

Agency for International Development

Pt. 211

§ 209.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 209.12 Effect on other regulations; supervision and coordination.

(a) All regulations, orders or like directions heretofore issued by any officer of the Agency for International Development which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendment thereof): (1) Executive Order 11246, and regulations issued thereunder, or (2) any other regulation or instruction insofar as it prohibits discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibits discrimination on any other ground.

(b) *Supervision and coordination.* The Administrator may from time to time assign to officials of other departments or agencies of the government (with the consent of such department or agency) responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in §209.10), including the achievement of effective coordination and maximum uniformity within the Agency for International Development and within the Executive branch of the Government in the application of title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another

Department or Agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this Agency.

[30 FR 317, Jan. 9, 1965, as amended at 38 FR 17949, July 5, 1973]

§ 209.13 Delegation of authority.

Responsibility for administration and enforcement of this part, with respect to Federal financial assistance administered by another Federal department or agency pursuant to delegation, transfer interagency service agreement, or other arrangement is vested in the head of such department or agency, or his delegate, and subject to such delegations or redelegations as he may make or authorize.

APPENDIX A TO PART 209—FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS REGULATION APPLIES

1. Grants to organizations and institutions to carry on programs of technical cooperation and development in the United States to promote the economic development of less developed friendly countries. (Section 211, Foreign Assistance Act, 22 U.S.C. 2171.)

2. Grants to organizations and institutions to carry on programs of technical cooperation and development in the United States to promote the economic development of the less developed friendly countries of Latin America. (Section 251, Foreign Assistance Act, 22 U.S.C. 2211.)

3. Grants to organizations and institutions to carry out programs in the United States of research into, and evaluation of, economic development in less developed foreign countries. (Section 241, Foreign Assistance Act, 22 U.S.C. 2193.)

[30 FR 317, Jan. 9, 1965, as amended at 38 FR 17949, July 5, 1973]

PART 211—TRANSFER OF FOOD COMMODITIES FOR FOOD USE IN DISASTER RELIEF, ECONOMIC DEVELOPMENT AND OTHER ASSISTANCE

Sec.

211.1 General purpose and scope; legislation.

211.2 Definitions.

211.3 Cooperating sponsor agreements; program procedure.

211.4 Availability and shipment of commodities.

§211.1

- 211.5 Obligations of cooperating sponsor.
- 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, damage or improper distribution of commodities.
- 211.10 Records and reporting requirements.
- 211.11 Suspension, termination, and expiration of program.
- 211.12 Waiver and amendment authority.
- 211.13 Participation by religious organizations.

APPENDIX I TO PART 211—OPERATIONAL PLAN

AUTHORITY: 7 U.S.C. 1726a(c).

SOURCE: 57 FR 19766, May 7, 1992, unless otherwise noted.

§211.1 General purpose and scope; legislation.

(a) *Legislation.* The Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480), was further revised by the Agricultural Development and Trade Act of 1990, Public Law 101-624, 104 Stat. 3632-65 (1990). The legislation implemented by the regulation in this part (as of the date of issuance of this part) includes sections of Public Law 480, as follows: Sections 1, 2, 3, 201, 202, 203, 207, 401, 402, 403, 404, 406, 407, 408, 409, 413 and 414. Pursuant to title II of Public Law 480, A.I.D. may transfer agricultural commodities to address famine or other urgent or extraordinary relief requirements; combat malnutrition, especially in children and mothers; carry out activities that attempt to alleviate the causes of hunger, mortality and morbidity; promote economic and community development; promote sound environmental practices; and carry out feeding programs. Agricultural commodities may be provided to meet emergency food needs through foreign governments and private or public organizations, including intergovernmental organizations. Section 202(a) of Public Law 480 authorizes A.I.D., notwithstanding any other provision of law, to provide agricultural commodities for emergency food needs in such manner and on such terms and conditions as A.I.D. determines appropriate to respond to the emergency. Agricultural commodities also may be provided for non-emergency assistance

22 CFR Ch. II (4-1-20 Edition)

through private voluntary organizations or cooperatives which are, to the extent practicable, registered with A.I.D., and through intergovernmental organizations.

(b) *Terms and conditions.* This part 211, also known as A.I.D. Regulation 11, provides the standard terms and conditions applicable to title II programs, except those conducted by agencies of the United Nations and the World Food Program. The Operational Plan submitted by a cooperating sponsor may propose, and justify, the waiver of any section of this Regulation that is not required by statute. If A.I.D. approves a waiver, the specific section or subsection waived will be identified in the Transfer Authorization signed by the cooperating sponsor and A.I.D. or in an attachment, prepared by A.I.D., that is appended to the Operational Plan.

§211.2 Definitions.

(a) *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, DC.

(b) *Annual Estimate of Requirements* or *AER* (Form A.I.D. 1550-3, Exhibit E, A.I.D. Handbook 9) is a statistical update of the Operational Plan which is signed by the cooperating sponsor requesting commodities under title II estimating the quantities required. When signed by AID/W, the AER together with the Food for Peace Program Agreement between A.I.D. and the cooperating sponsor, the approved Operational Plan, and this Regulation 11 form a donation agreement between A.I.D. and the cooperating sponsor with respect to the commodities included in the AER.

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

(d)(1) *Cooperating sponsor* means an entity, within or without the United States, governmental or not, such as the foreign government, the American Red Cross, the intergovernmental organization, or the private voluntary organization or cooperative, which enters

Agency for International Development

§211.2

into an agreement with the U.S. Government for the use of agricultural commodities or funds.

(2) *Governmental cooperating sponsor* means a foreign government which has signed a Transfer Authorization under which agricultural commodities are donated for emergency purposes only. Governmental cooperating sponsors are treated here as a group separate from other cooperating sponsors since they are eligible only for emergency programs and their circumstances are different in such matters as rules governing shipping and in certain other aspects of agreements.

(3) *Nongovernmental cooperating sponsor* means a cooperating sponsor which is a private voluntary organization, a cooperative, the American Red Cross, or other private or public agency. An intergovernmental organization also is treated as a nongovernmental cooperating sponsor in this Regulation 11 unless the text or context indicates otherwise.

(e) *Cooperative* means a private sector organization whose members own and control the organization and share in its services and its profits and that provides business services and outreach in cooperative development for its membership.

(f) *Diplomatic Posts* means the offices of the Department of State located in foreign countries and may include Embassies, Legations, and Consular offices. Since A.I.D. is responsible for title II programs, references in this Regulation to Diplomatic Posts apply only with respect to those countries where there is no USAID.

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

(h) *Disaster victims* means persons who, because of flood, drought, fire, earthquake, other natural or man-made disasters, or extraordinary relief requirements, are in need of food, feed, or other assistance.

(i) *Duty free* means exempt from all customs duties, toll charges, taxes or governmental impositions levied on the act of importation.

(j)(1) *Food for Peace Program Agreement* establishes a nongovernmental organization as a cooperating sponsor for

which A.I.D. agrees to authorize future transfers of commodities in accordance with title II of Public Law 480 and Regulation 11 and the cooperating sponsor agrees to accept transfer of commodities in accordance with approved programs under title II and A.I.D. Regulation 11 and related procedures.

(2) *Host Country Food for Peace Program Agreement* means an agreement between the cooperating sponsor and the foreign government of each cooperating country which authorizes the cooperating sponsor to conduct activities there in a manner consistent with the terms and conditions set forth within this Regulation 11.

(3) *Recipient Agency Agreement* means a written agreement between the cooperating sponsor and a recipient agency prior to the transfer to the recipient agency of commodities, monetized proceeds, or other program income for distribution or implementation of an approved program.

(k) *Free alongside ship* (f.a.s.) includes all costs of transportation and delivery of the goods to the dock. "Free on board" (f.o.b.) includes costs for delivering the goods and loading them aboard the carrier at a specific location.

(l) *Institutions* means nonpenal, public or nonprofit private establishments that operate 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.

(m) *Intergovernmental organizations* means agencies sponsored and supported by two or more nations, one of which is the United States.

(n) *Marine salvage* means the compensation made to those by whose assistance a vessel or its cargo has been saved from impending peril or recovered from actual loss.

(o) *Monetized proceeds* means funds generated from the sale of title II commodities in approved monetization programs. Monetized proceeds should be deposited in a special interest-bearing account for control and monitoring.

§211.3

22 CFR Ch. II (4–1–20 Edition)

(p) *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.

(q) *Operational Plan* is a plan submitted by the cooperating sponsor or potential cooperating sponsor describing the proposed use of commodity and/or monetized proceeds and/or program income. All references in this Regulation to the Operational Plan shall include the AER that relates to such Operational Plan.

(r) *Private voluntary organization* means a not-for-profit, nongovernmental organization (in the case of a United States organization, an organization that is exempt from Federal Income Taxes under section 501(c)(3) of the Internal Revenue Code of 1986) that receives funds from private sources, voluntary contributions of money, staff time, or in-kind support from the public, and that is engaged or is planning to engage in voluntary, charitable or development assistance activities (other than religious activities).

(s) *Program income* means gross income earned by the cooperating sponsor or recipient agencies from activities supported under the approved program during the program period, including, but not limited to, interest earned on deposits of monetized proceeds, revenue from income generating activities, funds accruing from the sale of containers and nominal voluntary contributions by recipients made on the basis of ability to pay.

(t) *Recipient agencies* means schools, institutions, welfare agencies, disaster relief organizations, and public or private agencies whose food distribution functions or project activities are sponsored by the cooperating sponsor and which receive for distribution to eligible recipients commodities or monetized proceeds or program income for approved project activities. A cooperating sponsor may be a recipient agency.

(u) *Recipients* means persons who receive food assistance or the benefit of monetized proceeds or program income because of their economic or nutritional condition or who are otherwise eligible to receive commodities for their own use or other assistance in ac-

cordance with the terms and conditions of the approved Operational Plan or Transfer Authorization.

