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1407.3 Procurement debarment and suspension.

AUTHORITY: 15 U.S.C. 714b.

SOURCE: 64 FR 67471, Dec. 2, 1999, unless otherwise noted.

§ 1407.1 Purpose.

This part specifies the policies that CCC will follow in taking action to debar or suspend individuals or firms from participation in Federal non-procurement and procurement activities.

§ 1407.2 Nonprocurement debarment and suspension.

(a) CCC will proceed under 2 CFR parts 180 and 417 when taking action to debar or suspend participants or potential participants in CCC's nonprocurement activities.

(b) The debarring and suspending official for nonprocurement actions taken by CCC shall be as follows: For actions initiated on behalf of CCC by the Foreign Agricultural Service (FAS), the Food and Nutrition Service (FNS), or the Agricultural Marketing Service (AMS), the debarring and suspending official will be the Vice President, CCC, who is the Administrator FAS, FNS, or AMS, respectively. For actions initiated on behalf of CCC by the Natural Resources Conservation Service (NRCS), the official will be the Vice President, CCC, who is the Chief, NRCS.

[64 FR 67471, Dec. 2, 1999, as amended at 79 FR 75997, Dec. 19, 2014]

§ 1407.3 Procurement debarment and suspension.

CCC will proceed under this part when taking action to debar or suspend contractors with CCC or participants or potential participants in CCC's procurement activities. CCC will apply the provisions of 48 CFR part 409, subpart 409.4, in such actions, with the exception that the debarring and suspending official will be the Executive Vice President, CCC, or a designee.

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PART 1409—TRADE MITIGATION PROGRAM

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AUTHORITY: 15 U.S.C. 714b and 714c.

SOURCE: 83 FR 44176, Aug. 30, 2018, unless otherwise noted.

Subpart A—2018 Market Facilitation Program (MFP)

SOURCE: Redesignated at 84 FR 36461, July 29, 2019, unless otherwise noted.

§ 1409.1 Applicability.

This subpart specifies the eligibility requirements and payment calculations for the Market Facilitation Program (MFP) for 2018 crops. MFP will provide payments with respect to commodities which have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. The determination of eligible commodities and any specific program requirements for a commodity will be specified in a notice of funding

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availability published by CCC in the FEDERAL REGISTER.

[83 FR 44176, Aug. 30, 2018, as amended at 84 FR 36461, July 29, 2019]

§ 1409.2 Definitions.

The following definitions apply to MFP. The definitions in part 718 of this title and parts 1400, and 1421 of this section apply, except where they conflict with the definitions in this section.

Application means the MFP application form.

Commodity means an agricultural commodity produced in the United States intended to be marketed for commercial production that has been designated as eligible for payments under MFP.

Crop means the harvested production of a commodity.

Crop year means:

- (1) For insurable crops, the crop year as defined according to the applicable crop insurance policy; and
- (2) For NAP covered crops, the crop year as provided in part 1437 of this chapter.

NOFA means a notice of funds availability published by CCC in the FEDERAL REGISTER that specifies terms and conditions of MFP that are applicable to a specific commodity.

Producer means a livestock producer, dairy producer, or a producer of a crop as defined in § 718.2 of this title.

§ 1409.3 Producer eligibility requirements.

(a) To be eligible for an MFP payment, a producer must:

- (1) Meet all of the requirements in this part and the NOFA that is applicable to the commodity;
- (2) Be a:
 - (i) Citizen of the United States;
 - (ii) Resident alien, which for purposes of this part means “lawful alien” as defined in part 1400 of this chapter;
 - (iii) Partnership of citizens of the United States; or
 - (iv) Corporation, limited liability corporation, or other organizational structure organized under State law;
- (3) Have an ownership interest in the commodity.

(b) For eligible crops, a producer's share in the crop must be reported for the applicable crop year on form FSA-

578, Report of Acreage, on file in the FSA county office as of the acreage reporting deadline, or no later than the date specified in the relevant NOFA. For crops that are covered commodities under § 1412.3 of this chapter, each applicant must be a person or legal entity who was actively engaged in farming, as provided in part 1400 of this chapter, in the crop year for which the crop is included in MFP.

(c) For livestock and dairy, a producer must have had an ownership interest in livestock or dairy production during the applicable time period established by CCC in the applicable NOFA.

§ 1409.4 Method of application.

(a) To apply for an MFP payment, the producer must submit an MFP application on the form designated by CCC to an FSA county office.

