cognizant agency shall distribute copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency and the nonprofit organization, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance as required to resolve such problems in a timely manner.

[Circular No. A-122]

Attachment B

Selected Items of Cost

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46. Taxes
47. Termination costs
48. Training and education costs
49. Transportation costs
50. Travel costs

[Circular No. A-122]

Attachment B

Selected Items of Cost

Paragraphs 1 through 50 provide principles to be applied in establishing the allowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. Failure to mention a particular item of cost is not intended to imply that it is unallowable; rather determination as to allowability in each case should be based on the treatment or principles provided for similar or related items of cost.

1. Advertising costs.

a. Advertising costs mean the costs of media services and associated costs. Media advertising includes magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The only advertising costs allowable are those which are solely for (i) the recruitment of personnel when considered in conjunction with all other recruitment costs, as set forth in paragraph 40; (ii) the procurement of goods and services; (iii) the disposal of surplus materials acquired in the performance of the award except when organizations are reimbursed for disposals at a predetermined amount in accordance with Attachment N of OMB Circular A-110; or (iv) specific requirements of the award.

2. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs, are unallowable.

3. Bid and proposal costs. (reserved)

4. Bonding costs.

a. Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the organization. They arise also in instances where the organization requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the organization in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

5. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like, are allowable.

6. Compensation for personal services.

a. *Definition.* Compensation for personal services includes all compensation paid currently or accrued by the organization for services of employees rendered during the period of the award (except as otherwise provided in paragraph g. below). It includes, but is not limited to, salaries, wages, director's and executive committee member's fees, incentive awards, fringe benefits, pension plan costs, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differentials.

b. *Allowability.* Except as otherwise specifically provided in this paragraph, the costs of such compensation are allowable to the extent that:

(1) Total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the organization consistently applied to both Government and non-Government activities; and

(2) Charges to awards whether treated as direct or indirect costs are determined and supported as required in this paragraph.

c. Reasonableness.

(1) When the organization is predominantly engaged in activities other than those sponsored by the Government, compensation for employees on Government-sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the organization's other activities.

(2) When the organization is predominantly engaged in Government-sponsored activities

and in cases where the kind of employees required for the Government activities are not found in the organization's other activities, compensation for employees on Government-sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved.

d. *Special considerations in determining allowability.* Certain conditions require special consideration and possible limitations in determining costs under Federal awards where amounts or types of compensation appear unreasonable. Among such conditions are the following:

(1) Compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an organization's compensation policy resulting in a substantial increase in the organization's level of compensation, particularly when it was concurrent with an increase in the ratio of Government awards to other activities of the organization or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

e. *Unallowable costs.* Costs which are unallowable under other paragraphs of this Attachment shall not be allowable under this paragraph solely on the basis that they constitute personal compensation.

f. Fringe benefits.

(1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave, military leave, and the like, are allowable provided such costs are absorbed by all organization activities in proportion to the relative amount of time or effort actually devoted to each.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, pension plan costs (see paragraph g. below), and the like, are allowable provided such benefits are granted in accordance with established written organization policies. Such benefits whether treated as indirect costs or as direct costs, shall be distributed to particular awards and other activities in a manner consistent with the pattern of benefits accruing to the individuals or group of employees whose salaries and wages are chargeable to such awards and other activities.

(3)(a) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(b) Where an organization follows a consistent policy of expensing actual payments to, or on behalf of, employees or former employees for unemployment compensation or workers' compensation, such payments are allowable in the year of payment with the prior approval of the awarding agency provided they are allocated to all activities of the organization.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the organization is named as beneficiary are unallowable.

g. Pension plan costs.

(1) Costs of the organization's pension plan which are incurred in accordance with the established policies of the organization are allowable, provided:

(a) Such policies meet the test of reasonableness;

(b) The methods of cost allocation are not discriminatory;

(c) The cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles as prescribed in Accounting Principles Board Opinion No. 8 issued by the American Institute of Certified Public Accountants; and

(d) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

(2) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act of 1974 (Pub. L. 93-408) are allowable. Late payment charges on such premiums are unallowable.

