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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1487

RIN 0551–AA98

Technical Assistance for Specialty Crops Program

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

ACTION: Final rule.

SUMMARY: This rule revises the Technical Assistance for Specialty Crops (TASC) program regulations to incorporate legislative changes introduced in the Agriculture Improvement Act of 2018 and to incorporate changes that conform the operation of the program to the requirements in the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (Uniform Guidance) and Federal grant–making best practices.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Curt Alt, (202) 690–4784, curt.alt@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The TASC is authorized by Section 203 of the Agricultural Trade Act of 1978 (7 U.S.C. 5623), as amended. The TASC regulations appear at 7 CFR part 1487.

The Agriculture Improvement Act of 2018 (Pub. L. 115–334), which reauthorized the program for fiscal years 2019–2023, introduced legislative changes to the program that improve the program’s flexibility and usefulness to stakeholders, such as making work on potential barriers to trade eligible for funding under the program and eliminating the five–year limit on program funding. In addition, this rule updates the regulations to bring the operation of the program into conformance with the requirements in the Uniform Guidance. Additional changes are desirable to bring the administration of the program into line with the current best practices in Federal grantmaking.

Notice and Comment

This rule is being issued as a final rule without prior notice and opportunity for comment. The Administrative Procedure Act (5 U.S.C. 553) exempts rules “relating . . . to public property, loans, grants, benefits, or contracts” from the statutory requirements for prior notice and opportunity for comment and publication of the rule not less than 30 days before its effective date (5 U.S.C. 553(a)(2)). Accordingly, this final rule is effective when published 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: 10.604, Technical Assistance for Specialty Crops Program.

E–Government Act Compliance

The Foreign Agricultural Service (FAS) 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 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 governments, and, for this reason, it is excluded from the scope of Executive Order 12372.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 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 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be

not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

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 Order 13175

This rule has been reviewed for compliance with 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, 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. FAS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to the knowledge of FAS, have tribal implications that require tribal consultation under Executive Order 13175. If a tribe requests consultation, FAS will work with USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that for every new regulation issued, at least two prior regulations be

identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

List of Subjects in 7 CFR Part 1487

Agricultural commodities, Exports.

For the reasons discussed in the preamble, 7 CFR part 1487 is revised to read as follows:

PART 1487—TECHNICAL ASSISTANCE FOR SPECIALTY CROPS

Sec.

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Authority: 7 U.S.C. 5623, 5662–5663, as amended.

§1487.1 General purpose and scope.

(a) Under the Technical Assistance for Specialty Crops (TASC) program, the Commodity Credit Corporation (CCC), an agency and instrumentality of the United States within the U.S. Department of Agriculture (USDA), provides grant funds to eligible organizations to implement activities that are intended to address existing or potential sanitary, phytosanitary, or technical barriers that prohibit or threaten the export of U.S. specialty crops that are currently available on a commercial basis. The TASC program is intended to benefit the represented industry rather than a specific company or brand.

(b) This part sets forth the general terms, conditions, and policies governing CCC's operation of the TASC program.

(c)(1) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200. In 2 CFR 400.1, the U.S. Department of Agriculture (USDA)

adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as USDA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards.

(2) The OMB guidance at 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to the TASC program.

(3) 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 TASC program, to the extent that these 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 provisions or regulatory provisions that are generally applicable to CCC also apply to the TASC program.

(d) The TASC program generally operates on a reimbursement basis. The program is administered by the Foreign Agricultural Service (FAS), acting on behalf of CCC.

§1487.2 Definitions.

For purposes of this part, the following definitions apply:

Activity means a discrete undertaking within a project to be carried out by a Participant, directly or through a subrecipient or contractor, that is specified in an agreement and is intended to fulfill a specific objective of the agreement.

Agreement means a legally binding grant entered into between CCC and a TASC applicant setting forth the terms and conditions to implement an approved project under the TASC program, including any subsequent amendments to such agreement.

Approval letter means a document by which CCC informs an applicant that its TASC proposal has been approved for funding. This letter may also approve specific activities and contain terms and conditions in addition to the agreement.

