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Office of Inspector General
Great Plains Region

Audit Report

Farm Service Agency Disposition of Nonfat Dry Milk

Report No. 03099-197-KC
September 2006



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington D.C. 20250



SEP 20 2006

REPLY TO

ATTN OF: 03099-197-KC

TO: Teresa C. Lasseter
Administrator
Farm Service Agency

ATTN: T. Mike McCann
Director
Operations Review and Analysis Staff

FROM: Robert W. Young /s/
Assistant Inspector General
for Audit

SUBJECT: Farm Service Agency - Disposition of Nonfat Dry Milk

This report presents the results of our audit of the Farm Service Agency Disposition of Nonfat Dry Milk. Your written response to the draft report, dated September 12, 2006, is included in its entirety as exhibit C with excerpts and the Office of Inspector General's position incorporated into the Findings and Recommendations sections of the report where applicable.

We accept your management decisions for all recommendations in this report. Please follow your agency's internal procedures in forwarding final action to the Office of the Chief Financial Officer (OCFO).

We are providing a separate memorandum to the agency and OCFO that provides specific information on the actions to be completed to achieve final action. Final action on the management decisions for these recommendations should be completed within 1 year of the date of this report to preclude being listed in the Department's Performance and Accountability Report.

We appreciate the cooperation and courtesies extended to us by your staff during the audit.

Executive Summary

Farm Service Agency, Disposition of Nonfat Dry Milk (Audit Report No. 03099-197-KC)

Results in Brief

The Farm Service Agency (FSA) acquires various surplus and price-supported agricultural commodities, including dairy products that are used to provide food assistance through domestic and foreign aid programs. As part of its mission, the Commodity Credit Corporation (CCC), using FSA personnel, helps in the orderly distribution of these commodities. FSA's Commodity Operations handles the acquisition, procurement, storage, transportation, disposition, and distribution of the commodities until they are used in domestic or foreign feeding programs or sold by CCC at announced or negotiated prices or through competitive bids. CCC is authorized to donate food commodities acquired through price support programs or from purchases in the commercial marketplace to federal, State and private agencies. Private voluntary organizations distribute many of the commodities overseas. Under certain circumstances CCC can donate commodities for research.

On May 12, 2005, the former FSA Administrator requested that the Office of Inspector General (OIG) perform a review of two incidents related to the disposition of CCC-owned Nonfat Dry Milk (NDM). One incident, in 2005, involved the sale of 15 million pounds of NDM to Mississippi State University (MSU). The Administrator was concerned that the sale had been made in a manner contrary to the legal advice of the Office of the General Counsel (OGC). Because of his concerns, the contract was voided and NDM shipments in route were diverted to other authorized locations. The other incident occurred during 2003 and involved the donation of 27 million pounds of NDM to the same university. The Administrator asked OIG to determine whether Agency officials properly followed procedures for the 2005 sale of NDM and whether the 2003 donation of NDM was properly made. He also asked OIG to determine if further actions should be taken.

During our review, we found that between February and November 2003, FSA donated approximately 24.7¹ million pounds of NDM to a private feed mill and affiliated research center for "catfish nutrition research" without (1) determining their legal authority to do so; (2) understanding the relationships of the parties involved; or (3) obtaining a signed agreement defining the project's objectives and outcomes to be achieved. Because of the principal contact's relationship with MSU,

¹ The Administrator's memorandum to OIG indicated 27 million pounds were donated; our review of shipping records confirmed only 24.7 million pounds of NDM were donated.

FSA officials mistakenly believed they were donating NDM to the university. FSA officials also believed they had authority to donate CCC commodities for research purposes. It was not until additional quantities were requested for donation in November 2003, that FSA staff questioned whether FSA had the authority to donate such large quantities of NDM to MSU. In response to this inquiry, OGC determined that the CCC Charter Act authorizes the donation of CCC commodities for research only when the research is conducted through, or in coordination with, a U. S. Department of Agriculture (USDA) research agency. No USDA research agency, however, was involved in this endeavor.

FSA offered and donated substantially more NDM than requested by the principal contact because large quantities of NDM were in CCC inventory. Although only a pallet load² or two of NDM was initially requested by the principal contact, FSA donated 24.7 million pounds valued at \$19.7 million. Only about 2,000 pounds were actually used in a controlled research study performed by the private research entity and the remainder was incorporated into catfish feed and was sold to the private feed mill's customers.

FSA also paid transportation costs exceeding \$579,000 to deliver the NDM to the feed mill and its affiliated research center. FSA charged this expenditure to the Price Support Program and did not request an apportionment from the Office of Management and Budget (OMB). An apportionment is a process required by Title 31 of the U. S. Code (U.S.C.) to authorize and monitor the disbursement of funds by agencies. We requested that OGC provide an opinion as to the applicability of the apportionment process with respect to expenditures made by CCC and how those provisions specifically relate to the expenditures for transporting CCC-owned NDM to the private feed dealer. OGC opined (see exhibit B) that any expenditures incurred in the disposition of such products would be subject to OMB's approval (apportionment). As such, with respect to the expenditures made for transporting NDM to a private feed dealer, OGC opined that these expenditures were made in contravention of the process set forth in Title 31 of the U. S. Code, specifically 31 U.S.C. 1512 and 1517.

In November 2003, upon learning that OGC knew of no statutory authority for CCC to donate NDM to universities for research purposes, FSA pursued a restricted, noncompetitive sale of NDM through a memorandum of understanding (MOU) with MSU. Prior to initiating the sale, FSA's staff requested clarification from the principal contact of his relationship with MSU, the private feed mill and its affiliated

² A pallet load of NDM is approximately 2,750 pounds.

research center. They also requested specific information on the “catfish nutrition research” project. To finalize the MOU, FSA staff also requested that OGC review the MOU for legal sufficiency. OGC would not approve the MOU and advised that a competitive sales agreement must be used in accordance with the CCC Charter Act.

The former FSA administrator became concerned with the incidents and internal miscommunication relating to the proposed sale of CCC-owned NDM and the earlier donation for research. In a June 7, 2005, memorandum to the Deputy Vice President of CCC, he required that any donation or sale of any CCC-owned commodity asset made noncompetitively or through any non-traditional manner be approved by the Administrator, or his designee, in advance of such disposition. He also requested that policies and procedures be developed no later than July 15, 2005, that document how sales of CCC assets are to be conducted and that these policies and procedures be cleared through OGC. A training program was also to be established for all officials involved in the sale of CCC assets.

At the conclusion of our audit, these requirements had not been formalized in FSA’s internal policies and procedures, or into a CCC docket.³ To strengthen FSA’s management controls over the disposition of commodity inventories and to prevent miscommunication and improper transactions in the future, FSA needs to establish written procedures that provide the specific authorities, approvals, and disposal methods and processes for sales and donations of inventory commodities. These procedures need to be cleared with OGC for legal sufficiency.

During our review, inferences were made that FSA managers continued to pursue sole source dispositions of NDM to MSU because they were MSU alumni. We confirmed that the Deputy Administrator for Commodity Operations (DACO) and the Commodity Procurement Policy and Analysis Division (CPPAD) Director were MSU alumni; however, nothing came to our attention that indicated MSU benefited from these transactions.

Because these transactions appeared to violate the CCC Charter Act, we discussed the facts and circumstances associated with these transactions with OIG Investigations to determine whether a criminal investigation was warranted. OIG Investigations declined to schedule an investigation after the U.S. Department of Justice declined to become involved.

³ A CCC docket establishes policies and delegates management responsibilities for specified activities in accordance with the applicable statutes involved.

Recommendations In Brief

We recommend that FSA:

- Request a written legal opinion from OGC as to whether FSA personnel violated applicable legal authorities in donating and/or providing CCC-owned NDM to a private feed dealer and its affiliated research center at no cost in 2003.
- Consult with OGC as to the actions FSA and/or CCC can and should take to rectify these questionable transactions, including recovery of the fair market value of the commodity and transportation expenditures from the private feed mill.
- Develop a cohesive management control structure within the Commodity Operations area for the disposition of CCC commodities to include the management decision process to properly evaluate sale and donation options and establish management controls to ensure compliance.
- Provide the facts and circumstances related to the expenditure of funds for transportation and handling charges to OGC and request a written legal opinion as to whether a violation of the appropriations law and/or the Anti-Deficiency Act occurred.

Agency Response

FSA concurred with the issues and recommendations in the report. According to FSA, the audit report highlights a serious situation regarding the inappropriate disposition of 24.7 million pounds of NDM in 2003 and an inappropriate sales disposition under consideration in 2005. During the timeframe of fiscal years (FY) 2003 through 2005, FSA oversaw the disposition of over 2 billion pounds of CCC-owned NDM with the related expenses.

FSA Commodity Operations has commenced work on implementing the recommendations and will work expeditiously to complete all of the required and necessary actions. The FSA response is included in its entirety as exhibit C.

OIG Position

We concur with the proposed corrective actions and have accepted the management decisions for all recommendations in the report. We have incorporated applicable portions of the written response to the draft report along with our position in the Findings and Recommendations section of this report.