(b) In the event that the producer does not submit documentation in response to any request of FSA to support the producer's application or documentation furnished does not show the producer had ownership in the commodity as claimed, the application for that commodity will be disapproved.

(c) A request for an MFP payment will not be approved by CCC until all the applicable eligibility provisions have been met and the producer has submitted all required forms and supporting documentation. In addition to the completed application form, if the following forms and documentation are not on file in the FSA county office or are not current for the applicable crop year of the crop or applicable year for the commodity for which MFP has been announced as available, the producer must also submit:

(1) A farm operating plan for an individual or legal entity as provided in part 1400 of this chapter;

(2) An average adjusted gross income statement for the applicable year entity as provided in part 1400 of this chapter;

(3) A highly erodible land conservation (sometimes referred to elsewhere as HELC) and wetland conservation certification as provided in part 12 of this title;

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(4) For crops, an acreage report for the applicable crop year as provided in part 718 of this title; and

(5) Verifiable records that substantiate the amount of production as specified in the relevant NOFA.

§ 1409.5 Calculation of payments.

The payment under this rule will be calculated by multiplying fifty percent of the total production of the commodity times the MFP payment rate for that commodity that is in effect when the payment is made times the producer's eligible share of the commodity. On or about December 3, 2018, CCC may announce a second payment rate, if applicable, that will apply to the remaining 50 percent of the producer's production for the selected commodity.

§ 1409.6 Eligibility subject to verification.

(a) Producers who are approved for participation in MFP are required to retain documentation in support of their application for 3 years after the date of approval.

(b) Producers must submit documentation to CCC as requested to substantiate an application.

(c) Producers receiving payments or any other person who furnishes such information to CCC must permit authorized representatives of USDA or the General Accounting Office during regular business hours to inspect, examine, and to allow such representatives to make copies of such books, records or other items for the purpose of confirming the accuracy of the information provided by the producer.

§ 1409.7 Miscellaneous provisions.

(a) If an MFP payment resulted from erroneous information provided by a producer, or any person acting on their behalf, the payment will be recalculated and the producer must refund any excess payment to CCC with interest calculated from the date of the disbursement of the payment.

(b) The refund of any payment to CCC is in addition to liability under any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

(c) The regulations in parts 11 and 780 of this title apply to determinations under this part.

(d) Any payment under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity or proceeds from the sale of the commodity.

(e) The \$900,000 average AGI limitation provisions in part 1400 of this chapter relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, apply to each applicant for MFP. The average AGI will be calculated for a person or legal entity based on the 3 complete tax years that precede the year for which the payment is made (for the 2018 crop year or marketing year for livestock and dairy the tax years are 2014, 2015, and 2016).

(f) No person or legal entity, excluding a joint venture or general partnership, as determined by the rules in part 1400 of this chapter may receive, directly or indirectly, more than \$125,000 in payments as specified in the relevant NOFA.

(g) The direct attribution provisions in part 1400 of this chapter apply to MFP. Under those rules, any payment to any legal entity will also be considered for payment limitation purposes to be a payment to persons or legal entities with an interest in the legal entity or in a sub-entity. If any such interested person or legal entity is over the payment limitation because of direct payment or their indirect interests or a combination thereof, then the payment to the actual payee will be reduced commensurate with the amount of the interest of the interested person in the payee. If anyone with a direct or indirect interest in a legal entity or sub-entity of a payee entity exceeds the AGI levels that would allow a producer to directly receive an MFP payment, then the MFP payment to the actual payee will be reduced commensurately with that interest.

(h) For the purposes of the effect of lien on eligibility for Federal programs (28 U.S.C. 3201(e)), CCC waives the restriction on receipt of funds under MFP but only as to beneficiaries who, as a condition of such waiver, agree to

apply the MFP payments to reduce the amount of the judgment lien.

(i) The provisions of §718.304 of this title, "Failure to Fully Comply," do not apply to this part.

Subpart B—2019 Market Facilitation Program (MFP)

SOURCE: 84 FR 36461, July 29, 2019, unless otherwise noted.

§ 1409.101 Applicability.

This subpart specifies the eligibility requirements and payment calculations for the MFP for 2019 agricultural commodities. MFP will provide payments with respect to agricultural commodities that have been impacted by trade actions of foreign governments resulting in the loss of exports. Any specific program requirements for a commodity will be specified in a notice of funding availability published by the Commodity Credit Corporation (CCC) in the FEDERAL REGISTER.

