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**Office of Inspector General
Great Plains Region**

Audit Report

Farm Service Agency Inspection of Temporary Domestic Storage Sites for Foreign Food Assistance

**Report No. 03099-198-KC
August 2008**



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington, D.C. 20250



DATE: August 22, 2008

REPLY TO
ATTN OF: 03099-198-KC

TO: Teresa C. Lasseter
Administrator
Farm Service Agency

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

FROM: Robert W. Young /s/
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for Audit

SUBJECT: Inspection of Temporary Domestic Storage Sites for Foreign Food
Assistance

This report presents the results of our audit of the Farm Service Agency's administration of its port examination process. Your response to the official draft report, dated August 14, 2008, is included as exhibit A with excerpts from your response and the Office of the Inspector General's position incorporated into relevant sections of the report. Based on the information in your written response, we accept management decisions on the report's four recommendations. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

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

Executive Summary

Farm Service Agency, Inspection of Temporary Domestic Storage Sites for Foreign Food Assistance (Audit Report No. 03099-198-KC)

Results in Brief

Each year, the Department of Agriculture (USDA) ships large quantities of food overseas as part of a number of food aid programs. In fiscal year 2007, for instance, USDA exported 2.46 million metric tons of food at a cost of over \$1 billion. Although the Commodity Credit Corporation (CCC) administers these programs, it has no operating personnel. CCC relies on the Farm Service Agency (FSA) to perform the day-to-day tasks associated with these functions. FSA's Kansas City Commodity Office (KCCO) handles the sale, donation, and transfer of CCC-owned commodities and also makes arrangements for their export to foreign countries. In an effort to improve storage conditions when food is delivered to ports but waiting to be shipped, FSA began a process in 1999 to examine ports and transloading facilities¹ to help ensure that USDA-purchased commodities are wholesome when shipped. In 2004, FSA revised the process to increase the frequency of examinations from once every 5 years to annual examinations, with more frequent examinations for facilities handling large quantities of food aid. As of April 11, 2008, CCC had approved 45 ports and transloading facilities for exporting USDA commodities to foreign countries. The Office of Inspector General initiated this audit to assess FSA's administration of its port examination process. Our review covered 179 port examinations performed between July 1, 2004, and March 16, 2006, and we visited three port facilities in two locations.

FSA/CCC notified facilities of their approval to store and handle USDA-purchased commodities by including them on a list of approved facilities on FSA's website. We found, however, that FSA does not have proper regulatory and operational procedures in place to remove facilities that fail examinations from the list or discontinue food shipments to them when unsanitary or unhealthy conditions are identified during the examination process. Therefore, listed facilities that repeatedly fail examinations cannot be denied food shipments for export. In addition, FSA's overall procedures were inadequate to ensure that examiners consistently evaluated examination elements (as "pass" or "fail") and that any deficiencies noted at port and transloading facilities were verified as corrected.

¹ Transloading facilities provide temporary storage for commodities as they are moved from railways to more permanent port facilities.

Informal Approval Process Lacked Enforcement Authority

When FSA developed its examination procedures, it approached the process informally and failed to incorporate meaningful enforcement capabilities. Specifically, FSA has no legal or regulatory process for discontinuing its relationships with ports and transloading facilities that repeatedly violate its standards. Without regulations or such procedures, FSA's examination process lacks consequences for repeat offenders. Rather than promulgate regulations for approving and removing a port from its list of approved ports, FSA relied on its procurement regulations² to conduct the examinations since it had to determine whether a port or transloading facility was able to perform. However, there is no binding contractual agreement between FSA and the port or the transloading facility.

Since FSA implemented the examination process, some ports and transloading facilities have repeatedly failed to maintain sanitary conditions for storing food commodities. For example, port warehouse examiners failed one facility five times over five months for a rat infestation and another facility seven times over four months for an insect and rodent infestation.

KCCO officials realized the limitations of the informal approach when they compiled thorough documentation of one port's continued deficiencies in storing USDA foreign food aid and presented the documentation to the Office of the General Counsel (OGC) in an effort to remove the port from CCC's approved list and suspend further food shipments to it. In denying KCCO's request, OGC said that since KCCO did not establish by regulation the policies and procedures for approving a port or transloading facility, it did not have the regulatory authority to remove the port from the approved list, even if it did have complete documentation of the port's failed examinations. OGC also stated that in order for KCCO to remove a port from the approved list, there must be procedures for the port to appeal KCCO's determination.

Until FSA develops formal internal operating procedures for approving ports and transloading facilities and can terminate its relationship with facilities that consistently fail examinations, it will continue to send food aid commodities to these facilities. FSA also risks sending contaminated food commodities to foreign countries and damaging the United States' reputation in the global community.

² 7 *Code of Federal Regulations* (C.F.R.) § 1496.5 (d) (3) and (4), January 1, 2005, provides, in part, that the adequacy of the port to receive, accumulate, handle, store, and protect the cargo will be considered prior to final selection. Factors to be considered include cleanliness, freedom from insects and rodents, etc.

Port Facilities Were Not Consistently Examined

Each port examination consists of a warehouse examiner review of the requirements applicable to the port storage or transloading facility. Each element of the review (such as the absence of pests and insects from a warehouse) is listed on an examination checklist and is to be graded by the examiner as “pass,” “fail,” or “N/A” (not applicable). For example, examiners must determine if commodities are clean and protected from bird droppings, dust, filth, and stains, and if warehouses are repeatedly inspected for rodent activity. Examiners performed 179 examinations at 43 approved port and transloading facilities between July 1, 2004, and March 16, 2006. We reviewed all 179 examinations and found, however, that examiners did not consistently assess warehouse conditions for the corresponding elements on the checklists. Specifically, we found that examination reports showed that 5 of 43 port facilities lacked pest control programs, yet 3 of these port facilities nevertheless passed their examinations. Two port facilities stored hazardous materials in warehouses available to store food, yet one of these facilities also passed its examination. In addition, warehouse examiners observed birds or traces of birds at two different port facilities. Of 21 total examinations conducted at both ports where birds or bird traces were observed, the warehouse examiners failed 16 but passed 5. Because all examiners observed bird traces, but gave both failing and passing marks, we considered the examinations to be inconsistent.

