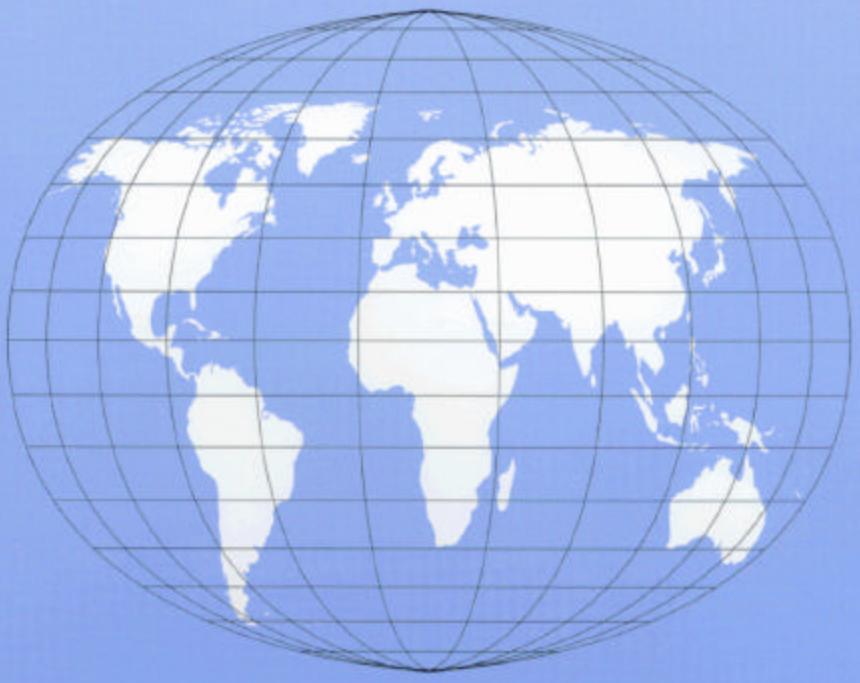
# Report of Audit

## Audit of USAID's Cargo Preference Reimbursements under Section 901d of the Merchant Marine Act of 1936

**Audit Report No. 9-000-01-003-P**
**March 30, 2001**



**Washington, D.C.**

**OFFICE OF INSPECTOR GENERAL**
**U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT**

# USAID
## OFFICE OF INSPECTOR GENERAL

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# MEMORANDUM

**FOR:** A-AA/BHR, Leonard M. Rogers
BHR/FFP, William T. Oliver, Jr.

**FROM:** AIG/A, Toby L. Jarman /s/

**SUBJECT:** Audit of USAID's Cargo Preference Reimbursements under Section 901d of the Merchant Marine Act of 1936 (Report No. 9-000-01-003-P)

This is our final report on the subject audit. In finalizing this report, we considered comments on our draft report by USAID and the United States Department of Agriculture's Commodity Credit Corporation (CCC). We have included responses from USAID and CCC as Appendix II and Appendix III, respectively.

This report contains seven recommendations. Two of the recommendations are monetary in nature and recommend potential reimbursements to USAID of about $182 million. In your response to our draft report, you concurred with all seven recommendations and their potential monetary benefits. We therefore consider that a management decision has been reached on each of the seven recommendations. Please coordinate final action for each recommendation with M/MPI.

The scope of our audit included shipments financed under five U.S. food assistance programs during fiscal years 1992 through 2000. While we reviewed data on all five programs, our audit focused primarily on the two programs administered by USAID—P.L. 480 Titles II and III. Accordingly, our findings and recommendations target corrective actions to be taken by USAID.

However, in order to be effective many of those actions need to be taken in conjunction with CCC.

I appreciate the cooperation and courtesy extended to my staff during the audit.

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## Summary of Results

When providing food assistance to nations overseas, both USAID and the U.S. Department of Agriculture (USDA) are required by law to ship a certain percentage of tonnage on privately-owned U.S.-flag commercial vessels. This requirement, known as "cargo preference," helps ensure that the United States maintains an adequate and viable merchant marine. In 1985 Congress increased this requirement, found in Section 901d of the Merchant Marine Act of 1936, as amended, from 50 percent to 75 percent for commodities shipped under certain U.S. food assistance programs. At the same time, Congress directed that the U.S. Department of Transportation (DOT) finance any increases in food assistance shipping costs due to the application of this new requirement. (See pages 6 through 7.)

Under a Memorandum of Understanding with USAID and DOT's Maritime Administration (MARAD), USDA, through its Commodity Credit Corporation (CCC) agreed to apply for cargo preference reimbursements from MARAD. Upon being reimbursed, CCC was to then apportion to USAID the reimbursed funds pertaining to the Agency's P.L. 480 Title II and Title III food shipments. Since 1992, CCC has received a total of $284 million in cargo preference reimbursements for the five food assistance programs administered by USDA and USAID. Of that amount, $142 million was reimbursed to USAID for shipments made under P.L. 480 Titles II and III. (See pages 7 and 8.)

However, as a result of this audit, we found that, in accordance with established laws, policies, and procedures governing the administration of cargo preference reimbursements, CCC could be entitled to as much as $289 million in additional unclaimed reimbursements for costs incurred during that same period. Of that amount, up to $175 million could be made available to the two programs administered by USAID. (See pages 8 through 14.)

Furthermore, we found that at least $7.2 million (see pages 15 through 17) in cargo preference reimbursements had been misallocated to a non-USAID-administered program. During the audit, we also identified several procedural problems in the cargo preference reimbursement process which, if corrected, could result in significantly more accurate, complete, and timely reimbursements for the international food assistance programs administered by USDA and USAID. (See pages 17 through 28.)

## Background

It is the policy of the United States to use its abundant agricultural productivity to promote the foreign policy of the United States by enhancing the food security of the developing world. The United States implements its international food assistance initiatives through five separate programs. Three of those programs are authorized, respectively, under Titles I, II, and III of the Agricultural Trade Development and Assistance Act of 1954, commonly referred to as "P.L. 480."[1] The other two food assistance programs are known as the Section 416(b) program[2] and the Food for Progress program.[3]

Each of the P.L. 480 programs has different objectives. The Title I program provides for government-to-government sales of agricultural commodities to developing countries under long-term credit arrangements. The Title II program provides for the donation of U.S. agricultural commodities to meet emergency and non-emergency food security needs in foreign countries. The Title III program provides government-to-government grants to support long-term growth in the least developed countries. The U.S. Department of Agriculture (USDA) administers the P.L. 480 Title I, Section 416 (b), and Food for Progress programs, while USAID is responsible for administering P.L. 480 Titles II and III.[4] Although USAID administers the P.L. 480 Title II and III programs, funding for both programs is initially appropriated to USDA. USDA retains funds for commodity procurement, but transfers obligational authority to USAID, upon request, for other program costs including transportation.

According to a January 2000 USAID report,[5] the United States remains the world's major provider of food assistance, despite recent budgetary constraints. The report states that, in fiscal year 1999 alone, the United States provided nearly 10 million metric tons of food assistance, valued at more than $2.4 billion, to 82 developing and re-industrializing countries. Through its administration of funds under P.L. 480 Titles II and III, USAID is responsible for the bulk of annually appropriated U.S. food assistance assets. Since 1992, USAID has expended nearly $2 billion to transport over $5 billion in food assistance commodities to foreign recipients under P.L. 480 Titles II and III.

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[1] Public Law 83-480 (July 10, 1954), also known as "P.L. 480" and "Food for Peace," is authorized under the Agricultural Trade Development and Assistance Act of 1954.

[2] The Section 416(b) program is authorized under Section 416(b) of the Agricultural Act of 1949.

[3] The Food for Progress program is authorized under Section 1110 of the Food Security Act of 1985, but is dependent on funding through P.L. 480 Title I, Section 416(b), or the Commodity Credit Corporation.

[4] The USAID office responsible for administering P.L. 480 Titles II and III is the Office of Food for Peace (FFP), under the Agency's Bureau for Humanitarian Response (BHR).

[5] *U.S. International Food Assistance Report 1999*; dated January 2000.

*U.S.-flag vessel carrying 5,000mt of bulk corn from Beaumont, Texas to the Cape Verde Islands under USAID's P.L. 480 Title II program. (Summer 2000)*

Each of the five food assistance programs described above is required by law to ship a certain percentage of tonnage on privately-owned U.S.-flag commercial vessels. This requirement, known as "cargo preference," is found in the Merchant Marine Act of 1936 (the "Act"), as amended. The objective of this requirement is to help ensure that the United States maintains an adequate and viable merchant marine. From 1954 to 1985 the cargo preference requirement stipulated that at least 50 percent of certain U.S. Government-generated cargoes be shipped on U.S.-flag vessels. In 1985 Congress amended the Act to increase this requirement from 50 percent to 75 percent for commodities shipped under certain U.S. food assistance programs. At the same time, Congress directed that any increase in food assistance shipping costs under these programs, due to the application of this new cargo preference requirement, would be financed by the U.S. Department of Transportation.

A 1987 Memorandum of Understanding (MOU) between USDA's Commodity Credit Corporation (CCC), the Department of Transportation's Maritime Administration (MARAD), and USAID set forth procedures through which MARAD was to reimburse CCC for higher shipping costs resulting from the 1985 amendment. The MOU provided that CCC would initially bear all ocean freight costs and that MARAD would then reimburse CCC based upon the submission of periodic invoices, accompanied by supporting documentation. After receiving reimbursements from MARAD, CCC arranges for reimbursed amounts to be apportioned to the food assistance programs from which they originated. Any rights USAID has to cargo preference reimbursements arise from this 1987 MOU and the customary practices between USAID and USDA concerning the administration and funding of P.L. 480 Title II and III programs.

## Audit Objective

The Office of Inspector General initiated this audit based on information provided by USAID/BHR/FFP during a prior audit of USAID's P.L. 480 Title II Monetization Programs.[6] We undertook the current audit to determine the extent to which U.S. international food assistance programs administered by USAID were benefiting from cargo preference reimbursements made available under Section 901d of the Merchant Marine Act of 1936, as amended.

