



Billing Code 3410-10

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1499

RIN 0551-AA94

Food for Progress Program

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is amending the regulations governing the Food for Progress Program to include colleges and universities among the entities eligible for awards under the program, and to make other minor changes. The Agricultural Improvement Act of 2018 added colleges and universities to the list of eligible entities in the Food for Progress Act of 1985. This amendment implements the statutory change to expand the types of entities that can receive awards under the program, and it makes other technical changes to update the regulations.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Written comments must be received by CCC or carry a postmark or equivalent no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments, identified by Regulatory Information Number (RIN) 0551-AA94, may be sent by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.

- E-mail: PPDED@fas.usda.gov. Include RIN 0551-AA94 in the subject line of the message.

- Mail: Director, Food Assistance Division, Office of Capacity Building and Development, Foreign Agricultural Service, 1400 Independence Ave., SW., STOP 1034, Washington, D.C. 20250.

Instructions: All submissions received must include the agency name and RIN 0551-AA94.

FOR FURTHER INFORMATION CONTACT: Angela Crooks, (202) 756-7194, FAD_Contact@fas.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Food for Progress Program provides for the donation of U.S. agricultural commodities to developing countries and emerging democracies committed to introducing and expanding free enterprise in the agricultural sector. The commodities are generally sold on the local market and the proceeds are used to support agricultural development activities. The program has two principal objectives: to improve agricultural productivity and expand trade in agricultural products. The Food for Progress Program is authorized in section 1110 of the Food Security Act of 1985 (also known as the Food for Progress Act of 1985) (7 U.S.C. 1736o).

The Foreign Agricultural Service (FAS) implements the Food for Progress Program on behalf of CCC. FAS uses the regulations in 7 CFR part 1499, Food for Progress Program, in the administration of the Food for Progress Program. The previous

version of the regulations was published as a final rule on September 12, 2016 (81 FR 62603).

Amendment of Regulations

FAS, on behalf of CCC, is amending the Food for Progress Program regulations in 7 CFR part 1499 through this final rule to implement a change made by the Agricultural Improvement Act of 2018 (Pub.L. 115-334) to the Food for Progress Act of 1985, which added colleges and universities, as defined in 7 U.S.C. 3103(4), to the list of entities eligible for awards under the program. FAS is adding the definition “*College or university*” to section 1499.2 and amending sections 1499.1(d), (f)(1), and (g)(1), and 1499.3(a) to implement this statutory change. The change will foster greater competition in proposal submissions and provide an opportunity for more innovative projects to be considered.

In addition, FAS is amending the regulations to make changes that are technical in nature and intended to improve the efficiency and effectiveness of the Food for Progress Program, including the following:

(1) Clarifying that regulatory provisions that are generally applicable to CCC apply to the Food for Progress Program (7 CFR 1499.1(c)).

(2) Clarifying that provisions specified by CCC during the negotiation of an agreement, which are in addition to provisions required by the regulations, will be included in the agreement but will not necessarily be in the plan of operation component of the agreement (7 CFR 1499.5(d)).

(3) Bringing the language in the regulations into better alignment with references in the Food for Progress Act of 1985 (7 CFR 1499.5(e)(1) and (e)(4)).

(4) Clarifying that the required assertion by a recipient that adequate transportation and storage facilities will be available in the target country refers to the time of arrival of the commodities in the target country (7 CFR 1499.5(e)(5)).

(5) Modifying references to economic sanction programs to allow for situations in which a U.S. Government economic sanction program is not country-specific (7 CFR 1499.11(e) and 1499.14(b)(2)).

(6) Replacing the specific reference to a percentage of the “Grand Total Costs” in the agreement budget with a more general reference to the amount specified in the agreement, which would allow CCC to make a change to the budget format if it determines that it would be beneficial (7 CFR 1499.11(h)(1)).

(7) Allowing CCC to specify in the agreement the circumstances in which a recipient must submit to CCC a contract with a provider of goods, services, or construction work (7 CFR 1499.11(k)).

(8) Allowing for the possibility that there might not be any closeout and post-closeout provisions specified in an agreement and that only those provisions in 2 CFR 200.343 and 200.344 would apply (7 CFR 1499.16(b)(3)).

(9) Modifying language to reflect that FAS personnel who act on behalf of CCC to make determinations under the Food for Progress Program are not necessarily CCC officials but are acting under delegated authority (7 CFR 1499.17(b) and (c)).