Attaché/Counselor means the FAS employee representing United States Department of Agriculture interests in a foreign country.

Eligible organization means any U.S. organization that demonstrates a role or interest in the exports of specialty crops, including, but not limited to: U.S. Government agencies, State government agencies, non-profit trade associations, universities, agricultural cooperatives, and private companies.

Participant means an entity that has entered into a TASC agreement with CCC.

Specialty crop means most cultivated plants produced in the United States, or the products thereof, except wheat, feed grains, oilseeds, cotton, rice, peanuts, sugar, and tobacco.

Unified Export Strategy (UES) system means the online Internet system maintained by FAS through which applicants currently may apply to TASC and the other FAS market development programs. The system is currently accessible at <https://apps.fas.usda.gov/ues/webapp/>. FAS may prescribe a different system through which applicants may apply to TASC and will announce such system in the applicable Notice of Funding Opportunity (NOFO).

United States means each of the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

§1487.3 Program eligibility.

(a) An eligible organization can submit an application under this part to become a Participant under the TASC Program. FAS 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 NOFO posted on the U.S. Government web site for grant opportunities.

(b) In order to be eligible for funding under the TASC program, activities must address existing or potential sanitary, phytosanitary, or technical barriers to the export of U.S. specialty crops. Examples of expenses that CCC may agree to cover under the TASC program include but are not limited to expenses associated with: initial pre-clearance programs, export protocol and work plan support, seminars and workshops, study tours, field surveys, development of pest lists, pest and disease research, database development, reasonable logistical and administrative support, and travel and per diem expenses.

(c) Eligible projects may take place in the United States or abroad.

(d) Proposals from research and consulting entities will be considered for funding assistance only with evidence of substantial participation in and financial support to the proposed project by U.S. industry. Such support is most credibly demonstrated through actual monetary contributions to the cost of the project.

(e) Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. entities, but are not eligible for funding assistance from the program.

§1487.4 Limits on the scope of proposals.

(a) *Funding cap.* Proposals that request more than \$500,000 of CCC funding in a given year will not be considered.

(b) *Length of activities.* Awards will generally be granted for a project period not exceeding five calendar years. However, FAS will entertain requests to extend agreements beyond five years when valid justifications are submitted. Participants must submit in writing a valid justification for why an extension is necessary no later than 60 days before the end of the period of performance. Extensions generally will be granted in one-year increments, if warranted. A Participant must wait for written approval from FAS before proceeding with the project.

(c) *Target countries.* Proposals may target barriers in any eligible export market, including single countries or reasonable regional groupings of countries.

(d) *Multiple proposals.* Applicants may submit multiple proposals, but no Participant may have more than five approved projects underway at any given time.

(e) *Program funds only for specific uses.* Participants shall not use program funds to supplement the costs of normal day-to-day operations or to promote their own products or services beyond specific uses approved in a given project.

§1487.5 Application process.

(a) *Announcement for TASC program participant.* CCC will periodically announce that it is accepting applications for participation in the TASC program. All relevant information, including application deadlines and proposal content, will be noted in the announcement, and proposals must be submitted in accordance with the terms and conditions, as well as other requirements specified in the announcement and in this part. Currently, applicants

are encouraged to submit applications through the UES system, but are not required to use the UES system. CCC may request any additional information it deems necessary from any applicant in order to properly evaluate any proposal

(b) *Universal identifier and System for Award Management (SAM)*. In accordance with 2 CFR part 25, each entity that applies to the TASC program and does not qualify for an exemption under 2 CFR 25.110 must:

- (1) Be registered in the SAM prior to submitting an application or plan;
- (2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and
- (3) Provide its DUNS number, or a unique identifier designated as a DUNS replacement, in each application or plan it submits to CCC.

(c) *Reporting subaward and executive compensation information*. In accordance with 2 CFR part 170, each entity that applies to the TASC program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive TASC funding.

§1487.6 Application review and formation of agreements.

(a) *General*. Proposals received in accordance with the announcement and this part will undergo a multi-phase review by CCC to determine eligibility for the program, the qualifications, quality, and appropriateness of proposed projects, and the reasonableness of proposed project budgets.