(3) Excise taxes on accumulated funding deficiencies and other penalties imposed under the Employee Retirement Income Security Act are unallowable.

h. Incentive compensation. Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the organization and the employees before the services were rendered, or pursuant to an established plan followed by the organization so consistently as to imply, in effect, an agreement to make such payment.

i. Overtime, extra pay shift, and multishift premiums. See paragraph 27.

j. Severance pay. See paragraph 44.

k. Training and education costs. See paragraph 48.

l. Support of salaries and wages.

(1) Charges to awards for salaries and wages, whether treated as direct costs or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports as

prescribed in subparagraph (2) below, except when a substitute system has been approved in writing by the cognizant agency. (See paragraph E.2 of Attachment A)

(2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (e.g., an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by nonprofit organizations to satisfy these requirements must meet the following standards:

(a) The reports must reflect an *after-the-fact* determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.

(3) Charges for the salaries and wages of nonprofessional employees, in addition to the supporting documentation described in subparagraphs (1) and (2) above, must also be supported by records indicating the total number of hours worked each day maintained in conformance with Department of Labor regulations implementing the Fair Labor Standards Act (29 CFR Part 516). For this purpose, the term "nonprofessional employee" shall have the same meaning as "nonexempt employee," under the Fair Labor Standards Act.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

7. Contingency provisions. Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see paragraph 8.f.(3) and 18.a.(2)(d)); pension funds (see paragraph 8.(g)); and reserves for normal severance pay (see paragraph 44.(b)(1)).

8. Contributions. Contributions and donations by the organization to others are unallowable.

9. Depreciation and use allowances.

a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowances or depreciation. However, except as provided in paragraph f. below a combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.).

b. The computation of use allowances or depreciation shall be based on the acquisition cost of the assets involved. The acquisition cost of an asset donated to the organization by a third party shall be its fair market value at the time of the donation.

c. The computation of use allowances or depreciation will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the organization in satisfaction of a statutory matching retirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvement (including land improvements such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air conditioning, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will be subject to the six and two-thirds percent equipment use allowance limitation.

e. Where depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular program area, and the renewal and replacement policies followed for the the individual items or classes of assets involved. The method of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater or lesser in the early portions of its

useful life than in the later portions, the straight-line method shall be presumed to be the appropriate method. Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. When the depreciation method is introduced for application to assets previously subject to a use allowance, the combination of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets. When the depreciation method is used for buildings, a building's shell may be segregated from each building component (e.g., plumbing system, heating, and air conditioning system, etc.) and each item depreciated over its estimated useful life; or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. When the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that, under paragraph e. above, would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets if warranted after taking into consideration the amount of depreciation previously charged to the Government, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

g. Charges for use allowances or depreciation must be supported by adequate property records and physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure that assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records indicating the amount of depreciation taken each period must also be maintained.

10. Donations

a. Services received.

(1) Donated or volunteer services may be furnished to an organization by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost.

(2) The value of donated services utilized in the performance of a direct cost activity shall be considered in the determination of the organization's indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(a) The aggregate value of the services is material;

(b) The services are supported by a significant amount of the indirect costs incurred by the organization;

(c) The direct cost activity is not pursued primarily for the benefit of the Federal Government.

(3) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency shall negotiate an appropriate allocation of indirect cost to the services.

(4) Where donated services directly benefit a project supported by an award, the indirect

costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the award or used to meet cost sharing or matching requirements.

(5) The value of the donated services may be used to meet cost sharing or matching requirements under conditions described in Attachment E, OMB Circular No. A-110. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

(6) Fair market value of donated services shall be computed as follows:

(a) *Rates for volunteer services.* Rates for volunteers shall be consistent with those regular rates paid for similar work in other activities of the organization. In cases where the kinds of skills involved are not found in the other activities of the organization, the rates used shall be consistent with those paid for similar work in the labor market in which the organization competes for such skills.

(b) *Services donated by other organizations.* When an employer donates the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs) provided the services are in the same skill for which the employee is normally paid. If the services are not in the same skill for which the employee is normally paid, fair market value shall be computed in accordance with subparagraph (a) above.

b. Goods and space.

(1) Donated goods; i.e., expendable personal property/supplies, and donated use of space may be furnished to an organization. The value of the goods and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in Attachment E, OMB Circular No. A-110. The value of the donations shall be determined in accordance with Attachment E. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

11. *Employee morale, health, and welfare, costs and credits.* The costs of house publications, health or first-aid clinics, and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the organization's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable. Such costs will be equitably apportioned to all activities of the organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs of amusement, diversion, social activities, ceremonials, and costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable (but see paragraphs 11 and 25).