The objective of this audit was to answer the following question:

**What is the status of cargo preference reimbursements under Section 901d of the Merchant Marine Act of 1936, as amended?**

To obtain estimated dollar amounts of unclaimed reimbursements, we relied on the Commodity Credit Corporation (CCC) which calculated those estimates based on data generated from its internal computer systems. Although we verified the accuracy of CCC's calculations using such data, we did not test the reliability of this data, or the systems from which it was generated.

Appendix I contains a discussion of the scope and methodology for this audit.

## Audit Findings

**What is the status of cargo preference reimbursements under Section 901d of the Merchant Marine Act of 1936, as amended?**

Since 1992, a total of $284 million in cargo preference reimbursements has been made available to the United States Department of Agriculture (USDA) for reprogramming under the five food assistance programs administered by USDA and USAID. Of that amount, $142 million has been made available to USAID for reprogramming under P.L. 480 Titles II and III. However, we believe that, in accordance with established laws, policies, and procedures governing the administration of cargo preference reimbursements, USDA could be entitled to as much as $289 million in additional unclaimed reimbursements for costs incurred during that same period. Of that amount, up to $175 million could be made available to the two programs administered by USAID. We also believe that at least $7.2 million in cargo preference reimbursements were misallocated to a non-USAID-administered program. During the audit, we identified several procedural problems in the cargo preference reimbursement process which, if corrected, could result in significantly more accurate, complete, and timely reimbursements for the international food assistance programs administered by USDA and USAID.

[6] Audit Report No. 9-000-00-002-P

**USAID Food Programs Could Be Entitled to $175 Million in Unclaimed Reimbursements**

Section 901d of the Merchant Marine Act of 1936, as amended, authorized USDA to claim reimbursement for excess ocean freight costs associated with the transport of commodities under food assistance programs administered by USDA and USAID. However, as of February 2001, USDA had not claimed, on behalf of USAID, an estimated $175 million in such reimbursements for food assistance shipments made since fiscal year 1993. This occurred because of confusion within USDA concerning which office had the responsibility for preparing and submitting reimbursement claims for excess ocean freight costs. Due to higher management priorities and the lack of sufficient qualified staff for monitoring cargo preference reimbursements, USAID was unaware that these reimbursements were not being claimed. Consequently, potentially $175 million in unclaimed reimbursements have not been made available to USAID for reprogramming under P.L. 480 Titles II and III during the last seven years.

The Cargo Preference Act of 1954 amended the Merchant Marine Act of 1936 in order to establish a requirement that at least 50 percent of agricultural cargoes under certain U.S. foreign assistance programs be shipped on U.S.-flag vessels. The objective of this "cargo preference" requirement was to help ensure that the United States maintained an adequate and viable merchant marine for the defense and economic security of the country. However, the requirement to use U.S.-flag vessels often resulted in higher transportation costs for U.S. food assistance programs due to higher rates charged by U.S.-flag carriers compared with foreign-flag carriers. Until 1985, these additional transportation costs were borne by the Federal agencies charged with administering the affected food assistance programs.

The Food Security Act of 1985[7] amended the Cargo Preference Act of 1954 by adding Sections 901a through 901k to the Merchant Marine Act of 1936. This new legislation increased the cargo preference requirement (to use U.S.-flag vessels for commodities shipped under U.S. food assistance programs) from 50 percent to 75 percent. However, Section 901d of the newly amended Merchant Marine Act of 1936 also required the Secretary of the U.S. Department of Transportation to finance or reimburse any increase in shipping costs resulting from the application of the new cargo preference requirement. According to Section 901d, the Department of Transportation had two new funding responsibilities. The first was to finance any increased ocean freight charges resulting from the application of the new 75 percent cargo preference requirement. The second was to reimburse ocean freight costs incurred on the export of international food assistance which exceeded 20 percent of the total purchase and shipping costs of those commodities.

[7] Public Law 99-198, Section 1142.

*U.S.-flag vessel docking at a foreign port to deliver food assistance cargo. (Summer 2000)*

The procedures for implementing those new funding responsibilities, to be administered principally by the Department of Transportation's Maritime Administration (MARAD) and the Department of Agriculture's Commodity Credit Corporation (CCC), were outlined in a 1987 Memorandum of Understanding[8] (MOU) signed by representatives of MARAD, CCC, and USAID. This MOU described procedures regarding the calculation, request, and payment of cargo preference reimbursements. According to the MOU, MARAD was to, upon submission and approval of agreed-upon documentation, reimburse CCC for the following two types of shipping costs:

**Incremental Ocean Freight Differential (OFD)** – OFD is defined as the amount by which the cost of ocean transportation is higher, by reason of the cargo preference requirement that the commodities be transported on U.S.-flag vessels, than would be the case for transportation on foreign-flag vessels. According to the MOU, MARAD was to reimburse CCC for any incremental OFD costs, by individual food assistance program, resulting from the application of the increased cargo preference requirement. The reimbursements for incremental OFD costs were to be based on invoices prepared and submitted quarterly by CCC during each cargo preference year[9] (CPY). These invoices were to include additional information for each shipment, such as identification numbers, bill-of-lading dates,

[8] A complete copy of the Memorandum of Understanding is included as Appendix VI in this report.

[9] The cargo preference year begins April 1 and ends March 31 of the following calendar year.

vessel name, and shipping rates. According to the MOU, the invoice for each quarter was to be provided by CCC to MARAD within forty-five calendar days after the end of the quarter. After receiving an invoice, MARAD then had at least forty-five additional calendar days to make the payment.

**Excess Ocean Freight** – According to the MOU, MARAD was to reimburse to CCC the amount, if any, by which the total of the ocean freight costs borne by CCC, including OFD, exceeded 20 percent of the total value of the commodities shipped, plus ocean freight costs, for all CCC programs. The reimbursement for excess ocean freight was to be based on invoices prepared and submitted annually by CCC after the end of each fiscal year.[10] According to the MOU, CCC was to submit an invoice to MARAD after the end of each fiscal year as soon as all program costs had been ascertained and paid by CCC. Reimbursements were due forty-five days after receipt of the invoice. Any amount of incremental OFD paid to CCC by MARAD for each fiscal year was to be deducted from the excess ocean freight reimbursement.

The MOU dictated that all CCC invoices to MARAD were to be submitted on a Standard Form 1081.[11] MARAD's responsibilities were to review the submissions, make adjustments if necessary, and send reimbursement payments to CCC. Although the MOU did not address what was to happen to the reimbursements once they reached CCC, the standard practice was for CCC to allocate the reimbursed funds by requesting that they be apportioned back to the programs from which they originated.

*U.S.-flag ship carrying P.L. 480 Title II shipment and bearing the USAID emblem. (Summer 2000)*

According to USDA records, MARAD has paid CCC a total of $284 million in cargo preference reimbursements for international food assistance shipments made

[10] The fiscal year begins October 1 and ends September 30 of the following calendar year.
[11] A Standard Form 1081 is the form CCC personnel prepares and submits to MARAD to request allowable reimbursements.

between 1992 and 2000. Of that amount, USDA has made $142 million available to USAID for reprogramming under P.L. 480 Titles II and III. The majority of these reimbursements were for incremental OFD costs. For shipments made during fiscal year 1992 through fiscal year 2000, CCC has received $249 million in incremental OFD reimbursements, compared to only $35 million in excess ocean freight reimbursements. However, because complete claims have not been filed for OFD or excess ocean freight costs, significant additional reimbursements are possible.

For excess ocean freight costs, CCC estimated that there were unclaimed reimbursements totaling as much as $289 million for shipments made under the five food assistance programs during fiscal year 1992 through fiscal year 2000. Of that amount, up to $175 million could be made available to the two programs administered by USAID ($163 million to P.L. 480 Title II and $12 million to P.L. 480 Title III).

The following table summarizes those estimates.

| **Estimated Unclaimed Excess Ocean Freight Reimbursements** | |
|---|---|
| Program | (in millions of dollars) |
| P.L. 480 Title I | $51 |
| Section 416(b) | $55 |
| Food for Progress | $8 |
| P.L. 480 Title II | $163 |
| P.L. 480 Title III | $12 |
| Total | $289 |

The above estimates were only for unclaimed excess ocean freight reimbursements. Officials at CCC indicated that there were also a number of unclaimed reimbursements for incremental OFD for shipments made during the same period. Because OFD reimbursements are to be deducted from excess ocean freight reimbursements, the final determination as to the exact amount of excess ocean freight to be claimed for reimbursement will depend on the final quarterly OFD reimbursements received for each fiscal year. At the time of the audit, CCC officials were unable to estimate the amount of those unclaimed OFD reimbursements. However, because OFD reimbursements are to be deducted from excess ocean freight reimbursements, the total amount of unclaimed reimbursements, estimated to be $289 million, is likely to be reimbursed either through one reimbursement mechanism or the other.

These unclaimed excess ocean freight reimbursements accumulated for several years without being paid because CCC had not submitted any invoices for

reimbursement of excess ocean freight costs for shipments made after fiscal year 1993. The last invoice submitted by CCC for reimbursement of excess ocean freight was for shipments made during fiscal year 1993. The main reason CCC had not submitted more recent invoices for excess ocean freight reimbursement was because of confusion within USDA offices concerning which office was responsible for preparing and submitting the invoices.

Another factor that contributed to the accumulation of unclaimed excess ocean freight reimbursements was that USAID managers did not closely monitor the cargo preference reimbursement process. According to officials in USAID's Office of Food for Peace, higher management priorities and the lack of sufficient qualified staff prevented the effective monitoring and administration of USAID's food assistance programs, with respect to cargo preference financing and reimbursement provisions as they relate to Titles II and III. Consequently, USAID management was unaware that invoices for excess ocean freight reimbursements were not being submitted.

As a result, food assistance programs administered by both USDA and USAID have not benefited from potentially hundreds of millions of dollars of reimbursements over the last seven years. Delays in recovering allowable reimbursements resulted in fewer funds being available for food assistance to eligible recipients throughout the world than would have otherwise been available. Further, the overall cost of implementing the cargo preference requirement, as measured in terms of actual reimbursements from MARAD to USDA, has been understated for the same period.