(b) *Evaluation criteria.* CCC will review all proposals for eligibility and completeness. CCC will evaluate and score each proposal against the factors described in the NOFO. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal, and submit the proposals and funding recommendations to appropriate officials for decision. CCC may, when appropriate to the subject matter of the proposal, request the assistance of other U.S. Government experts in evaluating the merits of a proposal. Demonstration of substantial U.S. industry participation in or financial or other support of a proposal will be a positive factor in the consideration of proposals. All reviewers will be required to sign a conflict of interest form, and when conflicts of interests are identified the reviewer will be recused from the objective review process.

(c) *Approval decision.* CCC will approve those applications that it determines best satisfy the criteria and factors specified in the announcement and this part. All decisions regarding the disposition of an application are final.

§1487.7 Applicant notification.

(a) CCC will notify each applicant in writing of the final decision on its application. CCC will send an agreement and an approval letter to each approved applicant. An applicant that accepts the terms and conditions contained in the agreement and approval letter must so indicate by having the appropriate authorizing official sign the agreement and submit it to CCC. The applicant may not begin to implement approved activities until the applicant's authorizing official and CCC have signed the agreement. The applicant is

authorized to begin implementation of the project as of the date specified in the approval letter, unless otherwise indicated.

(b) The approval letter and agreement will outline the activities and budgets that are approved and will specify the terms and conditions applicable to the project, including the levels of TASC funding and cost share requirements.

§1487.8 Reimbursements and advances.

(a) *Reimbursement procedures.* (1) Following the implementation of a project for which CCC has agreed to provide funding, a Participant may submit claims for reimbursement of eligible expenses incurred in implementing a TASC project, to the extent that CCC has agreed to pay such expenses. Any changes to approved activities must be approved in writing by CCC before any reimbursable expenses associated with the change can be incurred. A Participant will be reimbursed after CCC reviews the claim and determines that it is complete.

(2) CCC will make all payments to the Participants in U.S. dollars. FAS will initiate payment within 30 days after receipt of the billing, unless the billing is improper.

(3) Participants will be authorized to submit requests for reimbursements or advances at least monthly when electronic fund transfers (EFTs) are not used, and as frequently as desired when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

(4) Participants may submit claims for reimbursement of the expenses incurred in implementing TASC projects, to the extent CCC has agreed to pay for such costs, limited initially to 85 percent of the total amount specified in the agreement. The Participant may

be reimbursed for the remaining 15 percent of the funds only after the final performance report containing the information required by the agreement is submitted to and approved by FAS.

(5) Final claims for reimbursement must be received no later than 90 calendar days after the completion date of the project or following the expiration or termination date of the agreement, whichever is sooner, and are subject to FAS approval of the Participant's final performance report. Participants are required to use a prescribed system to submit their claims. This system will be clearly stated in the NOFO. Currently the CCC's Internet-based UES system is being used to request reimbursement for eligible TASC program expenses.

(6) Participants shall maintain complete records of all program expenditures, identified by TASC agreement number, program year, country or region, activity number, and cost category. Such records shall be accompanied by documentation that supports the expenditure and shall be made available to CCC upon request. CCC may deny a claim for reimbursement if the claim is not supported by acceptable documentation.

(7) In the event that a reimbursement claim is overpaid or is disallowed after payment already has been made, the Participant shall repay CCC within 30 calendar days of such overpayment or disallowance the amount overpaid or disallowed either by submitting a check payable to CCC and referencing the applicable project, or by offsetting its next reimbursement claim. The Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(8) The Participant shall report any actions that may have a bearing on the propriety of any claims for reimbursement in writing to the appropriate Attaché/Counselor and FAS Division Director.

(b) *Advances--(1) Policy.* In general, CCC operates the TASC program on a cost reimbursable basis.

