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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1499

RIN 0551-AB02

Food for Progress Program

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is amending the regulation governing the Food for Progress Program to update citations and make other technical and clarifying changes. The Office of Management and Budget (OMB) revised and renumbered certain provisions in its regulations regarding universal identifiers, the System for Award Management, and the uniform administrative requirements, cost principles, and audit requirements for Federal awards. This amendment makes technical corrections to the Food for Progress Program regulation to reflect the revised OMB regulations, and it makes other minor changes intended to improve the efficiency and effectiveness of the program.

DATES: This rule is effective August 31, 2022.

FOR FURTHER INFORMATION CONTACT:

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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 regulation in 7 CFR part 1499, Food for Progress Program, in the administration of the Food for Progress Program. The previous version of the regulation was published as a final rule on August 28, 2019 (84 FR 45059).

Amendment of Regulation

The Food for Progress Program regulation, 7 CFR part 1499, refers to and cites various sections of 2 CFR part 25, Universal Identifier and System for Award Management, and 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. OMB amended 2 CFR parts 25 and 200 in August 2020 and, as a result, CCC has identified a number of instances where technical corrections to 7 CFR part 1499 are necessary to update citations and make the language consistent with 2 CFR parts 25 and 200. FAS, on behalf of CCC, is amending the Food for Progress Program regulation to make these technical corrections.

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

(1) Clarifying that 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 Food for Progress Program, to the extent that such regulations do not directly conflict with the provisions of 7 CFR part 1499 (7 CFR 1499.1(c));

(2) Providing further detail about the impact description that must be included as part of the strategic analysis in an application for an award under the

Food for Progress Program (7 CFR 1499.4(b)(2));

(3) Replacing “interim evaluation” with “midterm evaluation” to be consistent with the “Monitoring and Evaluation Policy,” issued by the Foreign Agricultural Service—Food Assistance Division, USDA (7 CFR 1499.4(b)(6) and 1499.13(d));

(4) Bringing the language in the regulation into better alignment with language in the Food for Progress Act of 1985 (7 CFR 1499.5(e)(4));

(5) Clarifying that the term “point of entry” refers to the point of entry of the donated commodities into the target country (7 CFR 1499.6(e));

(6) Providing that, when a recipient needs to use funds that have been advanced by CCC to pay approved expenses under an agreement, the recipient may transfer the funds from a bank account located in the United States, where they have been required by the regulation to be maintained, to a bank account in the target country (7 CFR 1499.6(f)(7));

(7) Clarifying that transportation of donated commodities to the designated discharge port or point of entry will be arranged for under an agreement, in the manner determined by CCC, by CCC or the recipient; and the recipient will be responsible for any transportation of the donated commodities after their arrival at the designated discharge port or point of entry for as long as the recipient has title to such donated commodities, except as may otherwise be provided in the agreement (7 CFR 1499.7(b) and (f));

(8) Providing that a recipient may only use the services of a transportation company that is legally operating in the country in which it will be transporting the donated commodities and that would not have a conflict of interest in transporting the commodities (7 CFR 1499.7(d));

(9) Clarifying that CCC will arrange for transporting the donated commodities in accordance with 7 CFR 1499.7(b)(1) when CCC determines that it is applicable, regardless of where and when title to the donated commodities passes to a recipient; and that a recipient must maintain the donated commodities in good condition from the time that it takes possession of them at the designated discharge port, point of entry, or point of receipt from the originating carrier until their distribution, sale, or barter (7 CFR 1499.8(b) and (c));

(10) Providing additional information about requirements regarding the acknowledgment of funding by USDA, the use of the USDA logo, and communications to the public, as well as the process for a recipient to request a waiver of compliance with one or more of such requirements (7 CFR 1499.8(d) and (e));

(11) Clarifying that the recipient's responsibility for the donated commodities, which becomes effective following transfer of title to the recipient, remains in effect for as long as the recipient has title to the commodities (7 CFR 1499.9(a) and (b) and 1499.10(a));

(12) Providing that the recipient must report damage to or loss of donated commodities in accordance with one of three stated procedures, depending on the estimated amount of such damage or loss (7 CFR 1499.9(b)(1));