13. *Equipment and other capital expenditures.*

a. As used in this paragraph, the following terms have the meanings set forth below:

(1) "Equipment" means an article of nonexpendable tangible personal property having a useful life of more than two years and an acquisition cost of \$500 or more per unit. An organization may use its own definition provided that it at least includes all nonexpendable tangible personal property as defined herein.

(2) "Acquisition cost" means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

(3) "Special purpose equipment" means equipment which is usable only for research, medical, scientific, or technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

b. (1) Capital expenditures for general purpose equipment are unallowable as a direct cost except with the prior approval of the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs provided that items with a unit cost of \$1000 or more have the prior approval of the awarding agency.

c. Capital expenditures for land or buildings are unallowable as a direct cost except with the prior approval of the awarding agency.

d. Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

e. Equipment and other capital expenditures are unallowable as indirect costs. However, see paragraph 9 for allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see paragraph 42 for allowability of rental costs for land, buildings, and equipment.

14. *Fines and penalties.* Costs of fines and penalties resulting from violations of, or failure of the organization to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency.

15. *Fringe benefits.* See paragraph 6. f.

16. *Idle facilities and idle capacity.*

a. As used in this paragraph the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the organization.

(2) "Idle facilities" means completely unused facilities that are excess to the organization's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 per cent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multishift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.

(4) "Costs of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs; e.g., property taxes, insurance, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see paragraphs 47.b. and d.).

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be idle facilities.

17. *Independent research and development* [Reserved].

18. *Insurance and indemnification.*

a. Insurance includes insurance which the organization is required to carry, or which is approved, under the terms of the award and any other insurance which the organization maintains in connection with the general conduct of its operations. This paragraph does not apply to insurance which represents fringe benefits for employees (see paragraph 6.f. and 6.g.(2)).

(1) Costs of insurance required or approved, and maintained, pursuant to the award are allowable.

(2) Costs of other insurance maintained by the organization in connection with the

general conduct of its operations are allowable subject to the following limitations.

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances.

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of management fees.

(c) Costs of insurance or of any provisions for a reserve covering the risk of loss or damage to Government property are allowable only to the extent that the organization is liable for such loss or damage.

(d) Provisions for a reserve under a self-insurance program are allowable to the extent that types of coverage, extent of coverage, rates, and premiums would have been allowed had insurance been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(e) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see paragraph 6). The cost of such insurance when the organization is identified as the beneficiary is unallowable.

(3) Actual losses which could have been covered by permissible insurance (through the purchase of insurance or a self-insurance program) are unallowable unless expressly provided for in the award, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable.

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of operations, are allowable.

b. Indemnification includes securing the organization against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Government is obligated to indemnify the organization only to the extent expressly provided in the award.

19. *Interest, fund raising, and investment management costs.*

a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

d. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in paragraph B of Attachment A.

20. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the organization and its employees, including costs of labor management committees,

employee publications, and other related activities are allowable.

21. *Losses on other awards.* Any excess of costs over income on any award is unallowable as a cost of any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any underrecoveries through negotiation of lump sums for, or ceilings on, indirect costs.

22. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see paragraph 13).

23. *Materials and supplies.* The costs of materials and supplies necessary to carry out an award are allowable. Such costs should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the organization. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges may be a proper part of material cost. Materials and supplies charged as a direct cost should include only the materials and supplies actually used for the performance of the contract or grant, and due credit should be given for any excess materials or supplies retained, or returned to vendors.

24. *Meetings, conferences.*

a. Costs associated with the conduct of meetings and conferences, include the cost of renting facilities, meals, speakers' fees, and the like. But see paragraph 12, *Entertainment costs*, and paragraph 29, *Participant support costs*.

b. To the extent that these costs are identifiable with a particular cost objective, they should be charged to that objective. (See paragraph B. of Attachment A.) These costs are allowable provided that they meet the general tests of allowability, shown in Attachment A to this Circular.

c. Costs of meetings and conferences held to conduct the general administration of the organization are allowable.

25. *Memberships, subscriptions, and professional activity costs.*

a. Costs of the organization's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the organization's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of attendance at meetings and conferences sponsored by others when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, and other items incidental to such attendance.

26. *Organization costs.* Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or

investment counselors, whether or not employees of the organization, in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the awarding agency.