(v) *Registered private voluntary organization or cooperative* means a nonprofit private voluntary organization or cooperative registered with, and approved by, A.I.D. The term includes foreign as well as U.S. registered nonprofit voluntary organizations and cooperatives. For discussion of registration, see 22 CFR part 203, A.I.D. Regulation 3, Registration of Agencies for Voluntary Foreign Aid. In reviewing and approving proposals, A.I.D., at its discretion, may give preference to registered private voluntary organizations and cooperatives over those that are not and to U.S. private voluntary organizations and cooperatives over those that are foreign.

(w) *Transfer Authorization* or *TA* means the document signed by the cooperating sponsor and A.I.D. which describes commodities and the program in which they will be used. The TA incorporates A.I.D. Regulation 11 and authorizes CCC to ship the commodities.

(x) *USDA* means the U.S. Department of Agriculture.

(y) *Welfare agencies* means public or private voluntary organizations that provide care, including food assistance, to needy persons who are not residents of institutions.

§211.3 Cooperating sponsor agreements; program procedure.

(a) *Food for Peace Program Agreement.* A nongovernmental organization is eligible to be a cooperating sponsor for regular programs under paragraph (d)(2)(i) of this section only after it has entered into a Food For Peace Program Agreement with A.I.D. that incorporates the terms and conditions set forth in Regulation 11.

(b) *Host Country Food for Peace Program Agreement.* Nongovernmental and intergovernmental cooperating sponsors shall, in addition to the Food for Peace Program Agreement, enter into a separate written Host Country Food for Peace Agreement with the foreign government of each country for which title II commodities are transferred to the cooperating sponsor. This agreement shall establish the terms and conditions needed by a nongovernmental

Agency for International Development

§211.4

cooperating sponsor to conduct a title II program in the country in accordance with the applicable requirements of this part. The cooperating sponsor shall provide USAID or the Diplomatic Post a copy of each executed Host Country Food for Peace Agreement.

Where such written agreement is not appropriate or feasible, USAID or the Diplomatic Post shall assure AID/W, in writing, that the program can be effectively implemented in compliance with this Regulation without such an agreement.

(c) *Recipient Agency Agreement.* Prior to the transfer of commodities, monetized proceeds, or program income to a recipient agency for distribution or implementation of an approved program, the cooperating sponsor shall execute with such agency a written agreement which shall:

(1) Describe the approved uses of commodities, monetized proceeds and program income in a manner consistent with the approved Operational Plan or TA;

(2) Require the recipient agency to pay the cooperating sponsor the value of any commodities, monetized proceeds or program income that are used for purposes not permitted under the Recipient Agency Agreement or that are lost, damaged or misused as a result of the recipient agency's failure to exercise reasonable care with respect to such commodities, monetized proceeds or program income; and

(3) Incorporate by reference or otherwise the terms and conditions set forth in this Regulation 11.

The Operational Plan may indicate those transfers of commodities, monetized proceeds or program income for which the cooperating sponsor and A.I.D. agree that a Recipient Agency Agreement would not be appropriate or feasible. In any case, the cooperating sponsor shall remain responsible for such commodities, monetized proceeds and program income in accordance with the terms of this Regulation 11 and the Operational Plan or TA. The cooperating sponsor shall provide USAID or the Diplomatic Post a copy of each executed Recipient Agency Agreement.

(d) *Program procedure*—(1) *Requests for programs.* A program may be requested

by any cooperating sponsor, including private voluntary organizations, cooperatives, foreign governments (for emergencies only), and international organizations.

(2) *Approval of programs.* There are two basic patterns of decision typically employed in approving a request for title II assistance:

(i) *Regular programs.* The cooperating sponsor submits to A.I.D. an Operational Plan or multi-year Operational Plan (see appendix I), describing the program proposed. Also, an AER will be submitted to A.I.D. along with the Operational Plan, estimating the quantities of commodities required for each program proposed. AID/W's approval of and signature on the AER completes this decision process.

(ii) *Individual programs.* The other basic pattern of decision making results in a Transfer Authorization. The TA is used for all emergency government-to-government programs, and for nongovernmental cooperating sponsor programs which do not fit within the Program Agreement/AER framework. The TA will include by reference Regulation 11.

(3) *Subject to availability.* A.I.D.'s agreement to transfer commodities is subject to the availability of appropriations and agricultural commodities during each United States Government fiscal year to which it applies.

(4) *Timing of decision.* Under Public Law 480, section 207(a), within 45 days of its submission to AID/W, a decision must be made on a proposal submitted by a private voluntary organization or cooperative, concurred in by USAID or the Diplomatic Post. The decision shall detail the reasons for approval or denial, and if denied, conditions to be met for approval. In addition, a USAID or Diplomatic Post must decide whether or not to concur in the proposal within 45 days of receiving it or provide a written explanation to the private voluntary organization or cooperative and AID/W of the reasons USAID or the Diplomatic Post needs more time to consider the proposal.

§211.4 Availability and shipment of commodities.

(a) *Shipment, distribution and use of commodities.* Commodities shall be

§211.4

22 CFR Ch. II (4-1-20 Edition)

available for shipment, distribution and use in accordance with the provisions of the approved Operational Plan and AER, or TA and this Regulation 11.

(b) *Transfer of title and delivery.* (1) Unless the approved Operational Plan or TA provides otherwise, title to the commodity shall pass—

(i) For nongovernmental cooperating sponsors, at the point in the United States at which the ocean carrier or its agents take possession of the cargo (generally f.a.s. or f.o.b. vessel U.S. port); or

(ii) For governmental cooperating sponsors, at the destination port of entry, upon completion of discharge by the ocean carrier (non-landlocked countries), or at the destination point of entry, upon completion of delivery by the inland carrier (landlocked countries).

Except as A.I.D. may otherwise agree in writing, the cooperating sponsor shall retain title to commodities, monetized proceeds, and program income transferred to a recipient agency for distribution or use in accordance with the Operational Plan or TA.

(2) Nongovernmental cooperating sponsors shall make the necessary arrangements to accept commodities at the points of availability designated by CCC.

(c) *Processing, handling, transportation and other costs.* (1) Except as otherwise provided in the Operational Plan or TA, the United States will pay in accordance with this paragraph (c) processing, handling, transportation, and other incidental costs incurred in making commodities available to cooperating sponsors at U.S. ports or U.S. inland destinations, up to the point at which the ocean carrier takes possession of the cargo.

(2) The United States will finance the transfer of commodities at the lowest combination inland and ocean transportation costs as determined by the United States and in sizes and types of packages announced as applicable. If a nongovernmental cooperating sponsor requests changes to these standards which are made by the United States as an accommodation to the cooperating sponsor and these changes result in costs over those the United States otherwise would have incurred, the co-

operating sponsor shall reimburse the United States for these increased costs promptly upon request.

(3) All costs and expenses incurred subsequent to the transfer of title to cooperating sponsors shall be borne by them except as otherwise provided herein. Upon the determination that it is in the interests of the program to do so, the United States may pay or reimburse the following additional costs:

(i) Ocean transportation costs from U.S. ports to the designated ports of entry abroad; or

(ii) Ocean transportation costs from U.S. ports to designated points of entry abroad in the case—

(A) Of landlocked countries,

(B) Where ports cannot be used effectively because of natural or other disturbances,

(C) Where carriers to a specific country are unavailable, or

(D) Where a substantial savings in cost or time can be effected by the utilization of points of entry other than ports; or

(iii) In the case of commodities for urgent and extraordinary relief requirements, including prepositioned commodities, transportation costs from designated points of entry or ports of entry abroad to storage and distribution centers and associated storage and distribution costs.

(d) *Payment or reimbursement of ocean freight costs.* When A.I.D. contracts for ocean carriage, carriers shall be paid by A.I.D., as provided in their contracts of affreightment, upon presentation of Standard Form 1034 and three copies of 1034A (Public Voucher for purchases and services other than personal), together with three copies of the related on-board 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 on-board ocean bill of lading under which the goods herein described were located 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

Agency for International Development

§211.4

(Authorized representative)

Such documents shall be submitted to: Transportation Division, Office of Procurement, (FA/OP/TRANS), Agency for International Development, Washington, DC 20523. Except for duty, taxes and other costs excluded by §211.7 (a) and (b) of this Regulation 11, nongovernmental cooperating sponsors booking their own vessels will be reimbursed as provided in A.I.D. Regulation 2 (part 202 of this chapter) for ocean freight authorized by the United States upon presentation to AID/W of proof of payment to the ocean carrier. However, freight prepaid bills of lading which indicate firm incurrence of freight costs will be accepted by A.I.D. as evidence of payment to the ocean carrier provided that the nongovernmental cooperating sponsor agrees to ensure that such carrier is actually paid no later than 7 calendar days following receipt of U.S. Government funds by the sponsor or its agent. A.I.D. will reimburse nongovernmental cooperating sponsors only up to a maximum of 2½ percent commission paid to their freight forwarders as a result of booking Public Law 480, title II cargo. Similarly, when A.I.D. books cargo, a maximum of 2½ percent commission may be paid by the contracted carrier. Proof of payment of commissions must be submitted with requests for reimbursement.

(e) *Shipping instructions*—(1) *Shipments booked by A.I.D.* Requests for shipment of commodities shall originate with the cooperating sponsor and shall be submitted to USAID or the Diplomatic Post for clearance and transmittal to AID/W. AID/W shall, through cables or letters to USAID or the Diplomatic Post, provide cooperating sponsors (and, where applicable, private voluntary organization or cooperative headquarters) with names of vessels, expected times of arrival (ETAs), and other pertinent information on shipments booked by A.I.D. As soon as possible but not later than 7 days from the time of exportation of commodities, A.I.D.'s freight forwarding contractor shall send applicable ocean bills of lading by airmail, or by the fastest means available, to USDA (Chief, Processed Commodities Division, Kansas City ASCS Commodity Office (KCCO), P.O. Box 419205, Kansas City, Missouri 64141–

6205), to USAID or the Diplomatic Post (and where applicable to the USAID Controller and nongovernmental cooperating sponsor headquarters and field representative), to AID/W, FA/OP/TRANS (see §211.4(d)), and to the consignee in sufficient time to advise of the arrival of the shipment.