These inconsistencies occurred because FSA’s examination procedures did not contain comprehensive guidance, including precise definitions or terminology defining pests or instructions for weighting the significance of different violations. Without such guidance, warehouse examiners were left to arrive at their own conclusions about the seriousness of any given violation.

We concluded that FSA should revise its examination procedures for ports and transloading facilities. The revised procedures should provide necessary criteria to determine if an individual element was not being met or if the facility should be considered as failing the examination. Until it makes these revisions, FSA cannot be certain that the port facilities utilized when shipping USDA-purchased commodities provide adequate, clean, and safe conditions.

Corrective Action On Examination Failures Not Ensured

Failure on any element of the port examination is to result in the examiner’s issuance of a Form WA-125, “Memorandum of

Adjustments (Form WA-125)³ requiring corrective action and reporting of that corrective action to KCCO. While warehouse examiners performed 179 examinations, they recorded 51 failures at port and transloading facilities between July 1, 2004, and March 16, 2006. For 20 of the 51 failures, FSA did not issue the required Forms WA-125 to inform facilities of the observed deficiencies. For 20 additional failures, FSA did issue the Forms WA-125, but did not follow up to determine if facilities had taken adequate corrective action. FSA lacked specific internal written procedures for following up on issued Forms WA-125. The agency failed to adequately follow up and confirm whether the facilities had corrected the deficiencies and did not maintain written documentation of all relevant communication with responsible parties at the ports. Also, officials at KCCO were unclear about their respective duties and responsibilities for following up on deficiencies identified during examinations. Unless FSA maintains written documentation of each port and transloading facility's response to a failed examination and FSA's subsequent actions to confirm the deficiencies have been corrected, the agency will not have a clear and comprehensive record of each facility's performance, nor can FSA be certain that observed deficiencies have been corrected.

In response to our audit, KCCO officials developed written procedures detailing the division of responsibilities within KCCO for followup on issued Forms WA-125. However, we concluded that the new procedures did not address FSA's ability to monitor the corrective actions taken or contemplated, or KCCO's ability to maintain documentation of its followup activities. In subsequent discussions of the audit results, the Office of the General Counsel (OGC) and FSA disclosed they are working jointly to address conditions noted in the audit, and that proposed solutions may not be the same as the audit recommendations. Therefore, FSA needs to consult with OGC in developing corrective actions and responding to the audit recommendations. OIG may accept alternative actions put forth by FSA (in consultation with OGC), so long as such alternative actions would correct the causes of the conditions noted in the audit.

Recommendations In Brief

FSA should develop and publish written standards of approval and formal internal operating procedures for approving and disapproving ports and transloading facilities. These procedures should include an appeal process for facilities that are not approved. We also recommend that FSA strengthen its existing examination procedures for examining port facilities as well as provide comprehensive procedural guidance

³ Export Operations Division (EOD) Notice EOD-143, July 1, 2004, "Notice to the Trade – Revised U.S. Port Inspection Procedures," refers to Form WA-125, "Memorandum of Adjustments," as a Corrective Action Report.

for examiners, including specific parameters and/or criteria for determining pass/failure for observed conditions and precise definitions or terminology for each element evaluated. In addition, we recommend FSA strengthen procedures to ensure KCCO documents and verifies that acceptable corrective actions are reported and/or taken by the facilities.

Agency Response

FSA generally agreed with the report's four recommendations. FSA plans to create a license under the authority of the United States Warehouse Act (USWA) for ports and transloading facilities and add a requirement during the procurement process that only USWA licensed facilities may be used in handling government food assistance commodities. This action will allow FSA to use policies and procedures that are currently in place for its licensing programs including current regulations, written standards for approval and due process for approving and disapproving facilities under the USWA, and procedures to track and follow-up on adverse examination reports and to suspend and revoke licenses as appropriate. FSA will also revise its examination procedures and forms to provide comprehensive procedural guidance for examiners.

OIG Position

We accept the management decision on each of the report's four recommendations.

Abbreviations Used in This Report

| | |
|----------|--|
| CCC | Commodity Credit Corporation |
| C.F.R. | <i>Code of Federal Regulations</i> |
| EOD | Export Operations Division |
| FFP | Food for Progress |
| FSA | Farm Service Agency |
| FY | Fiscal Year |
| KCCO | Kansas City Commodity Office |
| OGC | Office of the General Counsel |
| OIG | Office of Inspector General |
| P.L. | Public Law |
| PVO | Private Voluntary Organization |
| U.S. AID | U.S. Agency for International Development |
| USDA | Department of Agriculture |
| USWA | <i>United States Warehouse Act</i> |
| VLO | Vessel Loading Observation |
| WLED | Warehouse License and Examination Division |

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Background and Objective

Background

The Department of Agriculture (USDA) sponsors the shipment of food commodities to foreign nations through a variety of aid programs.⁴ When those food commodities reach foreign shores, they are intended to promote a number of goals, including combating hunger and malnutrition, promoting broad-based equitable and sustainable agricultural development, expanding international trade, developing and expanding export markets for United States agricultural food commodities, and encouraging the development of private enterprise and democracy. In fiscal year (FY) 2007, in support of a broad range of such goals, USDA exported approximately 2.46 million metric tons of food commodities at a cost of over \$1 billion.

