

## Directive

FGIS 5130.2 6/5/85

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### DISPOSAL OF EXCESS AGRICULTURAL COMMODITIES

I.  
PURPOSE

This Directive:

- A. Sets forth policy on the disposal of excess agricultural commodities, and prescribes methods of disposing of such commodities.
- B. Does not apply to commodities acquired for commodity distribution programs or to commodities acquired by exchange for research.

II.  
REPLACEMENT  
HIGHLIGHTS

This Directive replaces AMS Instruction 265-1, Rev. 1 (9/28/77).

III.  
AUTHORITY

Agricultural Federal Property Management Regulations 104-43.315, 104-44 and 104-45.

IV.  
DEFINITIONS

A. Agricultural commodity is a product resulting from the cultivation of the soil or husbandry on farms. As used in this Directive:

- 1. Perishable commodities are processed flour, cornmeal, packaged grains, edible oils, etc.
- 2. Nonperishable commodities are grain, rice, dried beans, corn, soybeans, flaxseed, etc.
- 3. Other products are those furnished to or obtained by FGIS for grading, classification, inspecting, testing, developing standards, research, or experimentation.

B. Excess is any commodity under the control of FGIS which is not required for its needs.

C. Public body is any State, United States territory, any political subdivision thereof, the District of Columbia, any agency or instrumentality of the foregoing, or any agency of the Federal Government.

V.  
POLICY

A. No employee will appropriate or permit another employee to appropriate for personal use any agricultural commodity belonging to the Government or under the custody or supervision of the Government. This applies whether or not such item has been ordered to be destroyed or abandoned. If any agricultural commodity is appropriated by an employee for personal use, the supervisor must take immediate action to recover the commodity or its value.

B. If any question regarding the disposition of an agricultural commodity arises from the public or other sources, the Accountable Property Officer (APO) must make and retain memorandum notes of the circumstances. If such circumstances warrant, they must be reported.

C. In disposing of perishable agricultural commodities by sale, care shall be taken to guard against preference being given to any employee(s) over other prospective purchasers.

VI.  
OWNERSHIP

A. Excess agricultural commodities resulting from cooperative activities shall be considered FGIS property unless the cooperative agreement specifically provides otherwise, in which case the terms of the cooperative agreement must govern.

B. Excess agricultural commodities which remain after FGIS has completed the grading, classification, inspection, testing, development of standards, research, or experimentation on the commodity furnished to FGIS for such purpose, shall be considered FGIS property unless:

1. There is a specific agreement for return of the commodity to the party from whom it was obtained; or

2. Ownership of the commodity is otherwise established by written agreement.

VII.  
DELEGATION OF  
AUTHORITY

Authority to dispose of excess agricultural commodities either by sale or other methods, as outlined in this Directive, is delegated to the incumbents (or those acting for them) in the positions listed below. This delegation of authority cannot be redelegated.

A. Director, Field Management Division, Washington, D.C.

B. Field Office Managers and Officers in Charge in the field offices.

C. Laboratory Manager, Beltsville, Maryland.

VIII.  
DISPOSAL OF  
PERISHABLE  
COMMODITIES

A determination has been made that it is not practicable or economical to attempt to transfer excess perishable agricultural commodities, of the type covered by this Directive, to other agencies of the Department or to other Federal agencies.

Items in questionable condition shall not be disposed of in a manner that could result in human consumption. Excess perishable commodities may be disposed of as indicated below and a record maintained.

A. Donation to Major Disaster Relief. The commodity may be donated to supplement food supplies in declared major disaster areas (Executive Order No.12148, dated January 20, 1979). Field offices having such excess commodities in locations determined by the President to be major disaster areas should contact the local civil defense office for instructions.

B. Sales. Commodities which are in salable condition, and in sufficient quantities that fair value may be reasonably expected and warrant the administrative cost involved, may be sold at the best price obtainable. Food sales to the public shall be confined to items in good consumable condition and properly labeled. All sales are to be on a "where is and as is" basis, with no warranty expressed or implied.