(2) *Shipments booked by nongovernmental cooperating sponsor.* Requests for shipment of commodities shall originate with the cooperating sponsor and shall be cleared by USAID or the Diplomatic Post before transmittal to the cooperating sponsor's headquarters for concurrence and issuance. USAID or the Diplomatic Post shall promptly clear such 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 cooperating sponsor headquarters concurs in the request and issues the order, the original will be sent promptly to AID/W which will forward it to CCC for procurement action with a copy to USAID or the Diplomatic Post. Headquarters of cooperating sponsors which book their own shipments shall provide their representatives and USAID or the Diplomatic Post with the names of vessels, ETAs and other pertinent information on shipments booked. At the time of exportation of commodities, the booking agent representing the cooperating sponsor shall send applicable ocean bills of lading by airmail or by the fastest means available to USDA (Chief, Processed Commodities Division, Kansas City ASCS Commodity Office (KCCO), P.O. Box 419205, Kansas City, Missouri 64141–6205), to USAID or the Diplomatic Post (and where applicable to the USAID Controller and the nongovernmental cooperating sponsor representative), to AID/W, FA/OP/TRANS (see §211.4(d)), and to the consignee in the country of destination in sufficient time to advise of the arrival of the shipment. Nongovernmental cooperating sponsors also will forward cable advice of actual exportation to their program directors in countries within the Caribbean area in view of the short transit time from U.S. port to destination.

§211.5

(3) Cooperating sponsors awarding USAID-financed ocean transportation bookings of food aid under the Public Law 480, title II program shall follow consistent, transparent, fair and effective procedures. In order to promote these objectives, USAID may formulate, and from time-to-time amend, uniform standard booking guidelines relating to such bookings. Guidelines will be finalized only after consultation with affected cooperating sponsors, freight forwarders and carriers as required by the Agricultural Development and Trade Act of 1990 or other applicable legislation. Copies of the guidelines and any proposed amendments may be obtained from the Transportation Division, Office of Procurement, Agency for International Development, Washington, DC 20523.

(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.

(g) *Conflict of interest.* (1) Pursuant to section 407(c)(4) of Public Law 480, a person may not be an agent, broker, consultant, or other representative of the U.S. Government, an importer, or an importing country in connection with agricultural commodities provided under Public Law 480 during a fiscal year in which such person acts as an agent, broker, consultant or other representative of a person engaged in providing ocean transportation or ocean transportation-related services for such commodities.

(i) For purposes of section 407(c)(4), the term "transportation-related services" means lightening, stevedoring, bagging or inland transportation to the destination point.

(ii) The prohibition does not preclude payment by ocean carriers of compensation or brokerage fees on a shipment-by-shipment basis as provided in governing tariffs or charter parties to

22 CFR Ch. II (4-1-20 Edition)

persons performing freight forwarding or charter broking services under contract to the U.S. Government.

(2) Pursuant to section 407(d)(3) of Public Law 480, freight agents employed by A.I.D. under title I, II or III of Public Law 480 shall not represent any other foreign government during the period of their contract with the United States Government. This restriction applies both to charter brokers and freight forwarders whether they are prime contractors or sub-contractors of A.I.D.

(3) This paragraph (g) does not apply to shipments booked by nongovernmental cooperating sponsors or their agents.

[57 FR 19766, May 7, 1992, as amended at 60 FR 36991, July 19, 1995]

§211.5 Obligations of cooperating sponsor.

(a) *Operational Plans.* Each cooperating sponsor shall submit a description of the programs it is sponsoring or proposes to sponsor to USAID or the Diplomatic Post for its approval. AID/W will prescribe the format and timing for submittals and provide final approval of the Operational Plan. This Operational Plan will include program purposes and goals; criteria for measuring program effectiveness; a description of the activities for which commodities, monetized proceeds, or program income will be provided or used; and other specific provisions in addition to those set forth in this Regulation. 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 will be available in the recipient country at the time of arrival of the commodity to prevent spoilage or waste of the commodity. For preparation of the Operational Plan, see appendix I to this regulation. If a cooperating sponsor submits a multi-year Operational Plan that is approved by A.I.D., the Operational Plan provided with an AER each subsequent year should cover only those components or features which require updating or the cooperating sponsor proposes to change. A.I.D. will

Agency for International Development

§211.5

issue guidance each year regarding Operational Plans that must be submitted by cooperating sponsors. Within the limits of the total amount of commodities, monetized proceeds and program income approved by A.I.D. in the Operational Plan, the cooperating sponsor may increase or decrease by not to exceed 10 percent the amount of commodities, monetized proceeds or program income allocated to approved program categories or components of the Operational Plan. Such adjustments must be identified specifically in the annual report submitted by a cooperating sponsor under §211.10(b) of the Regulation. A cooperating sponsor may not otherwise deviate from the Operational Plan without the prior written approval of A.I.D.

(b) *Program supervision.* Cooperating sponsors shall provide adequate supervisory personnel for the efficient operation of the program, including personnel to:

(1) Plan, organize, implement, control, and evaluate programs involving distribution of commodities or use of monetized proceeds and program income,

(2) Make warehouse inspections, physical inventories, and end-use checks of food or funds, and

(3) Review of books and records maintained by recipient agencies that receive monetized proceeds and/or program income.

Cooperating sponsors shall be represented by a person resident in the country of distribution or other nearby country approved by AID/W, who is appointed by and responsible to the cooperating sponsor for distribution of commodities or use of monetized proceeds or program income in accordance with the provisions of this regulation.

(c) *Audits*—(1) *By nongovernmental cooperating sponsors.* A nongovernmental cooperating sponsor shall arrange for periodic audits to be conducted in accordance with OMB Circular A-133, including the OMB Compliance Supplement and the Statement of Position Regarding Circular A-133 developed by the American Institute of Certified Public Accountants. Nongovernmental recipient agencies shall be treated as subrecipients under OMB Circular A-133, and governmental recipient agen-

cies shall furnish the cooperating sponsor audits in accordance with the standard in paragraph (c)(2) of this section. The cooperating sponsor may satisfy these audit responsibilities with respect to recipient agencies by relying on independent audits performed of recipient agencies or on appropriate procedures performed by the cooperating sponsor's internal audit or program staff, by expanding the scope of the independent financial and compliance audit of the cooperating sponsor to encompass testing of recipient agency charges, or by a combination of these procedures. The Generally Accepted Commodity Accounting Principles issued by Food Aid Management, an association of cooperating sponsors, may be used for commodity accounting.

(2) *By governmental cooperating sponsors.* A governmental cooperating sponsor shall ensure that an audit satisfactory to A.I.D. is conducted annually with respect to donated commodities and monetized proceeds, if commodity sales are authorized under the agreement with A.I.D., including commodities and monetized proceeds transferred to or used by recipient agencies. The audit shall be a financial audit performed by the country's principal government audit agency or another audit agency or firm acceptable to A.I.D. This audit should be conducted in accordance with generally accepted government auditing standards issued by the United States General Accounting Office, or auditing standards that have been prescribed by the laws of the country or adopted by public accountants or an association of public accountants in the country, or Auditing Standards promulgated by the International Organization of Supreme Audit Institutions or International Auditing Practices Committee of the International Federation of Accountants. Both the auditor and the auditing standards to be used by the cooperating sponsor must be acceptable to A.I.D. The cooperating sponsor may satisfy its audit responsibility with respect to recipient agencies by relying on independent audits of the recipient agency or on appropriate procedures performed by internal audit or program staff of the cooperating sponsor, by expanding the scope of the independent

financial audit of the cooperating sponsor to encompass testing of recipient agency charges or actions, or by a combination of these procedures. Recipient agencies that receive less than \$25,000 of donated commodities and/or monetized proceeds are excluded from the cooperating sponsor's audit responsibility.

(d) *Commodity requirements; AER.* Each cooperating sponsor shall submit to USAID or the Diplomatic Post, within such times and on the AER form prescribed by AID/W, estimates of requirements showing the quantities of commodities required for each program proposed.

(e) *No military distribution.* Except as A.I.D. may otherwise agree in writing, agricultural commodities donated by A.I.D. shall not be distributed, handled or allocated by any military forces.

(f) *Determination of eligibility of recipients.* Cooperating sponsors shall be responsible for determining that the recipients and recipient agencies to whom they distribute commodities are eligible in accordance with the Operational Plan or TA and this Regulation. Cooperating sponsors shall impose upon recipient agencies responsibility for determining that the recipients to whom they distribute commodities or provide assistance with monetized proceeds or program income are eligible. Commodities shall be distributed free of charge except as provided in paragraphs (j) and (k) of this section or as otherwise authorized by AID/W, but in no case will recipients be excluded from receiving commodities because of inability to make a contribution to the cooperating sponsor for any purpose.

(g) *No discrimination.* Cooperating sponsors shall distribute commodities to and conduct operations (with food, monetized proceeds, or program income) only with eligible recipient agencies and eligible recipients without regard to political affiliation, geographic location, ethnic, tribal or religious identity or other factors extraneous to need and the eligibility criteria set forth in the approved Operational Plan or TA, and shall impose similar conditions upon recipient agencies.

(h) *Public recognition.* To the maximum extent practicable, and with the cooperation of the host government, adequate public recognition shall be given in the press, by radio, and other media that the commodities or assistance financed by monetized proceeds or program income have been provided through the friendship of the American people as food for peace. At distribution and feeding centers or other project sites 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 paragraph (i) of this section. Recipients' individual identification cards shall, insofar as practicable, be imprinted to contain such information.