Abbreviations Used in This Report

ARS	Agricultural Research Service
CCC	Commodity Credit Corporation
CPPAD	Commodity Procurement Policy and Analysis Division
CRIS	Current Research Information System
CSREES	Cooperative State Research, Education, and Extension Service
DACO	Deputy Administrator for Commodity Operations
FSA	Farm Service Agency
KCCO	Kansas City Commodity Office
MOU	Memorandum of Understanding
MS	Mississippi
MSU	Mississippi State University
NDM	Nonfat Dry Milk
NDMA	Nonfat Dry Milk Livestock Feed Assistance
NO	National Office
OBPA	Office of Budget and Program Analysis
OGC	Office of the General Counsel
OIG	Office of Inspector General
OMB	Office of Management and Budget
P.L.	Public Law
U.S.C	United States Code
USDA	U. S. Department of Agriculture

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Background and Objectives

Background

The Commodity Credit Corporation (CCC) is a wholly-owned Government corporation created in 1933 to stabilize, support, and protect farm income and prices; to help maintain balanced and adequate supplies of agricultural commodities, including products, foods, feeds, and fibers; and to help in the orderly distribution of these commodities. CCC was originally incorporated under a Delaware charter and was reincorporated in 1948, as a Federal corporation within the U.S. Department of Agriculture (USDA) by the CCC Charter Act (15 U. S. Code 714). CCC has no operating personnel. Its price support, storage, and reserve programs and domestic commodity acquisition and disposal activities are carried out primarily through the personnel and the facilities of the Farm Service Agency (FSA).

FSA acquires surplus and price-supported commodities to supply food assistance through domestic and foreign aid programs. Eligible commodities include dairy products, wheat, rice, feed grains, and oilseeds. For foreign food assistance programs, FSA also procures and supplies commodities for overseas humanitarian and developmental use under Titles II and III of Public Law (P.L.) 480, Food for Progress, McGovern Dole Food for Education Program and section 416 (b)⁴ programs. Private voluntary organizations distribute many of the commodities overseas. CCC is authorized to donate food commodities acquired through price support programs or from purchases in the commercial marketplace to Federal, State and private agencies. The commodities are used in the U. S. for feeding programs such as school lunch and assistance of needy persons. In most instances, arrangements are made to process the commodities into food. CCC further makes available farm commodities or products in areas of acute economic distress and in connection with certain major disasters. CCC also can advertise sales of commodities for restricted and unrestricted uses and purposes.

To stabilize domestic dairy prices as required under the authority of the Agricultural Act of 1949, as amended, FSA purchases dairy products at announced prices. The FSA's Commodity Operations handles the acquisition, procurement, storage, transportation, disposition, and distribution of the dairy products until the commodities are used in domestic or foreign feeding programs or sold by CCC at announced or negotiated prices or through competitive bids.

⁴ Section 416 (b) of the Agricultural Act of 1949, as amended.

In Washington, D.C., the Office of the Deputy Administrator for Commodity Operations (DACO) is responsible for developing policies and regulations for the administration of CCC operations related to the milk price support program; the storage, handling, and disposition of CCC's owned commodities; and for the export and domestic commodity donation programs. DACO ensures the timely provision of food products procured for domestic and international food assistance programs and market development programs. Commodity Operations is comprised of the Commodity Procurement Policy and Analysis Division (CPPAD), the Warehouse and Inventory Division, and the Kansas City Commodity Office (KCCO).

CPPAD formulates national policies and procedures to administer the operations of the CCC related to the price support program for milk and the procurement of commodities under various legislative authorities specifically for donation to domestic and foreign food assistance programs. CPPAD is made up of an Export Programs Branch and the Domestic Programs Branch.

The Domestic Programs Branch formulates national policies and procedures and coordinates program operations to carry out the purchase and delivery of processed commodities to domestic food distribution program outlets. In addition, the branch formulates national policies and procedures to administer the price support program for milk through the purchase of dairy products at announced prices.

The KCCO in Kansas City, Missouri, is responsible for managing the acquisition, handling, storage, transportation, and disposition of agricultural commodities to fulfill USDA and U.S. Agency for International Development program commitments. Private industry works in partnership with USDA and other Government agencies to supply the various programs with high-quality, nutritious products that meet program requirements.

As of September 30, 2003, CCC had approximately 1.4 billion pounds of nonfat dry milk (NDM) in inventory. During Fiscal Year 2003, CCC acquired approximately 634 million pounds of NDM and sold or donated about 523 million pounds of NDM.

On May 12, 2005, the FSA Administrator requested that the Office of Inspector General (OIG) perform a review and evaluate the actions of FSA staff related to two incidents involving dispositions of NDM to Mississippi State University (MSU) for catfish feed research. One incident in 2005, involved a non-competitive sale of 15 million pounds of NDM that was pursued contrary to the advice of the USDA Office of the General Counsel (OGC). The sale of NDM was terminated by the

Administrator's office upon notification that OGC had not concurred with the non-competitive basis of the proposed sale. The other incident involved a 27 million⁵ pound donation of NDM which the Administrator believed to have been made to MSU in 2003 at no cost. The donation of NDM in 2003 came to light in the course of the Administrator interviewing FSA staff related to events associated with the 2005 proposed sale of NDM.

Objectives

The objectives of the review were to (1) determine whether FSA personnel violated CCC legal authorities in donating NDM to a private feed mill and research facility for catfish feed nutrition research in 2003 and in pursuing a proposed sale of NDM for catfish feed research in 2005; (2) assess the control structure in place to guide FSA sales and donations of commodities, and (3) evaluate whether FSA committed an Anti-Deficiency Act violation in having paid transportation and handling costs in connection with the 2003 donation without OMB approval and/or the proper apportionment of funds.

⁵ Our review of the shipping records only confirmed that 24.7 million pounds of NDM were donated.

Findings and Recommendations

Section 1. FSA Improperly Disposed of CCC-Owned Nonfat Dry Milk

In 2003, FSA completed a donation of 24.7 million pounds of NDM at no cost to a private research facility and feed mill in Mississippi. A small portion of the NDM was used for research on catfish nutrition, while the majority of it was incorporated into commercial catfish feed and sold to feed mill customers. The donation was made by FSA without a clear understanding of how the NDM would be used, a written agreement specifying the desired outcomes, an understanding of the parties involved, and clearance for legal sufficiency from the OGC. FSA mistakenly believed they were donating the NDM to Mississippi State University (MSU) for research. However, donations for research are authorized by the CCC Charter Act only when the research is conducted through, or in coordination with, a USDA research agency. In this case, there was no USDA research agency involved and most of the NDM donated was not used for research. FSA also paid the costs of transporting the NDM to the private feed mill and research center without an apportionment for the funds, thereby potentially committing an Anti-Deficiency Act violation.

After realizing that the donation of NDM was inappropriate, FSA managers, in 2005, pursued a restricted use sale through MSU with deliveries of NDM to the same private entity that received the donated NDM in 2003 even after being cautioned by OGC against such a sale. Ultimately, the attempted sale was terminated when FSA senior management became aware that the sale did not have OGC clearance.

Finding 1

FSA Donated NDM Valued at Nearly \$20 Million to a Private Entity

During 2003, FSA managers gave approval to donate CCC-owned NDM for an initiative without first gaining a basic understanding of the endeavor's objectives, participants' roles and responsibilities, or the outcome to be achieved. Without determining their legal authority, FSA personnel provided over 24 million pounds of NDM at no cost to a private feed mill and its affiliated research center in Mississippi for its use in a commercial catfish operation. FSA Commodities Operations personnel mistakenly believed they were providing the commodity for a research project sponsored by MSU even though the deliveries were made to a private feed mill. FSA did not have formal procedures in

place for approving and processing donations of CCC-owned commodities for non-traditional assistance or sale programs. With an inventory of over 1 billion pounds of NDM in storage, FSA management was actively seeking for innovative ways to dispose of the large inventory and thereby, reduce storage costs. As a result, FSA did not follow prudent business practices in donating CCC-owned commodities valued in excess of \$19.7 million and in a manner that was consistent with the CCC Charter Act.

The CCC Charter Act⁶ states any research financed by the Corporation shall relate to the conservation or disposal of commodities owned or controlled by the corporation and be conducted in collaboration with research agencies of the Department of Agriculture (emphasis added). The Act⁷ further provides that whoever conceals, removes, disposes of, or converts to their own or another's use any property owned or held by the Corporation shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment of not more than 5 years.

No Binding Agreement and Lack of Understanding By Parties Involved

FSA had no binding agreement with any of the parties it negotiated with to provide CCC-owned NDM to facilitate research aimed at determining the level at which NDM can be incorporated as a protein supplement into commercial catfish feed. In seeking alternative outlets to reduce an existing surplus of CCC-owned NDM in storage, staff from the Senate Agriculture Committee, the Experiment Station located at MSU, and members of the Delta Council (economic development consortium) contacted a privately owned catfish feed mill and its affiliated research facility located in Indianola, MS, to determine if NDM could be used as a protein substitute in catfish feed. In January 2003, a professor from the MSU Experiment Station in Stoneville⁸, MS, contacted FSA to request a small quantity⁹ of NDM to conduct catfish nutrition research. The research project would entail experimenting with NDM as a component in fresh water fish food by using NDM as replacement for other protein ingredients. FSA personnel coordinated the shipments of NDM with the MSU professor. However, this professor was also a consultant for a private research center, which is affiliated with the private feed mill.

⁶ Commodity Credit Corporation Charter Act, 15 U.S.C. 714b, section 4. (m) as amended.

⁷ 15 U.S.C. 714 m (c), as amended.

⁸ Stoneville, MS, is home to the Agricultural Research Center's (ARS) Catfish Genetics Research Unit. Also, Stoneville is the host to the Cooperative State Research, Education, and Extension Service's (CSREES) Aquaculture Center. The Southern Research Aquaculture Center is one of five regional aquaculture centers in the United States sponsored by USDA's CSREES. ARS leases office space and catfish ponds from MSU's Experiment Station and also leases ponds from a private research center in Indianola, MS.

⁹ The initial request was for a pallet load of NDM or about 2,750 pounds of NDM.