(2) *Exception.* Upon request, CCC may make advance payments to a Participant against an approved project budget. Participants may request an advance of up to 85 percent of the funding approved in any given program year. Advances should be limited to the minimum amounts needed and requested as close as is administratively feasible to the actual time of disbursement by the Participant. Reimbursement claims will be used to offset advances. Participants shall deposit and maintain advances in insured, interest-bearing accounts, unless the exceptions in 2 CFR part 200 apply. Interest earned by the Participant on funds advanced by CCC is not program income. Up to \$500 of interest earned per year may be retained by the Participant for administrative expenses. Any additional interest earned on Federal advance payments shall be remitted annually to the appropriate entity as required in 2 CFR part 200.

(3) *Refunds due CCC.* A Participant shall fully expend all advances on approved activities within 90 calendar days after the date of disbursement by CCC. By the end of 90 calendar days, the Participant must submit reimbursement claims to offset the advance and submit a check made payable to CCC for any unexpended balance. The Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

§1487.9 Reporting.

(a) Participants are required to submit regular financial and performance reports in accordance with their agreement. Reporting requirements and formats for both annual financial and performance reports and final financial and performance reports will be specified in the agreement between CCC and the Participant.

(b)(1) In addition to the information required in 2 CFR 200.328(b)(2), a Participant's performance reports must include pertinent information regarding the Participant's progress, measured against established indicators, baselines, 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 and the targets established for the period. When actual accomplishments deviate significantly from targeted goals, the Participant must provide an explanation in the report.

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

(c) All final performance reports will be made available to the public.

(d) If requested by FAS, a Participant must provide to FAS additional information or reports relating to the agreement.

(e) If a Participant requires an extension of a reporting deadline, it must ensure that FAS receives an extension request at least five business days prior to the reporting deadline. FAS may decline to consider a request for an extension that it receives after this time

period. FAS will consider requests for reporting deadline extensions on a case by case basis and will make a decision based on the merits of each request. FAS will consider factors such as unforeseen or extenuating circumstances and past performance history when evaluating requests for extensions.

§1487.10 Notification of international travel.

The Participant shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel by the Participant or its consultants or other participants. The timing of such notice should be far enough in advance to enable the Attaché/Counselor to schedule appointments, make preparations, or otherwise provide any assistance being requested. Failure to provide advance notification of travel generally will result in disallowance of the expenses related to the travel, unless CCC determines it was impractical to provide such notification.

§1487.11 Evaluation.

Project evaluations may be carried out by CCC at its option with or without Participants. CCC may also seek outside expertise to conduct or participate in evaluations.

§1487.12 Compliance reviews and notices

(a) *Compliance review process.* (1) USDA staff may conduct compliance reviews of Participant's activities under the TASC program to ensure compliance with this part, applicable Federal laws and regulations, and the terms of the agreements and approval letters. Participants shall cooperate fully with relevant USDA staff conducting

compliance reviews and shall comply with all requests from USDA staff to facilitate the conduct of such reviews. Program funds spent inappropriately or on unapproved activities must be returned to CCC.

(2) Any project or activity funded under the program is subject to review or audit at any time during the course of implementation or after the completion of the project.

(3) Upon conclusion of the compliance review, USDA staff will provide a written compliance report to the Participant. The compliance report will detail any instances where it appears that the Participant is not complying with any of the terms or conditions of the agreement, approval letter, or the applicable laws and regulations. The report will also specify if it appears that CCC may be entitled to recover funds from the Participant and will explain the basis for any recovery of funds from the Participant. If, as a result of a compliance review, CCC determines that further review is needed in order to ensure compliance with the requirements of the TASC program, CCC may require the Participant to contract for an independent audit.

(4) In addition, CCC may notify a Participant in writing at any time if CCC determines that CCC may be entitled to recover funds from the Participant. CCC will explain the basis for any recovery of funds from the Participant in the written notice. The Participant shall, within 30 calendar days of the date of the notice, repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. If, however, a Participant notifies CCC within 30 calendar days of the date of the written notice that the Participant intends to file an appeal pursuant to the provisions of this part, the amount owed to CCC by the Participant is not due until

the appeal procedures are concluded and CCC has made a final determination as to the amount owed.

(5) The fact that a compliance review has been conducted by USDA staff does not signify that a Participant is in full compliance with its agreement, approval letter, and/or applicable laws and regulations.

