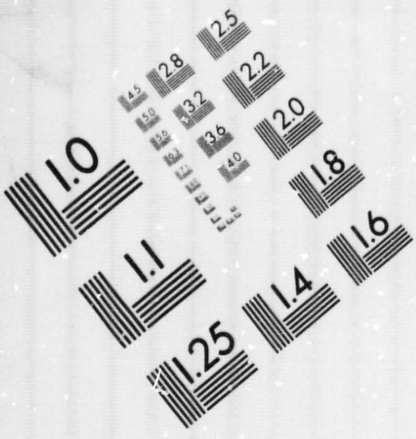

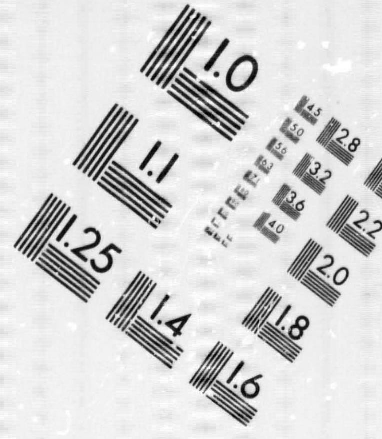

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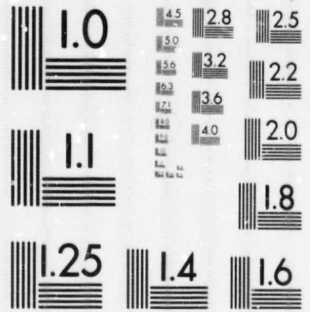

