

Commodity Credit Corporation, USDA

§ 1499.12

donated commodities on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliation of the potential consumers or beneficiaries.

(c) A participant shall not permit the distribution, handling, or allocation of donated commodities by the military forces or any government or insurgent group without the specific authorization of FAS.

(d) A participant may sell or barter donated commodities only if such sale or barter is provided for in the agreement or the participant is disposing of damaged commodities as specified in §1499.9. The participant shall sell the donated commodities at a reasonable market price in the economy where the sale occurs. The participant shall use any sale proceeds, income, or goods or services derived from the sale or barter of the donated commodities only as provided in the agreement.

(e) The participant shall deposit all sale proceeds and income into a separate, interest-bearing account unless the exceptions in §3019.22(k) of this title apply, the account is in a country where the laws or customs prohibit the payment of interest, or FAS determines that this requirement would constitute an undue burden.

(f) A participant may use sale proceeds or income to purchase real or personal property only if local law permits the participant to retain title to such property. However, the participant shall not use sale proceeds or income to pay for the acquisition, development, construction, alteration or upgrade of real property that is:

(1) Owned or managed by a church or other organization engaged exclusively in religious pursuits; or

(2) Used in whole or in part for sectarian purposes, except that a participant may use sale proceeds or income to pay for repairs to or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of donated commodities, but only if such structure is not used in whole or in part for any religious or sectarian purposes while the donated commodities are stored in it. If such use is not specifically provided for in the agreement, such use may

only occur after receipt of written approval from FAS.

(g) A participant shall endeavor to comply with §§3019.41 through 3019.43 of this title when procuring goods and services and when engaging in construction work to implement the agreement. The participant shall also establish procedures to prevent fraud. As provided for in the agreement, the participant shall enter into a written contract with each provider of goods, services or construction work that requires the provider to maintain adequate records to account for all donated commodities or funds or both provided to the provider by the participant and to submit periodic reports to the participant. The participant shall submit a copy of the signed contracts to FAS.

§ 1499.12 Subrecipients.

(a) If provided for in the agreement, a participant may utilize the services of a subrecipient to implement activities under this agreement. The participant shall enter into a written subagreement with the subrecipient, and provide a copy of such subagreement to FAS, in the manner set forth in the agreement, prior to the transfer of any donated commodities, sale proceeds, income or CCC-provided funds to the subrecipient. Such written subagreement shall require the subrecipient to pay to the participant the value of any donated commodities, sale proceeds, income, or CCC-provided cash funds that are not used in accordance with the subagreement or are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(b) If a participant demonstrates to FAS that it is not feasible to enter into a subagreement with a subrecipient, FAS may grant approval to proceed without a subagreement; provided, however, that the participant must obtain such approval from FAS prior to transferring any donated commodities, sale proceeds, income, or CCC-provided funds to the subrecipient.

(c) The participant shall monitor the actions of a subrecipient as necessary to ensure that donated commodities or funds provided to the subrecipient are

used for authorized purposes in compliance with applicable laws and regulations and the agreement and that performance goals are achieved. The participant shall provide in the subagreement that the subrecipient must comply with applicable provisions of the regulations set forth in Chapter XXX of this title.

§ 1499.13 Recordkeeping and reporting requirements.

(a) A program participant shall retain records and permit access to records in accordance with the requirements of § 3019.53 of this title. The date of submission of the final expenditure report, as referenced in § 3019.53(b) of this title, shall be the final date of submission of the forms required by paragraphs (c)(1) and (2) of this section as prescribed by FAS.

(b) A participant shall, within 30 days after export of all or a portion of the donated commodities, submit evidence of such export to FAS, in the manner set forth in the agreement. The evidence may be submitted through an electronic media approved by FAS or by providing the carrier's on board bill of lading. The evidence of export must show the kind and quantity of commodities exported, the date of export, and the country where commodities were delivered.

(c)(1) A participant shall submit to FAS information, using a form as prescribed by FAS, covering the receipt, handling and disposition of the donated commodities. Such report shall be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the donated commodities have been distributed, sold or bartered and such disposition has been reported to FAS.

(2) If the agreement authorizes the sale or barter of donated commodities, the participant shall submit to FAS information, using a form as prescribed by FAS, covering the receipt and use of sale proceeds and income, and, in the case of bartered commodities, covering the services and goods derived from the barter of donated commodities. Such reports shall be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the sale proceeds and income have been

disbursed and reported to FAS. When reporting financial information, the participant shall include the amounts in U.S. dollars and the exchange rate.

(3) The participant shall report, in the manner specified in the agreement, its progress, measured against established baselines, towards achieving the objectives of the activities under the agreement.

(4) The participant shall retain copies of and make available to FAS all barter receipts, contracts or other documents related to the barter of the donated commodities and the services or goods derived from such barter, for a minimum of two years after the agreement has been closed out.

(5) The participant shall provide to FAS additional information or reports relating to the agreement if requested by FAS.

(d) A participant shall submit to FAS, in the manner specified in the agreement, an annual audit in accordance with § 3019.26 of this title. If FAS requires an annual financial audit with respect to a particular agreement, and CCC provides funds for this purpose, the participant shall arrange for such audit and submit it to FAS, in the manner specified in the agreement.

(e)(1) A participant shall, as provided in the agreement, submit to FAS interim and final evaluations of the implementation of the agreement. Unless otherwise provided in the agreement, the evaluations shall be submitted at the mid-point and end-point of the implementation period. The participant shall arrange for the evaluations to be conducted by an independent third party that:

(i) Is financially and legally separate from the participant's organization;

(ii) Has staff with demonstrated knowledge, analytical capability, language skills and experience in conducting evaluations of development programs involving agriculture, education, and nutrition;

(iii) Uses acceptable analytical frameworks such as comparison with non-project areas, surveys, involvement of stakeholders in the evaluation, and statistical analyses;

(iv) Uses local consultants, as appropriate, to conduct portions of the evaluation; and,