A food aid export program of this size and complexity relies on the contributions of the Commodity Credit Corporation (CCC), a Government-owned and operated entity that has been the Federal Government's primary financing arm for an array of domestic and international agricultural programs. CCC was created to stabilize, support, and protect farm income and prices. However, because CCC has no operating personnel, it relies on the personnel of the Farm Service Agency (FSA) to perform the day-to-day tasks associated with these functions. FSA's Kansas City Commodity Office (KCCO) purchases food commodities, arranges for their movement to ports, and ensures that they are delivered undamaged to the shipping companies that will transport them overseas for USDA's food aid programs.

KCCO also manages a port approval and examination process intended to ensure that, until such food commodities are loaded on ships and exported to foreign nations, they are stored in adequate, clean, and secure facilities. The primary intent of the port examination process is to protect the commodities from damage or contamination resulting from, among other things, infestation, mold, dirt, and trash. Transloading facilities,⁵ as well as storage, facilities must be approved by KCCO's Export Operations Division (EOD).

KCCO's Warehouse License and Examination Division (WLED) employs warehouse examiners who perform the port and transloading facility examinations. EOD purchases and arranges deliveries of agricultural commodities to foreign countries. EOD also arranges for survey of cargo at destination ports and delivery locations for a number

⁴ Aid programs include the Food for Peace Program (Public Law (P.L.) 480, Titles II and III); Food for Progress Program (FFP) (P.L. 480 Title I); and Section 416(b) of the Agricultural Act of 1949.

⁵ Transloading facilities provide temporary storage for commodities as they are moved from railways to more permanent port facilities.

of non-governmental organizations. EOD's surveyors determine how much damaged food will be billed to the ocean carrier.

Based on CCC's authority, FSA's EOD maintains a list of port and transloading facilities that have applied for and received FSA's approval to store and handle food commodities.⁶ CCC does not require a written agreement or contract with these facilities. Instead, CCC only requires port and transloading facilities interested in participating in CCC's food aid export programs to submit an application. Participation in the programs is voluntary; however, CCC food commodities are to be exported only through approved facilities for this purpose.

If a port or transloading facility wishes to be placed on FSA's list of approved facilities, it must apply for and then pass an initial examination performed by FSA's WLED warehouse examiners. After the initial examination, approved port and transloading facilities handling USDA commodities are subject to at least an annual examination assessing the terminal infrastructure, commodity storage conditions, pest control and security; these examinations may be more frequent if the facility handles a large quantity of food aid.

In conducting these examinations, warehouse examiners complete one of two checklists—one for ports and another for transloading facilities. If a facility functions both as a port and as a transloading facility, then the examiner uses both checklists. Each checklist is composed of many different elements that are graded on a pass/fail basis. For example, examiners must determine if commodities are clean and protected from bird droppings, dust, filth, and stains, and if warehouses are repeatedly inspected for rodent activity. A failure on an element will result in FSA's issuance of Form WA-125, "Memorandum of Adjustments," which describes the conditions that must be corrected and generally requires that, within 15 days, the port or operator take corrective actions to address the failed element(s) and report such corrective action to KCCO on the reverse side of the form.

Objective

The objective of our review was to assess FSA's administration of its port examination process.

⁶ Effective Sept. 1, 1999, CCC implemented a port approval and examination procedure for all port facilities storing P.L. 480, Titles II and III, FFP, and Section 416(b) foreign food assistance program commodities (EOD-51, "Notice to the Trade – Port Approval and Inspections," Aug. 12, 1999). This procedure was later superseded by EOD-143, "Notice to the Trade – Revised U.S. Port Inspection Procedures," July 1, 2004.

Findings and Recommendations

Section 1 - FSA's Controls over the Port Examination Process Need Improvement

In April 1998, a representative from U.S. Agency for International Development (U.S. AID) and a private voluntary organization (PVO) representative paid an on-site visit to a port storing USDA-purchased commodities. During their visit, they observed rodent and insect infestations in the storage area as well as birds flying through the storage area. Their observations and concerns about the sanitary conditions in which food aid was being stored and handled at the port prompted officials of KCCO and FSA's procurement division to develop the examination procedures adopted in 1999.

However, FSA failed to incorporate meaningful enforcement capabilities when it developed these examination procedures. Specifically, FSA has no process for discontinuing its relationships with ports and transloading facilities that repeatedly violate its standards. Rather than promulgate regulations for approving and removing a port from its list of approved ports, FSA relied on its procurement regulations⁷ to conduct examinations of the port or transloading facility since it had to determine whether a port or transloading facility was able to perform. Using the results of these examinations, FSA then developed a list of approved ports or transloading facilities.

At the time of our audit, KCCO had documented problems with an approved port. KCCO asked Office of the General Counsel (OGC) if it could stop sending food aid shipments to the port. According to OGC, since KCCO had not promulgated regulations establishing the basis for approval of a port or transloading facility, it had no regulatory authority to terminate its relationship with a port despite complete documentation of its failures. OGC also stated that before KCCO can terminate its relationship with a port, that port must be granted its due process to appeal KCCO's determination.

We also identified two other problems compromising the effectiveness of FSA's port and transloading facility examinations:

- FSA warehouse examiners did not always examine port facilities consistently, because the examination checklist procedures did not provide necessary criteria to determine if an individual element was not being met, or if the facility should be considered as failing

⁷ 7 C.F.R. § 1496.5 (d) (3) and (4), January 1, 2005, provides, in part, that the adequacy of the port to receive, accumulate, handle, store, and protect the cargo will be considered prior to final selection. Factors to be considered include cleanliness, freedom from insects and rodents, etc.

the examination. We noted that inspectors were inconsistent in examining or evaluating conditions at 9 of 43 approved port and transloading facilities.