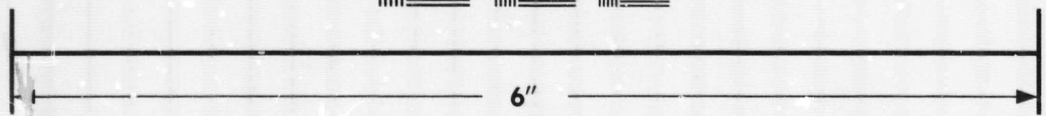

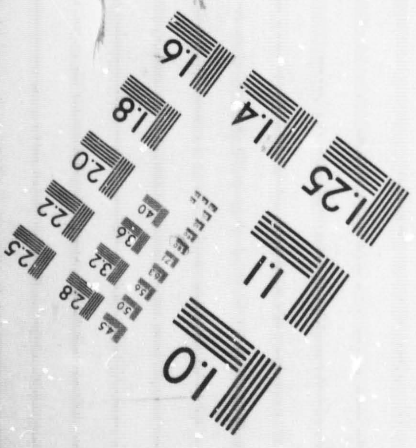

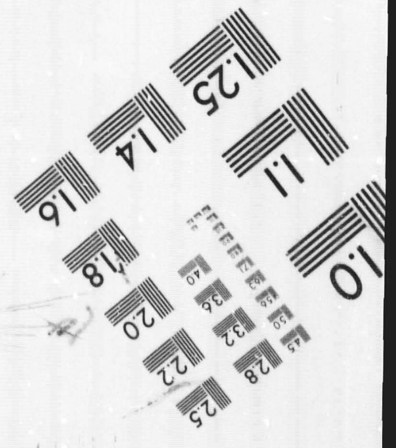

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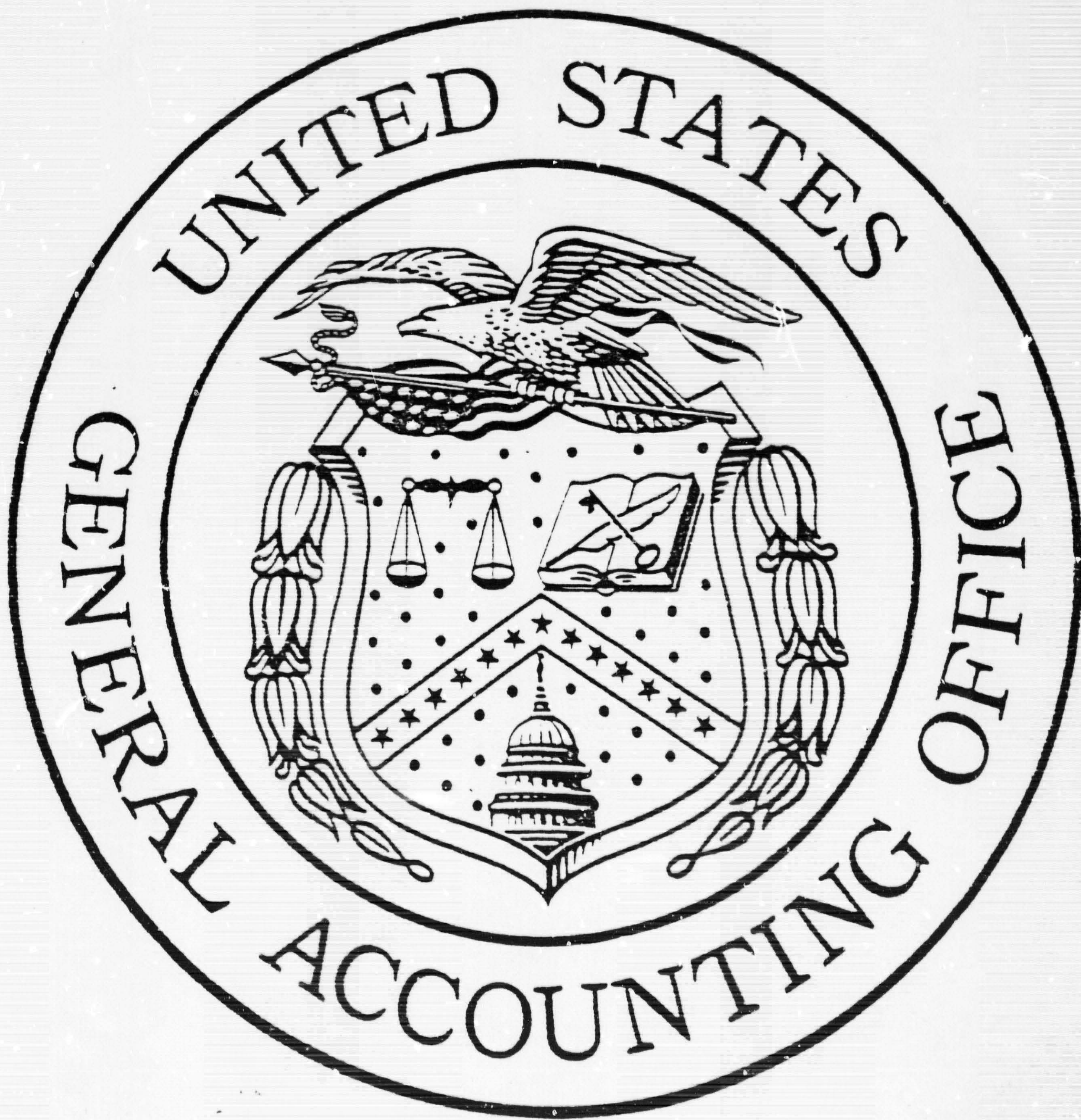

UNITED STATES
GENERAL ACCOUNTING OFFICE

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

122312

B-208610

September 1, 1983

The Honorable John P. East
Chairman, Subcommittee on
Separation of Powers
Committee on the Judiciary
United States Senate

Dear Mr. Chairman:

This is in response to your letters of August 5, 1982 and August 20, 1982, requesting an investigation into the legality of certain loan guarantee payments made by the Commodity Credit Corporation (CCC) to various United States banks which financed exports of domestic agricultural commodities to the Polish People's Republic (Poland).

The payments in question were made pursuant to offers made on June 8, 1981 and January 28, 1982, by CCC to repurchase its guarantee obligations to certain holders in return for an assignment of the debt covered by those obligations. According to their terms, the offers exempted the holders from compliance with certain procedural prerequisites to reimbursement provided for in the regulations governing CCC's Export Guarantee Programs GSM-101 and GSM-102. In your letter, you question whether the provisions of these offers may have violated CCC's own regulations and whether any of the resulting payments were therefore illegal. In addition, you ask whether the agreements adequately protect the Government's right of subrogation.

You also express concern regarding proper compliance with section 205, Title II, of the Urgent Supplemental Appropriation Act, 1982, Pub. L. No. 97-216. That section prohibits further payments to Poland during fiscal year 1982 in the absence of a formal declaration of default or a report from the President explaining the manner in which the national interest of the United States has been served by such payments. In your August 20, 1982 letter, you question whether the President's power under the Act may be delegated.