1. Solicitation of offers. The seller is responsible for obtaining reasonable competition consistent with the items and conditions involved in the sale. Generally, offers should be obtained from two or more sources within the usual trade area in which the items are located to ensure a fair sale price. However, where the quantity is so small that solicitation of private persons is not justified, solicitation may be confined to office employees if such will result in a fair sale price. It is preferable, of course, that an outside offer be obtained if practicable. Excessive solicitation in relation to anticipated sales proceeds or possible spoilage of perishable items should be avoided. Offers may be solicited orally, either by personal contact or by telephone.

2. Sales to Employees. Excess perishable agricultural commodities may be sold to employees when:

a. The sale is at the best price obtainable, and

b. The quantity involved does not exceed the needs of the employees' immediate households.

3. Release of Commodity. Commodities sold by negotiated sale shall not be released to purchasers until full and proper payment of the purchase price is made.

4. Records of Sales. Upon completion of a sale, the APO shall complete Form AD-107, Report of Transfer or Other Disposition or Construction of Property. Attachment 1 explains how to prepare the form. Forward a copy of the AD-107 to:

USDA, APHIS, FSO  
Accounting and Property Services  
Butler Square, West  
100 North Sixth Street  
Minneapolis, MN 55403

5. Proceeds of Sale. Payment for any excess agricultural commodities sold shall be in the form of cash, money order, or certified or cashier's check. If cash is received, it shall be converted to a money order. Payments shall be forwarded within 24 hours, if practicable, but in every case within 1 week after receipt. Payment shall be made payable to U.S. Department of Agriculture and transmitted with Form AD-107 (original); and Form AD-847, Fees and Charges Listing Sheet (refer to FGIS Billings and Collections Handbook, Chapter 2, Section 2, Paragraph A.) Send payment to:

National Finance Center  
P.O. Box 60950  
New Orleans, LA 70160

C. Donation.

1. Commodities that cannot be donated to major disaster relief areas or sold may be donated to public bodies, including public welfare institutions. The APO shall obtain a receipt for such donation.

2. If it is impracticable to donate to public bodies, commodities (which cannot be disposed of otherwise as set forth in this Directive) may be donated to private welfare institutions in lieu of destruction. Memorandum notes shall be made of donations. Persons who receive commodities shall pay all costs incident to the donation.

D. Destruction. Perishable commodities, which at the time of becoming excess are unfit for use, or which spoil before sale or donation can be made, shall be destroyed.

IX.  
DISPOSAL OF  
NONPERISHABLE  
COMMODITIES

Excess nonperishable commodities may be disposed of as indicated below and a record maintained:

A. Donation to Major Disaster Relief. The commodity may be donated to State and local governments to provide assistance in alleviating suffering resulting from major disasters.

B. Donation for Educational or Public Health Purposes. The commodity may be donated for educational or public health purposes when a need for such has been made known by the Department of Health and Human Services.

C. Sales. The commodity may be sold under the procedures outlined for perishables. See Section VIII.B. for solicitation of offers, records, and submission of proceeds. Exception: No purchase shall be made by a Department employee.

D. Donation.

1. The commodity may be donated to public bodies or public welfare institutions in the same manner as perishables (see Section VIII.C. above).

2. If the commodity cannot be sold or donated as indicated above, it may be donated to private welfare institutions in lieu of destruction. Memorandum notes shall be made of donations.

E. Destruction. Nonperishable commodities shall be destroyed if they are unfit for use at the time of becoming excess.

X.  
DISPOSAL OF  
COMMODITIES  
NOT OWNED

A. Return to Party From Whom Obtained.

1. If the commodity was furnished to FGIS under an agreement which provides for its return to the furnishing party when BY FGIS needs of FGIS have been served, the APO shall:

a. Arrange with the furnishing party immediately upon availability of the commodity for its removal.

b. Upon return of the commodity, obtain and file a receipt showing the type and quantity involved, and cite the agreement.

2. Destroy the commodity if it spoils before removal, inform the furnishing party, and record the circumstances in the files.

B. Disposal by FGIS.

1. If the agreement provides for the commodity to be disposed of by FGIS in a manner other than by return to the party from whom obtained, disposal shall be made in accordance with the terms of the agreement, provided that:

a. No perishable commodity is to be sold to any employee except at the best price obtainable, and in a quantity not to exceed the needs of the immediate household.

b. No nonperishable commodity is to be sold to a Department employee.

2. Commodities unfit for human use or otherwise unusable shall be destroyed.

/s/ D.R. Galliard  
Acting Administrator

Attachment