- FSA did not always verify that port and transloading facilities implemented corrective action to remedy problems noted by the warehouse examiners during the examinations. Warehouse examiners performed reviews at 43 port and transloading facilities which resulted in the completion of 179 examination checklists. Of these, FSA warehouse examiners determined 51 failures between July 1, 2004, and March 16, 2006. We found that for 20 of the 51 failures, FSA did not issue the required Forms WA-125⁸ to inform facilities of the observed deficiencies because the examiners had issued the Forms WA-125 to the port for the same issues in prior examinations, and because EOD determined that examiners did not need to issue the form to facilities not storing USDA food at the time of the examination failure. For 20 additional failures, FSA did issue the Forms WA-125, but did not follow up to determine if facilities had taken adequate corrective action. The followup did not occur, because FSA lacked specific internal written procedures at the time of our fieldwork for following up on forms WA-125 issued by examiners. Although FSA issued new written procedures in response to our audit, we determined they did not require FSA to maintain documentation of actions reported by the facility in response to Form WA-125 or FSA's measures to follow up on the facility's reported actions.

FSA cannot be assured that food is not damaged or contaminated before it is shipped unless (1) the agency develops a process for approving parties wishing to store and handle USDA-purchased food aid commodities; (2) the agency develops and publishes regulations and procedures for terminating its relationship with those facilities that repeatedly violate FSA's standards; (3) examiners consistently apply the elements of port examinations; and (4) examiners consistently follow up with port facilities that fail examinations to ensure observed deficiencies are corrected. FSA needs to consult with OGC in responding to or developing corrective actions to address these conditions.

⁸ EOD-143, July 1, 2004, "Notice to the Trade – Revised U.S. Port Inspection Procedures," refers to Form WA-125, "Memorandum of Adjustments," as a Corrective Action Report.

Finding 1**Informal Process to Approve Facilities for Foreign Food Aid Shipments Lacked Enforcement Authority**

On July 1, 2004, FSA issued a notice revising its former port examination procedures.⁹ The notice required that all cargo be moved through facilities approved by EOD. According to the notice, all port and transloading operations handling food must be subject to an annual examination in order to become an approved facility. However, we found that when FSA developed its examination procedures, it failed to incorporate meaningful enforcement capabilities. Specifically, FSA has no process for legally discontinuing its relationships with ports and transloading facilities that repeatedly violate its standards. Rather than promulgate regulations for this examination program, FSA believed that its procurement regulations¹⁰ provided adequate regulatory authority for the examinations. As a result, USDA-purchased food has been continually delivered to facilities that have failed multiple examinations. In addition, without the authority to stop delivering food to these facilities, FSA risks sending contaminated food to foreign countries and damaging the United States' reputation in the global community.

Because FSA approached its examinations of ports and transloading facilities as an informal process, it did not establish any definitive criteria or standards to which port storage facilities need to adhere for initial or continued approval. However, agency management is responsible for maintaining the quality of program performance. In particular, they are responsible for “mitigating adverse aspects of agency operations” and “assuring that programs are managed with integrity.”¹¹

KCCO and FSA procurement division officials were prompted to develop examination procedures for ports and transloading facilities in 1999 after representatives from U.S. AID and a PVO shared their observations from an on-site visit to a port storing USDA-purchased commodities. While visiting the port, they observed rodent and insect infestations in the storage area as well as birds flying through the storage area. In response, FSA established a port approval process and began requiring examinations of approved facilities every five years.

If the owners or managers of a port or transloading facility want the facility to be approved to handle and/or store USDA donated commodities for foreign food aid programs, the requesting party must

⁹ EOD-143, July 1, 2004, “Notice to the Trade, Revised U.S. Port Inspection Procedures” superseded EOD-51, August 12, 1999, “Notice to the Trade – Port Approval and Inspection.”

¹⁰ 7 C.F.R. § 1496.5 (d) (3) and (4), January 1, 2005, provides, in part, that the adequacy of the port to receive, accumulate, handle, store, and protect the cargo will be considered prior to final selection. Factors to be considered include cleanliness, freedom from insects and rodents, etc.

¹¹ *Department Manual* 1110-002, November 29, 2002, “USDA Management Control Manual.”

submit an application to FSA. The facility must then pass an initial examination performed by FSA's WLED examiners. The requesting party does not have to sign an agreement or contract with FSA in order to have a facility approved. FSA notifies the requesting party of the facility's approval by including it in a list of approved facilities on FSA's Internet web site. Some ports applied, but were not approved and were not included in the approved facilities list. An OGC representative informed us during the review that the approval procedure could be challenged, because FSA does not publish a standard of operations, nor does it offer an appeal procedure if owners and managers disagree with the agency's evaluation of their facility.

Examiners evaluate approved ports and transloading facilities using checklists outlining a number of elements necessary for the clean and secure storage of food commodities. For example, the checklists address the facilities' efforts to control the presence of birds, rodents, and insects. Based on their observations, examiners determine whether facilities passed or failed each element.

After FSA initiated the examination process, the same port visited by the U.S. AID and PVO representatives continued to have difficulty maintaining sanitary conditions. In 2004, KCCO responded by issuing a memo to WLED intended to further strengthen the examinations. In part, the memo called for annual examinations of facilities. Because FSA continued to handle the problem informally, it had no authority per OGC to rescind its approval of this port, or any other port or transloading facility that had repeatedly failed examination elements.

KCCO officials realized the limitations of the informal approach when they compiled thorough documentation of one port's continued deficiencies in storing USDA foreign food aid and presented the documentation to OGC in an effort to remove the port from CCC's approval list and suspend further food shipments to it. OGC said KCCO did not have the regulatory authority to remove the port, even if they did have complete documentation of its failed examinations.

On one occasion, KCCO temporarily stopped sending food aid shipments to a port that had repeatedly failed to correct conditions cited on Form WA-125. The port eventually took adequate corrective action, and when it did, KCCO resumed sending food aid shipments to the port. An OGC representative told us that KCCO could avoid using a port once, but it could not make this a regular practice. In the OGC representative's opinion, precluding a port from receiving food aid shipments is tantamount to debarment. Without due process rights in place, the port could successfully challenge KCCO's actions in court.