(i) *Containers—(1) Markings.* Unless otherwise specified in the Operational Plan or TA, 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 A.I.D. emblem and the following information stated in English:

- (i) Name of commodity;
- (ii) Provided through the friendship of the American people as food for peace;
- (iii) Not to be sold or exchanged (where applicable).

(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 may 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, obliteration, or cross out of the U.S. Government markings from the containers prior to such use.

(j) *Monetization programs.* Provisions of this Regulation that prohibit or restrict the sale of commodities or require marking or labeling of containers do not apply to the extent the sale of commodities is approved by A.I.D. Cooperating sponsors are not required to monitor, manage, report on or account for the distribution or use of commodities after title to the commodities has

Agency for International Development

§211.5

passed to buyers or other third parties pursuant to a sale under a monetization program and all sales proceeds have been fully deposited in the special interest-bearing account established by the cooperating sponsor for monetized proceeds. However, the receipt and use of sales proceeds must be monitored, managed, reported and accounted for as provided in this Regulation, with special reference to paragraphs (k) and (l) of this section, and §211.10. It is not mandatory that commodities approved for monetization be imported and sold free from all duties and taxes, but nongovernmental cooperating sponsors may negotiate agreements with the host government permitting the tax-free import and sale of such commodities. 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.*, the prices would include the cost of duties and taxes, except as A.I.D. may otherwise agree in writing. Thus, the amounts normally paid for duties and taxes would accrue for the benefit of the cooperating sponsor's approved program. Cooperating sponsors should refer to the "Monetization Field Manual" for more comprehensive guidance on setting the sales price. A copy of the Monetization Manual may be obtained from AID/W-FHA/PPE, Washington, DC 20523.

(k) *Use of funds.* (1) Nongovernmental cooperating sponsors and recipient agencies may use monetized proceeds and program income to:

(i) Transport, store, distribute and otherwise enhance the effectiveness of the use of donated commodities and products thereof, including construction or improvement of storage facilities or warehouses, handling, insect and rodent control, payment of personnel employed or used by the cooperating sponsor or recipient agencies in support of approved programs;

(ii) Implement income generating, community development, health, nutrition, cooperative development, agricultural and other developmental activities agreed upon by A.I.D. and the cooperating sponsor;

(iii) Make investments, with the approval of A.I.D., and any interest earned on such investments may be used for purposes described in paragraphs (k)(1) (i) and (ii) of this section;

(iv) Improve their financial and other management systems; and

(v) Pay indirect costs of the cooperating sponsor that are allocable to the monetization program at the indirect cost rate approved by A.I.D. for the cooperating sponsor, the direct and indirect costs of an office maintained by the cooperating sponsor in the country where the monetization program is conducted that are allocable to the title II program there, and the costs of a regional office maintained by a cooperating sponsor that are allocable to the cooperating sponsor's effort to enhance the effectiveness of the use of commodities provided by A.I.D. under title II.

(2) Monetized proceeds and program income may be used by the cooperating sponsor and recipient agencies only for the purposes described in the Operational Plan or TA, or otherwise approved by A.I.D., in writing, and only for such costs as would be allowable under OMB Circular A-122, as amended, "Cost Principles for Nonprofit Organizations". A recipient agency may use not to exceed \$500 per year of voluntary contributions for institutional, community or social development or other humanitarian purposes without regard to the Operational Plan or TA or OMB Circular A-122.

(3) Governmental cooperating sponsors shall use monetized proceeds and program income only for emergency purposes as described in the TA with respect to such programs.

(4) Monetized proceeds and program income may not be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.

(5) Except as A.I.D. may otherwise agree in writing, monetized proceeds may not be used to finance the production for export of agricultural commodities, or products thereof, that would compete in the world market with similar agricultural commodities, or products thereof, produced in the United States, if such competition

§211.5

would cause substantial injury to the United States producers, as determined by A.I.D.

(6)(i) The cooperating sponsor shall use commercially reasonable practices in construction activities and in purchasing goods and services with monetized proceeds or program income; maintain a code of standards of conduct regarding conflicts of interest; carry out procurement transactions in a manner to provide open and free competition to the maximum extent practicable; and maintain and make available to A.I.D. in accordance with §211.10 records and documents regarding the procurement of goods and services with monetized proceeds and program income. Cooperating sponsors shall follow their own requirements relating to bid guarantees, performance bonds and payment bonds when program income or monetized proceeds are used to finance construction or the improvement of facilities, but shall consult with USAID or the Diplomatic Post regarding such requirements when the estimated cost of such construction or improvements exceeds \$100,000. Title to real and personal property shall be vested in the cooperating sponsor, except as provided in the Operational Plan or TA or as A.I.D. may otherwise agree in writing, subject to the requirements of §211.11 upon termination of the program.

(ii) Monetized proceeds and program income may not be used to acquire, construct, alter or upgrade land, buildings or other real property improvements that are used in whole or in part for sectarian purposes or which are owned or managed by a church or other organization engaged exclusively in religious activity. Notwithstanding the preceding sentence, monetized proceeds or program income may be used to finance repair or rehabilitation of an existing structure owned or managed by a church or organization engaged exclusively in religious activity to the extent necessary to avoid spoilage or loss of donated commodities, provided that the structure is not used in whole or in part for any sectarian purpose while donated commodities are stored in it. The use of monetized proceeds or program income to finance construction of such a structure may be ap-

22 CFR Ch. II (4-1-20 Edition)

proved in the Operational Plan or TA or by USAID or the Diplomatic Post if the structure is needed and will be used for the storage of donated commodities for a sufficient period of time to warrant the expenditure of monetized proceeds or program income and the structure will not be used for any sectarian purpose during this period.

(l) *Report on funds.* The cooperating sponsor (headquarters, if there is more than one office) shall annually provide AID/W a report on the receipt and disbursement of all monetized proceeds and program income by cooperating sponsors and recipient agencies. This report should include the source of the funds, by country, and how the funds were used. This annual report should be submitted to AID/W by December 31 of each calendar year for the fiscal year ending September 30 of that calendar year.

(m) *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 recipient country of 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. USAIDs should seek AID/W guidance on this matter.

(n) *Commodities borrowed or exchanged for programs.* After the date of the program approval by AID/W, but before arrival at the distribution point of the commodities authorized, the cooperating sponsor may, with prior approval of USAID or the Diplomatic Post, borrow the same or similar commodities from available sources to meet program requirements provided that:

(1) Borrowed commodities which are used in accordance with the terms of the Operational Plan or TA will be replaced with commodities transferred by A.I.D. The amount of commodities transferred to replace borrowed commodities shall be established by mutual agreement between the cooperating sponsor and USAID or the Diplomatic Post and will be determined on the basis of equivalent value at the time and place of transfer or on some other justifiable basis proposed by the

Agency for International Development

§211.5

cooperating sponsor and acceptable to USAID or the Diplomatic Post;

(2) Packaged commodities which are borrowed shall be appropriately identified insofar as practicable in the language of the country of distribution as having been provided through the friendship of the American people as food for peace; and

(3) Suitable publicity shall be given to the exchange of commodities as provided in paragraph (h) of this section and containers for borrowed commodities shall be marked to the extent practicable in accordance with §211.6(c).

(o) *Commodity transfer between programs.* After the date of program approval by AID/W, but before distribution of the commodities, USAID or the Diplomatic Post (or the cooperating sponsor with prior approval of USAID or the Diplomatic Post) may transfer commodities between approved title II programs to meet emergency disaster requirements or to improve efficiency of operation, such as to meet temporary shortages due to delays in ocean transportation or provide for rapid distribution of stocks in danger of deterioration. Transfers also may 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 and disaster relief organization concerned. A USAID or Diplomatic Post with funds available, however, may pay the costs of transfers to meet extraordinary relief requirements, and AID/W shall be advised promptly of the details of the transfer. Commodities transferred between programs shall not be replaced by the U.S. Government unless AID/W authorizes such replacement.

(p) *Disposal of excessive stock of commodities.* If commodities are on hand which cannot be utilized in accordance with the approved Operational Plan or the TA, 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 the 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. (For discussion of unfit commodity disposal, see §211.8.)

(q) *Trilateral exchange programs.* The restrictions in this Regulation regarding the distribution, use or labeling of commodities shall not apply to commodities furnished by CCC in exchange for other commodities obtained from third parties ("exchanged commodities") to be distributed in a recipient country under a trilateral exchange program. Except as A.I.D. and the cooperating sponsor may otherwise agree in writing, title to the exchanged commodities will pass to the cooperating sponsor upon delivery to and acceptance by the cooperating sponsor at the point of delivery specified in the Operational Plan or TA. After title passes to the cooperating sponsor the exchanged commodities shall be deemed "commodities" covered by this Regulation with respect to all post-delivery obligations of the cooperating sponsor contained in this Regulation, including obligations regarding labeling to the extent practicable, distribution, monitoring, reporting, accounting and use of commodities or monetized proceeds resulting from their sale. In the event of difficulty in satisfying the labeling requirement, the cooperating sponsor will consult with USAID or the Diplomatic Post for guidance.

(r) *Landing.* Governmental cooperating sponsors shall permit donated commodities to be discharged notwithstanding any dispute or question concerning quality, quantity, or other matters relating to the commodity itself. Any such dispute or question shall be resolved in accordance with procedures stated in this Regulation or in the relevant shipping or other contracts, as applicable.

§211.6 Processing, repackaging, and labeling commodities.

(a) *Commercial processing and repackaging.* Cooperating sponsors or their designees may arrange for processing commodities into different end products and for packaging or repackaging commodities prior to distribution. Commodities may be bartered, or monetized proceeds or program income may be used, to offset such costs if provided for in the Operational Plan or TA or approved by USAID or the Diplomatic Post. When commercial facilities are used for processing, packaging or repackaging, cooperating sponsors or their designees shall enter into written agreements for such services and copies of the agreements must be provided to USAID or the Diplomatic Post. Except as AID/W otherwise agrees, the executed agreements shall provide as a minimum that the party providing such services shall:

(1) 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;

(2) Be liable for the value of all commodities not accounted for as provided in §211.9(e);

(3) Return or dispose of the containers in which the commodity is received from the cooperating sponsor according to instructions from the cooperating sponsor; and

(4) Plainly label carton, 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 A.I.D. emblem, and insofar as practicable, with the following information in the language of the country in which the commodities are to be distributed:

(1) Name of commodity;

(2) Provided through the friendship of the American people as food for peace; and

(3) Not to be sold or exchanged (where applicable).