(b) Participant response to compliance report. (1) A Participant shall, within 60 calendar days of the date of the issuance of a compliance report, submit a written response to CCC. The response may include additional documentation for consideration or a request for reconsideration of any finding along with supporting justification. If the Participant does not wish to contest the compliance report, the response shall include any money owed to CCC, which may be returned by submitting a check payable to CCC or by offsetting a reimbursement claim. The Participant shall make any payments in U.S. dollars, unless otherwise approved in advance by CCC. CCC, at its discretion, may extend the period for response.

(2) After reviewing the response, CCC shall determine whether the Participant owes any funds to CCC and will inform the Participant in writing of the basis for the determination. CCC may initiate action to collect such amount by providing the Participant a written demand for payment of the debt pursuant to the debt settlement policies and procedures in 7 CFR part 1403.

(c) Participant appeals of CCC determinations. (1) Within 30 calendar days of the date of the issuance of a determination, the Participant may appeal the determination by making a request in writing that includes the basis for such reconsideration. The Participant may also request a hearing.

(2) If the Participant requests a hearing, CCC will set a date and time for the hearing. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Participant bears the cost of a transcript; however, CCC may, at its discretion, have a transcript prepared at CCC's expense.

(3) CCC will base its final determination upon information contained in the administrative record. The Participant must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by CCC.

§1487.13 Records retention.

All records related to the project, including records pertaining to subawards, shall be made available upon request to authorized officials of the U.S. Government.

§1487.14 Program income.

Program income means gross income earned by the Participant that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. Any such income generated from an activity, the expenditures for which have been wholly or partially reimbursed with TASC funds, shall be used by the Participant in furtherance of its approved activities in the program period during which the TASC funds are available for obligation by the Participant, or must be returned to CCC. The use of such income shall be governed by this part. Reasonable activity fees or registration fees, if identified as such in a project budget, may be charged for projects approved for program funding. The intent to charge a fee must be part of the original proposal, along with an explanation of how such fees are to be used. Any activity fees

charged must be used to offset activity expenses or returned to CCC. Such fees may not be used as profit or counted as cost share.

§1487.15 Subrecipients.

(a) A Participant may utilize the services of a subrecipient to implement activities under the agreement if this is provided for in the agreement. The subrecipient may receive CCC–provided funds, program income, or other resources from the Participant for this purpose. The Participant must enter in to a written subaward with the subrecipient and comply with the applicable provisions of 2 CFR 200.331 and/or the Federal Acquisition Regulation (FAR), if applicable. If required by the agreement, the Participant must provide a copy of such subaward to FAS, in the manner set forth in the agreement, prior to the transfer of CCC–provided funds or program income to the subrecipient.

(b) A Participant must include the following requirements in a subaward:

(1) The subrecipient is required to comply with the applicable provisions of this part and 2 CFR parts 200 and 400 and/or the FAR, if applicable. The applicable provisions are those that relate specifically to subrecipients, as well as those relating to non–Federal entities that impose requirements that would be reasonable to pass through to a subrecipient because they directly concern the implementation by the subrecipient of one or more activities under the agreement. If there is a question about whether a particular provision is applicable, FAS will make the determination.

(2) The subrecipient must pay to the Participant the value of CCC–provided funds, interest, or program income that are not used in accordance with the subaward, or that are

lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(3) In accordance with 2 CFR 200.501(h), subawards must include a description of the applicable compliance requirements and the subrecipient's compliance responsibility. Methods to ensure compliance may include pre-award audits, monitoring during the agreement, and post-award audits.

(c) A Participant must monitor the actions of a subrecipient as necessary to ensure that CCC-provided funds and program income provided to the subrecipient are used for authorized purposes in compliance with applicable U.S. Federal laws and regulations and the subaward and that performance indicator targets are achieved for both activities and results under the agreement.

(d) Participants have full and sole responsibility for the legal sufficiency of all subawards they may enter into with one or more subrecipients in order to carry out an approved project and shall assume financial liability for any costs or claims resulting from suits, challenges, or other disputes based on subawards entered into by the Participant. Neither CCC nor any other agency of the United States Government nor any official or employee of CCC, FAS, USDA, or the United States Government has any obligation or responsibility with respect to Participant subawards with third parties.