From the initial contacts FSA had with the MSU professor, DACO was under the impression that the MSU Experiment Station in Stoneville, MS, would be conducting the research project. In an e-mail, dated February 3, 2003, DACO approved a request for a sample of NDM and indicated that someone from KCCO would contact the professor about the logistics for receiving the sample of NDM. In doing so, DACO wrote “the experiment station at Stoneville, MS in conjunction with MS State Univ. is interested in experimenting with NDM as a component in fresh water fish feed.”

Although the Director of KCCO assured DACO that FSA had authority to donate commodities for research, under the assumption that the Agricultural Research Service (ARS) in Stoneville, MS, was involved with the initial research, FSA made no attempt to contact ARS to confirm its interest and/or involvement in the project. We queried the Department’s Current Research Information System (CRIS) database which identifies all USDA research projects to determine whether this research project was shown. Our query did not identify the Delta Western research project as a USDA research effort. We confirmed with the MSU professor that ARS was not a collaborative partner in the research effort involving the donated NDM.

Furthermore, FSA did not contact anyone else representing MSU to verify its participation in the project. The professor directed the shipment of NDM to be delivered to the private feed mill in Indianola, MS, for processing because the Experiment Station in Stoneville, MS, did not have the capability of incorporating the NDM into catfish feed. Due to the close proximity to the mill, the professor stated that he intended to conduct this research experiment in small ponds owned by the private feed mill and the affiliated research center. While the private research center also leased ponds to ARS, the actual research involving the use of the NDM was not conducted in ARS-leased ponds.

Quantity Commitment Escalated

After DACO approved the initial request, KCCO transportation personnel became responsible for working with the professor to develop and coordinate the shipment of NDM to Indianola, MS. The professor told us that during the processing and coordinating of the initial shipment, KCCO officials commented on the large quantities of NDM in storage and offered him substantially more NDM than he had originally requested. After discussing KCCO’s additional offer with the owner of the private research center, the professor accepted the offer of additional NDM. The professor then worked out a delivery schedule with KCCO requesting over 15,000 tons of additional NDM with

deliveries to be made from April through October 2003. In an e-mail, dated March 14, 2003, the Deputy Director, KCCO, confirmed the shipping schedule and indicated to the professor that: "We have a number of options with regard to transporting the NDM to you. We can deliver it to you and can arrange to have it delivered and we will pay for shipments." This e-mail confirmation was also sent to other KCCO managers, DACO and Commodity Operations personnel. Shipments to the feed mill in Indianola, MS, began in March 2003 and by November 2003 approximately 24.7 million pounds were delivered. Only a small portion (estimated at less than a ton) of the total 24.7 million pounds of NDM was ultimately utilized in research by the private research center. Ultimately, almost the entire quantity of the NDM was incorporated into commercial catfish feed sold by the private entity to its commercial catfish operators.

Accounting for Transportation Expenditures

FSA paid the entire transportation charges of nearly \$580,000 associated with the deliveries. To account for and record the transportation charges paid, KCCO personnel used a miscellaneous donation code on internal accounting records. The miscellaneous donation code was used in lieu of creating a special accounting code for the transportation since it was not expected that this would be a recurring program (see Finding 2 on the transportation costs).

KCCO transportation personnel continued to ship NDM during 2003 to the private feed mill and its affiliated research center. The shipments of NDM were included in weekly status reports of commodity operations generated by KCCO and were discussed in staff meetings that DACO participated in. However, DACO stated to us that he had no recollection of approving the additional shipments and stated he would have never authorized such a donation totaling 24.7 million pounds of NDM.

Next Feeding Season Commitment Requested

On October 7, 2003, the MSU professor contacted the KCCO transportation staff and stated that other than the planned deliveries of NDM for that month, no additional NDM was needed at that time but they planned to use the product again next year (2004). The professor also told them he would be in contact to set up for deliveries beginning in late April or early May 2004. In early November 2003, a representative from the private feed mill asked a KCCO transportation staffer for an additional 100 truckloads or about 4.13 million pounds of NDM and the KCCO staffer forwarded the request to KCCO management for approval. Ultimately, a KCCO Deputy Director

forwarded the request to DACO inquiring whether DACO would like for KCCO “to continue providing MSU with NDM”.

On November 5, 2003, DACO questioned a KCCO Deputy Director on the request and wanted to know what quantities were within CCC’s authority to supply before he would authorize the shipments. However, KCCO managers were unsure of what authority they had used to justify the shipments of NDM earlier that year. At this point, Commodity Operations personnel also made the first inquiry to OGC as to CCC’s authority to complete this request. On November 17, 2003, an OGC attorney advised the Commodity Operations personnel that he knew of no statutory authorization allowing CCC to directly donate its inventory to State universities for research purposes. As an alternative to fulfill the request, another OGC attorney suggested FSA execute an unrestricted sale of NDM to “them” (MSU was implied in the e-mail) for \$10 per truckload.

It was at this point, FSA National Office and KCCO personnel realized they knew very little about the research project. Accordingly, they decided to contact the MSU professor and requested that he provide FSA with additional information on the project and its planned results. They concluded this information was needed to obtain DACO’s approval for the sale of the requested quantity. In a November 19, 2003, e-mail, the MSU professor explained: “As director of Delta Western’s research center and as a Research Professor at Mississippi State University, my group works closely with the ARS scientists that are involved with the use of leased ponds...In regards to the milk, we plan to continue to use the product in our *commercial feeds* (emphasis added) but will continue research for at least 3 years with the product. We generally do 3 years of work before we release the information. However, as soon as it is available, I will provide you with the data from the first year.” A copy of this e-mail was sent to senior KCCO management and Commodity Operations personnel, including DACO. In another e-mail on November 19, 2003, the MSU professor also explained to a KCCO Deputy Director that it (Delta Western Research implied) has a cooperative agreement with ARS. However, the e-mail stated that “ARS was not needed for this particular project and is not tied to it.”

Misaction Recognized

On November 30, 2003, a Commodity Operations employee in an e-mail to DACO summarized that FSA had consulted with OGC and there was no statute under which it could provide NDM as a donation. However, an OGC attorney had recommended to KCCO that it should ask for a proposal and have the private research center purchase the

NDM at \$10 per truckload. In response to that e-mail, the DACO replied that “there was no need to discuss; the \$10 per truck was fine with him.” On December 2, 2003, in an e-mail between KCCO mid-level personnel and transportation staff, the proposed sale of NDM for \$10 a truckload was mentioned; therefore, KCCO personnel thought that once an agreement had been reached with the professor, someone from Headquarters would provide KCCO with something in writing that would authorize the sale of NDM for catfish feed. In addition, the professor would have to submit a proposal in writing explaining how he planned to utilize the NDM and quantities needed.

The only supporting documentation explaining the project that the university or the professor submitted to FSA was received late December 2003 after the 24.7 million pounds of NDM had been delivered. In a memorandum to Commodity Operations personnel, the MSU professor provided some background information about the research center and the feed mill. The memorandum noted that the research center and feed mill were privately owned but had a partnership with MSU. The professor also described his roles at the University as well as directing research for the private entity. Finally, the memorandum described the specific projects that utilized NDM provided by CCC. The memorandum states: “...we have conducted the first year of what is a planned three year study on the use of dried milk in catfish feed. The project is two fold in that we have controlled studies being conducted in research ponds at Delta Western Research Center and we also have a large demonstration project ongoing on commercial catfish farms.”

During our review, we confirmed with the professor that only a small portion of the NDM went into the research ponds and the rest of the NDM was used in commercial feed. Although there are USDA research agencies in Mississippi, we found no evidence to support that any other of these USDA research agencies were involved in any of the “demonstration projects” involving use of the donated CCC-owned NDM. Although the professor’s memorandum was sent in December 2003, we found no additional documentation supporting either the completed donation or the proposed sale discussed in late 2003 and again in October 2004 (see Finding 3).

In summary, OGC indicated that no authority existed for FSA personnel’s actions in completing the donation of NDM quantities at no cost to the private entity. The research in question involved only a nominal quantity of NDM received by the private entity and was not performed by, or in collaboration with, any USDA research agency. CCC had no authority to directly donate any quantity of NDM to the private entity under the auspices of research regardless of the size of

the donation. FSA needs to refer the matter to legal counsel for consideration and determination of applicable violations of laws, regulations, policies, and procedures, and pursue remedies and penalties as deemed appropriate and enforceable.

Recommendation 1

Request a written legal opinion from OGC on whether FSA personnel violated applicable legal authorities to donate and/or provide CCC-owned NDM to a private entity at no cost in 2003.

FSA Response

The FSA Administrator sent a memorandum to OGC through the Acting Under Secretary for Farm and Foreign Agricultural Services on September 8, 2006, requesting a written legal opinion on the legitimacy of the donation of NDM to a private entity.

OIG Position

We accept management decision.

Recommendation 2

If it is determined that FSA personnel violated the CCC Charter Act or other applicable laws and regulations, initiate appropriate disciplinary actions commensurate with the role played in authorizing, allowing, and/or arranging for the unauthorized disposition of NDM to the private entities.

FSA Response

After the determination is made as to the legitimacy of the donations to a private entity, the Deputy Administrator for Commodity Operations will review and consult with the Human Resources Division by March 2007 on necessary disciplinary actions.

OIG Position

We accept management decision.

Recommendation 3

Consult with OGC as to the actions FSA and/or CCC can and should take to rectify these questionable transactions, including recovery of the

fair market value of the commodity and transportation expenditures from the private feed mill.

FSA Response

The FSA Administrator requested guidance from OGC in a memorandum, dated September 8, 2006, as to possible actions required to recover inventory and transportation costs from the private entity. FSA will pursue recovery actions based upon OGC's guidance. If warranted, recovery actions will be initiated by June 2007.

OIG Position

We accept management decision.