(13) Clarifying that the "in excess of \$5,000" threshold amount that triggers the requirement to inspect damaged donated commodities refers to the amount of damage sustained by the donated commodities, not to the overall value of the donated commodities; and the value of the donated commodities prior to the damage must be determined on the basis of the costs incurred by CCC with respect to such commodities, as well as costs incurred by the recipient and paid by CCC (7 CFR 1499.9(e));

(14) Modifying the text previously in 7 CFR 1499.13(f) and moving it to 7 CFR 1499.13(c) to clarify that information covering the receipt, handling, and disposition of the donated commodities, and the receipt and use of any sale proceeds, etc., must be included in the performance reports (7 CFR 1499.13(c)(ii) and (iii)); and

(15) Clarifying that the date of submission of the final expenditure report, as referenced in 2 CFR 200.334, will be the date of submission of the final financial report (7 CFR 1499.13(h)).

Notice and Comment

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

Assistance Listings for Federal Users

The program covered by this regulation is included in the Assistance Listings for Federal Users at *SAM.gov* 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.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Executive Orders 12866 and 13563

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant. It has been determined that this rule is not significant for the purposes of Executive Order 12866; therefore, this rule was not reviewed by the Office of Management and Budget.

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), (e), and (f)(1) to read as follows:

§ 1499.1 Purpose and applicability.

(c) In addition to the provisions of 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, to the extent that such regulations do not directly conflict with the provisions of this part. 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.

(e) The OMB guidance at 2 CFR part 200, and the provisions of 2 CFR part 400 and of this part, do not apply to an award by CCC under the FFPr Program to a recipient that is a foreign public entity, as defined in 2 CFR 200.1, and, therefore, they do not apply to a foreign government or an intergovernmental organization.

(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 200.1; 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.

■ 3. In § 1499.2, revise the definitions of “Commodities” and “Program income” to read as follows:

§ 1499.2 Definitions.

Commodities means agricultural commodities, or products of agricultural commodities, that are produced in the United States.

Program income means interest earned on proceeds from the sale of donated commodities, as well as funds received by a recipient or subrecipient as a direct result of carrying out an approved activity under an agreement. The term includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under a Federal award, the sale of items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Program income does not include any of the following: proceeds from the sale of donated commodities; CCC-provided funds; interest earned on CCC-provided funds; funds provided for cost sharing or matching contributions, refunds, rebates, credits, or discounts; or interest earned on funds provided for cost sharing or matching contributions, refunds, rebates, credits, or discounts.

■ 4. In § 1499.3, revise the first sentence of 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 college 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.

■ 5. In § 1499.4, revise paragraphs (b)(2) and (6), (c) introductory text, and (c)(3) to read as follows:

§ 1499.4 Application process.

(b) * * *
(2) An introduction and a strategic analysis, which includes a description

of opportunities for lasting impact and sustainable benefits, as specified in the notice of funding opportunity;

(6) Unless otherwise specified in the notice of funding opportunity, an evaluation plan that describes the proposed design, methodology, and time frame of the project's evaluation activities, and how the applicant intends to manage these activities, and that will include a baseline study, midterm evaluation, final evaluation, and any applicable special studies; and

(c) Unless an exception in 2 CFR 25.110 applies, each applicant is required to:

(3) Maintain an active SAM registration, in accordance with 2 CFR part 25, with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

■ 6. In § 1499.5, revise paragraphs (b), (c), (d)(4), (e) introductory text, and (e)(4) to read as follows:

§ 1499.5 Agreements.

(b) The agreement will include the general information required in 2 CFR 200.211(b), as applicable.

(c) The agreement will incorporate general terms and conditions, pursuant to 2 CFR 200.211(c), as applicable.

(d) * * *
(4) Performance goals for the agreement, including a list of results, with long-term benefits where applicable, to be achieved by the activities; indicators, targets, and baseline data; and information about how performance will be assessed, including the timing and scope of expected performance; and

(e) The agreement will also include specific terms and conditions, and certifications and representations, including the following, as applicable:

(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 would otherwise be made to or within the target country. The recipient must submit information to CCC to support this assertion; and

■ 7. In § 1499.6, revise paragraphs (a)(1), (e), and (f)(7) and (8) to read as follows:

§ 1499.6 Payments.