27. *Overtime, extra-pay shift, and multishift premiums.* Premiums for overtime, extra-pay shifts, and multishift work are allowable only with the prior approval of the awarding agency except:

a. When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.

b. When employees are performing indirect functions such as administration, maintenance, or accounting.

c. In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed.

d. When lower overall cost to the Government will result.

28. *Page charges in professional journals.* Page charges for professional journal publications are allowable as a necessary part of research costs, where:

a. The research papers report work supported by the Government; and

b. The charges are levied impartially on all research papers published by the journal, whether or not by Government-sponsored authors.

29. *Participant support costs.* Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects. These costs are allowable with the prior approval of the awarding agency.

30. *Patent costs.*

a. Costs of (i) preparing disclosures, reports, and other documents required by the award and of searching the art to the extent necessary to make such disclosures, (ii) preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Government to be conveyed to the Government, and (iii) general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements are allowable (but see paragraph 34).

b. Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures, if not required by the award, are unallowable. Costs in connection with (i) filing and prosecuting any foreign patent application, or (ii) any United States patent application, where the award does not require conveying title or a royalty-free license to the Government, are unallowable (also see paragraph 43).

31. *Pension plans.* See paragraph 6, g.

32. *Plant security costs.* Necessary expenses incurred to comply with Government security requirements or for facilities protection, including wages,

uniforms, and equipment of personnel are allowable.

33. *Preaward costs.* Preaward costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

34. *Professional service costs.*

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization, are allowable, subject to b, c, and d, of this paragraph when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the organization's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Government awards.

(4) The impact of Government awards on the organization's business (i.e., what new problems have arisen).

(5) Whether the proportion of Government work to the organization's total business is such as to influence the organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Government awards.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in paragraph b above, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

d. Cost of legal, accounting, and consulting services, and related costs incurred in connection with defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, organization and reorganization, are unallowable unless otherwise provided for in the award (but see paragraph 47e).

35. *Profits and losses on disposition of depreciable property or other capital assets.*

a. (1) Gains and losses on sale, retirement, or other disposition of depreciable property

shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions.

(a) The gain or loss is processed through a depreciation reserve account and is reflected in the depreciation allowable under paragraph 9.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in paragraph 18.a.(3).

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with paragraph 9.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph a. above shall be excluded in computing award costs.

36. *Public information service costs.*

a. Public information service costs include the cost associated with pamphlets, news releases, and other forms of information services. Such costs are normally incurred to:

(1) Inform or instruct individuals, groups, or the general public.

(2) Interest individuals or groups in participating in a service program of the organization.

(3) Disseminate the results of sponsored and nonsponsored activities.

b. Public information service costs are allowable as direct costs with the prior approval of the awarding agency. Such costs are unallowable as indirect costs.

37. *Publication and printing costs.*

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the organization.

c. Publication and printing costs are unallowable as direct costs except with the prior approval of the awarding agency.

d. The cost of page charges in journals is addressed paragraph 28.

38. *Rearrangement and alteration costs.*

Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the awarding agency.

39 *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the organization's facilities to approximately the same condition existing immediately prior to commencement of Government awards, fair wear and tear excepted, are allowable.

40. *Recruiting costs.* The following recruiting costs are allowable: cost of "help wanted" advertising, operating costs of an employment office, costs of operating an educational testing program, travel expenses including food and lodging of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees (see paragraph 41c). Where the organization uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

41. *Relocation costs.*

a. Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitation described in paragraphs b, c, and d, below, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

b. Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to a maximum period of 30 days, including advance trip time.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4) below, are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of cancelling an unexpired lease, disconnecting and reinstalling household appliances, and purchasing insurance against loss of or damages to personal property. The cost of cancelling an unexpired lease is limited to three times the monthly rental.

c. Allowable relocation costs for new employees are limited to those described in (1) and (2) of paragraph b. above. When relocation costs incurred incident to the recruitment of new employees have been

allowed either as a direct or indirect cost and the employee resigns for reasons within his control within 12 months after hire, the organization shall refund or credit the Government for its share of the cost. However, the costs of travel to an overseas location shall be considered travel costs in accordance with paragraph 50 and not relocation costs for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

d. The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

42. *Rental costs.*

a. Subject to the limitations described in paragraphs b. through d. of this paragraph, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the organization continued to own the property.