Finding 2

Potential Anti-Deficiency Violation Regarding the Expenditure of Transportation Costs

During 2003, FSA decided to incur the transportation costs related to shipping the donated NDM to the recipients in Mississippi. FSA officials did not confer with or seek concurrence from the Office of Budget and Program Analysis (OBPA) or the Office of Management and Budget (OMB) personnel to determine if an apportionment for these transportation costs was necessary. They considered the donation as part of their normal Price Support Program operations and activities, which they believed were exempted from apportionment of CCC funds. This action may have resulted in an Anti-Deficiency Act violation if the transportation costs should have been apportioned and accounted for separately.

Title 31 of the U. S. Code (U.S.C.) sets forth statutory provisions for the budget process to be followed by the Federal Government and relating to the expenditure of Federal funds. Generally, the term "apportionment process" refers to the process used by OMB to monitor the disbursement of funds by agencies. Title 31 U.S.C. 1511 subsection (a) states, in part, that "appropriations" means (1) appropriated amounts; (2) funds; and (3) authority to make obligations by contract before appropriations. However, 31 U.S.C. 1511 subsection (b) states that the subchapter does not apply to amounts (except amounts for administrative expenses) available for price support and surplus removal of agricultural commodities and under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c). Further, 31 U.S.C. 1517 subsection (a) provides, in part, that an officer of the United States Government

may not make or authorize an expenditure or obligation exceeding (1) an apportionment or (2) the amount permitted by regulation prescribed under section 1514 (a) of this title. Further, an agency may not exceed the available amount of an administrative subdivision officially directed by the agency and must notify the President and Congress if a violation occurred.¹⁰

In our contacts with personnel from FSA Budget Division, OBPA, and OMB, we discussed: (1) the appropriateness of the FSA actions in accounting for the transportation expenditures paid, (2) whether or not an apportionment was required, and (3) the potential ramifications in determining whether the transportation expenditures were appropriately reported in the budget documents submitted to the Department and OMB. In reviewing the documentation supporting the shipments, we noted that KCCO personnel had used an existing accounting code for entering the transportation costs into CCC's financial systems rather than creating a new one to better classify the expenditures (see Finding 1). The miscellaneous donation code used resulted in the recording of the transportation expense under the price support program.

FSA Commodity Procurement Policy and Analysis Division (CPPAD) personnel considered the disposition of inventory commodities a function of the Price Support Program, and thus, exempt from the apportionment provisions. In support of their position, they cited past instructions from OMB that expenditures for price support activities did not need to be apportioned and reported to OMB. In a letter, dated August 6, 1996, to the Director, Office of Budget and Program Analysis, OMB advised USDA that "we are aware of the legislative prohibition on apportioning CCC amounts for price support programs and surplus removal of agricultural commodities, and we do not intend to apportion these activities. However, all other activities would be apportioned."

The Director for Agriculture, OMB, apprised us that the OMB position has changed over time with respect to considering dispositions of commodities a function of price support and, thus, exempt from the apportionment provisions. The reference to removal of surplus commodities was originally interpreted to include dispositions of commodities held in storage; however, their current position limits the applicability to acquisitions of commodities, not dispositions (emphasis added). In addition, the Director for Agriculture, OMB, confirmed an existing apportionment exemption for section 32 funds. In general,

¹⁰ U.S.C. Title 31, sec. 1517. "Prohibited obligations and expenditures" – (b) If an officer or employee of the executive agency or of the District of Columbia government violates subsection (a) of this section, the head of the executive agency...shall report immediately to the President and Congress all relevant facts and a statement of actions taken.

OMB's position was that the authorization used to support an activity determines whether apportionment is applicable or appropriate.

We confirmed with the FSA Budget Division that the number of required/requested apportionments had increased over the past few years, to about one hundred per year. However, between 1996 and 2004, the only apportionment of funds that had been requested by OMB related to price support activities was for handling, storage, and transportation expenses associated with NDM "dispositions" related to only the 2004 Faith Based NDM Initiative program.

In further discussions with the OMB Director for Agriculture, we provided a brief explanation of the circumstances associated with the donation of NDM. In response to our description of the situation, the OMB Director for Agriculture stated that the actions taken were problematic and the agency should provide the facts and circumstances to USDA's OGC for a legal opinion on whether violations of the Anti-Deficiency Act occurred concerning the transportation expenditures for the transactions.

In response to a request initiated during our review, OGC provided us a written opinion, dated December 23, 2005, concerning the applicability and operations of the apportionment process set forth in Title 31 of the U.S.C. with respect to expenditures made by CCC and how those provisions specifically related to expenditures used to transport NDM to a private feed dealer. In the opinion (see exhibit B), the Assistant General Counsel stated OGC was not aware of any document that delineated those CCC programs and activities that are included in the exceptions provided at 31 U.S.C. 1511(b), but believed the application of the exception for price support and surplus removal of agricultural commodities is quite limited, given the broad scope of CCC activities. Although 31 U.S.C. 1511 (b) provides that "administrative expenses" in the conduct of price support or surplus removal activity are subject to the apportionment process, OGC was not aware of any determination to fully address the scope of this phrase. Also, he stated once delivery of the commodities to CCC are completed, the price support or surplus removal has been completed, actions subsequently taken by CCC in the use or disposition of these commodities are not considered price support or surplus removal.

In summary, it was OGC's opinion that: (1) an apportionment approved by OMB is not needed with respect to the expenditure of CCC funds for acquisition and storage of dairy products under Title 1 of the Farm Security and Rural Investment Act of 2002; and (2) any expenditures incurred in the disposition of such products would be subject to such OMB approval. Regarding the lack of an OMB-approved

apportionment with respect to funds expended for transportation and handling charges associated with NDM donated to a private feed dealer, OGC opined that such expenditures were made in contravention of the process set forth in Title 31 of the U.S.C., specifically 31 U.S.C. 1512 and 1517. (The OGC opinion in its entirety is included as exhibit B.)

Recommendation 4

Provide the facts and circumstances for the cited condition to the OGC and request a written legal opinion from OGC whether a violation of the Anti-Deficiency Act occurred. Also, report to Congress, as required, if OGC determines that an Anti-Deficiency Act violation occurred.

FSA Response

In a memorandum, dated September 8, 2006, the FSA Administrator requested OGC provide a written legal opinion on the necessity for an apportionment for the \$580,000 transportation costs incurred in 2003 for shipping NDM to the private feed mill. If OGC determines that an apportionment should have been obtained, FSA will take all necessary corrective actions, including the report to Congress by September 2007.

OIG Position

We accept management decision.

Recommendation 5

Issue written policy that requires consultation with and concurrence by OMB regarding when transportation and handling expenditures for commodity dispositions need to be apportioned on appropriate apportionment schedules submitted to OMB.

FSA Response

Starting with FY 2007, FSA implemented processes to request apportionments from OMB for all CCC inventory dispositions costs such as transportation and handling. FSA will issue internal written procedures requiring apportionments for these types of expenses by August 2007.

OIG Position

We accept management decision.

Finding 3**FSA Pursued a Single Source Restricted Sale of NDM Against OGC's Advice**

FSA personnel completed a restricted use sales agreement for 2005 distribution of NDM for catfish feed without the concurrence of OGC. The sales agreement was between an experiment station at MSU and CCC. However, the restricted sales agreement involved scheduled deliveries to the private feed mill and research center, like the donation of NDM in 2003 (see Finding 1). In addition, FSA did not attempt to follow traditional sales procedures for CCC-owned dairy products or maximize the returns to the Corporation by obtaining competitive bids or offering the commodity for sale at the market value to other potential interested parties. This occurred due to lack of a cohesive management control structure (see Finding 4) and because responsible FSA personnel ignored OGC advice to sell the NDM on competitive basis and pursued the sale of NDM on a non-advertised/sole source basis at minimal cost. As a result, FSA was in the process of shipping NDM when the former FSA Administrator learned that OGC had not concurred with the proposed sale and his office interceded and terminated the sale.

The Agricultural Act of 1949¹¹ states “the Corporation may sell any basic agricultural commodity or storable non-basic commodity on a competitive bid basis (emphasis added), if the sale is determined to be appropriate by the Secretary.” With regard to selling commodities, the Charter Act¹² states the Corporation shall, to the maximum extent practicable, utilize the usual and customary channels, facilities, and arrangements of trade and commerce. Commodities acquired under price support can be sold for unrestricted use domestically at prices which are not below minimums prescribed by law. Commodities may also be sold for restricted uses or outlets at the highest prices determined obtainable considering the quantity and condition of the commodity to be sold. Commodities which have substantially deteriorated in quality or which are in danger of loss can be sold below price minimums.

The usual and customary channels previously used by FSA for the sale of dairy products involve issuance of announcements for sales of dairy products and invitations to bid to interested parties. These types of sales use either competitive bidding or announced market prices (fixed) as determined by CCC.

¹¹ Agricultural Act of 1949, section 407(f)(3), dated October 31, 1949, as amended.

¹² CCC Charter Act, section 5, “Specific Powers,” dated June 30, 1948.

After the donation of NDM during 2003 to the private feed mill and affiliated research center (see Finding 1) nearly a year went by before the idea of utilizing NDM in catfish feed came up again.¹³ In September 2004, [] Staff from the Senate Agriculture Committee met with DACO to discuss a sale of NDM to a group¹⁴ that included the private research arm of the private feed mill. During the course of subsequent discussions among representatives for MSU, DACO, and representatives from the FSA Administrator's Office, it was agreed FSA would sell 7,500 short tons (15 million pounds) to MSU. In February 2005, personnel from CPPAD drafted a Memorandum of Understanding (MOU) to sell MSU 15 million pounds of NDM at \$275 per truckload to be used in a catfish feed study. However, OGC attorneys rejected the draft MOU and said the agreement needed to be a competitive sales agreement. Also, OGC attorneys informed CPPAD that the draft MOU had to be revised to comply with section 4(m) of the Charter Act¹⁵ since the purpose of this arrangement was ostensibly to finance research activities. That is, the MOU had to include collaboration with research agencies of the Department of Agriculture.