(a) * * *

(1) The original, or a true copy, of each on board bill of lading indicating the freight rate and signed by the originating ocean carrier;

* * * * *

(e) If CCC has agreed to be responsible for the costs of transporting, storing, and distributing the donated commodities from the designated discharge port or the point of entry into the target country, and if the recipient will bear or has borne any of these costs, in accordance with the agreement, CCC will either provide an advance payment or a reimbursement to the recipient in the amount of such costs, in the manner set forth in the agreement.

(f) * * *

(7) Except as may otherwise be provided in the agreement, a recipient must deposit and maintain in an insured bank account located in the United States all funds advanced by CCC. The account must be interest-bearing, unless one of the exceptions in 2 CFR 200.305(b)(8) applies or CCC determines that this requirement would constitute an undue burden. A recipient will not be required to maintain a separate bank account for advance payments of CCC-provided funds. However, a recipient must be able to separately account for funds received, obligated, and expended under each agreement. When the recipient requires the use of funds that have been advanced by CCC to pay approved expenses under this agreement, the recipient may transfer the funds from the bank account located in the United States to a bank account in the target country.

(8) A recipient may retain, for administrative purposes, up to \$500 per Federal fiscal year of any interest earned on funds advanced under an agreement. The recipient must remit to the U.S. Department of Health and Human Services any additional interest earned during the Federal fiscal year on such funds, in accordance with the procedures in 2 CFR 200.305(b)(9).

* * * * *

■ 8. In § 1499.7:

■ a. Revise paragraphs (b) introductory text and (b)(1);

■ b. Redesignate paragraph (d) as paragraph (e);

■ c. Add new paragraphs (d) and (f).

The revisions and additions read as follows:

§ 1499.7 Transportation of donated commodities.

* * * * *

(b) Transportation to the designated discharge port or point of entry of

donated commodities, and other goods such as bags that may be provided by CCC under the FFP Program, will be arranged for under a specific agreement in the manner determined by CCC. Such transportation will be arranged for by:

(1) CCC in accordance with the Federal Acquisition Regulation (FAR) in 48 CFR chapter 1, the Agriculture Acquisition Regulation (AGAR) in 48 CFR chapter 4, and directives issued by the Director, Office of Contracting and Procurement, USDA; or

* * * * *

(d) A recipient may only use the services of a transportation company that is legally operating in the country in which it will be transporting the donated commodities and that would not have a conflict of interest in transporting such donated commodities.

* * * * *

(f) A recipient will be responsible for arranging and paying for any transportation of the donated commodities after their arrival at the designated discharge port or point of entry for as long as the recipient has title to such donated commodities, except as may otherwise be provided in the agreement.

■ 9. Revise § 1499.8 to read as follows:**§ 1499.8 Entry, handling, and labeling of donated commodities and notification requirements.**

(a) A recipient must make all necessary arrangements for receiving the donated commodities in the target country, including obtaining appropriate approvals for entry and transit. The recipient must make arrangements with the target country government for all donated commodities that will be distributed to beneficiaries to be imported and distributed free from all customs duties, tolls, and taxes. A recipient is encouraged to make similar arrangements, where possible, with the government of a country where donated commodities to be sold or bartered are delivered.

(b) A recipient must, as provided in the agreement, arrange for transporting, storing, and distributing the donated commodities from the designated point and time where title to the donated commodities passes to the recipient, except that CCC will arrange for transporting the donated commodities in accordance with § 1499.7(b)(1) when CCC determines that it is applicable.

(c) A recipient must maintain the donated commodities in good condition from the time that it takes possession of such donated commodities at the designated discharge port, the point of entry, or the point of receipt from the

originating carrier until their distribution, sale or barter.

