

apply by law, or are incorporated by reference into the cargo bookings and charter parties.

CCC does not have an established administrative appeal process to handle the internal review of these cargo claims before the claims are referred to the U.S. Department of Justice for collection through litigation. This rule would establish an administrative appeal process. CCC intends that independent hearing officers would make written determinations with respect to the claims. Once the administrative appeal was completed, if the carrier was determined to be liable for the loss and damage to cargo, CCC would follow the CCC debt settlement policies and procedures set forth in 7 CFR part 1403 to collect the debt. This would include but would not be limited to the administrative offset of the amount of the debt against other freight earned by the carrier which had not been paid or freight earned in the future.

Section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354) provides that, notwithstanding any other provision of law, a person shall exhaust all administrative appeal procedures established by the Secretary of Agriculture before a person may bring an action in a court of competent jurisdiction against the Secretary, the Department of Agriculture, or agency, office, officer or employee of the Department. Therefore, a carrier would have to participate in the administrative appeals procedure before it could file an action in court contesting the establishment of the debt or possible subsequent offset of the debt. The court's review would be limited to the administrative record established in the administrative appeal.

This rule also establishes a consultative process between USAID and CCC for claims pursued under title II, Public Law 480 food donation programs. It also requires CCC to credit the appropriate title II account for any funds collected by or remitted to CCC pursuant to 22 CFR 211.9(c)(2).

#### List of Subjects

##### 7 CFR Part 1405

Administrative practice and procedure, Agricultural commodities, Cargo claims, Cooperating sponsor, Maritime carriers.

##### 7 CFR Part 1499

Agricultural commodities, Cooperating sponsor.

##### 22 CFR Part 211

Agricultural commodities, Cooperating sponsor.

Accordingly, for the reasons set forth in the preamble, CCC proposes to amend 7 CFR parts 1405 and 1499, and USAID proposes to amend 22 CFR part 211 as follows:

#### 7 CFR CHAPTER XIV

#### PART 1405—LOANS, PURCHASES AND OTHER OPERATIONS

1. The authority citation for 7 CFR part 1405 continues to read as follows:

**Authority:** 15 U.S.C. 714(b) and 714(c).

2. Add § 1405.100 to read as follows:

##### § 1405.100 Cargo claims appeal process.

(a) *Applicability.* (1) The administrative appeals process set forth in this section is applicable to all ocean transportation cargo loss and damage claims arising under shipments of agricultural commodities made available by CCC under section 416(b) of the Agricultural Act of 1949, the Food for Progress Act of 1985, and Title II of the Agricultural Trade Development and Assistance Act of 1954, commonly known as Public Law 480, and any other regulation or contract that incorporates by reference the provisions of this section. This includes the movement of cargoes under through bills of lading to inland destinations.

(2) This section is applicable to any determination made by CCC relating to the resolution of disputed cargo loss and damage claims between CCC and the maritime carrier.

(b) *Delegations of authority.* (1) The Deputy Vice President, CCC, who is Deputy Administrator for Commodity Operations of the Farm Service Agency (Deputy Administrator), shall be responsible for administering this section. The Deputy Administrator may delegate the authority provided in this section in the manner deemed appropriate by the Deputy Administrator.

(2) The Executive Vice President, CCC, who is the Administrator for the Farm Service Agency, may modify or reverse any action of the Deputy Administrator or a designee of the Deputy Administrator made with respect to this section.

(c) *Appeal procedure.* (1) If CCC determines that a maritime carrier is liable for loss and damage that occurred during the transportation of commodities made available by CCC, CCC will notify the carrier in writing of the nature of the violation. The carrier will be given 30 days in which to appeal the determination to CCC and request

either a hearing before a hearing officer or a hearing by telephone. CCC will provide to the carrier a written acknowledgment of their appeal and request for a hearing.

(2) If the carrier requests to pursue an appeal but not a hearing, CCC will allow the carrier to submit, in writing, the reasons why the carrier believes the determination of CCC to be in error. The carrier will be given 30 days from the receipt of the acknowledgment to file any statements and documents in support of its appeal. The carrier will be given an additional 15 days to respond to any new issues raised by CCC in response to the carrier's initial submission.

(3) If the carrier requests to pursue an appeal and requests a hearing, CCC will notify the carrier of the date of the hearing. All hearings will be held at the Kansas City Commodity Office of the Farm Service Agency, 6501 Beacon Drive, Kansas City, Missouri 64133-4675, except as may be determined by CCC. If a hearing is requested, the carrier will be notified of the date of the hearing and will be afforded 30 days from the receipt of the notification of the scheduling of the hearing to submit any statements and documents in support of the appeal. The carrier will be given an additional 15 days following the date of the hearing to submit any additional material that may have been determined necessary due to issues raised at the hearing.

(4) Determinations of the hearing officer shall be final and no further appeal within CCC shall be available except as may be specified in the final determination of the hearing officer.

(d) *Exhaustion of administrative remedy.* A carrier may not initiate an action in any court of competent jurisdiction prior to the exhaustion of the administrative appeal process set forth in this section.

#### PART 1499—FOREIGN DONATION PROGRAMS

3. The authority citation for 7 CFR part 1499 continues to read as follows:

**Authority:** 7 U.S.C. 1431(b), 7 U.S.C. 1736o, E.O. 12752.

4. Amend § 1499.15 by adding paragraph (j) to read as follows:

##### § 1499.15 Liability for loss, damage, or improper distribution of commodities—claims and procedures.

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(j) *Required contract term.* Any cooperating sponsor must include the following provision in the contract for the transportation of the commodity made available by CCC: "The provisions