FSA informed us it did not consult with OGC when it developed its informal examination process. Officials incorrectly assumed that the since Federal procurement regulations allowed it to determine whether a port could perform and, therefore, be used, this provided adequate authority to approve or rescind approval. However, according to OGC, this regulation does not provide authority to either approve a facility or rescind its eligibility to store shipments of food aid. The regulation only states that when evaluating ports' bids to receive agricultural commodities, FSA will consider the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices.¹²

KCCO officials expressed concern that if they applied stricter standards to ports, they would refuse to handle USDA food. KCCO officials noted they are looking only for short-term storage for the food, and they do not have a contractual relationship with the ports. Currently, FSA relies on ports' cooperation to correct problems that led to examination failures. This is the case even when vessel loading observation (VLO) reports show significant problems, such as rat infestation. According to an FSA official, they believe ports are generally cooperating with the agency. However, simply relying on ports' cooperation provides FSA with limited assurance that food aid commodities are stored in clean and secure facilities.

However, we note that FSA does not take a similarly informal approach to the storage of bulk and processed commodities in domestic warehouses. It does enter into contracts or agreements with domestic warehouses. In addition, standards of operation are detailed in the C.F.R. These include licensing requirements, financial requirements, condition of the facilities, qualifications of warehouse officials and personnel, operational capacities of the facilities, appeal rights for domestic warehouses rejected for approval, etc.¹³

Unlike ports and transloading facilities, domestic warehouses that fail examinations face substantial consequences and, therefore, have incentives to comply with elements of the examination checklist. The C.F.R., in part, provides that FSA/CCC has the authority to suspend, revoke, or terminate a warehouse's storage agreement if the warehouse operator violates the terms of the agreement.¹⁴

We noted that without similar authority to rescind its approval of a facility, KCCO continued sending cargo to two ports, even though the

¹² 7 C.F.R. § 1496.5 (d) (4), January 1, 2005, provides, in part, that the adequacy of the port to receive, accumulate, handle, store, and protect the cargo will be considered prior to final selection. Factors to be considered include cleanliness, freedom from insects and rodents, etc.

¹³ 7 C.F.R. § 1421.5551-5559, January 1, 2005.

¹⁴ 7 C.F.R. § 1421.5551-5559, January 1, 2005, and Form CCC-25, "Uniform Grain and Rice Storage Agreement."

port warehouse examiners failed one facility five times over 5 months for a rat infestation and the other facility seven times over 4 months for an insect and rodent infestation.

Until FSA can develop a formalized examination process, specifically one that includes consequences for failing examinations and allows for the disapproval of facilities that fail examination elements, it risks shipping contaminated food to foreign countries. Doing so could significantly damage the United States' reputation in the global community.

To ensure that commodities for foreign food aid programs are stored in adequate, sanitary, and secure facilities, FSA should complete the regulatory due process requirements to enable it to remove facilities which have failed multiple examinations from its approved list and discontinue food shipments to them. In subsequent discussions of the audit, OGC and FSA disclosed that they are working jointly to address the conditions noted in the audit, and that proposed solutions may not specifically meet the audit recommendations. Therefore, FSA needs to consult with OGC in developing corrective actions and responding to the recommendations. OIG may accept alternative actions put forth by FSA (in consultation with OGC), so long as such alternative actions would correct the causes of the conditions noted in the audit.

Recommendation 1

Develop and publish written standards of approval, which describe the requirements applicants wishing to store and handle USDA donated commodities for foreign food aid programs must meet and the regulatory due process for allowing KCCO to disapprove the applicants and prohibit food shipments to them when they repeatedly fail to maintain adequate, secure, and sanitary facilities for USDA donated commodities.

FSA Response.

FSA agreed with the recommendation. FSA plans to create a license under the authority of the United States Warehouse Act (USWA) for ports and transloading facilities handling government food assistance commodities. This action will allow FSA to use policies and procedures that are currently in place for its licensing programs including current regulations, written standards for approval and due process for approving and disapproving these facilities. Also a requirement will be added during the procurement process that only USWA licensed facilities may be used. The licensing agreement will be completed and available for execution by January 9, 2009.

OIG Position.

We accept FSA’s management decision.

Recommendation 2

Develop formal internal operating procedures for approving and disapproving ports and transloading facilities. Such procedures should prescribe that if warehouse examiners note continued problems with those that applied to handle and store USDA-donated commodities for foreign food aid programs, these facilities should be disapproved and rendered ineligible for handling food shipments.

FSA Response.

FSA agreed with the recommendation. FSA has in place procedures to approve and disapprove facilities under the USWA. Current procedures are in place to track and follow-up on adverse reports and to suspend and revoke licenses as appropriate. Upon completion and issuance of a port warehouse license (estimated to be January 9, 2009), FSA will use its current procedures to administer the licensing actions.

OIG Position.

We accept FSA’s management decision.

Finding 2

FSA Examiners Did Not Consistently Evaluate Port Facility Conditions

We found that FSA’s warehouse examiners did not consistently evaluate 9 of 43 approved port facilities’ compliance with individual examination elements. In particular, they were not consistent in their evaluations when they found that facilities lacked pest control programs and when they found that birds and hazardous materials were in close proximity to stored commodities. The examination results varied, because the examination procedures (checklists) did not provide necessary criteria to determine if an individual element was not being met, or if the facility should be considered as failing the examination. As a result, USDA-provided food is at risk of being contaminated or damaged before being shipped to its destination.