*U.S.-flag ship unloading food assistance commodities authorized under USAID's P.L. 480 Title II program. (Summer 2000)*

As corrective actions on the part of USAID and CCC in relation to the audit finding discussed above could result in a sizable one-time transfer of funds from MARAD, we discussed the possibility and impact of such a transfer with officials from the Office of Management and Budget (OMB). They assured us that cargo

preference reimbursements were authorized as a permanent, indefinite appropriation—meaning that there was no limit on the amount to be paid as long as the invoices were legitimate and met the conditions specified by law for payment. Consequently, those OMB officials indicated that there should not be any problem funding such a large transfer.

> **Recommendation No. 1: We recommend that USAID's Director of the Office of Food for Peace request the Commodity Credit Corporation to prepare and submit to the Maritime Administration invoices to recover all outstanding cargo preference reimbursements for excess ocean freight, currently estimated at $175 million, for shipping costs incurred under the P.L. 480 Title II and Title III programs during fiscal years 1994 through 2000, as identified in Appendix IV.**

### $7.2 Million in Cargo Preference Reimbursements Were Misallocated to Non-USAID Food Program

According to the Comptroller General, reimbursements to appropriations are required to be returned to the appropriation originally charged. A reimbursement of $35 million was paid by MARAD to USDA in 1995 for excess ocean freight costs incurred by U.S. food assistance programs during fiscal year 1992. Based on our calculations, at least $7.2 million of that reimbursement was wrongly allocated by CCC to the Section 416(b) program, administered by USDA, instead of to the P.L. 480 Title II and III programs administered by USAID. This occurred because CCC included Section 416(b) in the allocation of MARAD's reimbursement even though no portion of the reimbursement was attributable to Section 416(b) activities. Further, there were no written procedures governing the method of allocating excess ocean freight reimbursements. The result was that at least $7.2 million of the $35 million reimbursed was not equitably allocated to the food assistance programs from which the costs originated.

In a decision regarding repayments to appropriations,[12] the United States Comptroller General indicated that such repayments, including reimbursements and refunds, were required to be deposited directly back to their original appropriations. Because funding is appropriated separately for P.L. 480 Titles II and III, we would expect that any reimbursements generated by the expenditure of appropriated funds from either program would be made available for reprogramming under the same program from which the funds originated.

[12] *Accounting Systems Memorandum No. 10*, October 5, 1950: "It has long been the rule of the accounting officers of the United States that if a collection involves a refund of monies paid from an appropriation in excess of what was actually due, such refunds are properly for credit to the appropriation originally charged." (5 Comp. Gen. 734, 736)

The original invoice submitted by CCC to MARAD for reimbursement of excess shipping costs incurred during fiscal year 1992 was for $45 million. On that invoice, CCC proposed to allocate the $45 million reimbursement only to the three programs that had generated a portion of the reimbursement Food for Progress, P.L. 480 Title II and P.L. 480 Title III. The P.L. 480 Title I and Section 416(b) programs were not included in that allocation because their ocean freight costs were not high enough to generate any excess ocean freight reimbursement during the fiscal year. The original invoice indicated that the $45 million reimbursement would be allocated as follows:

| Program | Proposed Allocation of Amount Originally Claimed | % of Total |
|---|---|---|
| P.L. 480 Title I | $0 | 0% |
| Section 416(b) | $0 | 0% |
| Food for Progress | $4,651,070 | 10% |
| P.L. 480 Title II | $24,763,233 | 55% |
| P.L. 480 Title III | $15,713,943 | 35% |
| Total | $45,128,246 | 100% |

For the three programs that generated a portion of the claimed reimbursement, CCC's allocation was based on the proportion of each program's costs relative to the total costs incurred by all three programs during fiscal year 1992. We believe that this constituted a reasonable basis of allocation. However, upon receiving the original invoice, MARAD made adjustments to the total amount claimed, and reimbursed only $35 million to CCC. After MARAD reduced the total amount claimed from $45 million to $35 million, CCC changed its allocation by including Section 416(b) in the allocation pool even though that program had not generated any of the excess ocean freight reimbursement. This resulted in the following allocation of the $35 million that was actually reimbursed:

| Program | Actual Allocation of Amount Reimbursed | % of Total |
|---|---|---|
| P.L. 480 Title I | $0 | 0% |
| Section 416(b) | $7,982,118 | 23% |
| Food for Progress | $2,771,278 | 8% |
| P.L. 480 Title II | $14,940,224 | 42% |
| P.L. 480 Title III | $9,531,467 | 27% |
| Total | $35,225,087 | 100% |

Instead of allocating the reimbursed amount only to the programs that had generated a portion of the reimbursement, nearly a fourth of the total revised amount was allocated to a program that had not generated any of the

reimbursement. Section 416(b), which was not to receive any of the originally invoiced amount, was allocated $7,982,118 (23 percent) of the revised amount, resulting in reduced allocations to the other three programs. As a result, $7,170,141 ($4,377,446 for Title II and $2,792,695 for Title III) was not made available for reprogramming under programs administered by USAID. The following table shows the differences caused by this misallocation.

| Program | Actual Allocation of Amount Reimbursed | How Allocation Should Have Been Made Based on Original Invoice | Difference |
|---|---|---|---|
| P.L. 480 Title I | $0 | $0 | $0 |
| Section 416(b) | $7,982,118 | $0 | $(7,982,118) |
| Food for Progress | $2,771,278 | $3,583,255 | $811,977 |
| P.L. 480 Title II | $14,940,224 | $19,317,670 | $4,377,446 |
| P.L. 480 Title III | $9,531,467 | $12,324,162 | $2,792,695 |
| Totals | $35,225,087 | $35,225,087 | $0 |

Although the MOU did not include any guidance on how reimbursements for excess ocean freight were to be allocated, we believe that the original method of allocation on CCC's original invoice was reasonable and recommend that it be used to adjust the amounts that were misallocated to the Section 416(b) program. As discussed in the previous section of this report, unclaimed reimbursements of excess ocean freight costs have been estimated to total hundreds of millions of dollars. Therefore, we believe that it would be prudent for USAID and CCC to mutually agree upon, and document, a consistent and equitable method of allocating such funds prior to their receipt.

**Recommendation No. 2: We recommend that USAID's Director of the Office of Food for Peace request that the Commodity Credit Corporation transfer a total of $7,170,141 from the Section 416(b) program to the P.L. 480 Title II ($4,377,446) and Title III ($2,792,695) programs to correct the misallocation of a cargo preference reimbursement, as detailed in this report, for shipping costs incurred during fiscal year 1992.**

**Recommendation No. 3: We recommend that USAID's Director of the Office of Food for Peace, in conjunction with the Commodity Credit Corporation, determine and document a consistent and equitable method of allocating reimbursements of ocean freight costs in excess of 20 percent of total costs as authorized under Section 901d of the Merchant Marine Act of 1936, as amended.**

**Invoices for Incremental Ocean Freight Differential Were Not Prepared or Submitted in a Timely Manner**

The Memorandum of Understanding (MOU) signed by MARAD, CCC, and USAID in 1987 required CCC to submit invoices to MARAD for reimbursement of incremental OFD costs within 45 calendar days after the end of each quarter. We found that CCC has submitted quarterly invoices, resulting in $39 million in reimbursements of incremental OFD for P.L. 480 Title II and III shipments made during the last four cargo preference years, on average, 185 days after they were due. All of those invoices were also incomplete, resulting in the need for supplemental invoices which extended the reimbursement period even longer. Supplemental invoices, for an estimated $13 million in reimbursements, have not yet been submitted to MARAD. The primary reason incremental OFD invoices were not prepared or submitted in a timely manner was because of missing documentation which was required to be submitted with the invoices. Although CCC and USAID have recently taken steps to improve this problem, untimely submission of OFD invoices to MARAD has resulted in substantial delays of cargo preference reimbursements over several years. Consequently, for P.L. 480 Title II and III shipments made during cargo preference years 1997 through 2000, USAID's access to quarterly reimbursements totaling over $39 million, for reprogramming under its respective food assistance programs, was delayed by an average of 185 days or more each quarter. An estimated $13 million in additional incremental OFD reimbursements for shipments made during the same period remain unclaimed.

Regarding reimbursement procedures for incremental OFD, the 1987 MOU states:

> CCC will prepare and submit to MARAD quarterly invoices for reimbursement of incremental OFD. The invoice for each quarter will be provided by CCC to MARAD within forty five (45) calendar days of the end of the quarter. The amount of the incremental OFD will be due within ten (10) calendar days after (i) the date CCC notifies MARAD in writing of its determination that 50 percent of the estimated annual USDA/CCC program tonnage has been shipped on U.S.-flag vessels or (ii) the date determined and reported to MARAD by CCC that 50 percent of the estimated annual USDA/CCC program tonnage is reasonably expected to have been shipped but in any event, no payment will be made earlier than forty five (45) calendar days after receipt of the invoice.

Our review of quarterly invoices submitted to MARAD by CCC for incremental OFD reimbursements for P.L. 480 Titles II and III for cargo preference years 1997-2000, revealed that, on average, those invoices were prepared 185 days after

they were due. The table in Appendix V summarizes the amount of delay associated with the preparation and submission of those invoices. In addition to the invoices for cargo preference years 1997-2000, at the conclusion of our audit none of the quarterly invoices for cargo preference year 2001 had been submitted, even though the first three quarters for that year were also due.

The quarterly invoices for reimbursement of incremental OFD were also incomplete. According to CCC, all incremental OFD invoices submitted for cargo preference years 1997-2000 require amendments to claim reimbursements from MARAD for shipments not reflected in the original quarterly invoices. At the end of our audit, amended invoices were being prepared for shipments not included in the initial quarterly invoices submitted for those four years. While CCC was unable to estimate the dollar amount of those amendments, one CCC official believed that the original invoices only covered about 75 percent of the tonnage shipped during that period. Consequently, we believe that supplemental invoices for reimbursement of incremental OFD have not yet been submitted for approximately one-fourth of the tonnage of food assistance shipments made during the last four cargo preference years. Based on the incremental OFD already reimbursed for P.L. Title II and III shipments during those four years, the amount of unclaimed incremental OFD for the same period could be as much as $13 million.