Emblems or other identification of nongovernmental cooperating sponsors also may 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 (c) 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 the applicable charter or booking contract. The cooperating sponsor shall be responsible for all costs related to

(1) Distributing the commodity to end users, as provided in the approved Operational Plan or TA;

(2) Demurrage, detention, and over-time;

(3) Obtaining independent discharge survey reports as provided in §211.9 under which the cooperating sponsor will be reimbursed for the costs of obtaining independent survey reports as provided in §211.9(c)(1)(iv); and

(4) Wharfage, taxes, dues, and port charges assessed and collected by local authorities from the consignee, 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.* Except for commodities which are to be monetized (sold) under an approved Operational Plan or TA, commodities shall be admitted duty free and exempt from all taxes. Consular or legalization invoices shall not be required unless specific provision is made in the Operational Plan or TA. If required, they shall be issued without cost to the cooperating sponsor or to the Government of the United States. The cooperating sponsor shall be responsible for ensuring prompt entry and transit in the foreign country(ies) and for obtaining all necessary import permits, licenses or other appropriate approvals for entry and transit, including phytosanitary, health and inspection certificates.

(c) *Storage facilities and transportation in foreign countries.* The cooperating sponsors shall provide assurance to USAID or the Diplomatic Post that all necessary arrangements for receiving the commodities have been made, and shall assume full responsibility for storage and maintenance of the 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 A.I.D. Before recommending approval of a program to AID/W, USAID or the 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 the 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 pro-

vided in the Operational Plan or TA. Nongovernmental cooperating sponsors shall handle claims arising from loss or damage in the intermediate country, in accordance with §211.9(e). Governmental cooperating sponsors shall assign any rights that they may have to any claims that arise in the intermediate country to USAID or the Diplomatic Post which shall pursue and retain the proceeds of such claims.

(e) *Authorization for reimbursement of costs.* If, because of packaging damage, a cooperating sponsor determines that commodities must be repackaged to ensure that the commodities arrive at the distribution point in a wholesome condition, the cooperating sponsor may incur expenses for such repackaging up to \$500 and such costs will be reimbursed by CCC. If costs will exceed \$500, the authority to repack and incur the costs must be approved by USAID or the Diplomatic Post in advance of repackaging unless such prior approval is specifically waived, in writing, by USAID or the Diplomatic Post. For losses in transit, the \$500 limitation shall apply to all commodities which are shipped on the same voyage of the same vessel to the same port of destination, irrespective of the kinds of commodities shipped or the number of different bills of lading issued by the carrier. For other losses, the \$500 limitation shall apply to each loss situation, e.g., if 700 bags are damaged in a warehouse due to an earthquake, the \$500 limitation applies to the total cost of repackaging the 700 bags. Shipments may not be artificially divided in order to avoid the limitation of \$500 or for obtaining prior approval to incur repackaging costs.

(f) *Method of reimbursement.* (1) Costs of repackaging required because of damage occurring prior to or during discharge from the ocean carrier 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 will be made by CCC upon receipt of invoices or other documents to support such costs. For amounts expended in excess of \$500, reimbursement will be made upon receipt of supporting invoices or other documents establishing the costs of repackaging and showing the prior

§211.8

22 CFR Ch. II (4–1–20 Edition)

approval of USAID or the Diplomatic Post to incur the costs, unless approval is waived under §211.7(e).

(2) Costs of repackaging required because of damage caused after discharge of the cargo from the ocean carrier will be reimbursed to the cooperating sponsor by CCC (USDA-ASCS Fiscal Division, 14th & Independence Avenue, Washington, DC 20250) upon receipt of supporting invoices or other documentation.

§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 a governmental cooperating sponsor at discharge port or point of entry overseas, USAID or the Diplomatic Post shall immediately arrange for inspection by a public health official or other competent authority. A nongovernmental cooperating sponsor shall arrange for such an inspection under these circumstances. Commodity that is determined to be unfit for authorized use shall be disposed of in accordance with the priority set forth in paragraph (b). 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. 20FT401 or from the special title II, Public Law 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. 20FT401.

(b) *After delivery to cooperating sponsor.* (1) If after arrival in a foreign country it appears that all or part of the commodities, may be unfit for the use authorized in the Operational Plan or TA, 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, USAID or the Diplomatic Post may determine whether the commodities are unfit, and if so, may direct disposal in accordance with paragraphs (b) (1) through (4) of this section. The cooperating sponsor shall ar-

range 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).

(2) A cooperating sponsor shall dispose of commodities determined to be unfit for authorized use in the order of priority described in paragraphs (b)(2) (i) through (iv) of this section. The concurrence of USAID or the Diplomatic Post should be requested for disposition of commodities valued at \$500 or more. If the USAID or Diplomatic Post does not respond to the cooperating sponsor's request for concurrence within 15 days, the cooperating sponsor may dispose of the commodities in the manner described in its request and inform the USAID or Diplomatic Post of its action taken in accordance with this section.

(i) 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, removed or crossed out.

(ii) 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.

(iii) Donation to a governmental or charitable organization for use as animal feed or for other nonfood use.

(iv) If the commodity is unfit for any use or if disposal in accordance with paragraphs (b)(2) (i), (ii) or (iii) of this section is not possible, the commodity shall be destroyed in such manner as to prevent its use for any purpose. Commodities valued at \$500 or more shall be destroyed under the observation of a representative of the USAID or Diplomatic Post if practicable. When the cooperating sponsor informs the USAID or Diplomatic Post of its intention to destroy commodities, the cooperating sponsor shall indicate the kind and amount of commodities that will be destroyed, the manner of destruction, the

Agency for International Development

§211.9

representative(s) of local authorities who will witness the destruction, and the date when the commodities will be destroyed. The date shall be established on the basis of programmatic need, but an effort should be made to provide a reasonable opportunity for a representative of the USAID or Diplomatic Post to attend. The commodities may be destroyed on the date indicated even if there is no representative of the USAID or Diplomatic Post to observe this action.

(3) Expenses incidental to the handling and disposition of the damaged commodity shall be paid by the cooperating sponsor unless it is determined by 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 Operational Plan or TA. Actual expenses incurred, including third party costs, in selling the commodities may be deducted from the sales proceeds and, except for monetization programs, the net proceeds shall be deposited with the U.S. Disbursing Officer, American Embassy, with instructions to credit the deposit to CCC Account No. 20FT401. In monetization programs, net proceeds shall be deposited in the special account used for the approved program.

(4) The cooperating sponsor shall furnish USAID or the Diplomatic Post a written report in accordance with §211.9(f), and the report shall enclose a certification by a public health official or other competent authority of

(i) The exact quantity of the damaged commodity disposed of because it was determined to be unfit for any use and

(ii) The manner in which the commodities were destroyed.

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

(Where the instructions in this §211.9 state that the cooperating sponsor should contact USDA or CCC, the contact office is: Kansas City ASCS Commodity Office (KCCO), P.O. Box 419205, Kansas City, Missouri 64141-6205. For Section 211.9 (a) and (b) contact: KCCO, Chief, Processed Commodities Division. For §211.9(c) contact: KCCO, Chief,

Claims and Collections Division, Kansas City, Missouri 64141-6105.)

(a) *Fault of cooperating sponsor prior to loading on ocean vessel.* A cooperating sponsor and A.I.D. shall agree on a schedule for shipping commodities. A nongovernmental cooperating sponsor that books cargo for ocean transportation must notify USDA immediately if the vessel does not arrive at the U.S. port of export in accordance with the agreed shipping schedule. USDA will determine whether the commodity shall be

(1) Moved to another available outlet;

(2) Stored at the port for delivery to the nongovernmental cooperating sponsor when a vessel is available for loading; or

(3) Disposed of as USDA may deem proper.

When CCC incurs additional expenses because the nongovernmental cooperating sponsor, or its agent, fails to meet the agreed shipping schedule or to make necessary arrangements to accept commodities at the points of delivery designated by CCC, and CCC determines that the expenses were incurred because of the fault or negligence of the nongovernmental cooperating sponsor, the cooperating sponsor shall reimburse CCC for such expenses or take such action as directed by CCC.

(b) *Fault of others prior to loading on ocean vessel.* A nongovernmental cooperating sponsor shall immediately notify CCC if there is a loss of or damage to commodities, between the time title is transferred to the cooperating sponsor and the time the commodities are loaded on board the vessel, that is caused by the act or omission of a third party, such as a warehouseman or carrier, who is or may be legally liable for the loss or damage. The cooperating sponsor also shall promptly assign to CCC any claim it has against the third party and forward to CCC all documents relating to the loss or damage and the claim. CCC shall have the right to initiate, prosecute, and retain the proceeds all claims for such loss or damage.

(c) *Ocean carrier loss and damage—(1) Survey and outturn reports.* (i) Nongovernmental cooperating sponsors shall arrange for an independent cargo surveyor to attend the discharge of the

§211.9

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 provision for such examinations and reports. The surveyor shall prepare a report of its findings showing the quantity and condition of the commodities discharged. The report also shall 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. Whenever a damaged commodity appears unfit for its intended use, the cooperating sponsor shall obtain

(A) A certification by a public health official or similar competent authority regarding the condition of the commodity; and

(B) A certificate of disposition if the commodity is determined to be unfit for its intended use. These certificates shall be obtained as soon as possible after discharge of the cargo. If the cooperating sponsor can provide a narrative chronology or other commentary to assist in the adjudication of ocean transportation claims, this information should be forwarded as follows: cooperating sponsors shall prepare such a statement in any case where the loss is estimated to be in excess of \$5,000; all documentation shall be in English or supported by an English translation and shall be forwarded as set forth in paragraphs (c)(1)(iii) and (iv) of this section; and the cost of an English translation shall be incorporated into the survey fee. The cooperating sponsor may, at its option, also engage the independent surveyor to supervise clearance and delivery of the cargo from customs or port areas to the cooperating sponsor or its agent and to issue delivery survey reports thereon.