In order to facilitate our consideration of the issues raised by your letter, we requested and received a report on the matter from the Secretary of Agriculture. In his reply, Secretary Block included copies of the relevant agreement and offers, a memorandum explaining the legal basis of the January 28, 1982 offer, and the opinion of the Department of Agriculture (Department) on the subrogation and delegation issues. The Department's position is that the CCC was authorized by statute to extend the offers, the offers did not violate departmental regulations, and they did not amount to an amendment of those regulations. Additionally, the Secretary

maintains that the terms of the offers adequately protect the subrogation rights of the Government. Finally, the Secretary expresses the opinion that the President may delegate his power under Pub. L. No. 97-216 to the Secretary of State, citing a Department of Justice opinion.

While we may not agree with all of the legal arguments and contentions made by the Department concerning the extent of CCC's authority to modify the terms and conditions under which its contracts of guarantee and assurance agreements are issued, we do not believe that the offers of June 1981 and January 1982, and the resulting payments by CCC to the banks that accepted those offers were legally improper. Moreover, we essentially agree with the Department's position that the terms of the offers and the actual procedures followed by CCC and the Government with respect to the matters of subrogation and delegation were fully consistent with all applicable statutes and regulations and fully protected the Government's legal interests.

CCC made the offers and payments in question as part of two agricultural payment guarantee programs. The Non-Commercial Risk Assurance Program (GSM-101), 7 C.F.R. Part 1487 (1982), and the Export Credit Guarantee Program (GSM-102), 7 C.F.R. Part 1493 (1982), were established pursuant to the statutory authority of 15 U.S.C. § 714c (1976 & Supp. IV 1980). These programs are designed to protect domestic agricultural exporters against foreign bank defaults by transferring the risk of loss from exporters and their financing institutions to CCC. The programs are intended to "facilitate exportation; forestall or limit declines in exports; permit exporters to meet competition from other countries; and increase commercial exports of U.S. agricultural commodities." 7 C.F.R. §§ 1487.1(a) (1982). GSM-102 covers all risks, whereas GSM-101 covers only non-commercial risks.

Essentially, CCC enters into assurance agreements (GSM-101) or payment guarantees (GSM-102) with American exporters selling domestic commodities on credit to foreign buyers who have negotiated irrevocable letters of credit with banks in their own countries. The exporter receives a payment guarantee from CCC which is assignable, together with its account receivable, to an American bank which, in turn, pays the exporter immediately for the right to receive the deferred payments from the foreign bank. The payment obligation is then owed by the foreign bank to the United States bank. Although different terms are used in the two programs--"assurance agreement" in GSM-101 and "payment guarantee" in GSM-102--both programs operate in similar fashion "to protect the exporter or * * * assignee from * * * defaults * * * by a foreign bank." 7 C.F.R. §§ 1487.2(a) and 1493.2(b).

The regulations governing the GSM-101 and GSM-102 programs set forth a specific procedure for the payment of guarantee obligations by CCC. Under sections 1487.8 and 1493.8, the exporter or its assignee first provides a written notice to CCC of a default by the foreign bank in failing to make a payment when due. The regulations state that the notice "shall include the assurance agreement number [or payment guarantee number], the amount due, the date of the bank's refusal to pay, and the reason for default" (if known, in the case of GSM-102). 7 C.F.R. §§ 1487.8(a), 1493.8(a) (1982). Secondly, 7 C.F.R. §§ 1487.8(b) and 1493.8(b) provide that within 30 days of the notice of default the exporter or its assignee shall furnish a claim for loss accompanied by certain specific information, including the assurance agreement or payment guarantee number, certification that a scheduled payment has not been received, and copies of the foreign bank letter of credit, the export credit sales contract, bills of lading, and invoices. CCC will honor the claim for loss after it has determined that a loss has occurred for which CCC is liable under the applicable guarantee agreement and regulations. 7 C.F.R. §§ 1487.9, 1493.9 (1982). The regulations governing both programs further provide that "CCC shall only honor claims for losses on amounts <u>not paid as scheduled</u>." (Emphasis added.) 7 C.F.R. §§ 1487.9(c) and 1493.9(c). 1/

On April 27, 1981, because of Poland's financial difficulties, the U.S. Government and other western creditor countries agreed to consolidate and reschedule certain Polish debts. The agreement between the U.S. and Poland, signed August 27, 1981, included 90 percent of the CCC guaranteed payments owed by Poland and coming due in 1981. See Attachment A. In order to implement the terms of the April rescheduling agreement, the CCC extended an offer to all banks holding GSM-101 assurance agreements and GSM-102 payment guarantees for credit to Poland (see June 8, 1981 Offer, Attachment B, hereinafter June Offer). The CCC offered to repurchase its obligations covering payment of Polish debts due on or before December 31, 1981, in exchange for the assignment to CCC of all right, title and interest in the exporters' rights to payment from Poland under the applicable export sales contract. According to Secretary Block, CCC has paid out $125.6 million under the June Offer (as of October 1982).