(d) A recipient must comply with the following requirements in this paragraph, and the requirements specified in the agreement, regarding the acknowledgment of funding by USDA, the use of the USDA logo, and communications to the public:

(1) If a recipient arranges for the packaging or repackaging of donated commodities that are to be distributed, the recipient must ensure that the packaging:

(i) Is plainly labeled in the language of the target country;

(ii) Contains the name of the donated commodities;

(iii) Includes a statement indicating that the donated commodities are furnished by the Food for Progress Program of the United States Department of Agriculture; and

(iv) Includes a statement indicating that the donated commodities must not be sold, exchanged or bartered.

(2) If a recipient arranges for the processing and repackaging of donated commodities that are to be distributed, the recipient must ensure that the packaging:

(i) Is plainly labeled in the language of the target country;

(ii) Contains the name of the processed product;

(iii) Includes a statement indicating that the processed product was made with commodities furnished by the Food for Progress Program of the United States Department of Agriculture; and

(iv) Includes a statement indicating that the processed product must not be sold, exchanged or bartered.

(3) If a recipient distributes donated commodities that are not packaged, the recipient must display a sign at the distribution site that includes the name of the donated commodities, a statement indicating that the donated commodities are being furnished by the Food for Progress Program of the United States Department of Agriculture, and a statement indicating that the donated commodities must not be sold, exchanged, or bartered.

(4) A recipient must ensure that signs are displayed at all activity implementation and commodity distribution sites to inform beneficiaries that funding for the project was provided by the Food for Progress Program of the United States Department of Agriculture.

(5) A recipient must ensure that all communications to the public relating to the project, the activities, or the donated commodities, whether made through print, broadcast, digital, or other media, include a statement

acknowledging that funding was provided by the Food for Progress Program of the United States Department of Agriculture. This includes project descriptions, fact sheets, signs, websites, press releases, social media, videos, reports, and other communications to the public. A recipient must also ensure that the USDA logo is used in communications to the public in accordance with the agreement.

(e)(1) At the request of a recipient, CCC may waive compliance with one or more of the requirements in paragraph (d) of this section. A recipient may submit a written request for a waiver at any time after the agreement has been signed. Except as provided in paragraph (e)(2) of this section, the recipient must comply with the requirement(s) while awaiting a determination by CCC regarding its waiver request.

(2) If a recipient determines that compliance with one or more of the requirements in paragraph (d) of this section poses an imminent threat of injury, loss of life, or destruction of property in the target country, the recipient must submit a request to CCC for a waiver of such requirement(s), with an explanation of the safety or security risk, as soon as possible. The recipient will not have to comply with such requirement(s) while awaiting a determination by CCC regarding its waiver request.

(f) In exceptional circumstances, CCC may, on its own initiative, waive one or more of the requirements in paragraph (d) of this section for programmatic reasons.

■ 10. In § 1499.9, revise paragraphs (a) and (b), the sixth and ninth sentences of paragraph (c), paragraph (d)(3)(iii), and the first and second sentences of paragraph (e) introductory text to read as follows:

§ 1499.9 Damage to or loss of donated commodities.

(a) CCC will be responsible for the donated commodities prior to the transfer of title to the donated commodities to the recipient. The recipient will be responsible for the donated commodities while the recipient has title to the donated commodities. The title will transfer as specified in the agreement.

(b)(1) A recipient must inform CCC, in the manner set forth in the agreement, of any damage to or loss of donated commodities that occurs while the recipient has title to the donated commodities. The recipient must comply with the following procedures when reporting such damage to or loss of donated commodities:

(i) If the amount of the damage or loss is estimated to exceed \$20,000, the recipient must notify CCC in writing immediately after becoming aware of such damage or loss and, in this notification, provide detailed information about the circumstances surrounding such damage or loss, the quantity of damaged or lost donated commodities, and the amount of the damage or loss;

(ii) If the amount of the damage or loss is estimated to exceed \$1,000 but not to exceed \$20,000, the recipient must notify CCC in writing of the damage or loss within 15 days after the date that the recipient becomes aware of it and then provide detailed information about the damage or loss in the first report required to be filed under § 1499.13(c) that is due after the date that the recipient becomes aware of such damage or loss; and

(iii) If the amount of the damage or loss is estimated not to exceed \$1,000, the recipient must notify CCC, and provide detailed information about the damage or loss, in the first report required to be filed under § 1499.13(c) that is due after the date that the recipient becomes aware of such damage or loss.