On March 17, 2005, after receiving notice of the OGC rejection, an employee from CPPAD discussed OGC's concerns with DACO in which he advised that the revised document had to be a sales agreement and not an MOU. The CPPAD employee explained there were existing announcements offering NDM for sale that they could use to have MSU provide offers or bids for. However, DACO was reluctant to use a competitive sale because he was concerned MSU might not be successful in obtaining the bid or award.

Later in March 2005, CPPAD personnel decided against using the existing competitive announcement sales process and proceeded to complete a sole source sales agreement with MSU¹⁶. A new noncompetitive sales agreement was prepared and submitted to OGC for concurrence. However, OGC attorneys again rejected this sales agreement due to its noncompetitive provisions and again informed FSA it would only clear such sale for legal sufficiency if it was conducted under a competitive announcement. FSA officials then

¹³ Correspondence from the MSU professor indicated that his studies would start in the month of April so he needed advance notice to determine whether to contract with other sources to obtain needed protein sources.

¹⁴ The "Group" included the Thad Cochran National Warmwater Aquaculture Center, Delta Branch Experiment Station, MSU, and the private research center.

¹⁵ CCC Charter Act, 15 U.S.C. 714b, section 4.(m), as amended.

¹⁶ The sales agreement identified the purchaser as Mississippi Agriculture and Forestry Experiment Station, MSU, and the delivery site was the private research center in Indianola, MS.

considered conducting the sale by announcing an invitation to bid with a very restrictive window (only a few hours) for submitting offers to limit participation so only MSU would be able to bid. Despite OGC's advice, the CPPAD Director ultimately proceeded with the sole source sales agreement.

At the time the CPPAD staff sent the proposed sole source agreement to KCCO for processing, KCCO officials were already aware that OGC had previously stipulated that it would not clear any written agreement for a sale of NDM to MSU unless it was conducted competitively. When the sole source sales agreement was presented to KCCO for signature by a contracting officer, these officials were reluctant to execute the agreement terms without authority or written approval from either DACO or CPPAD. However, the Acting DACO, who was not actively involved with drafting the MOU or final noncompetitive sales agreement, sent an e-mail to KCCO stating "the purpose of this e-mail is to authorize the sale of Commodity Credit Corporation (CCC)-owned nonfat dry milk to the Mississippi Agricultural and Forestry Experiment Station, Mississippi State University under Section 165 of the Agricultural Market Transition Act, 7 U.S.C. 7285 and CCC Docket P-COM-98-006 dated May 11, 1998, using the Nonfat Dry Milk Restricted Use Sales Agreement For Catfish."

On the basis of the e-mail from the Acting DACO, a KCCO contracting officer signed the agreement and KCCO started the process of identifying trucks to transport the stated quantity of NDM to the approved delivery point. However, the Director of KCCO remained concerned about the propriety of sale and asked CPPAD whether OGC had, in fact, cleared the sales agreement for legal sufficiency. When he was told OGC had not cleared the agreement, the Director relayed his concerns to the Administrator. In response to this information, the Associate Administrator halted the sale based on these concerns on April 28, 2005, and three trucks carrying NDM in route to the private feed mill were immediately diverted to other authorized locations and the sales agreement was cancelled.

Although the sale was cancelled, at least one more attempt was made in early May 2005, to develop a competitive sales contract that would be limited to colleges and universities and for catfish feed research purposes. However, on May 5, 2005, an OGC attorney identified the restrictions involving research from the CCC Charter Act¹⁷ and advised that "efforts to evade this prohibition will not be approved by this office."

¹⁷ CCC Charter Act, – 15 U.S.C. 714b, section 4. (m).

Non-Competitive Sale

We could not locate any policy, procedure, or precedent that would allow FSA to execute a sole source sale of NDM at a price well below market value. The CCC's sales docket¹⁸ cites various statutes including the CCC Charter Act's requirement to utilize customary channels for the sale of commodities. FSA customarily uses announcements to sell NDM. An official from KCCO's Dairy and Domestic Operations Division said this was the only instance of CCC attempting to sell NDM outside of the competitive bidding process.

The documented authorities provided to us to justify the sale, in fact, show CCC did not follow these prescribed statutes, policies, or precedents in executing the sale. OGC attorneys stated in returning the MOU agreement to FSA without concurrence that: "the legal concern is simply that there is no rationale basis to favor one entity over another, nor is there a basis to simply give away assets of CCC – in this case it get(s) real close to giving an asset away if you don't maximize the return."

Communication Problems

Communication problems occurred among personnel within FSA Commodity Operations. The Domestic Program Branch Chief, under CPPAD, was assigned responsibility for putting the sales agreement together and coordinating with OGC in completing the sales proposal and obtaining OGC clearance for the sale and its supporting documents. However, when discussing OGC's concerns with upper management, the Branch Chief mentioned only that OGC had advised him the sale had to be conducted on a competitive basis before they would concur with the written agreement and the research restriction was not discussed. The Director of CPPAD initially claimed to us that he was not told of any of OGC's concerns so he had went ahead with a noncompetitive sales agreement with no restrictions on the use of the NDM. However, DACO asserted to us, that had he known of the research restriction, he would have stopped the sale.

Returns Not Maximized

Under the contract, FSA agreed to sell 15 million pounds of NDM at \$275 per truckload, which amounted to under \$100,000. According to the Director of KCCO, NDM being sold had an estimated market value of between \$7 and \$10 million. The price of \$275 per truckload was

¹⁸ CCC Docket P-COM-98-006, dated May 11, 1998.

consistent with the price at which NDM was sold to State and Tribal Governments under the 2004 Nonfat Dry Milk Livestock Feed Assistance Initiative (NDMA). FSA used this initiative as the template for constructing the NDM sale and preparing the supporting agreement documents. However, the 2004 NDMA was a disaster assistance effort directed toward livestock producers in drought affected counties and States. There was no cost benefit analysis prepared supporting that the sales price and other cost considerations maximized the return to the Corporation.

In our view, the price at which NDM was proposed for sale to the State University was not reasonably based. First, NDM provided was not denatured and, thus, was still suitable for human consumption. Second, the established price did not represent an attempt to maximize returns to the Corporation in that it did not include recovery of the price support and handling charges. Third, the established price was not reflective of the market price that existed at the time the sale was negotiated. Information obtained from the FSA Intranet supports restricted and unrestricted sales of NDM in 2004 and 2005 at prices of \$.60 to \$.90 per pound.

On June 7, 2005, FSA's former Administrator required his approval of all sales or donations of CCC-owned commodity assets (no matter the quantity or quality) made noncompetitively or through any nontraditional manner. However, this requirement was put forth in a memorandum to DACO and has not been formalized in FSA's internal policies and procedures or the CCC docket. While this policy was set forth in response to the case in question, FSA needs to establish policy and procedures that address the entire scope of decision making relative to proposed sales and donations of inventory commodities, in an effort to avoid the occurrence of similar misunderstandings and improper transactions in the future.

Recommendation 6

Develop formal written procedures that provide a structured process for evaluating options for dispositions of inventory commodities (donations and sales), including entity and position specific decision making authorities, required consultations with and concurrences required from other parties (CCC Board of Directors, OGC, etc.), and documentation requirements.

FSA Response

The FSA Administrator has directed the Acting Deputy Administrator for Commodity Operations to develop the formal written procedures for

the Administrator's approval and to have procedures in place for FY 2007. Commodity Operations plans to formalize the procedures in internal handbooks by March 2007. Until such time as the procedures are completed, Commodity Operations will obtain the Administrator's approval of inventory disposition decisions.

OIG Position

We accept management decision.

Recommendation 7

Codify the requirement in FSA's directive management system and/or CCC's docket put forth in the Administrator's memorandum dated June 7, 2005, that the CCC Executive Vice President or his/her designee shall approve all sales or donations that are non-competitive or made through any non-traditional manner.

FSA Response

FSA agrees to codify the requirements in the Agency's directives management system for approval from CCC's Executive Vice President or his designee on all non-competitive or non-traditional sales and donations of inventory. This action should be completed by March 2007.

OIG Position

We accept management decision.

Recommendation 8

Initiate personnel disciplinary actions commensurate with the role played in continuing to pursue a sale of NDM in 2005 against OGC's advice and in violation of standing laws, regulations, and procedures.

FSA Response

FSA had reassigned the duties and responsibilities of an employee in October 2005. The reassignment was prompted by several factors including the attempted sales transaction that occurred in April 2005.

OIG Position

We accept management decision.

Section 2. Cohesive Management Control Structure Needed over Commodity Dispositions

Finding 4

FSA Lacks Formal Decision Making Process for CCC Commodity Dispositions

FSA lacks a cohesive and comprehensive management control structure to ensure that commodity inventory assets are disposed of in accordance with the Corporation's disposition policies and all legal requirements. Specifically, the FSA has not developed written policies and procedures governing the disposition of CCC-owned commodities. CCC senior management has delegated full authority and responsibility for commodity donations to its Commodity Operations with only a general disposition policy to guide particular commodity disposals. Without established procedures that demonstrate how to apply the general CCC disposition policies to specific CCC-owned commodity disposal situations, FSA managers and staff are left to implement FSA guidelines as they see fit. As a result, FSA disposed of NDM in a manner that circumvented regulations for disposing of CCC-owned commodities in violation of the CCC Charter Act. (See section 1.)

