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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1409

RIN 0560–AI42

Market Facilitation Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing a new regulation to implement the Market Facilitation Program (MFP). MFP provides payments to producers with commodities that have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. This rule specifies the eligibility requirements, payment calculations, and application procedures for MFP. The details for specific commodities and the relevant application start dates will be announced in subsequent notices of funds availability (NOFAs).

DATES: *Effective:* August 30, 2018.

FOR FURTHER INFORMATION CONTACT: Bradley Karmen, Acting Deputy Administrator for Farm Programs, telephone: (202) 720–3175. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The imposition of tariffs by other countries on U.S. agricultural products, among other actions, are disrupting marketing of agricultural commodities and are outside of the control of the agricultural producers who are being negatively impacted. In response to the actions of foreign governments, the President has pledged that up to $12 billion in financial assistance will be made available for certain agricultural commodities under section 5 of the CCC Charter Act (15 U.S.C. 714c). This section authorizes CCC to assist in the disposition of surplus commodities and to increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.

MFP payments constitute one portion of up to $12 billion in financial assistance to farmers. The MFP payments will aid producers in the disposition of surplus commodities and aid in the expansion of domestic markets or aid in the development of new and additional markets and uses for the specific crops or commodities that are negatively impacted by actions of foreign governments. The MFP payments will provide producers with financial assistance that gives them the ability to absorb some of the additional costs from having to delay or reorient marketing of the new crop due to the tariff retaliation. The determination of commodities that are included in MFP and specific program requirements applicable to the commodities, such as enrollment periods, will be announced in the applicable NOFAs published in the **Federal Register**.

The Farm Service Agency (FSA) will administer MFP on behalf of CCC.

MFP Description

MFP is a temporary assistance program to producers of covered agricultural commodities. MFP will be available to producers of those commodities determined by the Secretary to have been adversely affected by the actions of foreign governments.

MFP payment rates and units of measure will be in effect beginning September 4, 2018. The payment rate under this rule will apply to the first 50 percent of the producer's total production of the selected 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. USDA will continue to monitor the situation with respect to adverse effects felt by American commodity producers as a result of trade disruptions and will determine whether additional assistance is necessary at a later date, considering additional available data and updated methodologies. The MFP payment under this announcement is expected to total about $5 billion.

Producer Eligibility Requirements

Under MFP, CCC will provide payments to producers of those commodities determined by the Secretary to have been adversely affected by the retaliatory actions of foreign governments. Participation in other CCC programs is not a prerequisite to participate in MFP.

MFP payments will be available to those producers who had an ownership interest in the crop on acres that were planted and reported to FSA for the 2018 crop year. Producers who reported such an interest are eligible for MFP payments, provided all other eligibility requirements are met. A verbal or written agreement that precludes a producer from having such an interest may disqualify the producer for MFP.

Crop producers must meet all of the following requirements to be eligible for an MFP payment:

(1) The producer must have submitted to FSA a form FSA–578, ''Report of Acreage'' (referred to as ''acreage report''), representing the applicable crop year acreage of the eligible crop as planted, and provide FSA with supporting documentation, as required by the applicable NOFA. For any producer who is not participating in another FSA-administered CCC program, the producer must provide the required crop planting information on the acreage report. If the acreage report deadline for the eligible crop has passed, the producer will follow the established ''late-filed'' acreage reports process;

(2) The producer's acreage report must specify the producer's ownership share of both the eligible crop and the number of acres planted to that crop; and

(3) The producer must apply for an MFP payment as announced by CCC.

Payments for commodities other than crops, such as livestock and dairy, will be based on information submitted by producers to FSA as specified in the applicable NOFA. MFP payments will be available to those producers who had an ownership interest in the commodity during the applicable time period, provided all other eligibility requirements are met.

Producers of commodities other than crops must meet all of the following requirements to be eligible for an MFP payment:

(1) The producer must complete an MFP application form and provide FSA with supporting documentation, as required by the applicable NOFA, which must specify the producer's ownership interest in the eligible commodity and the amount of the commodity for the applicable time period; and

(2) The producer must have ownership in the commodity as described in the applicable NOFA.

Adjusted Gross Income and Payment Limitation Requirements

The average adjusted gross income (AGI) limitations as specified in 7 CFR part 1400 apply to MFP. No person or legal entity (excluding a joint venture or general partnership), as defined and determined under 7 CFR part 1400 may receive, directly or indirectly, more than $125,000 in MFP payments for the 2018 crop year as specified in the relevant NOFA. The application of the payment limitation will be specified in the NOFA. For example, certain commodities announced at the same time may have a combined payment limitation.