§ 1409.102 Definitions.

The following definitions apply to MFP. The definitions in 7 CFR part 718 and parts 1400 and 1421 of this chapter apply, except where they conflict with the definitions in this section.

Application means the MFP application form.

Commodity means an agricultural commodity produced in the United States intended to be marketed for commercial purposes that has been designated as eligible for payments under MFP.

County payment rate means the per acre value determined by: Historical acres and yields of non-specialty crops planted in that county and the amount of damage calculated due to trade actions of foreign governments resulting in the loss of exports represented as a per unit (for example, bushel or pound).

Crop means the non-specialty crops and specialty crops.

Crop year means:

(1) For insurable crops, the crop year as defined according to the applicable crop insurance policy; and

(2) For NAP covered crops, the crop year as provided in part 1437 of this chapter.

MFP means the Market Facilitation Program funded by CCC and administered by the Farm Service Agency (FSA).

NOFA means a notice of funds availability published by CCC in the FEDERAL REGISTER that specifies terms and conditions of MFP that are applicable to a specific commodity.

Non-specialty crop means any of the following crops: Alfalfa hay, barley, canola, corn, crambe, dried beans, dry peas, extra long staple cotton, flaxseed, lentils, long grain and medium grain rice, millet, mustard seed, oats, peanuts, rapeseed, rye, safflower, sesame seed, small and large chickpeas, sorghum, soybeans, sunflower seed, temperate japonica rice, triticale, upland cotton, and wheat. If warranted, additional non-specialty crops may be included in MFP in which case the availability of assistance will be specified in a NOFA published in the FEDERAL REGISTER.

Producer means a livestock producer, dairy producer, or a producer of a crop as defined in 7 CFR 718.2.

Specialty crops means any of the following crops: Almonds, cranberries, cultivated ginseng, fresh grapes, fresh sweet cherries, hazelnuts, macadamia nuts, pecans, pistachios, and walnuts. If warranted, additional specialty crops may be included in MFP in which case the availability of assistance will be specified in a NOFA published in the FEDERAL REGISTER.

§ 1409.103 Producer eligibility requirements.

(a) To be eligible for an MFP payment, a producer must meet all of the requirements in this part and the NOFA that is applicable to the commodity.

(b) A producer's share in the crop must be reported for the 2019 crop year on form FSA-578, Report of Acreage, submitted to FSA, and must be on file in the FSA county office by the applicable reporting dates, or no later than the date specified in the applicable NOFA.

(c) For non-specialty crops, except as determined by CCC, each applicant must be a person or legal entity who was actively engaged in farming, as provided in part 1400 of this chapter.

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(d) For livestock and dairy, a producer must have had an ownership interest in livestock or dairy production during the applicable time period established by CCC in the applicable NOFA.

§ 1409.104 Method of application.

(a) To apply for a payment, the producer must submit an MFP application on the form designated by CCC to an FSA county office.

(b) In the event that the producer does not submit documentation in response to any request of CCC to support the producer's application or documentation furnished does not show the producer had ownership in the commodity as claimed, the application for that commodity will be disapproved.

(c) A request for a payment will not be approved by CCC until all the applicable eligibility provisions have been met and the producer has submitted all required forms and supporting documentation. In addition to the completed application form, if the following forms and documentation are not on file in the FSA county office or are not current for the 2019 crop year of the crop or applicable year for the commodity for which MFP has been announced as available, the producer must also submit:

(1) A farm operating plan for an individual or legal entity as provided in part 1400 of this chapter;

(2) An average adjusted gross income statement for the applicable year entity as provided in part 1400 of this chapter;

(3) A highly erodible land conservation and wetland conservation certification as provided in part 12 of this title;

(4) For non-specialty and specialty crops, an acreage report for the applicable crop year as provided in 7 CFR part 718; and

(5) For dairy and livestock, verifiable records that substantiate the amount of production as specified in the applicable NOFA.

§ 1409.105 Calculation of payments.

(a) For non-specialty crops, the payment under this subpart will be calculated by multiplying the county payment rate by the 2019 reported planted

acreage for a farm not to exceed the sum of planted and prevented planted acres of non-specialty crops on the farm in 2018, and available acreage from 2018 expired Conservation Reserve Program contracts. Producers' payments may be adjusted as determined by CCC and as detailed in the applicable NOFA.