1/ The latter regulatory provision, governing the GSM-102 program, goes on to state that notwithstanding the above-quoted portion of the regulation, CCC has the discretion to declare the entire amount of the unpaid balance plus accrued interest to be in default and make payment on its guarantee accordingly.

Early in 1982, holders of CCC guarantees informally advised CCC that the Polish Bank had not made its January payments to them. When it became apparent that the Polish Bank would not make the required payment, CCC made an offer on January 28, 1982 (January Offer, Attachment C) under terms and conditions that were different and somewhat more complex than those of the June Offer. In the January Offer, CCC provided for purchase of its outstanding guarantee obligation on a payment-by-payment basis, offering the creditors one of two payment options.

Under the first option, CCC agreed to repurchase the unpaid obligation at a price equal to the full amount of CCC's obligation, thereby extinguishing all of CCC's liability for that payment under the original guarantee. In return, the holder was required to assign to CCC all of its rights, title, and interest to receive the corresponding payment from the debtor, including any amounts not covered by CCC's guarantee. CCC would then prorate any moneys subsequently collected from the debtor between the holder and CCC based on the ratio of guaranteed to unguaranteed portions of the debt.

Under the second option, CCC agreed to repurchase the obligation at a price equal to the full amount of the principal component of the payment involved, and was relieved of any obligation to pay interest of six percent per annum on the principal amount that would otherwise be required. In return, the holder retained all right, title, and interest in the unguaranteed portion of the payment and would not have to share with CCC in any subsequent monies it recovered from the debtor.

If the offer was accepted, the holder was required to notify CCC as to which option was being chosen for a given payment. According to the Department, CCC paid out $203.6 million under the January Offer (as of October 1982).

Prior to our consideration of the legal issues involved, we must address a jurisdictional question. As suggested by CCC in its memorandum defending the legality of its January Offer, CCC has broad statutory authority "to act independently of the laws regulating the expenditures of Federal agencies generally." B-200103, March 5, 1981. In this respect, 15 U.S.C. § 714b provides that CCC:

> "(j) Shall determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid.
>
> "(k) Shall have authority to make final and conclusive settlement and adjustment of any claims by or against the Corporation or the accounts of its fiscal officers."

On the basis of these statutory provisions, our Office has consistently held that we have no authority to settle claims arising under the Commodity Credit Corporation Charter Act, 15 U.S.C. §§ 714-714p, or to render opinions that are legally binding on the CCC. B-200654, September 9, 1981; B-200103, March 5, 1981; B-152318, September 3, 1963; B-143782/B-142771, November 23, 1960; and B-144751, March 1, 1961. However, as we pointed out in B-200103, March 5, 1981, "our Office has the right and the duty to report to Congress any activity or expenditure by the CCC which we regard as illegal." It is on this basis that we have considered your request for our opinion as to the legality of the CCC's actions.

Before proceeding to answer your specific question, we would like to discuss, briefly, an issue that is central to our analysis and resolution of this case and which may have been the primary basis for much of the congressional concern about CCC's action in this matter. The issue is whether the June and January Offers adequately protect the interests of the United States and whether the resulting agreements with the banks that accepted those offers place the United States in a position that is at least equivalent to the position the Government would have been in if CCC had strictly complied with the applicable regulations. As explained at greater length in our answers to your specific questions, we believe that in all significant respects, including such things as the extent of CCC's liability, notice requirements, and subrogation rights, the terms of the June and January Offers protect the Government's interests to substantially the same degree as would the regulations. Our conclusion upholding the legality of CCC's action in making the June and January Offers is, to a considerable extent, premised on our view that the interests of the United States are adequately protected by the terms of those Offers and the manner in which the resulting agreements were implemented.