Notice and Comment

This rule is being issued as a final rule without prior notice and opportunity for comment. The Administrative Procedure Act exempts rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” from

the statutory requirement for prior notice and opportunity for comment (5 U.S.C. 553(a)(2)). Accordingly, this rule may be made effective less than 30 days after publication in the Federal Register. However, members of the public may participate in this rulemaking by submitting written comments, data, or views. CCC will consider the comments received and may conduct additional rulemaking based on the comments. Written comments must be received by CCC or carry a postmark or equivalent no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Catalog of Federal Domestic Assistance

The program covered by this regulation is listed in the Catalog of Federal Domestic Assistance (CFDA) under the following FAS CFDA number: 10.606, Food for Progress.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act of 2002 (44 U.S.C. chapter 36), to promote the use of the Internet and other information technologies to provide increased opportunities for citizens' access to Government information and services, and for other purposes.

Executive Order 12866

This rule is issued in conformance with Executive Order 12866, "Regulatory Planning and Review." It has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office

of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform.” This rule does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule will not be retroactive.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with officials of State and local governments that would be directly affected by the proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This rule will not directly affect State or local officials and, for this reason, it is excluded from the scope of Executive Order 12372.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of any rule that is subject to notice and comment rulemaking under the Administrative Procedure Act (APA) or any other law, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act does not apply to this rule

because CCC is not required by the APA or any other law to publish a notice of proposed rulemaking with respect to the subject matter of the rule.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” This rule will not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. This rule does not impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States was not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. CCC does not expect this rule to have any effect on Indian tribes.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because it does not impose any enforceable duty or contain any unfunded mandate as described under the UMRA.

List of Subjects in 7 CFR part 1499

Agricultural commodities, Cooperative agreements, Exports, Food assistance programs, Foreign aid, Grant programs-agriculture, Technical assistance.

For the reasons set forth in the preamble, the Commodity Credit Corporation amends part 1499 of title 7 of the Code of Regulations as follows:

PART 1499 – FOOD FOR PROGRESS PROGRAM

1. The authority citation for part 1499 continues to read as follows:

Authority: 7 U.S.C. 1736o; and 15 U.S.C. 714b and 714c.

2. In § 1499.1, revise paragraphs (c), (d), (f)(1), and (g)(1) and (2) to read as follows:

§1499.1 Purpose and applicability.

* * * * *

(c) Except as otherwise provided in this part, other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, and IV, also apply to the FFPr Program. The provisions of the CCC Charter Act (15 U.S.C. 714 *et seq.*) and any other statutory or regulatory provisions that are generally applicable to CCC apply to the FFPr Program.

(d) In accordance with 7 U.S.C. 1736o(b)(5), assistance under the FFPr Program may be provided to governments of emerging agricultural countries, intergovernmental organizations, private voluntary organizations, nonprofit agricultural organizations or cooperatives, nongovernmental organizations, colleges or universities, and any other private entities.

* * * * *

(f)(1) The OMB guidance at subparts A through E of 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to all awards by CCC under the FFPr Program to all recipients that are private voluntary organizations, including a private voluntary organization that is a foreign organization, as defined in 2 CFR 200.47; nonprofit agricultural organizations or cooperatives, including a nonprofit agricultural organization or cooperative that is a foreign organization; nongovernmental organizations, including a nongovernmental organization that is a for-profit entity or a foreign organization; colleges or universities; or other private entities, including a private entity that is a for-profit entity or a foreign organization.

* * * * *

(g)(1) The OMB guidance at subpart F of 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies only to awards by CCC to recipients that are private voluntary organizations, agricultural organizations or cooperatives, nongovernmental organizations, colleges or universities, or other private entities, but that are not for-profit entities or foreign organizations.

(2) The OMB guidance at subpart F of 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to subawards to subrecipients under this part, except where the subrecipient is a for-profit entity, foreign public entity, or foreign organization.

* * * * *

3. In § 1499.2, add a definition for “College or university” in alphabetical order to read as follows:

§1499.2 Definitions.

* * * * *

College or university means an educational institution in any State which admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; is legally authorized within such State to provide a program of education beyond secondary education; provides an educational program for which a bachelor's degree or any other higher degree is awarded; is a public or other nonprofit institution; and is accredited by a nationally recognized accrediting agency or association. The terms include a research foundation maintained by such a college or university. As used in this definition, State will have the meaning given in 7 U.S.C. 3103(16).

* * * * *

4. In § 1499.3, revise paragraph (a) to read as follows:

§1499.3 Eligibility and conflicts of interest.

(a) A private voluntary organization, a nonprofit agricultural organization or cooperative, a nongovernmental organization, a colleges or university, or any other private entity is eligible to submit an application under this part to become a recipient under the Food for Progress Program. CCC will set forth specific eligibility information, including any factors or priorities that will affect the eligibility of an applicant or application for selection, in the full text of the applicable notice of funding opportunity posted on the U.S. Government web site for grant opportunities.

* * * * *

5. In § 1499.5:

- a. Revise paragraphs (d)(2)(vii) and (viii);
- b. Remove paragraph (d)(2)(ix);

c. Revise paragraphs (d)(3) and (4);

d, Add paragraph (d)(5); and

e. Revise paragraphs (e)(1), (4), and (5).