According to USAID, CCC, and MARAD, the biggest contributing factor for not filing OFD invoices timely was the lack of shipping documentation. For each shipment of food assistance, freight forwarders (often contracted by cooperating sponsors involved in the distribution of food assistance) were required[13] to submit to CCC "completion packages" containing such documentation as bills of lading, shipping information logs, and booking confirmation reports. This documentation was necessary to enable CCC to enter data into its automated database in order to prepare the MARAD invoices. Copies of some of the shipping documents were also needed to accompany CCC's invoices to MARAD for reimbursement. Per USDA, MARAD only reimburses amounts (1) which are supported by complete documentation presented with the bill; (2) for which vessel classifications are correct; and (3) which do not include any inland transportation charges. As of March 2000, CCC records indicated that approximately 1,369 delinquent completion packages had not been received from at least seven different freight forwarders.

[13] Cooperating sponsors undertaking P.L. 480 Title II activities assume both programmatic and financial accountability for the resources provided through individual grants and cooperative agreements. Consistent with 22 CFR Section 211.4(e)(2) and USDA Notice to the Trade EOD-44, dated 1 February 1999, freight forwarders representing a Title II cooperating sponsor are required to send applicable completion packages to CCC by airmail or the fastest means available within two weeks of the vessel sailing.

*Unloading bagged commodities for in-land transport. (Summer 2000)*

*Unloading bulk corn from Beaumont, Texas, at port in the Cape Verde Islands. (Summer 2000)*

The problem of missing documentation has been mitigated somewhat through recent aggressive efforts by CCC and USAID. For example, in February 2000, CCC and USAID personnel jointly identified processes that would accelerate the receipt of documentation necessary for filing more complete cargo preference reimbursement invoices. CCC initiated a tracking system that identified missing documentation by program and sponsor. Reports generated by that tracking system gave USAID additional information with which to better monitor the documentation submission performance of contracted freight forwarders. With this information, USAID has been able to improve the flow of required documents by directly contacting delinquent freight forwarders and, in one case, temporarily suspending a freight forwarder[14] for not submitting shipping documents in a timely manner. Through these combined efforts, as of February 2001, the number of delinquent completion packages had been reduced to 728 and were limited to two freight forwarders. According to CCC, both of the freight forwarders have

[14] Our audit team visited this particular freight forwarder in July 2000 to determine the cause of its delinquent completion packages. The freight forwarder's manager said that he was unaware of the problem until receiving a warning letter from USAID. The manager agreed to implement corrective actions to help ensure that the missing documentation was sent to CCC.

agreed to train their personnel in order to eliminate the backlog of missing completion packages.

Untimely submission of OFD invoices to MARAD has resulted in the substantial delay of cargo preference reimbursements during the last four cargo preference years. As a result, USAID's access to quarterly reimbursements totaling almost $39 million, for reprogramming under P.L. 480 Titles II and III, has been delayed by an average of at least 185 days each quarter for shipments made during cargo preference years 1997 through 2000. Also, an estimated $13 million in additional incremental OFD reimbursements for shipments under P.L. 480 Titles II and III during the same period remains unclaimed.

**Recommendation No. 4: We recommend that USAID's Director of the Office of Food for Peace request the Commodity Credit Corporation to prepare and submit to the Maritime Administration invoices to recover all outstanding cargo preference reimbursements for incremental ocean freight differential, including supplemental invoices, for shipping costs incurred under the P.L. 480 Title II and Title III programs during cargo preference years 1997 through 2001, as identified in Appendix IV.**

### CCC and USAID Need to Determine the Cause of Differences Between Amounts Requested and Actually Reimbursed

USDA's financial management guidance requires that losses due to uncollectible amounts be measured through a systematic, documented methodology. Since 1992, CCC has submitted invoices requesting $471 million in cargo preference reimbursements for both incremental OFD and excess ocean freight costs. From those invoices, MARAD has authorized payments of only $284 million, leaving a difference (loss) of $187 million unpaid. According to MARAD, this occurred because CCC did not always use accurate figures or formulas when calculating reimbursements. However, at the time of our audit, neither CCC nor USAID had reconciled or challenged the adjustments made by MARAD. This occurred because the MOU did not outline specific reconciliation responsibilities. Consequently, there has been no official determination on the part of CCC or USAID as to whether MARAD's rejection of $187 million in potentially valid claims for cargo preference reimbursements was justified. Further, without determining the causes of those differences, we believe they are likely to continue to occur in the future.

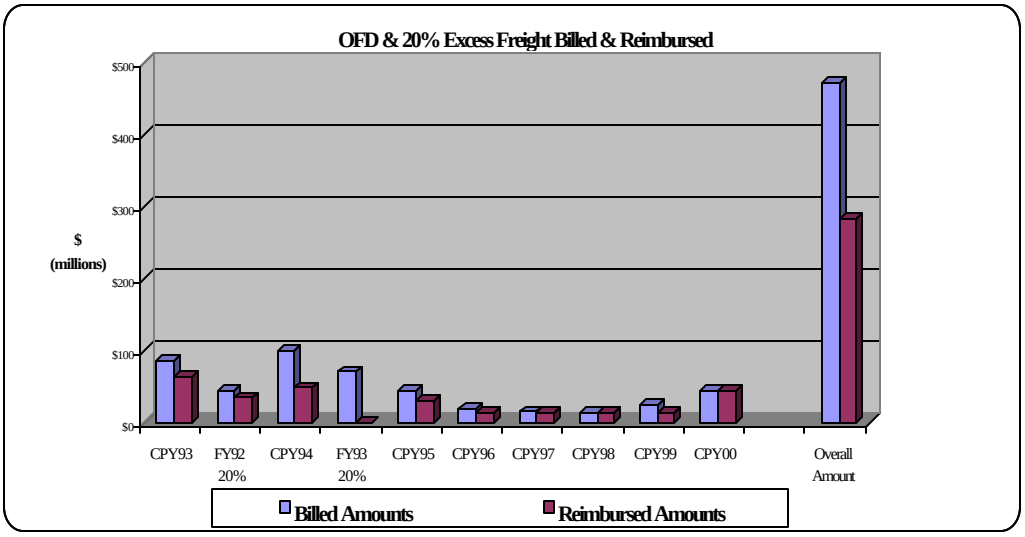
According to the *USDA Financial and Accounting Standards Manual*:[15]

> Accounts receivable arise from claims to cash or other assets. A receivable should be recognized when a federal entity establishes a claim to cash or other assets against other entities, either based on legal provisions, such as a payment due date or good or services provided. If the exact amount is unknown, a reasonable estimate should be made… [In addition,] losses on receivables should be recognized when it is more likely than not that the receivables will not be totally collected. The phrase "more likely than not" means more than a 50 percent chance of loss occurrence. An allowance for estimated uncollectible amounts should be recognized to reduce the gross amount of receivables to its net realizable value… [Furthermore,] losses due to uncollectible amounts should be measured through a systematic, documented methodology that is applied consistently entity-wide. The systematic methodology should be based on analysis of both individual accounts and a group of accounts as a whole.

Based on this internal guidance, CCC personnel should have reconciled any differences, "through a systematic, documented methodology," between incremental OFD and excess ocean freight invoices submitted to MARAD and the actual amounts MARAD authorized for payment. Instead, when MARAD's actual payments differed from CCC's original invoices, CCC accounting personnel would simply adjust the accounts receivable balances, derived from the original invoices, to reflect the actual amount paid. Accounting personnel at CCC did not account for any of these differences as losses.

Since 1992, CCC has submitted invoices requesting a total of $471 million in cargo preference reimbursements for both incremental OFD and excess ocean freight costs. In accordance with the MOU, MARAD was to review the invoices submitted by CCC using copies of ocean bills of lading. After reviewing those invoices, MARAD has authorized payments totaling only $284 million, leaving a difference (loss) of $187 million unpaid. Of the $187 million in rejected claims, approximately $106 million related to invoices submitted by CCC for reimbursement of incremental OFD costs. The remaining $81 million pertained to invoices for reimbursement of excess ocean freight costs. The following chart depicts the difference between the amount of cargo preference reimbursements requested by CCC since 1992, compared to the amounts approved and actually paid by MARAD.

[15] *USDA Financial and Accounting Standards Manual*, Version 2.0; Chapter 7; Cash, Debt, and Disbursements Management.




Since 1992, USDA and USAID personnel have not reconciled cargo preference reimbursement invoices submitted to MARAD with the actual amounts MARAD paid. For example, in the excess ocean freight invoice for fiscal year 1993, USDA requested reimbursement in the amount of $71 million. After analyzing the invoice and related documentation, MARAD rejected the entire amount.

According to MARAD, this occurred because CCC did not use accurate figures or formulas when calculating the reimbursement request. Part of the discrepancy was because of a fundamental difference of opinion between CCC and MARAD concerning the interpretation of the MOU as to how to calculate the excess ocean freight reimbursement.[16] Also, MARAD adjusted the ocean freight costs submitted by CCC by deducting in-land freight costs. According to MARAD, and the MOU, in-land freight costs (the costs of transporting food assistance commodities once they reach the receiving port of a host country) should not be included in the ocean freight costs used to calculate excess ocean freight reimbursements. The result of MARAD's adjustments was a rejection of the total amount requested. To date, neither CCC nor USAID has reconciled MARAD's denial of CCC's invoice requesting excess ocean freight reimbursement for fiscal year 1993 to determine whether or not MARAD's declination of reimbursement was justified.

[16] This difference of opinion related to where, in the excess ocean freight calculation, the previously paid incremental OFD reimbursements were deducted. For its invoices requesting reimbursement of excess ocean freight for shipments made during fiscal years 1992 and 1993, CCC deducted previously paid OFD reimbursements from total program costs **prior to** calculating the 20 percent benchmark. MARAD adjusted those calculations by deducting the previous OFD reimbursements **after** calculating the 20 percent benchmark. This different calculation method resulted in a MARAD adjustment reducing the amount paid by a total of $23.4 million.

*A U.S.-flag ship carrying P.L. 480 commodities to the Cape Verde Islands. (Summer 2000)*

The MOU required MARAD to reimburse CCC for allowable shipping costs associated with incremental OFD and excess ocean freight costs. However, the MOU did not address how to treat any differences in requested versus actual reimbursements. Determining the causes of MARAD's adjustments to CCC invoiced amounts could possibly provide over $187 million in additional reimbursements for reprogramming, if those amounts turn out to be allowable and thus reimbursable costs. At a minimum, by reconciling the differences between requested and paid reimbursements, CCC might be able to account for the losses and avoid such losses in the future. Consequently, we believe that USAID should request that CCC reconcile the $187 million in rejected reimbursement requests and jointly establish procedures with CCC to follow-up/reconcile all such differences in the future.