For the $125,000 annual payment limit, both indirect and direct benefits are counted by attribution. The regulations in 7 CFR 1400.105 specify how payments are attributed; the total amount of payments is attributed to a person by taking into account the direct and indirect ownership interests of the person in a legal entity that is eligible to receive payments. In the case of a legal entity, the same payment is attributed to the direct payee in the full amount and to those that have an indirect interest to the amount of that indirect interest.

A person or legal entity is ineligible for payments if the person's or legal entity's AGI for the applicable program year is more than $900,000. If a person with an indirect interest in a legal entity has an average AGI of more than $900,000, the MFP payments subject to average AGI compliance provisions to the legal entity will be reduced as calculated based on the percent interest of the person in the legal entity receiving the payment. The relevant years used to calculate average AGI are the 3 consecutive tax years immediately preceding the year before the payment year, which will be the crop year, or the marketing year for livestock or dairy). For example, for 2018, the relevant years to calculate AGI are the 2014, 2015 and 2016 tax years.

In addition to having a share in the commodity, to be eligible for an MFP payment for crops that are ''covered commodities'' as defined in 7 CFR 1412.3, each applicant is required to be a person or legal entity who was actively engaged in farming, as provided in 7 CFR part 1400, in the crop year for which the crop is included in MFP.

Payment Calculations

Subject to any unique circumstance applicable to a specific commodity as specified in the applicable NOFA, the MFP payment for a commodity will be calculated as follows:

Production × Share × MFP Payment Rate

The share is the applicant's share of the commodity.

The MFP payment rate will be calculated for the specific commodity when it becomes eligible for MFP and will be announced in the applicable NOFA.

The amount of production is the applicant's actual production for the commodity. Specific production requirements for any commodity will be identified in the relevant NOFA. For example, for livestock, production may be the number of head of livestock during specified dates.

MFP General Requirements

General requirements that apply to other CCC programs also apply to MFP including compliance with the provisions of 7 CFR part 12, ''Highly Erodible Land and Wetland Conservation,'' during the year for which assistance is made available.

Foreign persons are not eligible for MFP payments. Federal, State, and local governments are not eligible for MFP payments.

There is no requirement to have crop insurance coverage or coverage under the Noninsured Crop Disaster Assistance Program (NAP) to be eligible for participation in MFP.

Appeal regulations specified in 7 CFR parts 11 and 780 apply. MFP commodity eligibility and other matters of general applicability that are not in response to, or result from, an individual set of facts in an individual participant's application for payment are not matters that can be appealed.

Eligible Crop Acreage

Most eligible crop producers will have already submitted the required acreage report to FSA as part of their participation in various FSA and CCC programs. The regulation in 7 CFR part 718 requires producers to report to FSA their acreage for various crops and commodities, including the number of acres that were planted in the United States for the crop or commodity and their percentage share of the crop for the reported acreage for the crop year. Therefore, FSA already has some of the information relevant to MFP as previously reported to FSA for many producers; as noted above other producers who apply for MFP will also need to submit their information on the acreage report.

If there were any errors in the previously submitted acreage report, the producer may go through the established FSA process to correct the reported information. Any such requests for correction must be made by the date specified in the relevant NOFA and require approval by FSA.

Application Process

To apply for MFP, each applicant must submit a complete valid MFP application either in person, by mail, email, or facsimile to an FSA county office. For many crops, FSA possesses the producer share data from the applicable crop year's acreage report for producers who participate in other FSA-administered CCC programs. For crops, the applicant's crop share interest on an MFP application cannot be greater than the crop share interest as reported on the acreage report. FSA will verify and confirm the applicant's crop share interest reported on the MFP application by comparing it to the applicant's crop share interest as reported on that farm's acreage report for the applicable crop year.

For livestock, the application will include number of head (production) and ownership share information as provided in the applicable NOFA. For dairy, the application will include the amount of historical production as provided in the applicable NOFA.

If FSA decides it is necessary to confirm the applicant's interest in the commodity, the applicant will be required to submit evidence upon request, such as seed receipts, custom harvesting receipts, bale gin lists, or purchase or sales receipts. In addition, the applicant will need to provide supporting documentation for the amount of production as specified in the relevant NOFA.

Process for Evaluation of MFP Applications and Approval of Payments

FSA will require producer specific documentation of the amount of production, as applicable.