(ii) In the event of cargo loss or damage, a nongovernmental cooperating

22 CFR Ch. II (4-1-20 Edition)

sponsor shall provide the names and addresses of individuals who were present at the time of discharge and during survey and who can verify the quantity lost or damaged. In the case of bulk grain shipments, the cooperating sponsor shall obtain the services of an independent surveyor to:

(A) Observe discharge of the cargo;

(B) Report on discharging method (including whether a scale was used, its type and calibration and other factors affecting its accuracy, or an explanation of why a scale was not used and how weight was determined);

(C) Furnish information as to whether cargo was discharged in accordance with port customs;

(D) Provide actual or estimated (if scales not used) quantity of cargo lost during discharge and specify how such losses occurred;

(E) Obtain copies of port and/or ship records including scale weights, where applicable, to show quantity discharged;

(F) Verify that upon conclusion of discharge, cargo holds are empty;

(G) Provide to USDA information as to quantity, type and cause of lost or damaged cargo;

(H) Furnish daily tally totals and any other pertinent information about the bagging of the bulk cargo when cargo is bagged or stacked by vessel interests; and

(I) Notify the cooperating sponsor immediately if additional services are necessary to protect cargo interests or if the 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) 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 seal numbers shown on the container vans, and indicate whether the seals were intact at the time the container vans were opened, and whether the container vans were in any way damaged. To the

extent possible, the independent surveyor should observe discharge of container vans from the vessel to ascertain whether any damage to the container van occurred and arrange for surveying the contents of any damaged container vans as they are opened.

(iii) Cooperating sponsors shall send to USDA copies of all reports and documents pertaining to the discharge of commodities. For those surveys arranged by CCC, the cooperating sponsors may obtain a copy of the report from the local USAID Food for Peace Officer.

(iv) CCC will reimburse a nongovernmental cooperating sponsor for the costs incurred by it in obtaining the services of an independent surveyor to conduct examinations of the cargo and render the report set forth above. Reimbursement by CCC will be made upon receipt by CCC of the survey report and the surveyor's invoice or other documents that establish the survey cost. However, CCC will not reimburse a nongovernmental cooperating sponsor 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 paragraph (c)(1) of this section is justified to the satisfaction of CCC.

(v) CCC normally will contract for the survey of cargo on shipments furnished under Transfer Authorizations, including shipments for which A.I.D. contracts for the ocean transportation services. Survey contracts normally will be let on a competitive bid basis. However, if a USAID or Diplomatic Post desires that CCC limit its consideration to only certain selected surveyors, USAID or the Diplomatic Post shall furnish AID/W a list of eligible surveyors for forwarding to CCC. Surveyors may be omitted from the list, for instance, based on foreign relations considerations, conflicts of interest, and/or lack of demonstrated capability to carry out surveying responsibilities properly as set forth in the requirements of CCC. Upon receipt of written justification for removal of a particular survey firm, CCC will consider removal of such firm and advise the USAID via AID/W of the final deter-

mination. AID/W will furnish CCC's surveying requirements to a USAID or Diplomatic Post upon request. If CCC is unable to find a surveyor at a port to which a shipment has been consigned, CCC may request AID/W to contact USAID or the Diplomatic Post to arrange for a survey. The surveyor's bill for such services shall be submitted to USAID or the Diplomatic Post for review. After the billing has been approved, USAID or the Diplomatic Post either may pay the bill using funds in CCC account 20FT401, if available, or forward the bill to AID/W for transmittal to CCC for payment. If USAID or the Diplomatic Post pays the bill, AID/W shall be advised of the amount paid, and CCC will reimburse USAID or the Diplomatic Post.

(2) *Claims against ocean carriers.* (i) Whether or not title to commodities has transferred from CCC to the cooperating sponsor, if A.I.D. contracted for the ocean transportation, CCC shall have the right to initiate, prosecute, and retain the proceeds of all claims against ocean carriers for cargo loss and/or damage arising out of shipments of commodities transferred or delivered by CCC hereunder.

(ii)(A) Unless otherwise provided in the Operational Plan or TA, nongovernmental cooperating sponsors shall file notice of any cargo loss and/or damage with the ocean carrier immediately upon discovery of any such loss and/or damage, promptly initiate claims against the ocean carrier for cargo loss and/or damage, take all necessary action to obtain restitution for losses within any applicable periods of limitations, and transmit to CCC copies of all such claims. However, the nongovernmental cooperating sponsor need not file a claim when the cargo loss and/or damage is not in excess of \$100, or in any case when the loss and/or damage is between \$100 and \$300 and it is determined by the nongovernmental cooperating sponsor that the cost of filing and collecting the claim will exceed the amount of the claim. The nongovernmental cooperating sponsor shall transmit to CCC copies of all claims filed with the ocean carriers for cargo loss and/or damage, as well as information and/or documentation on shipments when no claim is to be filed.

When General Average has been declared, no action will be taken by the nongovernmental cooperating sponsor to file or collect claims for loss or damage to commodities. (See paragraph (c)(2)(iii) of this section.)

(B) The value of commodities misused, lost or damaged 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 U.S. Government in making delivery to the cooperating sponsor. When value is determined on a cost basis, nongovernmental cooperating sponsors 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 U.S. Government. With respect to claims other than ocean carrier loss or damage claims, at the request of the cooperating sponsor or upon the recommendation of USAID or the Diplomatic Post, AID/W may determine that such value may be established on some other justifiable basis. When replacement is 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 nongovernmental cooperating sponsors on claims against ocean carriers not in excess of \$200 may be retained by the nongovernmental cooperating sponsor. On claims involving loss and/or damage having a value in excess of \$200, nongovernmental cooperating sponsors may retain from collections received by them, the larger of:

(1) The amount of \$200 plus 10 percent of the difference between \$200 and the total amount collected on the claim, up to a maximum of \$500, or

(2) Actual administrative expenses incurred in collection of the claim if 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 nongovernmental cooperating sponsors 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 nongovernmental cooperating sponsor has incurred on the lost and/or damaged commodity and which are included in the claims and paid by the liable party.

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

(E) A nongovernmental cooperating sponsor 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 nongovernmental cooperating sponsor may retain from the amount collected, the amounts authorized in paragraph (c)(2)(ii)(C) and in addition, an amount representing such percentage of the special charges described in paragraph (c)(2)(ii)(C) as the compromised amount is to the full amount of the claim. When a claim is not in excess of \$600, the nongovernmental cooperating sponsor may terminate collection activity on the claim according to the standards set forth in the Federal Claims Collection Standards, 4 CFR 104.3. Approval of such termination by CCC is not required, but the nongovernmental cooperating sponsor 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 nongovernmental cooperating sponsor from the proceeds of claims filed against ocean carriers, the word "claim" shall refer to the loss and/or 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 nongovernmental cooperating sponsor is unable to collect 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 nongovernmental cooperating sponsor 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. Nongovernmental cooperating sponsors shall promptly assign their claim rights to CCC upon request. In the event CCC collects or settles the claim after the rights of the nongovernmental cooperating sponsor to the claim have been assigned CCC, CCC shall, except as shown below, pay to the nongovernmental cooperating sponsor the amount the agency or organization would have been entitled to retain had they collected the same amount. However, the additional 10 percent on amounts collected in excess of \$200 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. In addition, if CCC determines that the documentation requirements of paragraph (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 nongovernmental cooperating sponsor.

(G) When nongovernmental cooperating sponsors 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 nongovernmental cooperating sponsor, 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 nongovernmental cooperating sponsor shipment, and general average has been declared, the nongovernmental cooperating sponsor shall furnish to CCC with a duplicate copy to AID/W—

(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 right to the claim(s) for such loss.

CCC assumes responsibility for general average and marine salvage.

(iv) A.I.D. will initiate and prosecute claims against ocean carriers and defend claims by such carriers, arising from or relating to affreightment contracts booked by A.I.D. where the claims involve entitlement to freight and related costs from the U.S. Government. Proceeds of such claims received by A.I.D. shall be returned to CCC pursuant to agreed procedures.

(d) *Fault of cooperating sponsor in country of distribution.* If a commodity, monetized proceeds or program income is used for a purpose not permitted under the Operational Plan or TA or this Regulation, or if a cooperating sponsor causes loss or damage to a commodity, monetized proceeds or program income through any act or omission or failure to provide proper storage, care and handling, the cooperating sponsor shall pay to the United States the value of the commodities, monetized proceeds or program income, lost, damaged, or misused, unless A.I.D. determines 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 Operational Plan or TA and this Regulation. In determining whether there was a proper exercise of the cooperating sponsor's

responsibility, A.I.D. shall consider normal commercial practices in the country of distribution and the problems associated with carrying out programs in developing countries. Payment by the cooperating sponsor shall be made in accordance with paragraph (g) of this section, except that the USAID or Diplomatic Post may agree to permit a cooperating sponsor to replace commodities lost, damaged, or misused with similar commodities of equal value.

(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 landlocked countries, arrange for an independent survey at the point of entry into the recipient country and to make a report as set forth in paragraph (c)(1) of this section. CCC will reimburse the cooperating sponsor for the costs of a survey as set forth in paragraph (c)(1)(iv).