FSA’s examinations consist of a review of requirements applicable to operating a port storage facility or transloading facility in the form of a checklist. For port storage facilities, the checklist is categorized into four

sections: Terminal Infrastructure, Commodity Storage Conditions, Pest Control, and Security. Each section is further categorized into elements, such as the protection of commodities from bird droppings, dust, filth, and stains; the presence of hazardous materials or contaminants; and the presence of pests or insects. For transloading operations, the checklist is similar but with only one section. Elements are graded by examiners on a pass/fail basis.¹⁵ However, the examination procedures do not specifically and consistently identify birds as pests and do not state whether the presence of birds or hazardous materials, or the absence of a pest control program should cause a facility to fail the examination.

Warehouse Examiners Did Not Consistently Evaluate Port Facilities' Pest Control Programs

We reviewed KCCO documentation of 43 port facilities and found that examiners cited 5 of the port facilities for lacking pest control programs. Of these five, warehouse examiners failed two and passed three. Although the two ports failed their examinations in total due to the lack of a pest control program, a different warehouse examiner passed another port which did not have a pest control program. In the case of the warehouse that passed, the warehouseman told the examiner that the facility had no pest control system in place and would call an exterminator when there was a need for one. However, port examination procedures do not provide any specific criteria for pest control programs or establish parameters for examiners for making such judgments.

The checklist procedures ask examiners to determine if port facilities maintain records of pest and insect control actions and inspections, if the warehouse is inspected for rodent activity and infestation on a routine and frequent basis, and if the inspections are performed by qualified individuals or companies. If port facilities fail to comply with any of these elements, the decision whether the facility fails the examination is left up to the warehouse examiner's judgment, because the examination procedures do not specify how many missing or failed elements equate to a failed examination determination.

We concluded that FSA needs to take steps to ensure that warehouse examiners' judgments, regarding pest control programs, are consistent and provide warehouse examiners with specific and uniform parameters for passing or failing a warehouse's compliance with individual checklist elements.

¹⁵ EOD-143, "Notice to the Trade, Revised U.S. Port Inspection Procedures," July 1, 2004. FSA WLED 05-001, "Pilot Port Inspection Procedures," October 5, 2004, provides instructions for conducting examination checklists.

Warehouse Examiners Did Not Consistently Evaluate the Presence of Birds at Port Facilities

Of the 43 ports inspected, 1 port was passed when bird traces were found, while another one failed. Of the 21 total examinations conducted at these two ports, the warehouse examiners failed 16 but passed 5. This occurred because the examination procedures are ambiguous regarding whether port facilities should fail if birds or traces of birds are observed. Due to this ambiguity, warehouse examiners inconsistently apply this determination because they are left to interpret whether the presence of birds provides adequate grounds for failing a facility.

The examination procedures ask examiners to determine if commodities are clean and protected from bird droppings, dust, filth, and stains; if warehouses are free of pests or insects; and if doors, windows, and entry points are maintained to discourage bird entry. However, the procedures do not specifically identify birds as pests.

Warehouse examiners passed the same port four times after noting that birds and bird nests were present in the warehouse and food was uncovered. During one of the four examinations, OIG auditors were present when the examiner noted bags of uncovered food soiled by bird droppings. The examiner sent notification of the bird problem in an electronic text message to the warehouse manager. In response, the warehouse manager took immediate action during the examination to clean and cover the bags. As a result of the actions taken by the warehouse, the warehouse examiner determined the actions rectified the adverse condition observed, and he judged the port as passing the examination. In another case, warehouse examiners failed another port on 16 consecutive subsequent examinations for having birds inside the facility. On one of these examinations, we were present when the examiner told port officials that he was reporting the port as failing the examination for two reasons, one of which was the presence of birds in the warehouse and bird droppings on USDA food cargo in storage.

We concluded that the examination procedures need to be revised to explicitly define birds as pests, and specify whether food is to be covered with tarps to protect against bird droppings.

Warehouse Examiners Did Not Consistently Evaluate the Presence of Hazardous Materials

Of the 43 port and transloading facilities examined, 1 port was passed when hazardous materials were in close proximity to food

while another one failed. Although port facilities are required to ensure that hazardous materials or contaminants are not stored near food, the examination procedures fail to define specific materials which should be classified as “hazardous.” The procedures also do not explicitly state how far hazardous materials must be kept from food. As a result, these port facilities are not sufficiently regulated to ensure that hazardous materials are segregated and do not contaminate food.

For example, one warehouse examiner passed a warehouse even though he reported “Poison corn noted by dry milk.”¹⁶ In contrast, a different examiner failed another warehouse because it stored instant lighting charcoal briquettes soaked in butane.

We concluded that the examination procedures should be revised so that specific hazardous materials are defined, and the segregation of these materials from the food is explicitly stated.

In addition, during our visit to one port, we noticed the examiner was using obsolete procedures¹⁷ to complete the checklists. He did not have a copy of the current checklist procedures.¹⁸ When asked why he was using the obsolete procedures, the examiner stated that since the facility had been approved at the time those procedures were effective, he continued to use those guidelines for conducting current examinations.

KCCO officials indicated that they did not provide specific thresholds for failure of checklist elements, such as bird droppings on the bags of food, because the purpose of their port examinations was only to get an overview of food storage conditions. They did not initiate the examinations as a method for judging a particular facility’s fitness to store and handle commodities. However, such broad guidelines have led to inconsistent performance of examinations at port facilities. Imprecision could have detrimental consequences if food contaminated from its stay in a facility that was passed on examination is provided to recipients.

Although many of the ports cited handle a small percentage of the food aid shipped to foreign countries, one port handled over 600,000 metric tons of the approximately 2.4 million metric tons of food handled by approved port facilities in FY 2007. The inconsistencies we identified indicate that the agency’s current examination process does not provide adequate assurance that all food is properly safeguarded against potential

¹⁶ Poisoned corn is a form of pest control.