(b) For non-specialty prevented planted crops followed by a CCC approved cover crop, the payment rate will be \$15 per acre.

(c) For dairy and livestock, the payment under this subpart will be calculated by multiplying the total production of the commodity times the producer's eligible share of the commodity times the payment rate for that commodity, as provided for in a subsequent NOFA.

(d) For specialty crops, the payment under this subpart will be calculated by multiplying 2019 bearing acres of the specialty crop by the payment rate for the relevant specialty crop.

(e) For MFP payments:

(1) The first payment will be up to 50 percent of the total calculated payment.

(2) CCC will determine if any further payments are warranted. If CCC determines that a second payment is warranted, it will be up to 75 percent of the total calculated payment less the amount received in the first payment and the second payment period will begin in November 2019.

(3) If CCC determines that a final payment is warranted, it will be for up to the remaining amount of the total calculated payment, unless otherwise adjusted by CCC, and the last payment period will begin in January 2020.

§ 1409.106 Eligibility subject to verification.

(a) Producers approved for participation in MFP are required to retain documentation in support of their application for 3 years after the date of approval.

(b) Producers must submit documentation to CCC as requested to substantiate an application.

(c) Producers receiving payments or any other person who furnishes such information to CCC must permit authorized representatives of USDA or

the General Accounting Office during regular business hours to inspect, examine, and to allow such representatives to make copies of such books, records, or other items for the purpose of confirming the accuracy of the information provided by the producer.

§ 1409.107 Miscellaneous provisions.

(a) If an MFP payment resulted from erroneous information provided by a producer, or any person acting on their behalf, the payment will be recalculated and the producer must refund any excess payment to CCC with interest calculated from the date of the disbursement of the payment.

(b) The refund of any payment to CCC is in addition to liability under any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

(c) The regulations in 7 CFR parts 11 and 780 part 1400 of this chapter apply to determinations under this subpart.

(d) Any payment under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity or proceeds from the sale of the commodity.

(e) The \$900,000 average AGI limitation provisions in part 1400 of this chapter relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, apply to each applicant for MFP unless at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching or forestry related activities. If at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry related activities, the person or legal entity, other than a joint venture or general partnership, is eligible to receive 2019 MFP payments up to the \$250,000 payment limitation specified in the applicable NOFA. The average AGI will be calculated for a person or legal entity based on the 3 complete tax years that precede the year for which the payment is made (for the 2019 crop year or marketing year for livestock and dairy the tax years are 2015, 2016, and 2017).

(f) No person or legal entity, excluding a joint venture or general partner-

ship, as determined by the rules in part 1400 of this chapter may receive, directly or indirectly, more than \$250,000 in payments as specified in the applicable NOFA.

(g) The direct attribution provisions in part 1400 of this chapter apply to MFP. Under those rules, any payment to any legal entity will also be considered for payment limitation purposes to be a payment to persons or legal entities with an interest in the legal entity or in a sub-entity. If any such interested person or legal entity is over the payment limitation because of direct payment or their indirect interests or a combination thereof, then the payment to the actual payee will be reduced commensurate with the amount of the interest of the interested person in the payee. If anyone with a direct or indirect interest in a legal entity or sub-entity of a payee entity exceeds the AGI levels that would allow a producer to directly receive an MFP payment, then the MFP payment to the actual payee will be reduced commensurately with that interest.

(h) For the purposes of the effect of lien on eligibility for Federal programs (28 U.S.C. 3201(e)), CCC waives the restriction on receipt of funds under MFP but only as to beneficiaries who, as a condition of such waiver, agree to apply the MFP payments to reduce the amount of the judgment lien.

(i) The provisions of 7 CFR 718.304, "Failure to Fully Comply," do not apply to this part.

Subpart C—Expanded Domestic Commodity Donation Program (EDCDP)

SOURCE: 84 FR 36463, July 29, 2019, unless otherwise noted.

§ 1409.201 Applicability.

(a) This subpart specifies the process for eligible non-profit entities to receive commodities from the Commodity Credit Corporation (CCC) that CCC has acquired in response to trade actions taken by foreign governments resulting in the loss of exports. The types and quantities of commodities made available under this subpart, if any, is dependent upon the ability of CCC to use such commodities through

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existing domestic feeding programs administered by the Food and Nutrition Service (FNS). In the event that these domestic feeding programs are unable to use the commodities acquired by CCC, EDCDP is intended to provide the remaining commodities to low income individuals, primarily through eligible entities not participating in existing FNS food distribution programs.