(2) If a cooperating sponsor acquires any right against a person or governmental or nongovernmental organization based on an event for which the person or organization is responsible that resulted in the damage, loss or misuse of any commodity, monetized proceeds or program income, the cooperating sponsor shall file a claim against the liable party or parties for the value of the commodities, monetized proceeds or program income lost, damaged or misused and shall make every reasonable effort to collect the claim. A copy of the claim and related documents shall be provided to USAID or the Diplomatic Post. Cooperating sponsors who fail to file or pursue such claims shall be liable to A.I.D. for the value of the commodities or monetized proceeds or program income lost, damaged, or misused. Provided, however, that the cooperating sponsor may elect not to file a claim if the loss is less than \$500 and such action is not detrimental to the program. Cooperating sponsors may retain \$150 of any amount collected on an individual claim. In addition, cooperating sponsors may, with the written approval of USAID or the Diplomatic Post, retain either special costs such as reasonable legal fees that they have incurred in

the collection of a claim, or pay such legal fees with monetized proceeds or program income. Any proposed settlement for less than the full amount of the claim must be approved by USAID or the Diplomatic Post prior to acceptance. When the cooperating sponsor has exhausted all reasonable attempts to collect a claim, it shall request USAID or the Diplomatic Post to provide further instructions in accordance with paragraph (e)(4).

(3) *Calculation of the amount of a claim against others.* A claim is the right a cooperating sponsor has against a third party as a result of an event for which the third party is responsible that caused the loss, damage or misuse of commodities, monetized proceeds or program income. The amount of the claim is based on the value of the commodities, monetized proceeds or program income lost, damaged or misused as a result of the event. An individual claim may not be broken down artificially to enlarge the amount the cooperating sponsor may retain as an administrative allowance on collection of the claim. For example, if a cooperating sponsor has a contract with a carrier to transport commodities, and losses occur during a single shipment of commodities from points A to B, the cooperating sponsor has one claim against the carrier, and the amount of the claim will be based on the total value of the commodities lost during the shipment from A to B even though some of the loss might have occurred on each of several trucks or by subcontractors used by the carrier to satisfy its contract responsibility to transport the commodities.

(4) Reasonable attempts to collect the claim shall not be less than the follow-up of initial billings with three progressively stronger demands at not more than 30-day intervals. If these efforts fail to elicit a satisfactory response, legal action in the judicial system of the cooperating country should be pursued unless:

- (i) Liability of the third party is not provable,
- (ii) The cost of pursuing the claim would exceed the amount of the claim,
- (iii) The third party would not have enough assets to satisfy the claim after

a judicial decision favorable to the cooperating sponsor,

(iv) Maintaining legal action in the country's judicial system would seriously impair the cooperating sponsor's ability to conduct an effective program in the country, or

(v) It is inappropriate for reasons relating to the judiciary or judicial system of the country.

A cooperating sponsor's decision not to take legal action, and reasons therefore, must be submitted in writing to USAID or the Diplomatic Post for review and approval, and USAID or the Diplomatic Post may require the cooperating sponsor to obtain and submit the opinion of competent legal counsel to support its decision. A cooperating sponsor also may request approval to terminate legal action after it has commenced if it is apparent that any of the exceptions described above becomes applicable or if it is otherwise appropriate to terminate legal action prior to judgment. In each instance, USAID or the Diplomatic Post must provide the cooperating sponsor a written explanation of its decision within 45 days from the date the request is received or inform the cooperating sponsor in writing regarding the reason(s) the USAID or Diplomatic Post needs more time to make a decision. If USAID or the Diplomatic Post approves a cooperating sponsor's decision not to take further action on the claim for reasons described in paragraphs (e)(4)(iv) or (v) of this section, the cooperating sponsor shall assign the claim to A.I.D. and shall provide to A.I.D. all documentation relating to the claim. When USAID or the Diplomatic Post takes an assignment of a claim or claims from a cooperating sponsor, the USAID or Diplomatic Post shall consult AID/W regarding the appropriate action to take on the assigned claim(s), unless standing guidance is in effect.

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

established in the Host Country Food for Peace Program Agreement required under §211.3(b), or by a separate formal understanding, and must be submitted to USAID or the Diplomatic Post for review and approval. Resolution of disputed claims by any administrative procedure or arbitration agreed to by the cooperating sponsor and the cooperating country should be final and binding on the parties.

(f) *Reporting losses to USAID or the Diplomatic Post.* (1) The cooperating sponsor shall provide the USAID or Diplomatic Post a quarterly report regarding any loss, damage or misuse of commodities, monetized proceeds or program income. The report must be provided within 30 days after the close of the calendar quarter and shall contain the following information except for commodity losses less than \$500: who had possession of the commodities, monetized proceeds or program income; who, if anyone, might be responsible for the loss, damage or misuse; the kind and quantity of commodities; the size and type of containers; the time and place of loss, damage or misuse; the current location of the commodities; the program number; CCC contract number, if known, and if not known, 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 loss, damage or misuse. If any of this information is not available, the cooperating sponsor shall explain why it is not. The report simply may identify separately commodity losses valued at less than \$500 and indicate the estimated value of the commodities lost damaged or misused and the action taken by the cooperating sponsor with respect to recovery or disposal, except that the cooperating sponsor shall inform the USAID or Diplomatic Post if it has reason to believe there is a pattern or trend in the loss, damage or misuse of such commodities and provide the information described above for losses of \$500 or more together with such other information available to it. USAID or the Diplomatic Post may require additional information about any commodities lost, damaged or misused. Information in the quarterly report

§211.10

22 CFR Ch. II (4–1–20 Edition)

may be provided in tabular form to the extent possible, and the report shall enclose a copy of any claim made by the cooperating sponsor during the reporting period.

(2) If any commodity, monetized proceeds or program income is lost or misused under circumstances which give a cooperating sponsor reason to believe that the loss or misuse has occurred as a result of criminal activity, the cooperating sponsor shall promptly report these circumstances to the A.I.D. Inspector General through AID/W, USAID or the Diplomatic Post, and subsequently to the appropriate authorities of the cooperating country unless instructed not to do so by A.I.D. The cooperating sponsor also shall cooperate fully with any subsequent investigation by the Inspector General and/or authorities of the cooperating country.

(g) *Handling claims proceeds.* Claims against ocean carriers shall be collected in U.S. dollars (or in the currency in which freight is paid, or a pro rata share of each) and shall be remitted (less amounts authorized to be retained) by nongovernmental cooperating sponsors to CCC. With respect to commodities, claims against nongovernmental cooperating sponsors 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 with instructions to credit the deposit to Treasury sales account 20FT401. Any conversion required for these deposits shall be at the highest rate of exchange legally obtainable on the date of deposit unless A.I.D. agrees otherwise in writing. With respect to monetized proceeds and program income, amounts recovered should be deposited into the special interest-bearing account established for the monetized proceeds and may be used for purposes of the approved program.

(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, 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.

(a) *Records.* Cooperating sponsors and recipient agencies shall maintain records and documents in a manner which accurately reflects the operation of the program and all transactions pertaining to the receipt, storage, distribution, sale, inspection and use of commodities and to receipt and disbursement of any monetized proceeds and program income. Such records shall be retained for a period of 3 years from the close of the U.S. fiscal year to which they pertain, or longer, upon request by A.I.D. for cause, such as in the case of litigation of a claim or an audit concerning such records. The cooperating sponsor shall transfer to A.I.D. any records, or copies thereof, requested by A.I.D.

(b) *Reports.* Cooperating sponsors shall submit two copies of audits performed in accordance to §211.5(c). In addition, cooperating sponsors shall submit to USAID or the Diplomatic Post, and to AID/W such reports as A.I.D. may reasonably request. The following is a list of the principal types of reports that are to be submitted at least annually:

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

(2) Reports relating to the generation of monetized proceeds and program income and the use of such funds for purposes specified in the Operational Plan or TA. See §211.5(l).

Agency for International Development

§211.11

(3) Reports relating to progress and problems in the implementation of the program.

(4) Reports shall be submitted in sufficient detail to enable USAID or the 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) At the time that an emergency program under Public Law 480, title II is initiated, whether by a governmental or nongovernmental cooperating sponsor, USAID or the Diplomatic Post should

(i) Make a determination regarding the ability of the cooperating sponsor to perform the record-keeping required by this §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 and monetized proceeds.

(c) *Inspection and audit.* Cooperating sponsors and recipient agencies shall cooperate with and assist U.S. Government representatives to enable them at any reasonable time to:

(1) Examine activities and records of the cooperating sponsor, recipient agencies, processors, or others, pertaining to the receipt, storage, distribution, processing, repackaging, sale and use of commodities by recipients;

(2) Inspect commodities in storage, or the facilities used in the handling or storage of commodities;

(3) Examine and audit books and records, including financial books and records and reports pertaining to storage, transportation, processing, repackaging, distribution, sale and use of commodities and pertaining to the deposit and use of any monetized proceeds and program income;

(4) Review the overall effectiveness of the program as it relates to the objectives set forth in the Operational Plan or TA; and

(5) Examine or audit the procedure and methods used in carrying out the requirements of this Regulation.

Inspections and audits of title II emergency programs will take into account

the circumstances under which such programs are carried out.

§211.11 Suspension, termination, and expiration of program.

(a) *Termination or suspension by A.I.D.* All or any part of the assistance provided under the program, including commodities in transit, may be terminated or suspended by A.I.D. at its discretion if AID/W determines that a cooperating sponsor has failed to comply with the provisions of the approved Operational Plan or TA, or of this Regulation, or that the continuation of such assistance is no longer necessary or desirable. If AID/W believes that circumstances permit, AID/W will provide a nongovernmental cooperating sponsor written notice of A.I.D.'s intention to terminate or suspend the cooperating sponsor's program, together with an explanation of the reason(s) for A.I.D.'s action, at least 30 days prior to the date indicated in the notice that the program will be terminated or suspended. Comments provided by the nongovernmental cooperating sponsor prior to the effective date of the termination or suspension shall be considered by AID/W in determining whether to rescind the notice. When a program is terminated or suspended, title to commodities which have been transferred to the cooperating sponsor, or monetized proceeds, program income and real or personal property procured with monetized proceeds or program income shall, at the written request of USAID, the Diplomatic Post or AID/W, be transferred to the U.S. Government by the cooperating sponsor or shall otherwise be transferred by the cooperating sponsor as directed by A.I.D. Any then excess commodities on hand at the time the program is terminated shall be disposed of in accordance with §211.5 (o) and (p) or as otherwise instructed by USAID or the Diplomatic Post. If it is determined that any commodity authorized to be supplied under the Operational Plan or TA 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 that

§211.12

every effort will be made to give adequate advance notice to protect cooperating sponsors against unnecessarily booking vessels.