¹⁷ EOD-51, “Notice to the Trade – Port Approval and Inspections,” August 12, 1999. FSA WLED 99-005, “Port Examination Procedures,” September 15, 1999.

¹⁸ EOD-143, “Notice to the Trade – Revised U.S. Port Inspection Procedures,” July 1, 2004. FSA WLED 05-001, “Pilot Port Inspection Procedures,” October 5, 2004.

contamination. Given the potential consequences of providing contaminated food to foreign recipients, FSA needs to develop more rigorous guidance for its port examination process.

Recommendation 3

Develop and implement revised specific examination procedures for examining port facilities that provides comprehensive guidance for inspectors as well as precise definitions and terminology for each element evaluated. (Such procedures or checklist should address, for example, the covering of food and the segregation of hazards from food.) The examination procedures should also include specific parameters and criteria for determining pass/failure by examiners for individual elements as well as the facilities as a whole. Distribute the revised examination requirements to all port examiners.

FSA Response.

FSA agreed with the recommendation and will revise the specific examination procedures to address the items contained in this finding. The procedures will be documented on the applicable examination forms and within applicable procedures contained in warehouse examiner handbooks. Revision of the procedures will be accomplished by January 9, 2009.

OIG Position.

We accept FSA's management decision.

Finding 3

Corrective Action on Examination Failures Not Ensured

Warehouse examiners performed reviews at 43 port facilities which resulted in the completion of 179 examination checklists. Of these, FSA warehouse examiners determined 51 failures between July 1, 2004, and March 16, 2006. For 11 of these 51 failures, FSA issued the Forms WA-125 and took followup actions consisting of letters or electronic mail acknowledging receipt of the facilities' responses to the form. However, for 20 of the 51 failures, FSA did not issue the required Forms WA-125 to inform facilities of the observed deficiencies. For 20 additional failures, FSA did issue the Forms WA-125, but did not follow up to determine if facilities had taken adequate corrective action. In some cases, FSA gave no reason for not issuing the form. In other cases, this occurred because examiners had noted the same examination failures on previously issued Forms WA-125, and because EOD had

determined that examiners did not need to issue the form to facilities not storing food at the time of the examination failure. Also, FSA lacked specific internal written procedures for following up to obtain responses on issued Forms WA-125, and procedures did not specify that FSA maintain written records of its followup activities at the time of our fieldwork. As a result, FSA cannot be sure that all facilities have implemented adequate corrective actions to resolve repeated examination failures.

FSA's examination procedures state that Form WA-125 must be issued to facilities that fail examinations.¹⁹ The facility then must submit a written plan of future corrective actions to KCCO within 15 days to explain its plans to address the specific causes of examination failure.

In addition, FSA issued 20 Forms WA-125 but did not follow up to verify that observed deficiencies were corrected as reported or that FSA had deemed reported actions sufficient. Specifically, in 18 of 20 cases, the facilities responded to the Forms WA-125, but FSA had no evidence that it accepted their response or verified that the reported corrective action was in fact taken. For example, in 1 of the 18 cases, a warehouse examiner noted that a warehouse was infested with live rats. The examiner also observed mud and cargo spillage. The port's response to the Form WA-125 stated that the cleaning crew had increased its efforts to keep the facility clean and that the stevedore would sweep between stacks of cargo to remove spillage. However, KCCO files had no documentation that KCCO accepted this reported plan or confirmed whether the facility had completed it. Another examination of the facility less than a month later showed another Form WA-125 issued for the same rat infestation problems, and mentioned that while the facility had taken some corrective action, it had not taken all the actions requested in the Form WA-125 issued during the previous examination.

In 2 other cases, Forms WA-125 were issued, but the facilities did not respond to the EOD, and FSA had no documentation evidencing that EOD followed up to obtain responses.²⁰ FSA did not always follow up on outstanding Forms WA-125 where responses had not been received, because it lacked specific written internal procedures for doing so, including procedures for documenting acceptance of port facilities' responses, and delineating responsibilities of EOD and WLED to follow up to obtain the response and verify the corrective action was taken. EOD staff stated that WLED and EOD personnel were unclear on who was responsible for making the initial follow-up phone call to the port

¹⁹ EOD-143, "Notice to the Trade, Revised U.S. Port Inspection Procedures," July 1, 2004. FSA WLED 05-001, "Pilot Port Inspection Procedures," October 5, 2004.

²⁰ In two other cases, Forms WA-125 were issued even though facilities had passed their examinations. In another case, a Form WA-125 was issued although no examination checklist was completed.

facilities. Each division thought that the other one was responsible for contacting the facilities.

KCCO did not develop written procedures delineating EOD and WLED's actions after an examiner issued a Form WA-125 to a facility, until we asked how it followed up on examination elements. During our audit fieldwork, KCCO issued written internal procedures on March 16, 2006, for following up on issued Forms WA-125 where responses had not been provided to clarify the division of responsibilities within KCCO.

According to the new procedures, if a facility responds to Form WA-125 within the required timeframe, WLED will share the response with EOD. EOD is to review the response and to respond as follows: (1) if EOD determines that the response contains sufficient evidence that adequate corrective action has been taken, the Form WA-125 is to be closed; or (2) if EOD determines that the response is incomplete or inadequate, it is to request more information from the facility, or request a follow-up examination by a warehouse examiner to verify that corrective action is taken and/or is adequate. If a facility does not respond to an issued Form WA-125 within 15 days, WLED is to advise EOD, and it is to contact that facility to obtain a response. If an acceptable response is still not received by EOD after their contact(s) with the facility/port, EOD management is to be notified and take such action as necessary.

After the new procedures were implemented, EOD personnel advised us that they still generally do not document all phone conversations in writing, especially when they consider a facility's failure on an examination to be a small problem. We concluded these revised internal procedures issued by FSA in response to our audit are insufficient because a written record of followup actions is still not required to show timely followup actions were taken and that observed deficient conditions at facilities were promptly corrected.