Your first question is whether the terms of the June and January Offers violated the CCC's own regulations and resulted in the CCC making any illegal payments. In its memorandum, which specifically addresses the legality of the January Offer, the CCC sets forth two legal arguments to defend its position. CCC's second argument, being the easier to resolve, is addressed first. CCC argues that the regulations only govern "the rules and conditions under which CCC is willing to issue its guarantees" which, once issued are subject to mutual adjustment by the parties involved. Thus, CCC contends that when it made its January Offer, and presumably its June Offer as well, it was using its statutory powers under 15 U.S.C. § 714b(c), (j), and (k) "to make and amend such contracts as are necessary to the judicious management of its obligations and its power to settle its claims arising under those contracts."

While CCC's memorandum does not specifically use the term "waiver," this argument, in our view, is necessarily premised on CCC having the authority to waive statutory regulations when it so chooses. As a general proposition, we do not believe that CCC or any other Federal agency has such authority.

The courts have consistently held that agencies must adhere to the substantive statutory regulations they promulgate, which have the full force and effect of law. Federal Crop Insurance Corporation v. Merrill, 322 U.S. 380 (1947). Thus, the Supreme Court has said that so long as a regulation remains in effect, the executive branch is bound by the regulation "which has the force of law." United States v. Nixon, 718 U.S. 683, 695-97 (1974).

Past decisions of our Office have consistently upheld this principle as well. See B-181432, February 19, 1976, 53 Comp. Gen. 364 (1973); B-158553, July 6, 1966; 43 Comp. Gen. 31 (1963); and 37 Comp. Gen. 820 (1958). For example, in 37 Comp. Gen. 820, 821 (1958), we said the following:

> "It is well established in administrative law that valid statutory regulations have the force and effect of law, are general in their application and may no more be waived than provisions of the statutes themselves."

We went on to hold that a provision in the regulations adopted by the Department of Agriculture to implement the Soil Bank Act that authorized the Administrator of the program to waive any provision in the regulations in a particular case was invalid. Our reasoning was summarized as follows:

> "In our view, the authority to regulate and to include in the program such terms and conditions as the Administrator deems desirable for the specified purposes does not necessarily imply authority to disregard those terms and conditions thereby creating an unregulated area subject only to his discretion. If any agency requires authority to waive its statutory regulation, we believe that specific statutory authority therefor * * * should be requested from the Congress."

In another particularly relevant decision--53 Comp. Gen. 364 (1973)--we responded to a request from the Department of Agriculture

as to whether a proposed amendment could be made to the regulations governing CCC's wool price support program that would permit a "retroactive waiver" of the requirement in the regulations that payments be based on actual net sales proceeds. In that decision, which relied heavily on the rationale set forth in 37 Comp. Gen. 820, we held as follows:

> "Under well-established principles applied in numerous decisions of our Office, regulations promulgated pursuant to express statutory authority, such as the CCC regulations here involved, have the force and effect of law and cannot be retroactively waived." (Emphasis added.)

Accordingly, it is clear that CCC, like other Government agencies or corporations, is bound by the general principle that substantive statutory regulations have the force and effect of law, and are binding on everyone, including the agency that promulgates them, unless and until the regulations are validly amended or revoked. Certainly, we would not question CCC's authority to amend its regulations governing any of its payment guarantee programs, provided the amended regulations would only have a prospective application. CCC's argument that its regulations only govern the terms and conditions under which CCC issues its guarantees which, once issued, are no different than any other contract which can be modified or amended subsequently without further reference to any requirements contained in the regulations is legally unsupportable.

Implicit in the proposition that substantive regulations have the force and effect of law and are legally binding on the agency that issues them is the principle that whenever a conflict occurs between a substantive provision in the regulations and a substantive provision in a related contract, the regulatory provision is controlling. Otherwise, if an agency was free to incorporate terms and conditions into a contract, either at the time the contract was executed or through a later modification of the contract that could supersede a substantive regulatory provision, the general principle that regulations have the force and effect of law would be nullified. Accordingly, it is clear that where a conflict exists between a substantive term in a contract and one in a regulation, the regulatory provision is controlling. See 36 Comp. Gen. 507 (1951).

The fact that an agency is bound by the substantive, statutory regulations it issues is not dispositive of the question before us, however. We must now address CCC's other argument which focuses on

what we believe to be the primary issue in the case. In addition to arguing that the regulations were not binding, CCC maintains in its memorandum that "the January 28 offer in no way alters the basic rights and liability of CCC under its obligations but instead offers a possibility of improving CCC's position concerning these obligations * * *." According to CCC, the requirement in the January Offer that holders accepting the Offer notify CCC which option is being elected, "provides the same notice to CCC as the notice of default required by the regulations" by alerting CCC of its potential liability and allowing it to take such steps as it considers necessary to protect its interest.