**Recommendation No. 5: We recommend that USAID's Director of the Office of Food for Peace request the Commodity Credit Corporation to reconcile the $187 million in differences between requested and paid reimbursements from cargo preference reimbursement invoices submitted to the Maritime Administration for shipments made since 1992 to determine 1) whether the Maritime Administration's adjustments were justified; and 2) how to avoid such differences in the future.**

**Reimbursed Funds Were Not Apportioned in a Timely Manner**

Contrary to Office of Management and Budget (OMB) guidance, CCC did not always ensure that applicable cargo preference reimbursements, after being received from MARAD, were apportioned to accounts accessible to USAID in a timely manner. This condition occurred because CCC did not believe the funds were needed immediately. Because reimbursements received by CCC in fiscal years 1997 through 1999 were not apportioned until fiscal year 2000, up to $24 million was not available for USAID to reprogram under P.L. 480 Titles II and III for a period of one to three years.

According to the General Accounting Office[17] (GAO), reimbursements are considered a budgetary resource subject to apportionment by the Office of Management and Budget (OMB). OMB Circular A-34 states that reapportionment requests should be submitted to OMB "as soon as a change in an apportionment previously made becomes necessary due to changes in amounts available (e.g., actual reimbursements differ significantly from estimates)…" Contrary to this guidance, CCC did not always request timely apportionment of cargo preference reimbursements. For example, during fiscal years 1995 through 2000, MARAD approved $81 million in cargo preference reimbursements for P.L. 480 Titles II and III. However, at the beginning of our audit, only $57 million had been apportioned to accounts accessible by USAID. The remaining $24 million, for MARAD reimbursements received in fiscal years 1997 through 1999, was not apportioned until fiscal year 2000.

These delays in apportionment occurred mainly because CCC did not believe the funds were needed immediately. Further, USAID and CCC had not established written procedures to ensure that CCC requested apportionment in a timely manner. According to a CCC employee responsible for preparing apportionment requests, USDA requests that funds be apportioned only as they are needed. Because reimbursements received by CCC in fiscal years 1997 through 1999 were not apportioned until fiscal year 2000, up to $24 million was not available for USAID to reprogram under P.L. 480 Titles II and III for a period of one to three years.

> **Recommendation No. 6: We recommend that USAID's Director of the Office of Food for Peace, in conjunction with the Commodity Credit Corporation, develop written procedures to help ensure that all cargo preference reimbursements, to which USAID food assistance programs are entitled, are apportioned to those programs in a timely manner.**

[17] *Principles of Federal Appropriations Law*, Volume I, p. 5-66 (GAO/OGC-91-5).

**Cargo Preference Reimbursement Procedures Should be Clarified, Updated, and/or Improved**

Procedures in the MOU between CCC, MARAD, and USAID are unclear, outdated, and, in some cases, run contrary to the legislation authorizing cargo preference reimbursements. Lack of specificity in those procedures has resulted in many of the problems identified in this report. For this reason, we are recommending that USAID seek to establish a joint task force, in conjunction with the other involved agencies, to review the entire cargo preference reimbursement process in order to identify and propose changes to increase the efficiency and effectiveness of those procedures. The MOU has not been amended in over fourteen years, even though major changes in responsibility have occurred.

The MOU between CCC, MARAD, and USAID, signed in July 1987, set forth the manner in which those three agencies were to cooperate in administering the cargo preference reimbursements authorized under the Merchant Marine Act of 1936, as amended. Although the procedures outlined in the MOU have resulted in $284 million in cargo preference reimbursements from MARAD to CCC since 1992, many of the problems addressed in this report, including reimbursements that were not properly claimed, allocated, approved, or apportioned, could be attributed, in part, to a lack of specificity with regard to those same procedures. For example, the MOU did not clearly explain how the excess ocean freight reimbursement was to be determined. As a result, CCC's calculations for reimbursement of excess ocean freight costs for fiscal years 1992 and 1993 exceeded MARAD's calculations by $23.4 million. Unclear instructions in the MOU have also resulted in confusion with regard to the documentation required for claiming reimbursements. This confusion has contributed to reimbursement delays which have spread over several years.

The MOU also needs to be updated in order to reflect more current situations. For example, the MOU indicates that USAID has administrative responsibilities for cargoes moved under P.L. 480 Title II and Section 416(b), whereas USAID is currently responsible for P.L. 480 Title II and III. The MOU does not even mention the Food for Progress program, administered by USDA, which has received over $24 million in cargo preference reimbursements since 1992.

*Cranes unloading bulk corn at port in Cape Verde Islands. (Summer 2000)*

The following are some additional areas in which, we believe, changes to the procedures in the current MOU could improve the efficiency and effectiveness of the cargo preference reimbursement process.

- First, the entire process of funding increased shipping costs due to cargo preference should be revisited to determine whether there is a more efficient way of administering that process. For example, the authorizing language in Section 901(d) of the Merchant Marine Act indicates that the Secretary of Transportation would finance, not reimburse, any increase in ocean freight charges as a result of raising the cargo preference requirement from 50 percent to 75 percent. It appears that Congress' intent was to immediately assist agencies administering food assistance programs by having the Department of Transportation (DOT) pay the incremental shipping costs. The reimbursement process outlined in the MOU requires USDA and USAID to finance those incremental costs up front and then seek reimbursement that may or may not be received until years after the shipping costs are actually incurred. We suggest that alternative methods for meeting the cargo preference funding mandates in Section 901d of the Merchant Marine Act of 1936 be considered. Possible alternatives might include DOT advancing funds to USDA, based on estimates, and liquidating those advanced funds as actual OFD costs occur. Another alternative might be for USDA to request an additional appropriation to cover incremental shipping costs. This would eliminate the time and money spent by USDA, USAID, and DOT on processing cargo preference reimbursements under the current procedures.

- If the current reimbursement process is retained, the procedures for submitting invoices and support documentation to MARAD could be streamlined or even eliminated in favor of filing for reimbursements electronically. Rather than providing MARAD with copies of support documentation, such as bills of lading, USDA could retain that documentation and allow MARAD to periodically inspect it. This would reduce the amount of required documentation and take advantage of the efficiencies of today's automated environment.

- The authorizing language in Section 901(d) of the Merchant Marine Act indicates that the Secretary of Transportation would finance any increased ocean freight charges incurred in any fiscal year as a result of the new cargo preference requirement. The MOU requires that the incremental OFD reimbursement be calculated by cargo preference year (April - March) and that the excess ocean freight reimbursement be calculated by fiscal year (October - September). Using two different years seems to create unnecessary administrative headaches and confusion. To simplify procedures, we suggest that alternatives be considered to calculate both types of reimbursements using the same 12-month period.

Although Section IX of the MOU allows the MOU to be amended at any time, upon mutual agreement of the parties, the MOU has not been amended since it was originally signed nearly fourteen years ago. We believe that the cargo preference reimbursement process could benefit substantially from procedural changes agreed to in an amended MOU. For that purpose, we recommend that a joint task force, with representatives from each of the three agencies involved, review the problem areas in this report and propose changes to the procedures in the current MOU in order to increase the efficiency and effectiveness of the cargo preference reimbursement process.

**Recommendation No. 7: We recommend that USAID's Assistant Administrator of the Bureau for Humanitarian Response seek to establish a joint task force with the U. S. Department of Agriculture, the U. S. Department of Transportation, and the Office of Management and Budget to review the problem areas identified in this report for the purpose of modifying the 1987 Memorandum of Understanding in order to clarify, update, and improve current cargo preference financing procedures. This task force should include, at a minimum, representatives from USAID's Office of Food for Peace, Office of Procurement, and Office of General Counsel; United States Department of Agriculture's Commodity Credit Corporation, Foreign Agricultural Service, Farm Services Agency, and Office of**

**General Counsel; the Office of Management and Budget, and the Department of Transportation's Maritime Administration.**

## Management Comments and Our Evaluation

In response to our draft report, USAID management concurred with each of the seven audit recommendations included in the report. Specifically, in response to Recommendation No. 1, USAID management agreed to request that an estimated $175 million be recovered. USAID management also noted that, since fiscal year 1997, BHR/FFP has consistently, in its Federal Manager's Financial Integrity Act (FMFIA) Report, called to upper-management's attention that it was vulnerable to financial monitoring deficiencies due to lack of qualified staff.

In response to Recommendation No. 2, USAID management agreed to request that the Commodity Credit Corporation transfer a total of $7,170,141 to accounts for P.L. 480 Titles II and III. USAID management also noted that the President, as part of his fiscal year 2002 Budget Request, will ask for legislation that will make funds recovered for Title III automatically available for Title II.

In response to the other five procedural recommendations, USAID management agreed to implement our recommended actions. Finally, USAID management clarified some of the background material contained in our draft report. We have made appropriate changes to our final report based on those clarifications.

As a result of USAID management's comments, included in their entirety as Appendix II, we consider a management decision to have been made with regard to each of the seven recommendations.

Because the findings and recommendations resulting from this audit concern the United States Department of Agriculture's Commodity Credit Corporation (CCC), in addition to USAID, we provided a copy of our draft report to CCC management for comment. In response to the draft report, CCC management indicated that it agreed with many of the findings and recommendations presented in the report, but requested that the report reflect certain events more accurately. Specifically, CCC management indicated that USAID, in addition to CCC, was responsible for ensuring accurate and timely billings for cargo preference reimbursements, and that, over the years, CCC has repeatedly requested assistance from USAID in obtaining missing documentation so that invoicing and reimbursement could be achieved more timely. CCC management also suggested that our report note that USAID and USDA are continuing to work closely together to address many of the issues identified in the report. CCC management provided additional information regarding such issues as the reconciliation of reimbursements, joint meetings with USAID, and

the apportionment of funds. We considered all of CCC management's comments and, where appropriate, made changes to our report.

