

ACTION: Proposed rule.

SUMMARY: This rule would establish an administrative appeals procedure that would be used by the Commodity Credit Corporation (CCC) with respect to ocean transportation cargo loss and damage claims arising under shipments of agricultural commodities made available by CCC under various foreign donation programs. Whether or not title to the commodities has passed from CCC to a cooperating sponsor, which may be a foreign government, private voluntary organization, or private entity, CCC either retains the right or may be assigned the right to initiate, prosecute, and, with certain limited exceptions, retain the proceeds of cargo loss and damage claims. The rule would require that any recipient of CCC-donated commodities must include in the contract for the ocean transportation of the commodities a provision that the maritime carrier agrees to participate in this administrative appeal process.

For CCC claims initiated on behalf of the United States Agency for International Development (USAID), the rule would also require consultations between agencies and the crediting of funds collected into USAID accounts.

DATES: Comments must be submitted on or before April 2, 2003, to be assured of consideration.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Steve Mikkelsen, Director, Procurement and Donations Division, USDA/FSA/PDD/STOP 0551, 1400 Independence Avenue, SW., Washington, DC 20250-0551 or sent electronically to: steve_mikkelsen@wdc.fsa.usda.gov. Persons with disabilities who require alternative means for communication (braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720-2600 (voice and TDD).

Comments concerning USAID programs should also be addressed to Lauren Landis, Director, Office of Food For Peace, Bureau for Democracy, Conflict, and Humanitarian Assistance, U.S. Agency for International Development, Room 7.06-157, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523 or sent electronically to: [llandis@usaid.gov](mailto:lilandis@usaid.gov).

FOR FURTHER INFORMATION CONTACT: Steve Mikkelsen of CCC on (202) 720-5074, or Jeffrey Drummond of USAID on (202) 712-0238.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This proposed rule is issued in conformance with Executive Order 12866 and has been determined to be not significant.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither CCC nor the United States Agency for International Development (USAID) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, or the private sector, in the aggregate of \$100 million or more in any 1 year. This rule contains no Federal mandates under the regulatory provisions of title II of the UMRA for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information collection requirements imposed by this rule have

been previously submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). OMB has assigned control number 0051-0035 for this information collection. This regulation does not change any of the information collection requirements.

Background

The regulations set forth at 7 CFR part 1499 establish the general terms and conditions governing CCC's donation of commodities to cooperating sponsors under section 416(b) of the Agricultural Act of 1949 and the Food for Progress programs. Under 7 CFR 1499.15(d)(1), notwithstanding the transfer of title, CCC has the right to file, pursue and, with certain exceptions, retain the proceeds from claims arising from ocean transportation cargo loss and damage arising out of shipments of commodities provided to governmental cooperating sponsors. Under 7 CFR 1499.15(d)(8), if a nongovernmental cooperating sponsor is unable to effect collection of a claim or negotiate an acceptable compromise, the nongovernmental cooperating sponsor is required to assign its rights to the claim to CCC. Nongovernmental cooperating sponsors must also assign their claim rights to CCC upon CCC's request.

The regulations set forth at 22 CFR part 211 establish the general terms and conditions governing the U.S. Agency for International Development's (USAID) food donation programs under title II, Public Law 480. CCC makes the agricultural commodities available to USAID for use in these programs. Under 22 CFR 211.9(c)(2)(i), whether or not title to commodities is transferred from CCC to the cooperating sponsor, if USAID contracted for the ocean transportation, CCC has the right to initiate, prosecute, and retain the proceeds of all claims against maritime carriers for cargo loss and damage arising out of shipments of commodities made available by CCC. Under 22 CFR 211.9(c)(2)(ii)(F), if a nongovernmental cooperating sponsor is unable to effect collection of a claim or negotiate an acceptable compromise, the nongovernmental cooperating sponsor is required to assign its rights to the claim to CCC. Nongovernmental sponsors must also assign their claim rights to CCC upon CCC's request.

If the commodity is lost or damaged in transit due to the fault of the carrier, existing admiralty law principles control whether the party contracting for the transportation of the goods may recover damages from the carrier. The provisions of the Carriage of Goods by Sea Act (46 U.S.C. 1300 *et seq.*) either