However, FSA still needs assurance that facility conditions have, in fact, been corrected, because the corrective action taken for those cited facilities cannot be verified through record review. Also, the revised procedures still do not require a written record of followup actions in order to ensure that unfit conditions at facilities are promptly corrected.

Recommendation 4

Strengthen existing written procedures to require written records of followup actions taken by KCCO be prepared and maintained to ensure that undesirable conditions observed at facilities are promptly corrected.

FSA Response.

FSA agreed with the recommendation. Issuance of the USWA license to port facilities will place all licensing actions under the procedures in place for this program. Current procedures require that all actions be documented in writing. Efforts are underway to record the information electronically. The procedures will become effective upon license availability expected by January 9, 2009.

OIG Position.

We accept FSA's management decision.

Scope and Methodology

Our review covered 179 port examinations performed between July 1, 2004, when EOD-143, "Revised U.S. Port Inspection Procedures," became effective, and March 16, 2006. We performed our review at the FSA National office in Washington, D.C.; KCCO in Kansas City, Missouri; and at 3 of 43 port/transloading facilities approved for handling USDA-purchased food aid commodities at that time. Based upon input from KCCO personnel and the volume of USDA-purchased commodities shipped from these facilities, we chose to visit the Port of Houston, and Jacintoport in Houston, Texas, as well as the Port of Lake Charles in Lake Charles, Louisiana.²¹ Fieldwork was performed from October 2005 through April 2008.

To accomplish our objectives, we reviewed CCC, FSA, KCCO, EOD, and WLED regulations, notices, procedures, and instructions relating to the port examination process. To complete our review, we:

- Interviewed responsible FSA, KCCO, EOD, and WLED program officials to understand how they operate the port examination process;
- Reviewed available policies and procedures related to the port examination process to determine whether procedures were adequate to ensure protection for USDA-purchased food aid commodities stored at port facilities;
- Interviewed officials from the Grain Inspection, Packers, and Stockyards Administration, the Foreign Agricultural Service, the Food and Drug Administration, the U.S. Agency for International Development, and the U.S. Coast Guard to determine their level of involvement with the port examination process;
- Reviewed 179 examination reports to determine port performance, warehouse examiners' consistency, and agency followup on problems noted;
- Reviewed approval files at KCCO to assess the approval process;

²¹ Of food commodities scheduled to arrive at ports in February 2006, the Port of Houston was to receive over 10 percent, Jacintoport was to receive over 40 percent, and the Port of Lake Charles was to receive over 2 percent. The Port of Lake Charles also held pre-positioned commodities.

- Reviewed correspondence between port/transloading facilities and EOD to evaluate follow-up procedures for completed examinations;
- Observed warehouse examiners performing port examinations at two locations (three approved port/transloading facilities);
- Observed VLOs performed at three approved port/transloading facilities;
- Reviewed VLO reports and compared them to port examination reports to ascertain differences; and
- Interviewed security personnel at field sites to determine what measures were taken to protect USDA-purchased food aid commodities stored at the facility.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Exhibit A – FSA Response



United States
Department of
Agriculture

Farm and Foreign
Agricultural
Services

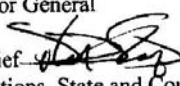
Farm Service
Agency

Operations Review
and Analysis Staff

1400 Independence
Ave, SW
Stop 0540
Washington, DC
20250-0501

AUG 14 2009

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

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

SUBJECT: Response to Audit 03099-198 - KC, Farm Service Agency; Inspection of
Temporary Domestic Storage Sites for Foreign Food Assistance.

In general, the Farm Service Agency (FSA) concurs with the recommendations contained in the audit. However, we will need to consult with the Office of the General Counsel (OGC) in developing corrections actions to correct the conditions noted in the audit. FSA has briefed its warehouse examiners on the results of this audit and the planned steps that will be taken to improve the exam policies and procedures.

Recommendation 1

FSA plans after OGC review, to address this recommendation by creating a license under the authority of the United States Warehouse Act (USWA) for ports and transloading facilities handling government food assistance commodities. This action will allow FSA to use policies and procedures that are currently in place for its licensing programs including current regulations, written standards for approval and due process for approving and disapproving these facilities. A requirement will then be added during the procurement process that only USWA licensed facilities may be used. The licensing agreement will be completed and available for execution by January 9, 2009.

Recommendation 2

FSA has in place procedures to approve and disapprove facilities under the USWA. Current procedures are in place to track and follow-up on adverse reports and to suspend and revoke licenses as appropriate. Upon completion of the development and issuing of a port warehouse license, FSA will use its current procedures to administer the licensing actions.

Recommendation 3

FSA agrees to revise the specific examination procedures to address the items contained in this finding. The procedures will be documented on the applicable examination forms and within applicable procedures contained in warehouse examiner handbooks. Revision of the procedures will be accomplished by January 9, 2009.

**Director, Farm and Foreign Agriculture Division
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Recommendation 4

Issuance of the USWA license to port facilities will place all licensing actions under the procedures in place for this program. Current procedures require that all actions be documented in writing. Efforts are underway to record the information electronically. The procedures will become effective upon license availability expected by January 9, 2009.

Glossary of Terms

- Port facility - A place on a waterway that provides a harbor for ships taking on or discharging cargo.
- Stevedore - A worker who loads or unloads ships.
- Transloading facility - A facility that provides temporary storage for commodities as they are moved from railways to more permanent port facilities.

Informational copies of this report have been distributed to:

| | |
|--|-----|
| Administrator, Farm Service Agency | |
| Attn: FSA Liaison Officer | (3) |
| Government Accountability Office | (1) |
| Office of Management and Budget | (1) |
| Office of the Chief Financial Officer | |
| Director, Planning and Accountability Division | (1) |