In essence, it is CCC's contention that the main provisions and procedures provided for in the January Offer, and presumably the June Offer as well, do not substantially differ from the payment mechanism and procedures set forth in the regulations. CCC argues that those differences that did exist were relatively minor and did not alter the basic rights, liabilities, and procedural protections that would otherwise have governed CCC's guarantees under the regulations. We agree. In our view the differences between the terms and conditions set forth in the June and January Offers and those provided for in the applicable regulations were not so substantial as to invalidate CCC's guarantee.

While, as stated above, it is generally recognized that substantive statutory regulations have the force and effect of law, it is also recognized that agencies have some discretion in complying with what could be deemed to be "procedural" regulations. For example, in American Farm Lines v. Black Ball Freight Service, 397 U.S. 532 (1970), the Court held that the Interstate Commerce Commission was "entitled to a measure of discretion in administering its own procedural rules * * *." Also, in Sun Oil Company v. Federal Power Commission, 256 F. 2d 233 (5th Cir. 1958) which involved the authority of the Federal Power Commission to modify, in effect, certain of its procedural rules, the Court of Appeals said the following:

> "* * * an administrative agency is not a slave of its rules. National Labor Relations Board v. Grace Co., 8 Cir., 1950, 184 F.2d 126. Ad hoc changes may be applied retroactively. National Labor Relations Board v. National Container Corp., 2 Cir., 1954, 211 F.2d 525. In a particular case an administrative agency may relax or modify its procedural rules and its action in so doing will not be subjected to judicial interference in the absence of a showing of injury or substantial prejudice. National Labor Relations Board v. Monsanto-Chemical Co., 8 Cir., 1953, 205 F.2d 763."

Our Office also recognizes a distinction between "procedural" and "substantive" regulations in this respect. In 37 Comp. Gen. 820, supra, in which we held that a regulatory provision authorizing the Administrator of a Department of Agriculture program to waive substantive provisions in the program regulations was not valid, we did not object to a waiver of certain procedural requirements contained in the regulations. We held:

> "Where the agreements were entered into in good faith and are fully executed, we will not question payments thereunder for the sole reason that the closing date for filing agreements or the final date for obtaining the signature of the landlord were not met due to some unusual circumstances where the purpose of such requirement was otherwise satisfied." (Emphasis added.)

Our decision in B-188741, January 27, 1978, is especially relevant in this respect. In that case we considered SBA's authority to purchase a guaranteed loan even though the lender had failed to provide SBA with a written notification of the borrower's default within 90 days as prescribed in the applicable regulations. Instead, the bank had notified SBA by telephone of the borrower's delinquency. In a prior decision, B-181432, February 19, 1976, supra, we had said that we would take exception to any future payments on defaults arising after the date of the decision "if the notice requirements are not strictly complied with." However, in the 1978 decision, we held that SBA could honor its guarantee. In doing so, we recognized that where a procedural regulatory requirement is involved, an agency is authorized to waive strict compliance with the regulations provided that the purpose of the requirement is otherwise served. Thus, we said the following:

> " * * * the issue in the present case involves the requirement that the notice adhere to a particular form rather than the more basic issue considered in the original opinion of whether notice in any form was an absolute requirement. We believe that this issue of the form of the notice can properly be categorized as procedural and that precedent does exist to allow a waiver in such circumstances, especially where the waiver would not appear to result in any injury either to the Government or non-Government party."

For the following reasons, we believe the holdings in these decisions are applicable in this case. Under the regulations governing the GSM-101 and GSM-102 programs, the holder is required to notify CCC of a "default" by the foreign bank in failing to make a payment in accordance with the terms of the foreign bank letter of credit or related obligation. 7 C.F.R. §§ 1487.8 and 1493.8. As stated by CCC, that only means that the debtor has

failed to make a payment when due. A formal declaration of default that would cause the full balance of the loan to become immediately due and payable which might trigger other penalties, is not required under the regulations. The obvious purpose of this kind of notice requirement is to alert CCC of its imminent liability and to enable it to take whatever actions are deemed advisable to protect the Government's interest. See B-181432, February 14, 1976. The regulations further provide that 30 days after the notice of default the holder shall furnish a claim for loss that contains a variety of information and documents, the most important of which is a certification that the scheduled payment has not been received. This, of course, is the essence of any Government guaranteed loan or credit program. That is, since the Government's liability is merely contingent and not direct, the Government ordinarily only becomes liable for monies that the debtor has not paid when due. 7 C.F.R. §§ 1487.9(c) and 1493.9(c).

