

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

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

authorized use, the Cooperating Sponsor shall notify the Agricultural Counselor or Attache of the circumstances pertaining to the loss or damage. With the concurrence of the Agricultural Counselor or Attache, the commodity determined to be unfit for authorized use shall be disposed of in the following order of priority:

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

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

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

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

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

possible after the discharge of the cargo. A report must also be provided to the Chief, Debt Management Division, KCMO/DMD, of action taken to dispose of commodities unfit for authorized use.

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

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

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

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

(2)(i) If the Cooperating Sponsor arranges for an independent cargo surveyor, the Cooperating Sponsor shall forward to the Chief, Debt Management Office, KCMO/DMD, any narrative chronology or other commentary it can provide to assist in the adjudication of ocean transportation claims and shall prepare such a narrative in any case where the loss is estimated to be in excess of \$5,000.00. The Cooperating Sponsor may, at its option, also engage the independent surveyor to supervise