(b) CCC, as specified in the applicable Notice of Commodity Availability, will use grants and cooperative agreements to conduct the Expanded Domestic Commodity Donation Program (EDCDP).

(c) The Food and Nutrition Service and the Agricultural Marketing Service will administer the EDCDP on behalf of CCC.

§ 1409.202 Definitions.

Commodity means an agricultural commodity produced in the United States intended to be marketed for commercial purposes.

Eligible entity means an incorporated nonprofit entity that is operating for religious, charitable, or educational purposes, and does not provide net earnings to or operate in any other manner that inures to the benefit of any officer, employee, or shareholder of the entity as defined in section 22 of the Child Nutrition Act of 1966 (42 U.S.C. 1791) and meets the requirements of § 1409.203.

Notice of Commodity Availability (NOCA) means the notice published by CCC specifying: The types of commodities available for use under this subpart; the terms and conditions that are in addition to the requirements of this subpart regarding approved uses of such commodities; the requirements a non-profit entity must meet to be an eligible entity; and whether funds will be made available by CCC regarding storage, handling, transportation and other administrative costs.

§ 1409.203 Application process.

(a) A non-profit entity that seeks approval for participation in EDCDP, as specified in the applicable NOCA must submit to the U.S. Department of Agriculture office identified in the NOCA:

- (1) The application form;

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(2) A copy of the entity's 501(c)(3) tax exempt status letter from the Internal Revenue Service (IRS);

(3) A copy of the entity's most recent IRS Form-990; and

(4) Any other supporting documents specified in the NOCA.

(b) After CCC has determined that the entity has met all eligibility requirements, the eligible entity may be considered for participation in EDCDP. After approval by CCC, the eligible entity must execute the applicable grant or cooperative agreement presented by CCC.

§ 1409.204 Award process.

(a) CCC intends to make awards to responsive applicants able to fully meet the requirements of the program subject to the priority criteria outlined below.

(b) To the extent that it is unable to make awards to all fully qualified applicants due to the limited quantity of commodities that will be available under this subpart, CCC reserves the right to both make awards on a pro-rated basis and to prioritize awards on the criteria listed below. CCC will consider the following factors in accepting offers for participation:

(1) The extent to which an eligible entity is already a participant in existing FNS administered programs with priority placed upon those entities that are not participating in such programs;

(2) The ability of the eligible entity to receive, store, and distribute at least 20,000 pounds of food per shipment and any other requirements as outlined in the NOCA, as determined by CCC, to successfully implement the proposed program activity;

(3) The eligible entity's operational and financial capability to receive and distribute commodities provided by CCC under this subpart;

(4) The scope of the proposed program activity in terms of its intended use of such commodities in low income areas, as determined by CCC using United States Census Bureau data and information available from federal means tested programs; and

(5) Any other criteria specified in the NOCA.

(c) An eligible entity may submit only one program proposal in response

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to a NOCA for the same geographic area.

§ 1409.205 Execution of agreement.

CCC will enter into a grant or cooperative agreement with an eligible entity regarding the entity's approved program proposal. The eligible entity may not assign or delegate any required action or responsibility of the entity except as provided in the applicable grant or cooperative agreement. Any modification of the grant or cooperative agreement must be made with the written approval of CCC.

§ 1409.206 Eligibility subject to verification.

(a) Eligible entities participating in EDCDP are required to retain documentation relating to the EDCDP for 3 years after the date of approval of the grant or cooperative agreement. However, records pertaining to claims or audits that remain unresolved in this period of time must be retained until such actions have been resolved.

(b) Eligible entities participating in EDCDP must permit authorized representatives of the U.S. Department of

Agriculture or the General Accounting Office during regular business hours to inspect, examine, and to allow such representatives to make copies of such books, records, or other items for the purpose of confirming the accuracy of the information provided by such entity.

§ 1409.207 Miscellaneous provisions.

(a) An eligible entity must comply with the provisions of:

(1) 2 CFR Chapters I and II (Office of Management and Budget Government-wide Guidance for Grants and Agreements);

(2) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards);

(3) 2 CFR part 415 (General Program Administrative Regulations); and

(4) 2 CFR part 418 (New Restrictions on Lobbying).

(b) An eligible entity that does not comply with the terms of the applicable grant or cooperative agreement is subject to the provisions of: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.