CCC Docket P-COM-98-006, "Policies Regarding Management of Commodity Credit Corporation Commodities and Materials and Delegation of Responsibility," establishes policies and delegates responsibilities of management of CCC commodities and materials in accordance with various statutes. This includes but is not limited to the Agricultural Act of 1949, as amended, the Food Security Commodity Reserve Act of 1996 and the CCC Charter Act, as amended, and designates the officers of CCC and employees of USDA who are authorized to carry out policies of CCC with respect to these matters. The major provisions of the docket are:

- Except to the extent determinations are made by the Secretary of Agriculture or by CCC's Board of Directors, the CCC President or The CCC Executive Vice President is authorized to determine the availability of commodities for sale or other disposition. This authority may not be delegated.
- Principal responsibility for policies in connection with the domestic storage, handling, and disposal of commodities is delegated to the Deputy Administrator for Commodity Operations, FSA, who is also the Deputy Vice President, CCC. This includes the authority to determine the methods and

pricing of these merchandising activities and the general terms and conditions of sales and other disposals.

- Principal responsibility for policies in connection with export sales is delegated to the General Sales Manager, who is also a CCC Vice President.

CCC's policy per the docket is to dispose of all commodities and materials acquired by CCC as rapidly and orderly as possible. The term commodities include agricultural commodities and products, including value added or high value products. In making disposals, CCC shall to the maximum extent practicable, consistent with the fulfillment of its purposes and the effective and efficient conduct of its business, utilize the customary channels, facilities, and arrangements of trade and commerce.

CCC records showed that in Fiscal Year 2003, it sold and donated over \$5.2 billion¹⁹ in various CCC-owned commodities. This figure shows the expenditure of significant resources by FSA to dispose of commodities within CCC's programs and indicates the need for a cohesive management control structure and management oversight. However, we found that FSA did not have in-depth written policies regarding both sales and donations of commodities and did not provide proper senior management oversight of these dispositions.

Lack of Management Oversight

OGC attorneys informed Commodity Operations personnel that the donation of NDM would have to comply with section 4(m) of the Charter Act²⁰ and had to include collaboration with research agencies of the Department of Agriculture. By not confirming the involvement of USDA research agencies, FSA was essentially misappropriating CCC assets to the feed mill and its customers and appropriating funds to cover transportation expenditures.

CCC's donation of commodities at no cost that would be sold by the feed mill for its benefit and that of its customers, and FSA's determination to supplant competitive sale(s) with the sole source donation and sales agreements raises questions about the Commodity Operations exercise of its delegated authority. Furthermore, we found no documentation evidencing that the availability of NDM for the purpose of manufacturing catfish feed had been properly approved by

¹⁹ The \$5.2 billion includes commodities acquired through Price Support Programs and commodities acquired specifically for sales or donations.

²⁰ CCC Charter Act, 15 U.S.C. 714b, section 4. (m), as amended.

CCC officers and/or officials. We concluded that CCC officers and FSA senior managers need to be more closely involved in CCC-owned commodity dispositions and in the decision-making process for these transactions.

Written Policies

After our review started, FSA prepared a desk reference entitled, “Farm Service Agency Commodity Operations Sales Procedures,” which includes CCC sales policies and procedures, indicating how sales are conducted in accordance with governing authorities. The procedures were intended to be used by the commodity merchandisers at KCCO when selling CCC-owned commodities. FSA itself has not produced any written policy of its own for donating CCC-owned assets, like NDM that it acquires routinely over the years.

This FSA reference policy is general and reflects the relevant language of the CCC Charter Act, Federal Agricultural Improvement and Reform Act of 1996, and CCC Docket No. P-COM-98-006, “Policies regarding Management of Commodity Credit Corporation Commodities and Materials and Delegations of Responsibilities,” in summary or general terms. However, the guidance was meant to apply to the activities of the FSA KCCO and is worded broadly rather than specific. For example, the desk reference identifies the types of sales that CCC is involved with, such as, negotiated sales or sealed bids, and whether there are limitations on the final use, unrestricted sales versus restricted sales; but, the desk reference fails to identify the decision-making process or authority for ultimately determining the proper sale type and final use requirements to be followed for proposed sales. In addition, the guidance does not reference the type of analysis necessary to support how the final sales price is determined; that is, what factors were considered, such as a cost/benefit determination to support the final sales price determination and what other costs the Corporation should bear.

There are no CCC and/or FSA specific operational procedures for determining domestic dispositions for CCC commodities; the FSA Commodity Operations has been delegated the authority for domestic sales and donations. We concluded that FSA should issue additional written policies and procedures regarding the disposition operations for CCC commodities. Such policy and operational procedures should address the decision points that result in selection of the proper means (sales or donations); the type of instrument (contract or agreement); and the use of traditional announcements or notices to publicize disposition activities (e.g., Notices to the Trade) or nontraditional methods to dispose of commodities. Specifically:

1. FSA should not sell or donate CCC-owned commodities without having a binding contract or agreement in place. The FSA KCCO continued to ship millions of pounds of NDM to the private feed mill and research center at no cost in the absence of a written commitment and an agreement or contract with the entity was never completed for the arrangement.
2. As a general rule, FSA should not use an agreement when sales contracts are justified. The CCC Charter Act and the CCC Docket do not provide whether agreements or contracts are the preferred instrument for disposition. To initiate an agreement to donate NDM to the private feed mill and affiliated research center, FSA ignored a contract method of disposal at announced prices it had used in past years and later patterned a failed sales agreement in 2005 based on a legal instrument it had used in the 2003 Livestock Feed Initiatives, a disaster assistance program for livestock producers.
3. To the maximum extent practicable, CCC should always sell or donate CCC-owned commodities in a manner that maximizes the return to the corporation. The FSA Commodity Operations improperly donated NDM for commercial feed manufacturing purposes at no cost to the private feed mill and research center. Subsequent attempts to later sell additional quantities of NDM to these entities were to be at nominal costs and far below the actual market value of the commodity for animal feed uses. Furthermore, the proposed sales price would have not covered the costs to CCC of preparing, handling, and transporting the commodities to the entities. There was no cost benefit documentation showing that other alternatives were considered or analysis prepared showing that returns to the Corporation were being maximized by these transactions.
4. FSA should ensure competition for sales contracts and donation agreements to the maximum extent practicable. There is no clear policy or procedure regarding the justification needed for sales or donation agreements entered into without competition. The responsible FSA Commodity Operations personnel and the KCCO personnel offered no justification for entering into a noncompetitive donation arrangement and later an attempted noncompetitive sales agreement with the private feed mill and research center and MSU. Competitive proposals should be solicited for commodity donation initiatives and evaluated on their merits as to those providing the most benefits. CCC policy should also offer guidance on preparing an agreement to ensure

the instruments meet the appropriate criteria and legal requirements, specifically:

- a. Agreements need to acknowledge the ownership of any commodity assets CCC contributes, giving CCC the option of recovering or disposing of these assets when the agreement terminates. There was no reference or agreement in the initial donation arrangement or the subsequent draft agreement and instruments for disposing of any leftover CCC-provided commodities after the research project concluded. Almost all of the NDM CCC donated was utilized in a commercial catfish feed manufacturing endeavor rather than a research purpose as asserted by the FSA Commodity Operations staff.
- b. Agreements need to specify the activities the cooperator will engage in as part of its participation. The unwritten arrangement with the private feed mill and research center had no agreement on what specific activities would be accomplished by them. There was no written deliverable or final report requested by FSA evidencing what results had been achieved by the endeavor.
- c. The involvement of OGC in developing and approving agreements and sales contracts needs to be documented in relation to commodity dispositions. FSA needs to coordinate relevant program activities with OGC to ensure that decisions affecting policies and regulations comply with authorizing legislation.

Recommendation 9

Develop a cohesive management control structure within the Commodity Operations for the disposition of CCC commodities to include the management decision process to properly evaluate sales and/or donation options.

FSA Response

By March 2007, Commodity Operations will develop and implement a decision process required for all CCC inventory disposition decisions. The decision process will include a review of authorities, obtaining appropriate approvals from senior management, and evaluation of the associated costs.

OIG Position

We accept management decision.

Recommendation 10

In consultation with OGC, develop and issue commodity donation guidelines that are based on the decision process and policies developed in Recommendation 9.

FSA Response

FSA agrees to formalize the CCC inventory management controls and to request OGC review for legal sufficiency the commodity donation guidelines developed in response to Recommendation 9. FSA will seek OGC input by March 2007 on the commodity donation guidelines.

OIG Position

We accept management decision.

Scope and Methodology

Our review was conducted at the FSA National office (NO) in Washington D.C., KCCO in Kansas City, Missouri; Mississippi State University (MSU) in Starkville, Mississippi; and a private feed mill and its affiliated research center in Indianola, Mississippi. We conducted our fieldwork from May 2005 to January 2006.

To accomplish our objectives, we performed the following procedures.

- Reviewed applicable laws and regulations concerning the donation and sale of CCC-owned commodities and the apportionment of appropriated funds to account for transportation expenditures associated with the donation of the commodities. This included the CCC Charter Act, the applicable CCC Dockets, and the Anti-Deficiency Act, as well as other authorities deemed necessary.
- Reviewed internal CCC policies and procedures concerning the donation and sale of CCC-owned commodities as well as accounting for the donation and expenditure of transportation charges.
- Examined files and other agency records from FSA, KCCO, and the private research center supporting the donation and proposed sale of commodities as well as the payment of transportation expenses.
- Interviewed FSA NO and KCCO officials, MSU officials, and officials from the private research center and feed mill responsible for negotiating and arranging the donation and the sale of CCC commodities and performing research on catfish nutrition.
- Interviewed officials from OGC regarding their involvement in the donation and the sale of dairy products.
- Interviewed officials from OMB, USDA's OBPA, and FSA Budget personnel related to the apportionment of funds.