c. Rental costs under less-than-length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between (i) divisions of an organization; (ii) organizations under common control through common officers, directors, or members; and (iii) an organization and a director, trustee, officer, or key employee of the organization or his immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

d. Rental costs under leases which create a material equity in the leased property are allowable only up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed; e.g., depreciation or use allowances, maintenance, taxes, insurance but excluding interest expense and other unallowable costs. For this purpose, a material equity in the property exists if the lease is noncancelable or is cancelable only upon the occurrence of some remote contingency and has one or more of the following characteristics:

(1) The organization has the right to purchase the property for a price which at the beginning of the lease appears to be substantially less than the probable fair market value at the time it is permitted to purchase the property (commonly called a lease with a bargain purchase option);

(2) Title to the property passes to the organization at some time during or after the lease period;

(3) The term of the lease (initial term plus periods covered by bargain renewal options, if any) is equal to 75 per cent or more of the economic life of the leased property; i.e., the period the property is expected to be economically usable by one or more users.

43. *Royalties and other costs for use of patents and copyrights.*

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the organization.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government award would be made.

(3) Royalties paid under an agreement entered into after an award is made to an organization.

c. In any case involving a patent or copyright formerly owned by the organization, the amount of royalty allowed should not exceed the cost which would have been allowed had the organization retained title thereto.

44. *Severance pay.*

a. Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (i) law, (ii) employer-employee agreement, (iii) established policy that constitutes, in effect, an implied agreement on the organization's part, or (iv) circumstances of the particular employment.

b. Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all activities; or, where the organization provides for a reserve for normal severances such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the organization.

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

45. *Specialized service facilities.*

a. The costs of services provided by highly complex or specialized facilities operated by

the organization, such as electronic computers and wind tunnels, are allowable provided the charges for the services meet the conditions of either b. or c. of this paragraph and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under paragraph A.5. of Attachment A.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that (i) does not discriminate against federally supported activities of the organization, including usage by the organization for internal purposes, and (ii) is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. Advance agreements pursuant to paragraph A.6. of Attachment A are particularly important in this situation.

c. Where the costs incurred for a service are not material, they may be allocated as indirect costs.

46. Taxes.

a. In general, taxes which the organization is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (i) taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the Government and in the latter case when the awarding agency makes available the necessary exemption certificates, (ii) special assessments on land which represent capital improvements, and (iii) Federal income taxes.

b. Any refund of taxes, and any payment to the organization of interest thereon, which were allowed as award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Government.

47. *Termination costs.* Termination of awards generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Circular in termination situations.

a. *Common items.* The cost of items reasonably usable on the organization's other work shall not be allowable unless the organization submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the organization, the awarding agency should consider the organization's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the organization shall be regarded as evidence that such items are reasonably usable on the organization's other work. Any acceptance of common items as allocable to the terminated portion of the award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. *Costs continuing after termination.* If in a particular case, despite all reasonable efforts by the organization, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the organization to discontinue such costs shall be unallowable.

c. *Loss of useful value.* Loss of useful value of special tooling, machinery and equipment which was not charged to the award as a capital expenditure is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the organization.

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the awarding agency;

d. *Rental costs.* Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated award less the residual value of such leases, if (i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the award and such further period as may be reasonable, and (ii) the organization makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the award, and of reasonable restoration required by the provisions of the lease.

e. *Settlement expenses.* Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the award, unless the termination is for default. (See paragraph 4.a. of Attachment L, OMB Circular No. A-110; and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced for the award; except when grantees are reimbursed for disposals at a predetermined amount in accordance with Attachment N of OMB Circular A-110.

(3) Indirect costs related to salaries and wages incurred as settlement expenses in subparagraphs (1) and (2) of this paragraph. Normally, such indirect costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. *Claims under subawards.* Claims under subawards, including the allocable portion of claims which are common to the award, and to other work of the organization are generally allowable. An appropriate share of the organization's indirect expense may be allocated to the amount of settlements with subcontractor/subgrantees; provided that the amount allocated is otherwise consistent

with the basic guidelines contained in Attachment A. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

48. Training and education costs.

a. Costs of preparation and maintenance of a program of instruction including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and (i) salaries of the director of training and staff when the training program is conducted by the organization; or (ii) tuition and fees when the training is in an institution not operated by the organization, are allowable.

b. Costs of part-time education, at an undergraduate or postgraduate college level, including that provided at the organization's own facilities, are allowable only when the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work, and are limited to:

(1) Training materials.