(b) *Expiration of program.* Upon expiration of the approved program under circumstances other than those described in paragraph (a), the cooperating sponsor shall deposit with the U.S. Disbursing Officer, American Embassy, with instructions to credit the deposit to CCC Account No. 20FT401, any remaining monetized proceeds or program income, or the cooperating sponsor shall obtain approval from AID/W for the use of such monetized proceeds or program income, or real or personal property procured with such proceeds or income, for purposes consistent with those authorized for support from A.I.D.

§211.12 Waiver and amendment authority.

The Assistant Administrator for Food and Humanitarian Assistance, A.I.D., may waive, withdraw, or amend, at any time, any or all of the provisions of this Regulation 11 if such provision is not statutory and it is determined to be 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 Regulation or any instructions or procedures issued in connection herewith, or any agreements entered into pursuant hereto may at the discretion of A.I.D. be suspended or disqualified from further participation in any distribution program. Reinstatement may be made at the option of A.I.D. Disqualification shall not prevent A.I.D. from taking other action through other available means when considered necessary.

§211.13 Participation by religious organizations.

The funds provided under this part shall be administered in compliance with the standards set forth in part 205, Participation by Religious Organizations in USAID Programs, of this chapter.

[69 FR 61724, Oct. 20, 2004]

22 CFR Ch. II (4–1–20 Edition)

APPENDIX I TO PART 211—OPERATIONAL PLAN

A. General Outline of Operational Plans for Title II Activities

In addition to any other requirement of law or regulation, the Operational Plan will include information outlined below to the extent it is applicable to the specific activity.

1. Program Goals.

Describe 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.

2. Program Description.

a. Describe the characteristics, extent and severity of problems that the program will address.

b. Provide a clear concise statement of specific objectives for each program and of criteria for measuring progress towards reaching the objectives. If there are several objectives, indicate priorities.

c. Describe the target population by program, including economic/nutrition-related characteristics, sufficiently to permit a determination of recipient eligibility for title II commodities. Describe the educational and employment characteristics of the target group, if relevant to program objectives; the rationale for selection of the target group, the rationale for the selection of the geographical areas where programs will be carried out; the calculation of coverage and the percent of total target population reached.

d. Describe the intervention including:

(1) *Ration composition.* A description of rations, rationale for size and composition, assessment of effectiveness (dilution, sharing, acceptance).

(2) *Complementary program components and inputs.* Identify 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.

(3) *Monetization.* Describe to whom the commodities will be sold; the sales price (which shall not be less than the value of the food commodities f.a.s. or f.o.b.); arrangements for deposit of the monetization proceeds in a special (segregated), interest bearing account, pending use of the proceeds plus interest for the program; and the capability of the cooperating sponsor and recipient agencies to use and account for monetized proceeds properly as well as technical assistance the cooperating sponsor intends to obtain or provide if necessary in order to ensure that there are adequate financial and other management systems for the program proposed.

(4) *Intervention strategy.* Describe how the commodities, monetization proceeds, program income and other program components will address the problems. Indicate the recipient agencies to which commodities, monetized proceeds or program income will be transferred, and identify those recipient agencies which will not be required to execute Recipient Agency Agreements, and provide a brief explanation of the reasons.

(5) *Linkages with other development activities, such as health or agricultural extension services.* Describe specific areas of collaboration relative to program purposes.

(6) *Monitoring and evaluation.* Include a description of the evaluation plan, including information to be collected for purposes of assessing program operations and impact. Describe the monitoring system for collection, analysis and utilization of information. Include a schedule for carrying out the evaluation as well as a plan for conducting audits (Regulation 11, section 211.5(c)).

(7) *Program period.* The Operational Plan should cover enough time for a program to become fully operational and to permit evaluation of its effectiveness, including specific measurement of progress in achieving the stated program goals. Normally this will be a multi-year time frame, such as three to five years. Plans for and considerations involved in phasing-out U.S.G. support, and any phasing-over to non-U.S.G. support, should be discussed.

3. *Program funding.* Provide 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 arrangements which will be made covering voluntary contributions.

4. *Publicity.* Describe how the requirements for public recognition, container marking, and use of funds set forth in Regulation 11, §§211.5i(h), (i) and (k) and in 211.6 (a) and (b), will be met.

5. *Logistics.* Provide a logistics plan that demonstrates the adequacy and availability in 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 from the United States.

6. *Disincentives.* Furnish 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 substantial disincentive to domestic food production. It is not necessary to provide a disincentive analysis if A.I.D. or USDA has completed such an analysis for another program that is relevant to the program proposed by the cooperating sponsor.

7. *Accountability.* Describe the method to be used to supervise, monitor, and account for the distribution or sale of commodities and the use of monetized proceeds and program income.

8. *Import duty.* Provide information to show approval of foreign government to import the donated commodities duty free.

9. *Voluntary agency regular programs.* An Operational Plan is required for all regular, *i.e.*, non-emergency, title II nongovernmental cooperating sponsor programs as part of their program submission, along with the Annual Estimate of Requirements (AER), to USAID or the Diplomatic Post and AID/W. When new multi-year Operational Plans are required, they should be prepared and submitted 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, nongovernmental cooperating sponsor Operational Plans should be submitted to AID/W no later than the Mission Action Plan covering the following fiscal year's program. Once an 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's program directives, methodology, design or magnitudes. Updates should be submitted each year for review with the AERs.

B. Operational Plans for Emergency Programs

The response to emergency situations using title II resources does not usually permit the same degree of detail and certainty of analysis that is expected in planning title II non-emergency programs. However, Operational Plans are required for all nongovernmental cooperating sponsors' emergency programs, along with the AER. An Operational Plan for an emergency program must cover the same basic elements, set forth above, as for a nonemergency program. Thus, all of the above basic issues set forth in the Operational Plan format must be addressed when proposing title II emergency programs as well as regular nonemergency programs.

C. USAID/Diplomatic Post Responsibilities

A USAID or Diplomatic Post is expected to comment on the substance and adequacy of a nongovernmental cooperating sponsor's Operational Plan when submitted to AID/W along with a program request, and to address the plan's relationship to and consistency with the Mission's Country Development Strategy Statement.

D. Required Approval for Program Change

Cooperating sponsors agree not to deviate from the program as described in the Operational Plan and other program documents approved by A.I.D., without the prior written approval of A.I.D.

Pt. 212

E. Emergency Assistance Program Requests

Any cooperating sponsor (governmental or nongovernmental) may initiate an emergency assistance proposal under Public Law 480, title II. Requests are received by a USAID or Diplomatic Post and reviewed and approved before forwarding to AID/W with appropriate recommendations.

a. Nongovernmental emergency program requests can be cabled by USAID or the Diplomatic Post for AID/W review based on information provided and using procedures established for regular programs as described in Regulation 11, §211.5(a): AER and Operational Plan.

b. A foreign government or international organization (other than World Food Program) emergency request normally requires more Mission involvement in program design and management. However, as in the case of nongovernmental programs, the approval will be based on a cabled program summary based on the program plan outlined in (2) above. On approval, AID/W will prepare a Transfer Authorization (TA) to be signed by the recipient government specifying terms of the program and reporting requirements. Additional guidance in preparing government-to-government or international organizations emergency requests is in chapter 9 and Exhibit A of A.I.D. Handbook 9. The TA serves as (1) the Food for Peace Agreement between the U.S. Government and the cooperating sponsor, (2) the project authorization document, and (3) the authority for the CCC to ship commodities. (Under Pub. L. 480, section 207(a), not later than 15 days after receipt of a call forward from a field mission for commodities, the order shall be transmitted to the CCC.)

F. Local Currency Programs (Public Law 480, Title II Section 203)

Detailed guidance for preparing, approving, implementing and administering these programs is provided in chapters 6, 7, and 11 of A.I.D. Handbook 9.

G. Problems Conducting Programs In Developing Countries

Describe the problems that can be anticipated in implementing the program in the recipient country as a result of its being a developing country.

H. Waivers

A cooperating sponsor should provide a justification for the waiver of any specific section or sections of Regulation 11 that it believes necessary for the program.

22 CFR Ch. II (4–1–20 Edition)

PART 212—PUBLIC INFORMATION

Subpart A—General Provisions

Sec.

212.1 Purpose and scope.

212.2 Policy.

212.3 Records available on the Agency's Web site.

Subpart B—Proactive Disclosures of Agency Records

212.4 Materials available for public inspection and in electronic format.

Subpart C—Requirements for Making Requests

212.5 How to make a request for records.

Subpart D—Responsibility for Responding to Requests

212.6 Designation of authorized officials.

212.7 Processing of request.

Subpart E—Timing of Responses to Requests

212.8 Time limits.

Subpart F—Responses to Requests

212.9 Responsibility for responding to requests.

Subpart G—Confidential Commercial Information

212.10 Policy and procedure.

Subpart H—Administrative Appeals

212.11 Appeal procedures.

212.12 Mediation and dispute services.

Subpart I—Preservation of Records

212.13 Policy and procedures.

Subpart J—Fees

212.14 Fees to be charged—general.

212.15 Fees to be charged—requester categories.

Subpart K—FOIA Definitions

212.16 Glossary.

Subpart L—Other Rights and Services

212.17 Rights and services qualified by the FOIA statute.

Subpart M—Privacy Act Provisions

212.18 Purpose and scope.