(2) The recipient must take all steps necessary to protect its interests and the interests of CCC with respect to any damage to or loss of the donated commodities that occurs while the recipient has title to the donated commodities.

(c) * * * All surveys obtained by the recipient must, to the extent practicable, be conducted jointly by the surveyor, the recipient, and the ocean carrier, and the survey report must be signed by all three parties. * * * CCC will reimburse the recipient for the reasonable costs of these services, as determined by CCC.

(d) * * *

(3) * * *

(iii) Estimates the quantity of cargo, if any, lost during discharge through ocean carrier negligence;

* * * * *

(e) If donated commodities to which a recipient has title sustain damage in excess of \$5,000 at any time prior to their distribution or sale under the agreement, regardless of the party at fault, the recipient must immediately arrange for an inspection by a public health official or other competent authority approved by CCC and provide to CCC a certification by such public health official or other competent authority regarding the exact quantity and condition of the damaged donated commodities. The value of the donated commodities prior to the damage must

be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities, as well as such costs incurred by the recipient and paid by CCC. * * *

* * * * *

■ 11. In § 1499.10:

■ a. Revise paragraphs (a) and (b) introductory text;

■ b. Remove paragraph (b)(1);

■ c. Redesignate paragraphs (b)(2), (3), and (4) as paragraphs (b)(1), (2), and (3);

■ d. Remove paragraph (c); and

■ e. Redesignate paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e).

The revisions read as follows:

§ 1499.10 Claims for damage to or loss of donated commodities.

(a) CCC will be responsible for claims arising out of damage to or loss of a quantity of the donated commodities prior to the transfer of title to the donated commodities to the recipient. The recipient will be responsible for claims arising out of damage to or loss of a quantity of the donated commodities while the recipient has title to the donated commodities.

(b) If the recipient has title to donated commodities that have been damaged or lost, and the amount of the damage or loss is estimated to exceed \$20,000, the recipient must:

* * * * *

■ 12. In § 1499.11, revise paragraphs (e) and (h) 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 sanctions 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 such adjustments does not exceed the amount specified in the agreement. Adjustments beyond these limits require the prior approval of CCC.

(2) A recipient must not transfer any funds budgeted for participant support costs, as defined in 2 CFR 200.1, to other categories of expense without the prior approval of CCC.

* * * * *

■ 13. Revise § 1499.13 to read as follows:

§ 1499.13 Reporting and record keeping requirements.

(a) A recipient must comply with the performance and financial monitoring and reporting requirements in the agreement and 2 CFR 200.328 through 200.330.

(b) A recipient must submit financial reports to CCC, by the dates and for the reporting periods specified in the agreement. Such reports must provide an accurate accounting of sale proceeds, CCC-provided funds, interest, program income, and voluntary committed cost sharing or matching contributions. When reporting financial information under the agreement, the recipient must include the amounts in U.S. dollars and, if funds are held in local currency, the exchange rate.

(c)(1) A recipient must submit performance reports to CCC, by the dates and for the reporting periods specified in the agreement. These reports must include the following:

(i) The information required in 2 CFR 200.329(c)(2), including additional pertinent information regarding the recipient's progress, measured against established indicators, baseline values, and targets, towards achieving the expected results specified in the agreement. This reporting must include, for each performance indicator, a comparison of actual accomplishments with the baseline values and the targets established for the period. When actual accomplishments deviate significantly from targeted goals, the recipient must provide an explanation in the report;

(ii) Information covering the receipt, handling, and disposition of the donated commodities, until all of the donated commodities have been distributed, sold, or bartered and such disposition has been reported to CCC; and

(iii) If the agreement authorizes the sale or barter of donated commodities, information covering the receipt and use of any sale proceeds, goods and services derived from barter, and program income, until all of the sale proceeds, goods and services derived from barter, and program income have been disbursed or used and reported to CCC.