Comparing the procedures as set forth in the regulations first with the terms of the June Offer, reveals that the mechanism provided for in the June Offer would furnish CCC with essentially the same information and would put CCC in basically the same position as would exist under the regulations. First, it is clear that CCC was well aware of Poland's financial difficulties and the impending default. In fact, the June Offer was made to implement the debt rescheduling agreement the United States and Poland had entered into when it became apparent that Poland was about to default on the CCC guaranteed loans (as well as on debts owed to other western creditors). Thus, CCC certainly had the equivalent of the formal notice of default. More importantly, the June Offer provided that CCC would not honor its guarantee by making any payments to holders before the debt involved had become due. This accomplished the same purpose as the regulation requiring holders to certify that the scheduled payment had not been made. Thus, the contingent nature of CCC's liability under the GSM-101 and 102 programs was preserved by the terms of the June Offer. Also, paragraph 4 of the June Offer required the holder to submit a variety of information to CCC if it decided to accept the offer that was similar to the information required under the regulations in connection with the filing of a claim for loss. In all other material aspects, including such things as CCC's liability for unpaid interest and CCC's subrogation rights, the June Offer contained terms that were at least equivalent to those set forth in the regulations.

A comparison of the terms of the provisions in the January Offer with those in the regulations yields the same result. First, with respect to the notice requirement, CCC remained fully aware

at all times of Poland's difficulties in making payments when due on these loans and letters of credit. Indeed, that knowledge is precisely what motivated CCC to make the January Offer as well as the prior June Offer. Second, although the January Offer contained terms that may have been somewhat more complex than those set forth in the June Offer, or in the regulations, especially with respect to the opportunity afforded holders to choose between two different payment options, we agree with CCC that its position was substantially the same, and certainly no worse, than would have been the case had payment been made strictly in accordance with the regulations. Third, and perhaps most importantly, we believe that the contingent nature of CCC's liability was preserved under either payment option.

With respect to the latter point, CCC specifically states in its memorandum that the January Offer applied only to "missed payments" that had "not yet been paid in full." In informal discussions with CCC's legal representatives, we were assured that this was in fact the case and that CCC did not make any payments to a holder under either option unless payment from the debtor was past due. Finally, our own examination of the terms of the January Offer, including the definition of those "outstanding obligations" to which the Offer applied and the provisions obligating CCC to pay interest accruing "after the due date of the corresponding payment" provides further support for CCC's contention in this respect. 2/

2/ We acknowledge that there may be other terms contained in the January Offer (such as the provision authorizing the holder to elect an option prior to the payment due date) that, standing alone, could be interpreted as allowing CCC to make a payment to a holder prior to a "default" by the debtor. However, for the reasons stated herein, we do not believe this result was intended and do not favor this interpretation. Moreover, even if we believed that the January Offer allowed CCC to make payments to holders some time shortly before the corresponding payment would have become due, we doubt whether it could be demonstrated that the United States would have suffered any real harm as a result of what would then admittedly have been a "premature" payment. Given that premise, the Polish debtor either would have subsequently made the payment when due, in which case the United States would presumably have been reimbursed for its prior expenditure (in accordance with its right of subrogation) or the debtor would have defaulted, in which case CCC would have been required under the terms of its guarantee to make the same payment, albeit a short time thereafter. In either case, since the Government would have suffered no real harm or adverse change of position, we would not be inclined to hold that those payments were illegal and should now be recovered. See B-181432, February 19, 1976.

Accordingly, it is our view that from a substantive standpoint, the terms and conditions governing payment by CCC under the June and January Offers were substantially the same as those in the regulations. That is, before payment could be made by CCC, the debtor would have failed to make a scheduled payment, CCC would have been fully aware that the payment had not been made, and CCC would have obtained the same rights of subrogation that it would have gained under the regulations. Furthermore, CCC's liability under the June and January Offers would have been no greater and actually may have been smaller than would have been the case if payments had been made strictly in accordance with the regulation. In other words, if CCC had proceeded under the regulations it would still have been required to make the same payments (or larger ones) to holders once they had submitted a formal notice of default to CCC and a subsequent claim for loss. Thus, it is our view that the differences between the terms of the June and January Offers, on the one hand and the applicable regulatory provisions on the other, are essentially procedural in nature and are merely equivalent methods of accomplishing the same purpose. Therefore, we believe that CCC was authorized to and in fact did, waive the "procedural" regulatory provisions in question when it extended the June and January Offers. Accordingly, CCC's failure, in these circumstances to comply strictly with the procedures in the regulations, and its allowing holders to do likewise, did not invalidate its guarantee or render the payments it made illegal.

