

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

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

(f) CCC may enter into a multi-country agreement in which donated commodities are delivered to one country and activities are carried out in another.

(g) CCC may provide donated commodities and CCC-provided funds under a multiyear agreement contingent upon the availability of commodities and funds.

[81 FR 62605, Sept. 12, 2016, as amended at 84 FR 45059, Aug. 28, 2019]

**§ 1499.6 Payments.**

(a) If a recipient arranges for transportation in accordance with § 1499.7(b)(2), CCC will, as specified in the agreement, pay the costs of such transportation to the ocean carrier or to the recipient. The recipient must, as specified in the agreement, submit to CCC, arrange to be submitted to CCC, or maintain on file and make available to CCC, the following documents:

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

(2) For all non-containerized cargoes:

(i) A signed copy of the Federal Grain Inspection Service (FGIS) Official Stowage Examination Certificate;

(ii) A signed copy of the National Cargo Bureau Certificate of Readiness; and

(iii) A signed copy of the Certificate of Loading issued by the National Cargo Bureau or a similar qualified independent surveyor;

(3) For all containerized cargoes, a copy of the FGIS Container Condition Inspection Certificate;

(4) A signed copy of the U.S. Food Aid Booking Note or charter party covering ocean transportation of the cargo;

(5) In the case of charter shipments, a signed notice of arrival at the first discharge port, unless CCC has determined that circumstances that could not have been reasonably anticipated or controlled (force majeure) have prevented the ocean carrier's arrival at the first port of discharge; and

(6) A request for payment of freight, survey costs other than at load port, and other expenses approved by CCC.

(b) If the agreement specifies that some or all of the documents listed in paragraph (a) of this section will be submitted to CCC, then CCC will not render payment for transportation services until it has received all of the specified documents.

(c) If a recipient arranges for transportation in accordance with § 1499.7(b)(2), and the recipient uses a freight forwarder, the recipient must ensure that the freight forwarder is registered in the SAM and require the freight forwarder to submit the documents specified in paragraph (a) of this section. The recipient will ensure that the total commission or fees paid to intermediaries in the transportation procurement process will not exceed two and a half percent of the total transportation costs.

(d) In no case will CCC provide payment to a recipient for demurrage costs or pay demurrage to any other entity.

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

(f) If the agreement authorizes the payment of CCC-provided funds, CCC will generally provide the funds to the recipient on an advance payment basis, in accordance with 2 CFR 200.305(b). In addition, the following procedures will apply to advance payments:

(1) A recipient may request advance payments of CCC-provided funds, up to the total amount specified in the agreement. When making an advance

payment request, a recipient must provide, for each agreement for which it is requesting an advance, total expenditures to date; an estimate of expenses to be covered by the advance; total advances previously requested, if any; the amount of cash on hand from the preceding advance; and, if necessary, a request to roll over any unused funds from the preceding advance to the current request period. The advance payment request must take into account any program income earned since the preceding advance.

(2) Whenever possible, a recipient should consolidate advance payment requests to cover anticipated cash needs for all food assistance program awards made by CCC to the recipient. A recipient may request advance payments with no minimum time required between requests.

(3) A recipient must minimize the amount of time that elapses between the transfer of funds by CCC and the disbursement of funds by the recipient. A recipient must fully disburse funds from the preceding advance before it submits a new advance request for the same agreement, with the exception that the recipient may request to retain the balance of any funds that have not been disbursed and roll it over into a new advance request if the new advance request is made within 90 days after the preceding advance was made.

(4) CCC will review all requests to roll over funds from the preceding advance that have not been disbursed and make a decision based on the merits of the request. CCC will consider factors such as the amount of funding that a recipient is requesting to roll over, the length of time that the recipient has been in possession of the funds, any unforeseen or extenuating circumstances, the recipient's history of performance, and findings from recent financial audits or compliance reviews.

(5) CCC will not approve any request for an advance or rollover of funds if the most recent financial report, as specified in the agreement, is past due, or if any required report, as specified in any open agreement between the recipient and CCC or FAS, is more than three months in arrears.

(6)(i) A recipient must return to CCC any funds advanced by CCC that have

not been disbursed as of the 91st day after the advance was made; provided, however, that paragraphs (f)(6)(ii) and (iii) of this section will apply if the recipient submits a request to CCC before that date to roll over the funds into a new advance.

(ii) If a recipient submits a request to roll over funds into a new advance, and CCC approves the rollover of funds, such funds will be considered to have been advanced on the date that the recipient receives the approval notice from CCC, for the purposes of complying with the requirement in paragraph (f)(6)(i) of this section.

(iii) If a recipient submits a request to roll over funds into a new advance, and CCC does not approve the rollover of some or all of the funds, such funds must be returned to CCC.

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

(7) Except as may otherwise be provided in the agreement, a recipient must deposit and maintain in an insured bank account located in the United States all funds advanced by CCC. The account must be interest-bearing, unless one of the exceptions in 2 CFR 200.305(b)(8) applies or CCC determines that this requirement would constitute an undue burden. A recipient will not be required to maintain a separate bank account for advance payments of CCC-provided funds. However, a recipient must be able to separately account for the receipt, obligation, and expenditure of funds under each agreement.

(8) A recipient may retain, for administrative purposes, up to \$500 per Federal fiscal year of any interest earned on funds advanced under an agreement. The recipient must remit to the U.S. Department of Health and Human Services, Payment Management System, any additional interest earned

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during the Federal fiscal year on such funds, in accordance with the procedures in 2 CFR 200.305(b)(9).

(g) If a recipient is required to pay funds to CCC in connection with an agreement, the recipient must make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

[81 FR 62605, Sept. 12, 2016, as amended at 84 FR 45059, Aug. 28, 2019]

### § 1499.7 Transportation of donated commodities.

(a) Shipments of donated commodities are subject to the requirements of 46 U.S.C. 55305, regarding carriage on U.S.-flag vessels.

(b) Transportation of donated commodities and other goods such as bags that may be provided by CCC under the FFPr Program will be arranged for under a specific agreement in the manner determined by CCC. Such transportation will be arranged for by:

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

(2) The recipient, with payment by CCC, in the manner specified in the agreement.

(c) A recipient that is responsible for transportation under paragraph (b)(2) of this section must declare in the transportation contract the point at which the ocean carrier will take custody of donated commodities to be transported.

(d) A recipient that arranges for transportation in accordance with paragraph (b)(2) of this section may only use the services of a freight forwarder that is licensed by the Federal Maritime Commission and that would not have a conflict of interest in carrying out the freight forwarder duties. To assist CCC in determining whether there is a potential conflict of interest, the recipient must submit to CCC a certification indicating that the freight forwarder:

(1) Is not engaged in, and will not engage in, supplying commodities or furnishing ocean transportation or ocean transportation-related services for

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commodities provided under any FFPr Program agreement to which the recipient is a party; and

(2) Is not affiliated with the recipient and has not made arrangements to give or receive any payment, kickback, or illegal benefit in connection with its selection as an agent of the recipient.

### § 1499.8 Entry, handling, and labeling of donated commodities and notification requirements.

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

(b) A recipient must, as provided in the agreement, arrange for transporting, storing, and distributing the donated commodities from the designated point and time where title to the donated commodities passes to the recipient.

(c) A recipient must store and maintain the donated commodities in good condition from the time of delivery at the port of entry or the point of receipt from the originating carrier until their distribution, sale or barter.

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

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

(ii) Contains the name of the donated commodities;

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

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

(2) If a recipient arranges for the processing and repackaging of donated