The revisions and addition read as follows:

§1499.5 Agreements.

* * * * *

(d) * * *

(2) * * *

(vii) Any other governmental or nongovernmental entities that will be involved in the implementation of the activities; and

(viii) Any processing, packaging, or repackaging of the donated commodities that will take place prior to their distribution, sale, or barter by the recipient;

(3) A budget, which will set forth the maximum amounts of sale proceeds, CCC-provided funds, interest, program income, and voluntary committed cost sharing or matching contributions that may be used for each line item, as well as other applicable budget requirements;

(4) Performance goals for the agreement, including a list of results, with long-term benefits where applicable, to be achieved by the activities and corresponding indicators, targets, and time frames; and

(5) Any additional provisions specified by CCC during the negotiation of the agreement.

(e) * * *

(1) The agreement will prohibit the sale or transshipment of the donated commodities by the recipient to a country not specified in the agreement, or the use of the donated commodities for other than domestic purposes, for as long as the recipient has title to such donated commodities;

* * * * *

(4) The recipient will assert that, to the best of its knowledge, any sale or barter of the donated commodities will not displace or interfere with any sales of United States commodities that may otherwise be made to or within the target country. The recipient must submit information to CCC to support this assertion; and

(5) The recipient will assert that adequate transportation and storage facilities will be available in the target country at the time of the arrival of the donated commodities to prevent spoilage or waste of the donated commodities. The recipient must submit information to CCC to support this assertion.

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6. In § 1499.6, revise paragraph (f)(6)(iv) to read as follows:

§1499.6 Payments.

* * * * *

(f) * * *

(6) * * *

(iv) If a recipient must return funds to CCC in accordance with paragraph (f)(6) of this section, the recipient must return the funds by the later of five business days after the 91st day after the funds were advanced, or five business days after the date on which the recipient receives notice from CCC that it has denied the recipient's request to roll over

the funds; provided, however, that CCC may specify a different date for the return of funds in a written communication to the recipient.

* * * * *

7. In § 1499.11, revise paragraphs (e), (h)(1), and (k) to read as follows:

§1499.11 Use of donated commodities, sale proceeds, CCC-provided funds, and program income.

* * * * *

(e) A recipient must not use sale proceeds, CCC-provided funds, interest, or program income to acquire goods and services, either directly or indirectly through another party, in a manner that violates a U.S. Government economic sanction program, as specified in the agreement.

* * * * *

(h)(1) Except as provided in paragraph (h)(2) of this section, a recipient may make adjustments within the agreement budget between direct cost line items without further approval, provided that the total amount of adjustments does not exceed the amount specified in the agreement. Adjustments beyond these limits require the prior approval of CCC.

* * * * *

(k) A recipient must enter into a written contract with each provider of goods, services, or construction work that is valued at or above the Simplified Acquisition Threshold. Each such contract must require the provider to maintain adequate records to account for all donated commodities, funds, or both furnished to the provider by the recipient and to comply with any other applicable requirements that may be specified by

CCC in the agreement. The recipient must submit a copy of each signed contract to CCC, as specified in the agreement.

8. In § 1499.14, revise paragraph (b)(2) to read as follows:

§1499.14 Subrecipients.

* * * * *

(b) * * *

(2) The subrecipient is prohibited from using sale proceeds, CCC-provided funds, interest, or program income to acquire goods and services, either directly or indirectly through another party, in a manner that violates a U.S. Government economic sanction program, as specified in the agreement.

* * * * *

9. In § 1499.16, revise paragraph (b)(3) to read as follows:

§1499.16 Suspension and termination of agreements.

* * * * *

(b) * * *

(3) Must comply with any closeout and post-closeout provisions specified in the agreement and 2 CFR 200.343 and 200.344.

10. In § 1499.17, revise paragraphs (b) and (c) to read as follows:

§1499.17 Opportunities to object and appeals.

* * * * *

(b) The recipient must submit its objection in writing, along with any documentation, to the official specified in the agreement within 30 days after the date of CCC's written notification to the recipient of the CCC action being challenged. This

official will endeavor to notify the recipient of his or her determination (the initial determination) within 60 days after the date that CCC received the recipient's written objection.

(c) The recipient may appeal the initial determination to the Administrator, FAS. An appeal must be in writing and be submitted to the Office of the Administrator within 30 days after the date of the initial determination. The recipient may submit additional documentation with its appeal.

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Robert Stephenson,
Executive Vice President,
Commodity Credit Corporation.

July 19, 2019.
Date

In concurrence with:

Ken Isley,
Administrator,
Foreign Agricultural Service.
[FR Doc. 2019-18420 Filed: 8/27/2019 8:45 am; Publication Date: 8/28/2019]

18 July 19
Date