(e) Participants are responsible for ensuring to the greatest extent possible that the terms, conditions, and costs of subawards constitute the most economical and effective use of project funds.

(f) All fees for professional and technical services paid to subrecipients in any part with project funds must be covered by written subawards.

(g) A Participant shall:

(1) Ensure that all expenditures for goods and services in excess of \$25 reimbursed by CCC are documented by a purchase order or invoice;

(2) Ensure that no employee, officer, board member, agent, or the employee's, officer's, board member's, or agent's family, partners, or an organization that employs or is about to employ any of the parties indicated herein, participates in the review, selection, award or administration of a subaward in which such entities or their affiliates have a financial or other interest;

(3) Conduct all contracting in an openly competitive manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals for procurement of any goods or services, and such individuals' families or partners, or an organization that employs or is about to employ any of the aforementioned shall be excluded from competition for such procurement;

(4) Conduct all awarding of grants and agreements in an openly competitive manner, except under the following conditions:

(i) Non-monetary awards of property or services;

(ii) Awards of less than \$75,000;

(iii) Awards to fund continuing work already started under a previous award;

(iv) Awards that cannot be delayed due to an emergency or a substantial danger to health or safety;

(v) Awards when it is impracticable to secure competition; or

(vi) Awards to fund unique and innovative unsolicited applications;

- (5) Base each solicitation for professional or technical services on a clear and accurate description of and requirements related to the services to be procured;
- (6) Perform and document some form of fee, price, or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered fees or prices for procurements in excess of the simplified acquisition threshold defined at 2 CFR 200.88; and
- (7) Document the decision-making process.

§1487.16 Suspension and termination of agreements.

(a) An agreement or subaward may be suspended or terminated in accordance with 2 CFR 200.338 or 200.339. FAS may suspend or terminate an agreement if it determines that:

- (1) One of the bases in 2 CFR 200.338 or 200.339 for termination or suspension by FAS has been satisfied; or
- (2) The continuation of the assistance provided under the agreement is no longer necessary or desirable.

(b) If an agreement is terminated, the Participant:

- (1) Is responsible for using or returning any CCC-provided funds, interest, or program income that have not been disbursed, as agreed to by FAS; and
- (2) Must comply with any closeout and post-closeout procedures specified in the agreement and 2 CFR 200.343 and 200.344.

§1487.17 Audit requirements.

(a) Subpart F of 2 CFR part 200 applies to all Participants and subrecipients under this part other than those that are for-profit entities, foreign public entities, or foreign organizations.

(b) A Participant or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization and that expends, during its fiscal year, a total of at least the audit requirement threshold in 2 CFR 200.501 in Federal awards, is required to obtain an audit. Such a Participant or subrecipient has the following two options to satisfy the requirement in this paragraph (b):

(1)(i) A financial audit of the agreement or subaward, in accordance with the Government Auditing Standards issued by the United States Government Accountability Office (GAO), if the Participant or subrecipient expends Federal awards under only one FAS program during such fiscal year; or

(ii) A financial audit of all Federal awards from FAS, in accordance with GAO's Government Auditing Standards, if the Participant or subrecipient expends Federal awards under multiple FAS programs during such fiscal year; or

(2) An audit that meets the requirements contained in subpart F of 2 CFR part 200.

(c) A Participant or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization and that expends, during its fiscal year, a total that is less than the audit requirement threshold in 2 CFR 200.501 in Federal awards, is exempt from requirements under this section for an audit for that year, except as provided in paragraphs (d) and (f) of this section, but it must make records available for review by appropriate officials of Federal agencies.

(d) FAS may require an annual financial audit of an agreement or subaward when the audit requirement threshold in 2 CFR 200.501 is not met. In that case, FAS must provide funds under the agreement for this purpose, and the Participant or subrecipient, as applicable, must arrange for such audit and submit it to FAS.

(e) When a Participant or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization is required to obtain a financial audit under this section, it must provide a copy of the audit to FAS within 60 days after the end of its fiscal year.