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## Scope and Methodology

### Scope

This Office of Inspector General conducted an audit to determine the status of cargo preference reimbursements under Section 901d of the Merchant Marine Act of 1936, as amended. The audit was conducted in accordance with generally accepted government auditing standards. Audit fieldwork was conducted in consultation with the United States Department of Agriculture's (USDA) Office of Inspector General, between April 2000 and January 2001 in USAID's Washington, D.C. offices, and USDA's Washington, D.C and Kansas City Commodity Office (KCCO). In addition, we performed a field visit to the offices of a freight forwarder in New Jersey. The scope of this audit covered cargo preference shipments made from 1992 through 2000.

The scope of our audit included shipments financed under five U.S. food assistance programs during fiscal years 1992 through 2000. While we reviewed data on all five programs, our audit focused primarily on the two programs administered by USAID—P.L. 480 Titles II and III. Since 1992, all five programs expended $3.2 billion to transport $11.6 billion in food assistance commodities to foreign recipients. Of that amount USAID expended nearly $2 billion to transport commodities totaling $5.2 billion under P.L. 480 Titles II and III.

Because the scope included all cargo preference shipments made from 1992 through 2000, we decided a materiality threshold was not appropriate for the audit objective since we recommended recoupment of all allowable reimbursement claims.

Our review of management controls focused on program operations, validity and reliability of data, and compliance with applicable laws and agreements.

### Methodology

In order to accomplish the audit objective, we evaluated management controls and documentation relating to cargo preference reimbursements. In order to gain an understanding of the cargo preference reimbursement process, we held numerous discussions with officials at USAID, USDA, Commodity Credit Corporation, Kansas City Commodity Office, Office of Management and Budget, and the Maritime Adminstration, as well as other individuals outside the government with interest in USAID's foreign food assistance programs. To facilitate accomplishing the audit objective, we developed an audit program and performed the following tasks:

- Gathered and examined relevant laws, regulations, guidance, and documentation to gain a better understanding of the cargo preference reimbursement processes;

- Flowcharted the reimbursement processes and identified and assessed risks associated with management controls;

- Obtained and reviewed copies of apportionment schedules to identify the amount of funding, including cargo preference reimbursements, made available under applicable U.S. foreign food assistance programs;

- Reviewed USAID's annual Federal Managers' Financial Integrity Act submission to identify any material weaknesses related to the audit objective;

- Traced quarterly and annual invoices and payments for cargo preference reimbursements to identify claimed, unclaimed, paid, and rejected amounts;

- Reconciled quarterly and annual cargo preference reimbursed and apportioned amounts to available documentation; and

- Assisted USAID and USDA with obtaining required documentation from freight forwarders needed to file reimbursements.

To obtain estimated dollar amounts of unclaimed reimbursements, we relied on CCC which calculated those estimates based on computer-generated data from its Processed Commodities Inventory Management System and financial accounting systems. Although we verified the accuracy of CCC's calculations using such data, we did not test the reliability of that data, or the systems from which it was generated, because those systems, and their related controls, were not within the purview of the OIG. For example, we did not test the completeness or accuracy of CCC's shipping and cost data by tracing that data back to source documents. However, based on the testing that we did accomplish, as well as assertions of accuracy and completeness from CCC, we were able to obtain sufficient reasonable assurance to draw the conclusions and make the recommendations included in this report.

## Management Comments: USAID

MAR 28 2001

MEMORANDUM

TO: AIG/A, Toby L. Jarman

FROM: AA/BHR, Leonard M. Rogers /s/
BHR/FFP, William T. Oliver /s/

SUBJECT: Audit of Cargo Preference Reimbursements under Section 901d of the Merchant Marine Act of 1936 (Report No. 9-000-01-00X-P)

We concur in all of the recommendations contained in the audit report and believe, if successfully implemented, they will result in more cost-effective implementation of the cargo preference financing and reimbursement requirements. We appreciate the diligence and professionalism of the IG/A team in conducting this audit as a result of issues raised by BHR/FFP in a meeting of the Food Aid Consultative Group. We have a few specific comments on various sections of the report.

*BACKGROUND SECTION*

The final sentence of the full paragraph on page 4 somewhat incorrectly characterizes USAID's responsibilities. USDA retains obligation authority and funds for commodity procurement and the payment of claims. Upon request from USAID, USDA transfers obligation authority to USAID only for other program costs including transportation.

Footnote 4 indicates that BHR/FFP is responsible for administering P .L. 480, Titles II and III. BHR/FFP is only partially responsible for the administration of P .L. 480, Titles II and III. With respect to Title II, ADS 103.3.8. 7c states, "AA/M is delegated the functions and authorities in section 407(d) of P.L. 480, with respect to the purchase of ocean transportation services and authority to sign, on behalf of US AID, U.S. Government contracts under section 407(d) and grants and cooperative agreements under Title V of P.L. 480." In addition, ADS 103.3.8.7d provides that Mission Directors, other principal officers of USAID field posts, and in countries where USAID is not represented, principal diplomatic officers are delegated certain authorities with respect to P .L. 480 claims against private voluntary agencies arising under USAID Regulation 11. Finally, per the provision of ADS 103.3.8.7ela), AA/BHR, has delegated the authority to manage Title V (Farmer-to-Farmer) of P.L. 480 to the Director of the Office of Private and Voluntary Cooperation in BHR.

With respect to Title III, the USAID Automated Directive Systems (ADS) 103.3.8.7b delegates the authority for Title III management to the USAID Regional Bureaus, acting with the concurrence of AA/BHR. BHR/FFP's responsibility for Title III is limited to the procurement and transportation of commodities as agreed to by regional bureau AAs and host country governments.

AUDIT RECOMMENDATION NO.1

We concur in this audit recommendation and agree to request that an estimated $175 million be recovered. We note, however, that since FY 1997, BHR/FFP has consistently, in its Federal Managers Financial Integrity Act (FMFIA) Report, called to USAID Management's attention that it was vulnerable to financial monitoring deficiencies due to lack of qualified staff.

We note that the phrase “excess ocean freight” appearing in line 5, paragraph 1, page 9 and in the recommendation itself is used with consistent meaning throughout the narrative text. The terminology used in the header of Appendix IV, “20% commodity excess,” varies with the narrative usage. We understand that Appendix IV is a USDA document and could not be conformed to the clearer phraseology of the text.

AUDIT RECOMMENDATION NO.2

We concur in the recommendation to request the Commodity Credit Corporation (CCC) to transfer a total of $7,170,141 to the Titles II and III accounts. We note, however, that the President, as part of his FY 2002 Budget Request, will ask for legislation that will automatically make funds recovered for Title III automatically available for Title II.

AUDIT RECOMMENDATIONS NOS. 3 THROUGH 7

We concur in the recommendations.

## Management Comments: CCC

MAR 21 2001

TO: Dianne L. Rawl
Office of the Inspector General
Agency for International Development

FROM: Sally F. Nunn /s/
Acting Controller
Commodity Credit Corporation

SUBJECT: Audit of Cargo Preference Reimbursements under Section 901 d of the Merchant Marine Act of 1936

United States Department of Agriculture (USDA) has reviewed the above mentioned draft audit report. While we agree with many of the findings and recommendations presented in the report, we do not believe that the report accurately reflects certain events and would appreciate your consideration of the following comments.

The draft report states that invoices for incremental ocean freight differentials were not prepared and submitted in a timely manner. What the report fails to mention is the US Agency for International Development (USAID), not only Commodity Credit Corporation (CCC), is responsible for providing or insuring timely submission of a portion of the documentation. We note that over the course of several years, USDA/CCC has repeatedly requested assistance from USAID in providing missing documentation so that invoicing and reimbursement could be achieved more timely.

We suggest that the report should note that on-going meetings are continuing to be held between USAID and USDA to aggressively address many of the issues identified in this report. USAID and USDA continue to work closely together to resolve outstanding issues relating to delinquent documentation to improve the billing process. The objective of this joint effort is to bring the quarterly billings current and to allow for proper billing of the 20 % excess ocean freight.

The report leaves the impression that CCC fails to fully reconcile the billed amounts with those reimbursed by MARAD. We would like to clarify that each time a reimbursement is received from MARAD, either MARAD provides CCC with an explanation for the adjustments made or CCC seeks clarification of adjusted amounts. We suggest that your report reflect the fact that MARAD only reimburses amounts (1) which are supported by complete documentation presented with the bill; (2) for which vessel classifications are correct; and (3) which do not include any inland transportation charges. Unless MARAD is totally satisfied with both billing and supporting documentation, they will adjust the amount billed. In addition, MARAD requests only single billing

per quarter, per program. In the past, due to the timing of CCC's receipt of documentation, numerous billing updates were required.

USDA strongly disagrees with Footnote #10 and suggests the following wording: “the fact that excess ocean freight reimbursements were not being claimed first surfaced during a January 11, 2000 meeting with USDA and USAID to discuss delayed OFD billings caused by missing documentation.”

With respect to apportionment schedules for these funds, the USDAIFSA Budget Division prepares an apportionment schedule for either of two reasons: (1) a program is approaching the limits of its available funds, or (2) USAID provides a written request for an apportionment. Please be advised that neither of these events has occurred in the past. If this issue needs to be addressed further, we would be willing to arrange with the appropriate representatives of the Budget Division to meet at your convenience.

Finally, we would like to emphasize that both USAID and USDA share responsibility for ensuring accurate and timely billings for Cargo Preference reimbursements. USDA, as a service provider to the programs administered by USAID, cannot submit billings to MARAD until we receive accurate and complete documentation with which to prepare the billing. As noted above, USDA has been working closely with USAID to improve the process and we believe that much progress has been made to date. Both Agencies recognize that some issues are yet to be resolved but we are committed to the cooperative efforts currently under way. We are certain that, with improved timeliness of document receipt, we can jointly resolve these issues with an improved, more timely billing process.