(2) A recipient must ensure the accuracy and reliability of the performance data submitted to CCC in performance reports. At any time during the period of performance of the agreement, CCC may review the recipient's performance data to determine whether it is accurate and reliable. The recipient must comply with all requests made by CCC or an

entity designated by CCC in relation to such reviews.

(d) Baseline, midterm, and final evaluation reports are required for all agreements, unless otherwise specified in the agreement. The reports must be submitted in accordance with the timeline in the CCC-approved evaluation plan. Evaluation reports submitted to CCC may be made public in an effort to increase accountability and transparency and share lessons learned and best practices.

(e) A recipient must, within 30 days after export of all or a portion of the donated commodities, submit evidence of such export to CCC, in the manner set forth in the agreement. The evidence may be submitted through an electronic media approved by CCC or by providing the ocean carrier's on board bill of lading. The evidence of export must show the kind and quantity of commodities exported, the date of export, and the country where the commodities will be delivered. The date of export is the date that the ocean carrier carrying the donated commodities sails from the final U.S. load port.

(f) If requested by CCC, a recipient must provide to CCC additional information or reports relating to the agreement.

(g) If a recipient requires an extension of a reporting deadline, it must ensure that CCC receives an extension request at least five business days prior to the reporting deadline. CCC may decline to consider a request for an extension that it receives after this time period. CCC will consider requests for reporting deadline extensions on a case by case basis and make a decision based on the merits of each request. CCC will consider factors such as unforeseen or extenuating circumstances and past performance history when evaluating requests for extensions.

(h) A recipient must retain records and permit access to records in accordance with the requirements of 2 CFR 200.334 through 200.338. The date of submission of the final expenditure report, as referenced in 2 CFR 200.334, will be the date of submission of the final financial report required by paragraph (b) of this section, as prescribed by CCC. The recipient must retain copies of and make available to CCC all sales receipts, contracts, or other documents related to the sale or barter of donated commodities and any goods or services derived from such barter, as well as records of dispatch received from ocean carriers.

■ 14. In § 1499.14, revise the third sentence of paragraph (a), paragraph

(b)(2), and the first sentence of paragraph (b)(4) to read as follows:

§ 1499.14 Subrecipients.

(a) * * * The recipient must enter into a written subagreement with the subrecipient and comply with the applicable provisions of 2 CFR 200.332.

* * *

(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 sanctions program, as specified in the agreement.

* * *

(4) The subrecipient is responsible for complying with the applicable compliance requirements set forth in the subaward in accordance with § 1499.18 and 2 CFR 200.501(h).

* * *

■ 15. In § 1499.15, revise the first sentence to read as follows:

§ 1499.15 Noncompliance with an agreement.

If a recipient fails to comply with a Federal statute or regulation or the terms and conditions of the agreement, and CCC determines that the noncompliance cannot be remedied by imposing additional conditions, CCC may take one or more of the actions set forth in 2 CFR 200.339 and, if appropriate, initiate a claim against the recipient.

■ 16. In § 1499.16:

- a. Revise paragraph (a);
- b. Redesignate paragraph (b) as paragraph (c);
- c. Add new paragraph (b); and
- d. Revise newly redesignated paragraph (c)(3).

The revisions and addition read as follows:

§ 1499.16 Suspension and termination of agreements.

(a) CCC may suspend or terminate an agreement if it determines that:

(1) One of the bases in 2 CFR 200.339 or 200.340 for suspension or termination by CCC has been satisfied;

(2) The continuation of the assistance provided under the agreement is no longer necessary or desirable; or

(3) Storage facilities are inadequate to prevent spoilage or waste of the donated commodities, or distribution of the donated commodities will result in a substantial disincentive to or interference with domestic production or marketing in the target country.

(b) The termination provisions in 2 CFR 200.340 and 200.341 will apply to an agreement.

(c) * * *

(3) Must comply with any closeout and post-closeout provisions specified in the agreement and 2 CFR 200.344 and 200.345.

■ 17. In § 1499.19, revise the first sentence to read as follows:

§ 1499.19 Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and have been assigned OMB control number 0551–0035. * * *

Zach Ducheneaux,

Executive Vice President, Commodity Credit Corporation.