(f) FAS, the USDA Office of Inspector General, or GAO may conduct or arrange for additional audits of any Participants or subrecipients, including for-profit entities and foreign organizations. Participants and subrecipients must promptly comply with all requests related to such audits. If FAS conducts or arranges for an additional audit, such as an audit with respect to a particular agreement, FAS will fund the full cost of such an audit, in accordance with 2 CFR 200.503(d).

§1487.18 Disclosure of program information.

(a) Documents submitted to CCC by Participants are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and 7 CFR part 1, subpart A, including, specifically, 7 CFR 1.11.

(b) Any research conducted by a Participant pursuant to an agreement and/or approval letter shall be subject to the provisions relating to intangible property in 2 CFR part 200.

§1487.19 Ethical conduct.

- (a) The Participant shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.
- (b) A Participant shall conduct its business in accordance with the laws and regulations of the country(s) in which each activity is carried out and in accordance with applicable U.S. Federal, state, and local laws and regulations. A Participant shall conduct its business in the United States in accordance with applicable Federal, state, and local laws and regulations.
- (c) Neither a Participant nor its affiliates shall make export sales of U.S. agricultural commodities covered under the terms of an agreement. Neither a Participant nor its affiliates shall charge a fee for facilitating an export sale. A Participant may collect check-off funds and membership fees that are required for membership in the Participant's organization.
- (d) The Participant shall not use program activities or project funds to promote private self-interests or conduct private business.
- (e) A Participant shall not limit participation in its TASC activities to members of its organization. Participants shall ensure that their TASC-funded programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non-merit factors.
- (f) A Participant shall select U.S. agricultural industry representatives to participate in activities based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested by CCC, a Participant shall submit such selection criteria to CCC for approval.

(g) The Participant must report any actions or circumstances that may have a bearing on the propriety of program activities to the appropriate Attaché/Counselor, and the Participant's U.S. office shall report such actions or circumstances in writing to CCC.

(h) The officers, employees, board members, and agents of the Participant shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, sub-contractors, or parties to sub-agreements. However, Participants may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, board members, or agents of the Participant.

§1487.20 Amendments.

(a) Participants may request to modify approved projects if circumstances change in such a way that they would likely affect the progress and ultimate success of a project. Such modification must be made through a written amendment to the agreement. All requests for project modifications must be made in writing to CCC and must include:

- (1) A justification as to why changes to the project as originally designed are needed;
- (2) An explanation of the necessary adjustments in approach or strategy; and
- (3) A description of necessary changes in the project's time line(s) and/or budget (*e.g.*, shifting of budgetary resources from one-line item to another in order to accommodate the changes).

(b) All requests for project modifications must be reviewed and approved by CCC. Upon approval, CCC will issue an amendment to the agreement, which must be signed by CCC and the Participant.

§1487.21 Noncompliance with an agreement.

(a) If a Participant fails to comply with any term in its project agreement, approval letter, or this part, CCC may take one or more of the enforcement actions in 2 CFR part 200 and, if appropriate, initiate a claim against the Participant, following the procedures set forth in this part. CCC may also initiate a claim against a Participant if program income or CCC–provided funds are lost due to an action or omission of the Participant. If any Participant has engaged in fraud with respect to the TASC program, or has otherwise violated program requirements under this part, CCC may:

(1) Hold such Participant liable for any and all losses to CCC resulting from such fraud or violation;

(2) Require a refund of any assistance provided to such Participant plus interest as determined by FAS; and

(3) Collect liquidated damages from such Participant in an amount determined appropriate by FAS.

(b) The provisions of this section shall be without prejudice to any other remedy that is available under any other provision of law.

§1487.22 Paperwork reduction requirements.

The paperwork and recordkeeping requirements imposed by this part have been approved by OMB under the Paperwork Reduction Act of 1980. OMB has assigned control number 0551–0038 for this information collection.

Margo Erny,
Acting Executive Vice President,
Commodity Credit Corporation.

November 27, 2019
Date

In concurrence with:

Ken Isley,
Administrator,
Foreign Agricultural Service.

November 26, 2019
Date

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