**Appendix IV**

## *Billing Status Update*
## *Ocean Freight Differential and 20% Commodity Excess*
## *February 2001*

| OCEAN FREIGHT DIFFERENTIAL BY CARGO PREFERENCE YEAR (APRIL 1 THROUGH MARCH 31) | | | | |
|---|---|---|---|---|
| Cargo Preference Year (CPY) | Quarterly Invoice Submitted to MARAD | Paid by MARAD | *Amended Invoice Submitted to MARAD | Amended Invoice Paid by MARAD |
| 1997 | **Invoiced** | Yes | No | No |
| 1998 | Invoiced | Yes | No | No |
| 1999 | Invoiced | Yes | No | No |
| 2000 | Invoiced | Yes (first two quarters) | No | No |
| 2001 | No | No | No | No |

*__Note__: An amended invoice is to bill MARAD for shipments that were not included in the original quarterly invoice, due to lack of documentation from the freight forwarders. ALL OFD PRIOR TO CPY 1997 HAS BEEN RESOLVED.

| 20% COMMODITY EXCESS BY FISCAL YEAR (OCTOBER 1 THROUGH SEPTEMBER 30) | | |
|---|---|---|
| Fiscal Year | Invoices Submitted to MARAD | Invoice Paid by MARAD |
| 1992 | Yes | Yes |
| 1993 | Yes | No |
| 1994 | No | No |
| 1995 | No | No |
| 1996 | No | No |
| 1997 | No | No |
| 1998 | No | No |
| 1999 | No | No |
| 2000 | No | No |

**SOURCE: USDA, February 2001**

**Appendix V**

| Quarterly Invoices Submitted to MARAD by CCC for Incremental OFD Reimbursements for P.L. 480 Titles II and III Cargo Preference Years 1997-2000 | | | | | |
|---|---|---|---|---|---|
| CPY by Quarter | CPY Quarterly Periods | Due Date per MOU | Actual Date | Number of Days Late | Amount Reimbursed |
| 96-97 | | | | | |
| 1st Q | 1 Apr 96 – 30 Jun 96 | 14 Aug 96 | 24 Dec 96 | 132 | $2,309,118 |
| 2nd Q | 1 Jul 96 – 30 Sep 96 | 14 Nov 96 | 26 Jun 97 | 224 | $1,643,490 |
| 3rd Q | 1 Oct 96 – 31 Dec 96 | 14 Feb 97 | 26 Aug 97 | 193 | $2,757,381 |
| 4th Q | 1 Jan 97 – 31 Mar 97 | 15 May 97 | 19 Jan 98 | 249 | $1,476,640 |
| | | | | | |
| 97-98 | | | | | |
| 1st Q | 1 Apr 97 – 30 Jun 97 | 14 Aug 97 | 27 Jan 98 | 166 | $2,401,709 |
| 2nd Q | 1 Jul 97 – 30 Sep 97 | 14 Nov 97 | 10 Mar 98 | 116 | $2,569,358 |
| 3rd Q | 1 Oct 97 – 31 Dec 97 | 14 Feb 98 | 29 Apr 98 | 74 | $1,645,144 |
| 4th Q | 1 Jan 98 – 31 Mar 98 | 15 May 98 | 26 Aug 98 | 103 | $1,142,258 |
| | | | | | |
| 98-99 | | | | | |
| 1st Q | 1 Apr 98 – 30 Jun 98 | 14 Aug 98 | 2 Dec 98 | 110 | $2,030,494 |
| 2nd Q | 1 Jul 98 – 30 Sep 98 | 14 Nov 98 | 7 May 99 | 174 | $3,163,434 |
| 3rd Q | 1 Oct 98 – 31 Dec 98 | 14 Feb 99 | 21 Jun 99 | 127 | $2,829,100 |
| 4th Q | 1 Jan 99 – 31 Mar 99 | 15 May 99 | 12 Jan 00 | 242 | $2,228,707 |
| | | | | | |
| 99-00 | | | | | |
| 1st Q | 1 Apr 99 – 30 Jun 99 | 14 Aug 99 | 3 Aug 00 | 355 | $2,199,039 |
| 2nd Q | 1 Jul 99 – 30 Sep 99 | 14 Nov 99 | 22 Aug 00 | 282 | $947,430 |
| 3rd Q | 1 Oct 99 – 31 Dec 99 | 14 Feb 00 | 26 Sep 00 | 225 | $3,828,638 |
| 4th Q | 1 Jan 00 – 31 Mar 00 | 15 May 00 | 20 Nov 00 | 189 | $5,591,605 |
| | | | | | |
| Average/Total | | | | 185 | $38,763,545 |

MEMORANDUM OF UNDERSTANDING

BETWEEN

COMMODITY CREDIT CORPORATION

AND

MARITIME ADMINISTRATION
DEPARTMENT OF TRANSPORTATION

AND

AGENCY FOR INTERNATIONAL DEVELOPMENT

## I-Purpose

This Memorandum of Understanding ("MOU") sets forth the manner in which the Commodity Credit Corporation ("CCC"), an agency within the Department of Agriculture ("USDA"), and the Maritime Administration ("MARAD"), and agency within the Department of Transportation ("DOT"), and the Agency for International Development ("AID") shall cooperate in certain areas of the administration of the cargo preference requirements set forth in Section 901a through 901k of the Merchant Marine Act, 1936, as amended ("1936 Act") (46 U.S.C. 1101 et seq.).

## II – Administration of 1936 Act

The Secretary of Transportation is responsible for the administration of the cargo preference provisions of the 1936 Act. MARAD will act for the DOT in carrying out the administration of certain cargo preference programs of the 1936 Act in accordance with this MOU.

AID has certain administrative responsibilities relevant to this MOU for cargoes moved under Title II, Public Law 480 and Section 416(b) of the Agricultural Act of 1949.

## III-Background

### A. General

Section 1142 of the Food Security Act of 1985 (P.L. 99-198, December 23, 1985) amended the 1936 Act, inter alia, by adding sections 901a through 901k which modified and expanded the application of cargo preference requirements to certain export activities of the Secretary of Agriculture or the CCC.

B. Section 901b

Section 901b of the 1936 Act provides that in addition to the requirement for U.S. – flag carriage of 50 percent of the tonnage imposed by section 901(b)(1) of the 1936 Act, an additional 10 percent of the tonnage of agricultural commodities or products thereof shipped under export activities of the Secretary of Agriculture or CCC specified section 901b(b) of the 1936 Act shall be transported on U.S. – flag vessels during the 12-month period commencing April 1, 1986, with such percentage increasing to 20 percent for the 12-month period commencing April 1, 1987, and to 25 percent for each 12-month period thereafter.

C. Section 901d(a)

Section 901d(a) of the 1936 Act provides that the "Secretary of Transportation shall finance any increased ocean freight charges incurred in any fiscal year which result from the application of Section 901b" of the 1936 Act.

D. Section 901(b)

Section 901d(b) of the 1936 Act provides that if in any fiscal year the total cost of ocean freight and ocean freight differential incurred by CCC on the export of commodities and products thereof under export activities specified in section 901b exceeds 20 percent of the total of the value of such commodities and products and the costs of such ocean freight and ocean freight differential incurred by CCC during such fiscal year, the Secretary of Transportation shall reimburse the CCC for the amount of such excess.

E. Section 901k

Section 901k of the 1936 Act provides that "(a) United States flag vessel eligible to carry cargoes under sections 901b through 901d means a vessel, defined in section 3 of title 1, United States Code, that is necessary for national security purposes and, if more than 25 years old, is within five years of having been substantially rebuilt and certified by the Secretary of Transportation as having a useful life of at least five years after that rebuilding."

F. Section 901b(c)(2)(B)

Section 901b(c)(2)(B) provides that "the Secretary of Transportation, in administering this subsection [901b(c)] and section 901(b), consistent with these sections shall take such steps as may be necessary and practicable without detriment to any port range to preserve during calendar years 1986, 1987, 1988 and 1989 the percentage share, or metric tonnage of bagged, processed, or fortified commodities, whichever is lower, experienced in calendar year 1984

as determined by the Secretary of Agriculture, of waterborne cargoes exported from Great Lakes ports pursuant to title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1721 et seq.)."

G. USDA/CCC Export Activities

The export activities of the Secretary of Agriculture or CCC ("USDA/CCC programs") which are covered by section 901b(b) of the 1936 Act are as follows:

1. Titles I & III of the Agricultural Trade Development and Assistance Act of 1954, as amended ("P.L. 480, Titles I and III").

2. Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended ("P.L. 480, Title II").

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

4. Other Programs – CCC will notify MARAD of the impending establishment of new export programs or reactivation of currently inactive export programs subject to the cargo preference provisions of the 1936 Act. MARAD, CCC and, as appropriate, AID will consult each other on the establishment of any additional administration procedures under terms of this MOU deemed desirable to accommodate such programs.

## IV – Definitions

The following definitions will be used for the purpose of this MOU:

1. "USDA/CCC Cargo Preference Year" ("C.P. Year") is the twelve month period commencing April 1, 1986, and ending March 31, 1987, and each subsequent twelve month period thereafter.

2. "Value of Commodities" for agricultural exports accounted for under section 901d(b) of the 1936 Act shall be determined by the Secretary of Agriculture.

3. "Ocean Freight Differential" ("OFD") is the amount by which the cost of ocean transportation is higher by reason of the cargo preference requirement that the commodities be transported on U.S. – flag vessels than would be the case for transportation on foreign-flag vessels. Any despatch accruing to CCC shall be deducted in determining the OFD to be reimbursed by MARAD. OFD will be established for each shipment on an eligible U.S. flag vessel.

4. "Ocean Freight" is the total compensation borne by

CCC for the ocean transportation of a shipment under a USDA/CCC program. In determining ocean freight, the amount of despatch received by CCC, as well as the amount of overseas bagging and overseas inland transportation costs, shall be excluded. Demurrage payments, if any, financed by CCC shall be included.

5. "Recaptured Ocean Freight" is any ocean freight amount obtained from an ocean carrier as a refund because of a reduction in voyage costs resulting from scrap voyages, return cargo carried, or one way voyages. The amount of the recaptured ocean freight shall be deducted from any ocean freight and OFD computations.

6. "USDA/CCC Program Tonnage" is the tonnage of cargoes shipped under a USDA/CCC program within a cargo preference year computed on the basis of bill of lading on-board dates.

## V – Implementation

### A. General

1. CCC shall initially bear all costs of ocean freight and OFD paid to U.S. – flag carriers on cargoes carried in connection with USDA/CCC programs.