We conducted our review in accordance with Government auditing standards.

Exhibit A – Summary of Monetary Results

Finding Number	Recommendation Number	Description	Amount	Monetary Results
1	3	Market value for 24.7 million pounds of NDM donated to a private research center in violation of the CCC Charter Act	\$19,782,133	Questioned Costs/Loans, Recovery Recommended
1	3	Funds expended for transportation costs for which an apportionment was not approved in possible violation of the Anti-Deficiency Act	\$579,388	Questioned Costs/Loans, Recovery Recommended

Exhibit B – OGC Opinion



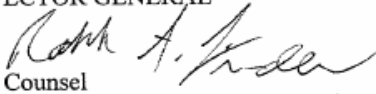
United States
Department of
Agriculture

Office of the
General
Counsel

Washington,
D.C.
20250-1400

DEC 23 2005

MEMORANDUM FOR DENNIS GANNON
REGIONAL INSPECTOR GENERAL
GREAT PLAINS REGION
OFFICE OF INSPECTOR GENERAL

FROM: Ralph A. Linden 
Assistant General Counsel
International Affairs and Commodity
Programs Division

SUBJECT: Audit of Commodity Credit Corporation Nonfat Dry Milk
Dispositions

This memorandum is in response to your request for a legal opinion concerning the applicability and operation of the apportionment process set forth in Title 31 of the United States Code with respect to expenditures made by the Commodity Credit Corporation (CCC) and how those provisions specifically relate to expenditures used to transport CCC-owned nonfat dry milk to a private feed dealer. The opinion does not address whether CCC had the authority to make available CCC-owned nonfat dry milk to a private feed dealer at no cost. As discussed more fully below, the apportionment process set forth in Title 31 of the United States Code applies to CCC except with respect to “price support and surplus removal of agricultural commodities. . . .”

Background on the Apportionment Process

Title 31 of the United States Code sets forth statutory provisions addressing a broad array of issues, including the establishment of the Department of the Treasury and the Office of Management and Budget (OMB), the functions of these entities, the budget process to be followed by the Federal Government, and provisions relating to the expenditure of Federal funds. A significant number of these provisions were part of a comprehensive revision in 1982 by Public Law 97-258 and reflect the consolidation of various existing budgetary statutes and the revision of such statutes to establish a contemporary and more uniform budget process for agencies of the United States. Accordingly, with respect to the specific issue of the applicability of the apportionment process to CCC, various provisions of Title 31 of the United States Code must be referred to and the currently applicable provisions are more easily identified as sections of Title 31 rather than as sections of individual acts.

Exhibit B – OGC Opinion

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Generally, the term “apportionment process” refers to the process used by OMB to monitor the disbursement of funds by agencies. While Title 31 sets forth the provisions used in that endeavor, the provisions relevant to your inquiry are set forth in different parts of Title 31. For the purposes of this memorandum, the key provisions of Title 31 are set forth below:

31 U.S.C. 101 provides:

In this title, “agency” means a department, agency, or instrumentality of the United States Government.

31 U.S.C. 1511 provides, in part:

- (a) In this subchapter, “appropriations” means—
 - (1) appropriated amounts;
 - (2) funds; and
 - (3) authority to make obligations by contract before appropriations.
- (b) This subchapter does not apply to—
 - (1) amounts (except amounts for administrative expenses) available—
 - (A) for price support and surplus removal of agricultural commodities; and
 - (B) under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c); . . .

31 U.S.C. 1512 provides, in part:

- (a) Except as provided in this subchapter, an appropriation available for obligation for a definite period shall be apportioned to prevent obligation or expenditure at a rate that would indicate a necessity for a deficiency or supplemental appropriation for the period. An appropriation for an indefinite period and authority to make obligations by contract before appropriations shall be apportioned to achieve the most effective and economical use. An apportionment may be reapportioned under this section.

31 U.S.C. 1517 provides, in part:

- (a) An officer or employee of the United States Government or of the District of Columbia government may not make or authorize an expenditure or obligation exceeding—

Exhibit B – OGC Opinion

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- (1) an apportionment; or
- (2) the amount permitted by regulations prescribed under section 1514(a) of this title.

CCC and the Apportionment Process

CCC, by virtue of section 2 of the CCC Charter Act (15 U.S.C. 714), is an “agency and instrumentality of the United States” and thus, as provided in 31 U.S.C. 101, the actions of CCC are covered by title 31. CCC, like virtually all other agencies, receives appropriated funds for specified uses. Funds received in this manner by CCC are subject to the apportionment process of Title 31 pursuant to 31 U.S.C. 1511(a)(1). Unlike most other agencies, CCC also has the authority to enter into contractual obligations in advance of an appropriation, which would subject those CCC funds to 31 U.S.C. 1511(a)(3). Further, to the extent CCC receives “funds” as the result of the sale of its assets and through loan repayments, those funds are included in the broad category of 31 U.S.C. 1511(a)(2). But for the application of 31 U.S.C. 1511(b), we are unaware of any resources used by CCC in making payments or loans to a person that do not fall within the definition of “appropriations” for purposes of Subtitle II, Chapter 15, Subchapter II of Title 31 of the United States Code (31 U.S.C. 1511 through 1519).

With respect to 31 U.S.C. 1511(b), we are not aware of any document that delineates those CCC programs and activities that are included within this exception. While we have not been able to conduct an exhaustive review of all statutes that relate to activities of CCC that may be encompassed in this definition, we believe that this exception for those “amounts (except amounts for administrative expenses) available . . . for price support and surplus removal of agricultural commodities” is quite limited, given the broad scope of CCC activities. While not meant to be an all-inclusive listing, those current activities conducted by CCC that do not fall within this exception clearly include expenditures relating to:

- Conservation programs
- Disaster assistance
- Loan Deficiency Payments
- International food aid and development programs
- Export promotion programs
- Direct and Counter-cyclical Payments
- Bio-energy program

Similarly, while not meant to be an all-inclusive listing, those current and recent activities conducted by CCC that do fall within this exception include:

- Nonrecourse loan proceeds issued under Title I of the Farm Security and Rural Investment Act of 2002 (i.e., all marketing assistance and sugar loans)
- Dairy price support purchases
- Surplus removal under section 5 of the CCC Charter Act

Exhibit B – OGC Opinion

Page 4

31 U.S.C. 1511(b) specifically provides that “administrative expenses” in the conduct of a price support or surplus removal activity are subject to the apportionment process; however, we are not aware of any determination that has been made to fully address the scope of this phrase. Most problematic in this regard are storage costs by CCC at the point of: (1) forfeiture in the case of a non-recourse loan; and (2) purchase in the case of a dairy product. It is our understanding that an apportionment has not been required with respect to these two listed activities but that OMB does apportion funds for the storage of commodities maintained in the Bill Emerson Humanitarian Trust. Since the operation of the Bill Emerson Humanitarian Trust is not a price support activity but an activity directly related to the administration of international food aid, we presume that is the basis for the apportionment of storage costs associated with this trust. As the storage of commodities is an integral aspect of price support and surplus removal activities, it is our opinion that an apportionment should not be required for those costs, but this determination ultimately rests with OMB.

We have consistently opined that delivery of price support or surplus removal occurs at the time CCC enters into an obligation with a party to: (1) immediately acquire a commodity from such party at an agreed upon price; or (2) acquire the commodity at a later date at an agreed upon price or in settlement of a nonrecourse loan upon the maturity of the loan. Once CCC has completed these transactions, the price support or surplus removal activity has been completed; actions subsequently taken by CCC in the use or disposition of these commodities are not price support or surplus removal. Consistent with this view, since 1998 OMB has required that an apportionment be obtained with respect to costs incurred for the ocean transportation of donated commodities to foreign destinations under section 416(b) of the Agricultural Act of 1949. Similarly, OMB approval is required, in our opinion, with respect to costs incurred in the transit of commodities obtained through price support activities.

Disposition of CCC-owned Nonfat Dry Milk

As noted above, it is our opinion that: (1) an apportionment approved by OMB is not needed with respect to the expenditure of CCC funds for the acquisition and storage of dairy products under Title I of the Farm Security and Rural Investment Act of 2002; and (2) any expenditures incurred in the disposition of such products would be subject to such OMB approval. Accordingly, in response to your specific inquiry regarding the lack of an OMB-approved apportionment in the context of nonfat dry milk transported to a private feed dealer, it is our opinion that such expenditures were made in contravention of the process set forth in Title 31 of the United States Code, specifically 31 U.S.C. 1512 and 1517.

Exhibit C – Agency Response



United States
Department of
Agriculture

Farm and Foreign
Agricultural
Services

Farm Service
Agency

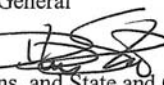
Operations Review
and Analysis Staff

Audits,
Investigations and
State and County
Review Branch

1400
Independence
Avenue, SW
Stop 0540
Washington, DC
20250-0540

SEP 12 2006

TO: Director, Farm and Foreign Agriculture Division
Office of Inspector General

FROM: Philip Sharp, Chief 
Audits, Investigations, and State and County Review Branch


SUBJECT: Audit 03099-197-KC – Farm Service Agency Disposition of Nonfat
Dry Milk (NDM)

Attached is the Farm Service Agency's (FSA) Acting Deputy Administrator for Commodity Operations Division (DACO) response to the official draft of the subject audit.

Also attached, is a copy of a September 8, 2006, letter that the FSA Administrator sent to the Office of the General Counsel requesting: (1) a written legal opinion as to whether FSA personnel violated applicable legal authorities, (2) advice on actions the FSA and/or the Commodity Credit Corporation should take to rectify the transactions, and (3) a written legal opinion as to whether a violation of the appropriations law and/or Anti-Deficiency Act occurred.