In your letter, you also raise the question of whether the offers provide adequate subrogation rights in the Government. The regulations, 7 C.F.R. §§ 1487.9(d) and 1493.8(b)(3)(iv), require the holder to submit an instrument to CCC subrogating CCC to the holder's rights for the amount of the corresponding payment in default under the applicable export credit sale. As noted by Secretary Block in his letter to us, paragraph 7 of the June Offer and paragraph 2 of the January Offer require the holders to provide CCC with the same rights of subrogation. In this respect, paragraph 2 of the June Offer provides as follows:

> "The holder of the guarantee agrees to assign to CCC, for each obligation repurchased, all right, title, and interest in the credit to the Polish obligor for the corresponding payment for the amount of that obligation."

Similarly, paragraph 2 of the January Offer completely fulfills the requirements of the regulations in regard to CCC's subrogation rights.

Your final question is whether the President may delegate the power assigned to him under section 205 of Title II, Urgent Supplemental Appropriations Act 1982, Pub. L. No. 97-216. That section provides that:

> " * * * no funds may be paid out of the Treasury of the United States or out of any fund of a Government corporation to any private individual or corporation in satisfaction of any assurance agreement or payment guarantee or other form of loan guarantee entered into by any agency or corporation of the United States Government with respect to loans made and credits extended to the Polish People's Republic, unless the Polish People's Republic has been declared to be in default of its debt to such individual or corporation or unless the President has provided a monthly written report to the Speaker of the House of Representatives and the President of the Senate explaining the manner in which the national interest of the United States has been served by any payments during the previous month under loan guarantee or credit assurance agreement with respect to loans made or credits extended to the Polish People's Republic in the absence of a declaration of default." (Emphasis in the original.)

An identical provision applicable to 1983 fiscal year funds is set forth in section 621 of the Agriculture, Rural Development, and Related Agencies Appropriation, Fiscal Year 1983, Pub. L. No. 97-370, approved December 18, 1982.

Secretary Block, in his letter to us, concurs in the view of the Department of Justice that the President has the authority to delegate to the Secretary of State the reporting requirements contained in section 205 of Pub. L. No. 97-216. 3/ We concur.

3/ The Secretary's letter did not refer to section 621 of Pub. L. No. 97-370 since it had not yet been enacted.

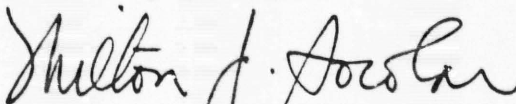
The President is authorized by 3 U.S.C. §§ 301-303 to "designate and empower the head of any department or agency in the executive branch" to perform any function, *i.e.*, "any duty, power, responsibility, authority, or discretion vested in the President" by law, so long as the law "does not affirmatively prohibit" the delegation. See B-205154, September 21, 1982. That legislation further provides that the designation and authorization shall be in writing and shall be published in the *Federal Register*.

Clearly, there is nothing in section 205 of Pub. L. No. 97-216 or in section 621 of Pub. L. No. 97-370 (or their legislative histories for that matter) that would restrict or prohibit the President from delegating the responsibility vested in him by those provisions. Since the Secretary of State is charged with the responsibility of managing foreign affairs, 22 U.S.C. § 2656 (1970), it is entirely logical that the President would delegate his reporting duties under Pub. L. No. 97-216 and Pub. L. No. 97-370 to the Secretary of State. The President did, in fact, delegate the functions vested in him by section 205 of Pub. L. No. 97-216 to the Secretary of State and the delegation was published in the *Federal Register* (Exec. Order No. 12390, 47 Fed. Reg. 47799 (1982)), thus complying with the procedural requirements of 3 U.S.C. § 302.

Accordingly, it is our conclusion that the responsibility vested in the President by Pub. L. No. 97-216 (and Pub. L. No. 97-370) of reporting to the Congress, to explain how the national interest of the United States was served by making payments on guaranteed loans or credits extended to Poland without declaring Poland to be in default, could properly be delegated to the Secretary of State.

We trust that the foregoing opinion will be of assistance to you.

Sincerely yours,



Comptroller General
of the United States

Enclosures

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