When there are multiple eligible applicants for a farm, FSA will approve each application that is filed for MFP when all the following have occurred:

(1) The landlord, tenant, and sharecropper have signed and submitted their own MFP application with the correct share interest in the crop, livestock, or dairy production on the farm; and

(2) The applicant provided a copy of the lease agreement, if determined necessary and requested by the FSA county committee.

Provisions Requiring Refund to CCC

In the event that any application for an MFP payment resulted from erroneous information reported by the producer, the payment will be recalculated, and the participant must refund any excess payment to CCC; if the error was the applicant's error, the refund must include interest to be calculated from the date of the disbursement to the MFP participant. If, for whatever reason, FSA determines that the applicant misrepresented either the total amount or producer's share of the crop, head of livestock, or production, or if the MFP payment would exceed the participant's payment based on correct amount of production and share, the application will be disapproved and the full MFP payment for that crop or livestock for that participant will be required to be refunded to CCC with interest from the date of disbursement. If any corrections to the ownership interest in the crop are made to the acreage report after the MFP application deadline, and would have resulted in a lower MFP payment, the applicant will be required to refund the difference with interest from date of disbursement.

Effective Date and Notice and Comment

The Administrative Procedure Act (5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to grants or benefits. This rule governs the program for payments to certain commodity producers and thus falls within that exemption. Accordingly, this rule is effective upon publication in the **Federal Register**. Further, the opportunity for notice and comment provided in this document is limited to the PRA requirements for the information collection activities.

Executive Orders 12866, 13563, 13771 and 13777

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, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on *regulations.gov.*

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. The OMB guidance in M–17–21, dated April 5, 2017, specifies that ''transfer rules'' are not covered by Executive Order 13771. Transfer rules are Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries. Therefore, this is considered a transfer rule by OMB and is not covered by Executive Order 13771.

Cost Benefit Analysis Summary

The amount of MFP payments for each commodity is intended to offset some of the adverse impact of losing market demand due to trade issues, for example, retaliatory tariffs imposed by other countries. The payment rate per unit (for example, bushel, pound, hundredweight, or animal) for each commodity will reflect the severity of the impact of trade disruptions to that commodity and the commodity-specific period of adjustment to new trade patterns. For example, the payment rate for a commodity that is heavily dependent on export markets, such as soybeans, will be higher than a commodity for which most production is marketed domestically. USDA forecasted those impacts based on the percentage of 2017 U.S. production of each commodity that was exported in 2017, the share of exports affected by trade disruptions, and other variables such as current stocks-to-use ratio for crop commodities.

The expected cost of initial MFP payments is approximately $5 billion. The majority of payments will go to soybean producers, because USDA has determined that soybeans have been most severely impacted by recent trade actions based on analysis of exports as a share of total production, the time it will take to adjust to new trade patterns, the observed price impact, and the current stocks-to-use ratio. The payments represent the total benefits (payments) to producers, which is the total cost to the government for MFP.

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 (SBREFA, Pub. L. 104–121), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because CCC is not required by Administrative Procedure Act or any law to publish a proposed rule for this rulemaking.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulation for compliance with NEPA (7 CFR part 799).

While OMB has designated this rule as ''economically significant'' under Executive Order 12866, ''. . . economic or social effects are not intended by themselves to require preparation of an environmental impact statement'' (40 CFR 1508.14), when not interrelated to natural or physical environmental effects. As previously stated, the intent of MFP is to compensate producers who have suffered post-production market losses. The limited discretionary aspects of MFP (for example, determining AGI and payment limitations) were designed to be consistent with established FSA and CCC programs. These discretionary aspects do not have the potential to impact the human environment as they are administrative, and MFP only takes effect after the commodity has been produced, harvested, and sold.

Accordingly, the following Categorical Exclusions in 7 CFR part 799.31 apply: § 799.31(b)(6)(iii) applies to financial assistance to supplement income, manage the supply of agricultural commodities, or influence the cost and supply of such commodities; § 799.31(b)(6)(iv) applies to individual farm participation in FSA programs where no ground disturbance or change in land use occurs as a result of the proposed action or participation; and § 799.31(b)(6)(vi) applies to ''safety net'' programs administered by FSA. No Extraordinary Circumstances (§ 799.33) exist. As such, the implementation of MFP and the participation in MFP do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, CCC will not prepare an environmental assessment or environmental impact statement for this regulatory action and this rule serves as documentation of the programmatic environmental compliance decision for this federal action.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affect by 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 State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the final rule related notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

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.