Please address any questions to Karren Fava 720-6152.

Attachments



USDA is an Equal Opportunity Employer

Exhibit C – Agency Response



United States
Department of
Agriculture

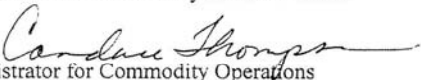
Farm and Foreign
Agricultural
Services

Farm Service
Agency

1400 Independence
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Stop 0550
Washington, DC
20250-0550

September 11, 2006

TO: Philip Sharp, Chief
Audits, Investigations, and State and County Review Branch

FROM: Candace Thompson 
Acting Deputy Administrator for Commodity Operations

SUBJECT: Audit 03099-197-KC, Farm Service Agency Disposition of
Nonfat Dry Milk (NDM)

We have reviewed the audit report entitled, "Official Draft Audit Report on the Disposition of Nonfat Dry Milk (NDM)" and have several general comments in addition to responses to each recommendation. The issues and problems highlighted by the audit report are serious and require immediate corrective and preventative action. The audit reports highlights a serious situation regarding the inappropriate disposition of 24.7 million pounds of NDM in 2003 and an inappropriate sales disposition under consideration in 2005. During this time frame of Fiscal Years 2003 through 2005, Farm Service Agency (FSA) oversaw the disposition of over 2 billion pounds of Commodity Credit Corporation (CCC)-owned NDM with the related expenses through a variety of disaster and feeding assistance programs and initiatives.

FSA has commenced work on implementing the recommendations and will work expeditiously to complete all required and necessary actions.

Recommendation 1: Request a written legal opinion from the Office of General Counsel (OGC) on whether FSA personnel violated applicable legal authorities to donate and /or provide CCC-owned NDM to a private entity at no cost in 2003.

Response: The FSA Administrator sent a memorandum to OGC through the Acting Under Secretary for Farm and Foreign Agricultural Services on September 8, 2006. The memorandum, enclosed for your reference, requested a written legal opinion on the legitimacy of the donation of the NDM to a private entity.

Recommendation 2: If it is determined that FSA personnel violated the CCC Charter Act or other applicable laws and regulations, initiate appropriate disciplinary actions commensurate with the role played in authorizing, allowing, and/or arranging for the unauthorized disposition of NDM to the private entity.

Response: After the determination is made as to the legitimacy of the donations to a private entity, the Deputy Administrator for Commodity Operations will review and consult with the Human Resources Division by March 2007 on necessary disciplinary actions.

Exhibit C – Agency Response

Chief, Audits, Investigations, and State and County Review Branch
Page 2

Recommendation 3: Consult with OGC as to the actions FSA and/or CCC can and should take to rectify these questionable transactions, including recovery of the fair market value of the commodity and transportation expenditures from the private feed mill.

Response: The FSA Administrator requested guidance from OGC in a memorandum dated September 8, 2006 as to possible actions required to recover inventory and transportation costs from the private entity. FSA will pursue recovery actions based upon OGC's guidance. If warranted recovery actions will be initiated by June 2007.

Recommendation 4: Provide the facts and circumstances for the cited condition to the OGC and request a written legal opinion from OGC whether a violation of the Anti-Deficiency Act occurred. Also, FSA should report to Congress, as required, if OGC determines that an Anti-Deficiency Act violation occurred.

Response: In a memorandum dated September 8, 2006, the FSA Administrator requested OGC provide a written legal opinion on the necessity for an apportionment for the \$580,000 transportation costs incurred in 2003 for shipping NDM to the private feed mill. If OGC determines that an apportionment should have been obtained, FSA will take all necessary corrective action, including the report to Congress by September 2007.

Recommendation 5: Issue written policy that requires consultation with and concurrence by OMB regarding when transportation and handling expenditures for commodity dispositions need to be apportioned on appropriate apportionment schedules submitted to OMB.

Response: Starting with Fiscal Year 2007, FSA implemented processes to request apportionments from OMB for all CCC inventory disposition costs such as transportation and handling, including costs for the disposition of dairy products. FSA will issue internal written instructions requiring apportionments for these types of expenses by August 2007.

Recommendation 6: Develop formal written procedures that provide a structured process for evaluating options for dispositions of inventory commodities (donations and sales), including entity and position specific decision making authorities, required consultations with and concurrences required from other parties (CCC Board of Directors, OGC, etc.), and documentation requirements.

Response: The FSA Administrator has directed the Acting Deputy Administrator for Commodity Operations to develop written inventory disposition procedures for the Administrator's approval and to have the procedures in place for Fiscal Year 2007. Commodity Operations plans to formalize the procedures in internal handbooks by March 2007. Until the procedures are completed, Commodity Operations will obtain the Administrator's approval of inventory disposition decisions.

Exhibit C – Agency Response

Chief, Audits, Investigations, and State and County Review Branch
Page 3

Recommendation 7: Codify the requirement in FSA's directive management system and/or CCC's docket put forth in the Administrator's memorandum dated June 7, 2005, that the CCC Executive Vice President or his designee shall approve all sales or donations that are non-competitive or made through a non-traditional manner.

Response: FSA agrees to codify the requirement in the Agency's directives management system for approval from CCC's Executive Vice President or his designee on all non-competitive or non-traditional sales and donations of inventory. This action should be completed by March 2007.

Recommendation 8: Initiate personnel disciplinary actions commensurate with the role played in continuing to pursue a sale of NDM in 2005 against OGC's advice and in violation of standing laws, regulations, and procedures.

Response: FSA reassigned the duties and responsibilities of an employee in October 2005. The reassignment was prompted by several factors including the attempted sales transaction that occurred in April 2005.

Recommendation 9: Develop a cohesive management control structure within the Commodity Operations for the disposition of CCC commodities to include the management decision process to properly evaluate sales and/or donation options.

Response: By March 2007, Commodity Operations will develop and implement a decision process required for all CCC inventory disposition decisions. The decision process will include a review of authorities, obtaining appropriate approvals from senior management, and evaluation of associated costs.

Recommendation 10: In consultation with OGC, develop and issue commodity donation guidelines that are based on the decision process and policies developed in Recommendation 9.

Response: FSA agrees to formalize the CCC inventory disposition management controls and to request OGC review for legal sufficiency the commodity donation guidelines developed in response to Recommendation 9. FSA will seek OGC input by March 2007 on the commodity donation guidelines.

If you need additional information or clarification, please contact me at 202-720-3217.

Enclosure

Exhibit C – Agency Response

Exhibit C – Page 5 of 6



United States
Department of
Agriculture

Farm and Foreign
Agricultural
Service

Farm Service
Agency

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TO: Marc L. Kesselman
General Counsel
Office of the General Counsel

THROUGH: Floyd D. Gaibler
Acting Under Secretary
Farm and Foreign Agricultural Services

FROM: Teresa C. Lasseter *Teresa C. Lasseter* Sept. 8, 2006
Administrator
Farm Service Agency

SUBJECT: Request for Legal Guidance on Disposition of Commodity Credit Corporation (CCC) Inventories

The Office of the Inspector General (OIG) recently provided the Farm Service Agency (FSA) with an official draft report on a review the agency requested, on May 12, 2005, on two incidences related to disposition of CCC-owned non-fat dry milk (NDM) in 2003 and 2005. In the audit report, OIG recommended that FSA request written legal opinions from the Office of the General Counsel (OGC) on several matters raised in the review. The purpose of this document is to formally make these recommended requests in order to properly conclude the review. Attached for your review and consideration is a copy of the official draft audit report.

Specifically we are requesting:

1. A written legal opinion from OGC as to whether FSA personnel violated applicable legal authorities in donating and/or providing 24.7 million pounds of CCC-owned NDM to a private feed dealer and its affiliated research center at no cost in 2003.
2. We would appreciate your advice on actions FSA and/or CCC should take to rectify the transactions, including recovery of the fair market value of the commodity and transportation expenditures from the private feed mill.
3. A written legal opinion from OGC as to whether a violation of the appropriations law and/or the Anti-Deficiency Act occurred. If you conclude there was a violation, we would also appreciate – separate from the legal opinion – your advice on any actions that should be taken.

There are several other items of information of which you should be aware, but for which we do not request any specific actions on the part of OGC, including:

Exhibit C – Agency Response

- A number of the upper level managers within FSA that were involved with this matter are no longer with the agency, or have been assigned to other duties.
- OIG recommended that FSA develop a cohesive management control structure within the agency's commodity operations area for the disposition of CCC commodities, which should include development of a management decision process to properly evaluate sale and donation options and establish management controls to ensure compliance. The FSA position for the Deputy Administrator for Commodity Operations is currently vacant. When this position is filled, the development of the requested management control structures will be one of this person's top priorities.
- The private feed dealer is still operating.
- For the upcoming fiscal year, FSA has undergone a comprehensive review of the apportionment process for CCC programs and activities, including discussions with OGC, OBPA and OMB. For FY 2007, FSA is currently in the process of seeking an individual apportionment schedule for the storage, handling, processing, packaging, and transportation cost for commodities – including dairy products such as NDM – acquired through CCC price support or surplus removal programs.

We greatly appreciate your assistance with this request. If you require additional information on the facts and circumstances related to this matter, please contact Teresa Lasseter at (202) 720-3467 and she will connect you or your staff with appropriate agency personnel.

Enclosure

Informational copies of this report have been distributed to:

Administrator, FSA	
ATTN: Agency Liaison Officer	(10)
Government Accountability Office	(1)
Office of Management and Budget	(1)
Director, Planning and Accountability Division, OCFO	(1)