2. MARAD shall reimburse CCC for the amount of the incremental OFD computed in accordance with this MOU ("Incremental OFD").

3. MARAD shall reimburse CCC for the amount, if any, by which the total of the ocean freight and OFD exceeds 20 percent of the total of the value of the commodities, ocean freight and OFD for all USDA/CCC programs covered by this MOU ("20 percent excess freight").

### B. Incremental OFD

1. Reimbursement – MARAD shall reimburse CCC for the incremental OFD payments separately for each USDA/CCC program when it has been determined by CCC and reported in writing to MARAD that 50 percent of the estimated annual USDA/CCC program tonnage (i) has been shipped on U.S. – flag vessels, or (ii) is reasonably expected to have been shipped on U.S. – flag vessels as of the date of report.

2. Determination of OFD by USDA/CCC Program

(a) P.L. 480, Titles I and III. OFD for P.L. 480, Titles I and III will be computed by the Director, P.L. 480, Operations Division, Foreign Agricultural Service, USDA, in accordance with USDA regulations.

(b) P.L. 480, Title II and Section 416(b)

(i) Liner Shipments. OFD for P.L. 480, Title II and Section 416(b) liner shipments will be computed by the Director, Kansas City Commodity Office, Agricultural Stabilization and Conservation Service, USDA. The OFD is the difference between (1) the U.S. – flag rate booked and (2) the foreign flag rate on file with the Federal Maritime Commission or submitted to KCCO by a foreign flag carrier that would have been utilized for determination of lowest landed cost, absent the cargo preference requirement.

(ii) Chartered Shipments. OFD for P.L. 480, Title II and Section 416(b) chartered shipments will be computed by the Chief, Transportation Division, AID ("Chief, T.D., AID"). The OFD is the difference between the weighted average freight rate(s) of foreign flag vessel(s) fixed and/or offered that, in the opinion of the Chief, T.D., AID could carry the quantity of cargo absent the requirement to use U.S. –flag vessel(s), and (1) the rate(s) for the U.S.-flag(s) fixed; or (2) the rate(s) offered (including any lower rates negotiated) by U.S. –flag vessel(s) which could have carried the required tonnage and, in the opinion of the Chief, T.D., AID represents the lowest landed cost (U.S. –flag basis). When foreign-flag vessels are not fixed and/or offered, or when offered, have specifications which preclude their use, the rates(s) to be used in computing OFD will be determined by the Chief, T.D., AID using any market data deemed relevant which provide reasonable comparability.

3. Determination of Incremental OFD

(i) For each C.P. year beginning in 1986, the average OFD paid by CCC will be computed separately for each USDA/CCC program by dividing the total amount of OFD paid by CCC by the total tonnage shipped. MARAD shall pay CCC the total of the average OFD multiplied by the total tonnage shipped (but not exceeding the total cargo preference requirement) multiplied by the ratio of the applicable increased cargo preference requirement to the total cargo preference requirement for the C.P. year.

(ii) The OFD paid for U.S. –flag vessels that are 25 years and older and are not within five years of having been substantially rebuilt as defined in section 901k of the 1936 Act are to be

deducted from the computation of the average OFD described in subparagraph (i)above. The average OFD on the remaining tonnage will be applied to the current legislated increment of the total U.S. –flag tonnage.

(iii) The computation of the incremental OFD for the final quarter of a C.P. year shall reflect any appropriate adjustment, if necessary, for payments made in the previous three quarters.

C. Determination of 20 Percent Excess Freight

1. MARAD shall pay to CCC the amount, if any, by which the total of the ocean freight and OFD borne by CCC exceeds 20 percent of the total value of the commodities shipped, ocean freight and OFD for all USDA/CCC programs for each of the fiscal years beginning in 1986 (last six months), and thereafter.

2. Any amount of incremental OFD paid to CCC by MARAD for each fiscal year shall be deducted from the OFD computation in paragraph 1 above.

D. List of Eligible U.S. –Flag Vessels.

MARAD shall provide the Director, P.L. 480 Operations Division, FAS, USDA periodically with a current list of U.S. –flag vessels that are eligible to carry preference cargoes pursuant to section 901k of the 1936 Act. If a vessel is not on the list, the Director will seek MARAD’s determination as to its eligibility.

E. Plans and Reports Required by MARAD

In order to facilitate the administration of this MOU, CCC will provide the following data to MARAD:

1. The estimated annual program tonnage for each USDA/CCC program updated as necessary but at least quarterly.

2. The estimated annual OFD payments for each USDA/CCC program by quarters updated as necessary but at least quarterly.

3. Each CCC invoice for OFD shall include the following additional information for each shipment:

(a) All shipments:

(1) PA, number or other applicable transaction identification number.

(2) CCC-106 number for P.L. 480, Title I shipments.

(3) Bill-of-lading date.

(4) Vessel name.

(5) Metric tons shipped.

(6) OFD amount disbursed.

(7) OFD amount receivable for MARAD.

(8) Identification of those vessels not eligible under section 901k.

(b) Additional information for P.L. 480, Title II and Section 416(b) shipments:

(1) Sponsoring agency.

(2) Load port.

(3) Discharge port or country.

(4) Commodity identification.

(5) U.S. –flag rate per metric ton.

(6) Foreign-flag rate per metric ton.

4. CCC will provide MARAD with a quarterly listing showing separately for foreign and U.S. –flag ships for each USDA/CCC program the following information for each shipment.

a. Corresponding purchase order number or other applicable identification transaction number.

b. Vessel name.

c. Bill of lading date.

d. Load port or range.

e. Discharge port where available otherwise country of discharge.

f. Metric tons shipped.

g. Commodity and packing (if feasible).

h. Commodity value. This may be provided in a separate quarterly report.

i. Total freight amount (if paid by CCC). This may be provided in a separate report.

5. MARAD will review invoices using copies of ocean bills of lading provided by CCC in accordance with 46 CFR Part 381.3 for P.L. 480, Titles I, II, and III and Section 416(b).

6. The documentation supporting the information and computations involved in this MOU in connection with all USDA/CCC programs shall be retained in the file of the Director, P.L. 480 Operations Division, FAS, USDA, Chief, T.D., AID or the Director, KCCO, USDA, as applicable, for a period of three years after the completion of the USDA/CCC program year.

## VI – Public Law 480 Title II Exports Through Great Lakes Ports

1. Public Law 480, Title II shipments from Great Lakes ports will be accounted for in each of the C.P. years 1986-1989.

2. CCC will provide MARAD with the Secretary of Agriculture's determination of the metric tonnage and percentage of waterborne bagged, processed, or fortified commodities exported from Great Lakes ports in calendar year 1984 under P.L. 480, Title II.

3. The quantity or percentage share of P.L. 480, Title II commodities to be exported from Great Lakes ports for each of the C.P. years 1986-1989 shall be based on the quantity or percentage share of P.L. 480, Title II commodities, whichever is lower, exported from Great Lakes ports in calendar year 1984 as determined by the Secretary of Agriculture.

4.Intermodal cargoes transported overland from the Great Lakes to other U.S. ports for export will not be included in determining the tonnage shipped from the Great Lakes in any C.P. year.

5. The Secretary of Transportation is charged with administering the provisions of section 901b(c)(2)(B) of the 1936 Act. CCC and AID will consult with MARAD at the earliest time that they anticipate any potential programmatic conflict so that MARAD, CCC and AID can address the matter consistent with section 901b(c)(2)(B) of the 1936 Act.

## VII – Minimum Tonnage Requirement

CCC will inform MARAD of the minimum tonnage of exports calculated for each USDA/CCC program for fiscal year 1986

(last six months) and each fiscal year thereafter in accordance with section 901c of the 1936 Act. This information will include the tonnage of exports for each fiscal year in the base period of the calculation.

## VIII – Reimbursement Procedures

### A. Incremental OFD

CCC will prepare and submit to MARAD quarterly invoices for reimbursement of incremental OFD. The invoice for each quarter will be provided by CCC to MARAD within forty five (45) calendar days of the end of the quarter. The amount of the incremental OFD will be due within ten (10) calendar days after (i) the date CCC notifies MARAD in writing of its determination that 50 percent of the estimated annual USDA/CCC program tonnage has been shipped on U.S. –flag vessels or (ii) the date determined and reported to MARAD by CCC that 50 percent of the estimated annual USDA/CCC program tonnage is reasonably expected to have been shipped but in any event, no payment will be made earlier than forty five (45) calendar days after receipt of the invoice.

### B. Twenty Percent Excess Freight

An invoice for the amount, if any, representing the 20 percent excess freight as computed in accordance with Article V.C. of this MOU will be submitted by CCC to MARAD after the end of each fiscal year as soon as all USDA/CCC program costs have been ascertained and paid by CCC. Reimbursement of such amounts, if any, will be due forty five (45) days after receipt of the invoice.

### C. Interest

If MARAD fails to reimburse CCC within ten (10) days of the due dates provided in paragraphs A and B above, interest may be assessed on the amount due from MARAD starting on the first day after the due date. The interest rate assessed shall be the same as the current interest rate charged CCC by the Department of Treasury on CCC’s borrowings from the Department of Treasury.

### D. Invoice Procedure

CCC invoices will be based on CCC accounting records and monthly program data provided MARAD. CCC shall use Form SF-1081 in invoicing MARAD. The invoice shall be addressed as follows:

Department of Transportation
Maritime Administration
Office of Accounting (MAR-330)

Room 7318
400 Seventh Street, S.W.
Washington, D.C. 20590

IX – Amendments

This Memorandum of Understanding may be amended at any time upon mutual agreement of the parties.

X – Termination Provisions

This Memorandum of Understanding may be terminated by either party upon thirty (30) days notice in writing, mutual agreement of the parties, or by operation of law.

XI – Effective Date

This MOU is effective beginning with the C.P. year commencing April 1, 1986, except as otherwise agreed to by the parties.

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John A. Gaughan /s/
Administrator
Maritime Administration
For the Department
of Transportation

Date: 20 July 87

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Milton Hertz /s/
Executive Vice President
Commodity Credit Corporation

Date: JUL 17 1987

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Jay F. Morris /s/
Deputy Administrator
Agency for International Development

Date: JUL 20 1987