(2) Textbooks.

(3) Fees charges by the educational institution.

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect costs of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution.

(5) Salaries and related costs of instructors who are employees of the organization.

(6) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year and only to the extent that circumstances do not permit the operation of classes or attendance at classes after regular working hours; otherwise such compensation is unallowable.

c. Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the organization's own facilities, at a postgraduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which the employee is now working or may reasonably be expected to work, and only where the costs receive the prior approval of the awarding agency. Such costs are limited to the costs attributable to a total period not to exceed one school year for each employee so trained. In unusual cases the period may be extended.

d. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees' salaries, subsistence, and travel. Costs allowable under this paragraph do not include those for courses that are part of a degree-oriented

curriculum, which are allowable only to the extent set forth in b. and c. above.

e. Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the organization for training purposes are allowable to the extent set forth in paragraphs 9, 22, and 42.

f. Contributions or donations to educational or training institutions, including the donation of facilities or other properties, and scholarships or fellowships, are unallowable.

g. Training and education costs in excess of those otherwise allowable under paragraphs b. and c. of this paragraph may be allowed with prior approval of the awarding agency. To be considered for approval, the organization must demonstrate that such costs are consistently incurred pursuant to an established training and education program, and that the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work.

49. *Transportation costs.* Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly charged as transportation costs or added to the cost of such items (see paragraph 23). Where identification with the materials received cannot readily be made, transportation costs may be charged to the appropriate indirect cost accounts if the organization follows a consistent, equitable procedure in this respect.

50. *Travel costs.*

a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the organization. Travel costs are allowable subject to paragraphs b. through e. below, when they are directly attributable to specific work under an award or are incurred in the normal course of administration of the organization.

b. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the organization in its regular operations.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Necessary and reasonable costs of family movements and personnel movements of a special or mass nature are allowable, pursuant to paragraphs 40 and 41, subject to

allocation on the basis of work or time period benefited when appropriate. Advance agreements are particularly important.

e. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must be approved. For purposes of this provision, foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. However, for an organization located in foreign countries, the term "foreign travel" means travel outside that country.

[Circular No. A-122]

Attachment C

Nonprofit Organizations not Subject to this Circular

Aerospace Corporation, El Segundo, California
 Argonne Universities Association, Chicago, Illinois
 Associated Universities, Incorporated, Washington, D.C.
 Associated Universities for Research and Astronomy, Tucson, Arizona
 Atomic Casualty Commission, Washington, D.C.
 Battelle Memorial Institute, Headquartered in Columbus, Ohio
 Brookhaven National Laboratory, Upton, New York
 Center for Energy and Environmental Research (CEER), (University of Puerto Rico) Commonwealth of Puerto Rico
 Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
 Comparative Animal Research Laboratory (CARL) (University of Tennessee), Oak Ridge, Tennessee
 Environmental Institute of Michigan, Ann Arbor, Michigan
 Hanford Environmental Health Foundation, Richland, Washington
 IIT Research Institute, Chicago, Illinois
 Institute for Defense Analysis, Arlington, Virginia
 Institute of Gas Technology, Chicago, Illinois
 Midwest Research Institute, Headquartered in Kansas City, Missouri
 Mitre Corporation, Bedford, Massachusetts
 Montana Energy Research and Development Institute, Inc., (MERDI), Butte, Montana
 National Radiological Astronomy Observatory, Green Bank, West Virginia
 Oak Ridge Associated Universities, Oak Ridge, Tennessee
 Project Management Corporation, Oak Ridge, Tennessee
 Rand Corporation, Santa Monica, California
 Research Triangle Institute, Research Triangle Park, North Carolina
 Riverside Research Institute, New York, New York
 Sandia Corporation, Albuquerque, New Mexico
 Southern Research Institute, Birmingham, Alabama
 Southwest Research Institute, San Antonio, Texas
 SRI International, Menlo Park, California
 Syracuse Research Corporation, Syracuse, New York

Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois

Universities Corporation for Atmospheric Research, Boulder, Colorado
 Nonprofit Insurance Companies such as Blue Cross and Blue Shield Organizations
 Other nonprofit organizations as negotiated with awarding agencies.

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