FSA and CCC have assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that required tribal consultation under Executive Order 13175. If a tribe requests consultation, FSA and CCC will work with USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

SBREFA

This rule is a major rule under SBREFA. SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. The beneficiaries of this rule have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. Therefore, FSA and CCC find that it would be contrary to the public interest to delay the effective date of this rule because it would delay implementation of MFP. The regulation needs to be effective to provide adequate time for producers to submit applications to request payments. Therefore, this rule is effective on the August 30, 2018.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies is TBD—Market Facilitation Program and number.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the following new information collection request that supports MFP was submitted to OMB for emergency approval. OMB approved the 6-month emergency information collection.

List of Subjects in 7 CFR Part 1409

Agriculture, Agricultural commodities, Crops, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, CCC adds 7 CFR part 1409 to read as follows:

PART 1409—MARKET FACILITATION PROGRAM

Sec.

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

§ 1409.1 Applicability.

This part specifies the eligibility requirements and payment calculations for the Market Facilitation Program (MFP). 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 availability published by CCC in the **Federal Register**.

§ 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;

(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.

Richard Fordyce,

Administrator, Farm Service Agency.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2018–18842 Filed 8–28–18; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1489

RIN 0551–AA92

Agricultural Trade Promotion Program

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

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing a new regulation to implement the Agricultural Trade Promotion Program (ATP). The ATP provides assistance to U.S. agricultural industries to conduct activities that promote U.S. agricultural commodities in foreign markets for commodities impacted by tariffs, including activities that address existing or potential non-tariff barriers to trade. This rule specifies, among other things, eligibility requirements, activities eligible for reimbursement, contribution requirements, and application procedures for the ATP. This rule also proposes a new information collection for required program information. Specific program requirements will be set forth in future Notices of Funds Availability (NOFAs) announced through the *Grants.gov* website.

DATES:

Effective date: August 30, 2018.

Comment date: We will consider comments on the Paperwork Reduction Act (PRA) that we receive by: October 29, 2018.

ADDRESSES: We invite you to submit comments as required by the PRA for the information collection activities. In your comment, specify RIN 0551–NEW, and include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: podadmin@fas.usda.gov.*
- *Fax:* (202) 720–9361.
- *Mail or Courier Service:* Director, Program Operations Division, OTP/FAS, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 6512, Stop 1020, Washington, DC 20250–1020.

Comments will be available for viewing online at *http://www.regulations.gov.* In addition, comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Curt Alt, Director, Program Operations Division, by telephone: (202) 720–4327; or by fax: (202) 720–9361; or by email: *podadmin@fas.usda.gov.*

The U.S. Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, sexual orientation, age, disability, political beliefs and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (Voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

The nature and severity of financial impacts of recent international trade actions (for example, the imposition of tariffs by other countries on U.S. agricultural products) are disrupting the marketing of U.S. agricultural commodities and are outside of the control of the industries that are being negatively affected. In response to these actions by foreign governments, the Commodity Credit Corporation (CCC) has decided to exercise its authority under Section 5 of the CCC Charter Act, which includes authority for CCC to use its general powers to ''aid in the development of foreign markets for . . . agricultural commodities . . . .'' [15 U.S.C. 714c(f)], to provide assistance to eligible organizations for market promotion activities. ATP funding is intended to ameliorate the negative impacts of recent international trade actions on U.S. agriculture by developing, maintaining, and expanding commercial export markets for U.S. agricultural commodities and products. ATP Participants may receive assistance for either generic or branded promotion activities as well as assistance to conduct activities to address existing or potential non-tariff barriers to trade.

The Foreign Agricultural Service (FAS) will administer the ATP on behalf of the CCC. Specific program requirements and details for applying for assistance under the ATP will be set forth in future NOFAs announced through the *Grants.gov* website.

Eligible Organizations

The ATP is a cost-share program that is designed to reimburse nonprofit U.S. agricultural trade organizations, nonprofit state regional trade groups, state agencies, U.S. agricultural cooperatives, and other entities that conduct approved foreign market promotion activities and can demonstrate damages suffered as a result of tariffs imposed on U.S. agricultural products in 2018/2019. When considering eligible nonprofit U.S. trade organizations, the CCC gives priority to organizations that have the broadest producer representation and affiliated industry participation of the commodity being promoted. Eligible activities can be generic or branded in nature. In order to be eligible for ATP assistance, U.S. for-profit entities shall be limited to those whose size does not exceed 300 percent of the small business size standards established for their particular industry and published at 13 CFR part 121, Small Business Size Regulations. Eligible for-profit entities may participate in an ATP Participant's brand promotion program. Any ATP Participant that operates a brand promotion program will be required to establish brand program operational