

§ 1599.10

7 CFR Ch. XV (1-1-05 Edition)

§ 1599.10 Are there special requirements for agreements between Cooperating Sponsor and Recipient Agencies?

(a) The Cooperating Sponsor shall enter into a written agreement with a recipient agency prior to the transfer of any commodities, sale proceeds or program income to the recipient agency. Copies of such agreements shall be provided to the Agricultural Counselor or Attache, and the Director, PPDED. Such agreements shall require the recipient agency to pay the Cooperating Sponsor the value of any commodities, sale proceeds or program income that are used for purposes not expressly permitted under the Program Agreement, or that are lost, damaged, or misused as a result of the recipient agency's failure to exercise reasonable care;

(b) FAS may waive the requirements of paragraph (a) of this section where it determines that such an agreement is not feasible or appropriate.

§ 1599.11 What procedures apply to sales and barter of commodities provided and the use of proceeds?

(a) Commodities may be sold or bartered without the prior approval of FAS where damage has rendered the commodities unfit for intended program purposes and sale or barter is necessary to mitigate loss of value.

(b) A Cooperating Sponsor may, but is not required to, negotiate an agreement with the host government under which the commodities imported for a sale or barter may be imported, sold, or bartered without assessment of duties or taxes. In such cases and where the commodities are sold, they shall be sold at prices reflecting prevailing local market value.

(c) The Cooperating Sponsor shall deposit all sale proceeds into an interest-bearing account unless prohibited by the laws or customs of the importing country or FAS determines that to do so would constitute an undue burden. Interest earned on such deposits shall only be used for approved activities.

(d) Except as otherwise provided in this part, the Cooperating Sponsor may use sale proceeds and resulting interest only for those purposes approved in the applicable Plan of Operation.

(e) FAS will approve the use of sale proceeds and interest to purchase real and personal property where local law permits the Cooperating Sponsor to retain title to such property, but will not approve the use of sale proceeds or interest to pay for the acquisition, development, construction, alteration or upgrade of real property that is:

(1) Owned or managed by a church or other organization engaged exclusively in religious activity, or

(2) Used in whole or in part for sectarian purposes; except that, a Cooperating Sponsor may use such sale proceeds or interest to pay for repairs or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of provided commodities but only if such structure is not used in whole or in part for any religious or sectarian purposes while the provided commodities are stored in such structure. When not approved in the Plan of Operation, such use may be approved by the Agricultural Counselor or Attache.

(f) The Cooperating Sponsor shall follow commercially reasonable practices in procuring goods and services and when engaging in construction activity in accordance with the approved Plan of Operation. Such practices shall include procedures to prevent fraud, self-dealing and conflicts of interest, and shall foster free and open competition to the maximum extent practicable.

(g) To the extent required by the Program Agreement, the Cooperating Sponsor shall submit to the Director, PPDED, an inventory of all assets acquired with sale proceeds or interest or program income. In the event that its participation in the program terminates, the Cooperating Sponsor shall dispose, at the direction of the Director, PPDED, of any property, real or personal, so acquired.

§ 1599.12 What procedures apply to the processing, packaging and labeling of commodities in the foreign country?

(a) Cooperating Sponsors may arrange for the processing of commodities provided under the Program Agreement, or for packaging or repackaging prior to distribution. When a third party provides such processing,

packaging or repackaging, the Cooperating Sponsor shall enter into a written agreement requiring that the provider of such services maintain adequate records to account for all commodities delivered and submit periodic reports to the Cooperating Sponsor. The Cooperating Sponsor shall submit a copy of the executed agreement to the Agricultural Counselor or Attache.

(b) If, prior to distribution, the Cooperating Sponsor arranges for packaging or repackaging commodities, the packaging shall be plainly labeled in the language of the country in which the commodities are to be distributed with the name of the commodity and, except where the commodities are to be sold or bartered after processing, packaging or repackaging, to indicate that the commodity is furnished by the people of the United States of America and not to be sold or exchanged. If the commodities are not packaged, the Cooperating Sponsor shall, to the extent practicable, display banners, posters or other media containing the information prescribed in this paragraph.

(c) FAS will reimburse Cooperating Sponsors that are nonprofit private voluntary organizations or cooperatives for expenses incurred for repackaging if the packages of commodities are discharged from the vessel in damaged condition, and are repackaged to ensure that the commodities arrive at the distribution point in wholesome condition. No prior approval is required for such expenses equaling \$500 or less. If such expense is estimated to exceed \$500, the authority to repackage and incur such expense must be approved by the Agricultural Counselor or Attache in advance of repackaging.

§1599.13 How does the Cooperating Sponsor dispose 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, 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 nongovern-

mental 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