In concurrence with:

Clay Hamilton,

Acting Administrator, Foreign Agricultural Service.

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3555

[Docket No. RHS–21–SFH–003]

RIN 0575–AD22

Single Family Housing Guaranteed Loan Program

AGENCY: Rural Housing Service, Agriculture Department (USDA).

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is implementing changes to the Single-Family Housing Guaranteed Loan Program (SFHGLP) to update the requirements for Federally supervised lenders, minimum net worth and experience for non-supervised lenders, approved lender participation requirements, handling of applicants with delinquent child support payments, and builder credit requirements.

DATES: This final rule is effective November 29, 2022.

FOR FURTHER INFORMATION CONTACT:

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(314) 679–6917; or email: laurie.mohr@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Rural Housing Service (RHS or Agency) is an agency of the United States Department of Agriculture (USDA) and offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single- and multi-family housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers and much more. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, State and Federal Government agencies, and local communities.

The RHS is issuing a final rule to amend the Single-Family Housing Guaranteed Loan Program (SFHGLP) regulation, 7 CFR part 3555, subparts B, C and D which will reinforce oversight and management of the growing SFHGLP portfolio. These changes will promote an efficient and robust management and oversight structure of lenders in the SFHGLP by strengthening underwriting practices, providing guidance for processing loan guarantees for applicants who are subject to administrative offset to collect delinquent child support payments, and streamline requirements for screening builder-contractors by lenders.

The updates align with the standards for managing credit programs recommended by the Office of Management and Budget (OMB) for Federally supervised lenders, minimum net worth, minimum line of credits, minimum experience, and approved lender participation requirements. These updates will also provide guidance for processing applications for individuals with delinquent child support payments and relaxes builder requirements to better align with the credit program requirements of other Federal agencies.

II. Discussion of Public Comments

RHS published a proposed rule on June 9, 2021 (86 FR 30555) to solicit comments on the proposed updated requirements for Federally supervised lenders, minimum net worth and experience for non-supervised lenders, approved lender participation requirements, treatment of applicants with delinquent child support payments, and builder credit requirements for SFHGLP (86 FR 30555). The Agency received comments

from six respondents including individuals, mortgage companies, and interested parties. Three of the comments are not applicable to the contents of the rule.

The following is a summary of the relevant comments:

Comment 1: One respondent opposed eliminating the background checks for builders stating the builder's integrity could not be thoroughly checked to avoid court appearances and rebuilding homes.

Agency Response: The Agency still relies on the lender to review and approve construction contractors or builders. The Agency has determined that these credit requirements are not the industry standard. The builder-contractor's ability to participate in such projects should be based on the applicant's and lender's review of the builder-contractor's experience, reputation, and financial ability to complete the project in a timely, efficient, and competent manner. The Agency believes the stance is correctly stated and stands behind the rule changes.

Comment 2: One respondent replied in favor of the proposed rule stating obtaining background checks for builders were difficult to obtain and could potentially hurt a builder's reputation if, for some unforeseen reason, you could not obtain a builder approval.

Agency Response: The Agency has determined no action is required.

Comment 3: One respondent agreed with certain delinquent child support provisions in the rule, however, the respondent raised concerns that the proposed change would be unduly difficult for rural families and children who are already experiencing housing challenges. The respondent noted that employment in rural areas is limited and felt that there are other means to addressing delinquent child support.

Agency Response: The Agency believes the stance is correctly stated and stands behind the rule changes.

III. Summary of Rule Changes

A summary of the changes includes amending 7 CFR 3555.51(a)(8) to eliminate items (a)(8)(iv) because it refers to the Office of Thrift Supervision (OTS), which no longer exists. Furthermore, the current § 3555.51(a)(9) and (10) is intended to provide a path for lenders that are not regulated by state or federal agencies and do not meet the requirements of (a)(1) through (8) an opportunity to participate in the SFHGLP. Therefore, the introductory paragraph of § 3555.51(a)(9) and (10) will be amended to clarify that when