

(iii) Conduct all contracting in an openly competitive manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids and requests for proposals for procurement of any goods or services shall be excluded from competition for such procurement;

(iv) Base solicitations for professional and technical services on a clear and accurate description of the requirements for the services to be procured;

(v) Perform some form of 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 prices.

(d) *Disposable capital goods.* (1) Capital goods purchased by the MAP participant and reimbursed by CCC that are unusable, unserviceable, or no longer needed for project purposes shall be disposed of in one of the following ways:

(i) The participant may exchange or sell the goods provided that it applies any exchange allowance, insurance proceeds or sales proceeds toward the purchase of other property needed in the project;

(ii) The participant may, with CCC approval, transfer the goods to other MAP participants and activities, or to a foreign third party; or

(iii) The participant may, upon Attaché/Counselor approval, donate the goods to a local charity, or convey the goods to the Attaché/Counselor, along with an itemized inventory list and any documents of title.

(2) A participant shall maintain an inventory of all capital goods with a value of \$100 acquired in furtherance of program activities. The inventory shall list and number each item and include the date of purchase or acquisition, cost of purchase, replacement value, serial number, make, model, and electrical requirements.

(3) The participant shall insure all capital goods acquired in furtherance of program activities and safeguard such goods against theft, damage and unauthorized use. The participant shall promptly report any loss, theft, or damage of property to the insurance company.

(e) *Contracts between MAP participants and brand participants.* Where CCC approves an application for brand promotion, the MAP participant shall enter into an agreement with each approved brand participant which shall:

(1) Specify a time period for such brand promotion, and require that all brand promotion expenditures be made within the MAP participant's approved activity plan period;

(2) Make no allowance for extension or renewal;

(3) Limit reimbursable expenditures to those made in countries and for activities approved in the activity plan;

(4) Specify the percentage of promotion expenditures that will be reimbursed, reimbursement procedures and documentation requirements;

(5) Include a written certification that the brand participant either owns the brand of the product it will promote or has exclusive rights to promote the brand in each of the countries in which promotion activities will occur;

(6) Require that all product labels, promotional material and advertising will identify the origin of the agricultural commodity as "Product of the U.S.", "Product of the U.S.A.", "Grown in the U.S.", "Grown in the U.S.A.", "Made in America" or other U.S. regional designation if approved in advance by CCC; that such origin identification will be conspicuously displayed, in a manner that is easily observed; and that such origin identification will conform, to the extent possible, to the U.S. standard of 1/6" (.42 centimeters) in height based on the lower case letter "o". A participant may request an exemption from this requirement. All such requests shall be in writing and include justification satisfactory to the Deputy Administrator that this labelling requirement would hinder a participant's promotional efforts. The Deputy Administrator will determine, on a case by case basis, whether sufficient justification exists to grant an exemption from the labelling requirement;

(7) Specify documentation requirements for a U.S. brand applicant seeking priority consideration for assistance based on eligibility as a small-sized entity;

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(8) Require that the U.S. brand participant submit to the MAP participant a statement certifying that any Federal funds received will supplement, but not supplant, any private or third party funds or other contributions to program activities; and

(9) The participant shall require the brand participant to maintain all original records and documents relating to program activities for five calendar years following the end of the applicable activity plan year and shall make such records and documents available upon request to authorized officials of the U.S. Government.

(f) EIP/MAP participants shall ensure that all product labels, promotional material and advertising will identify the origin of the agricultural commodity as "Product of the U.S.", "Product of the U.S.A.", "Grown in the U.S.", "Grown in the U.S.A.", "Made in America" or other U.S. regional designation if approved in advance by CCC; such origin identification is conspicuously displayed in a manner that is easily observed, and that, to the fullest extent possible, the origin identification conforms to the U.S. standard of 1/6" (.42 centimeters) in height based on the lower case letter "o". An EIP/MAP participant may request an exemption from this requirement. All such requests shall be in writing and include justification satisfactory to the Deputy Administrator that this labeling requirement would hinder a participant's promotional efforts. The Deputy Administrator will determine, on a case by case basis, whether sufficient justification exists to grant an exemption from the labelling requirement;

(g) Travel shall conform to U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and air travel shall conform to the requirements of the "Fly America Act (49 U.S.C. 1517)." The MAP participant shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel.

(h) *Proceeds*. Any income or refunds generated from an activity, i.e., participation fees, proceeds of sales, refunds of value added taxes (VAT), the expenditures for which have been wholly or partially reimbursed, shall be re-

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paid by submitting a check payable to CCC or offsetting the participant's next reimbursement claim. However, where CCC reimburses a participant with CCC commodity certificates, such participant may retain any income generated by the sale of such certificates.

[60 FR 6363, Feb. 1, 1995, as amended at 61 FR 3548, Feb. 1, 1996; 61 FR 32644, June 25, 1996]

§ 1485.24 Applicability date.

This Subpart applies to activities that are approved in accordance with the participant's 1995 program and corresponding activity plan year.

§ 1485.25 Paperwork reduction requirements.

The paperwork and record keeping requirements imposed by this final rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. OMB has assigned control number 05510027 for this information collection.

PART 1486—EMERGING MARKETS PROGRAM

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AUTHORITY: 7 U.S.C. 5622 note.

SOURCE: 70 FR 255, Jan. 4, 2005, unless otherwise noted.

Subpart A—General Information

§ 1486.100 What is the Emerging Markets Program?

(a) The principal purpose of the EMP is to assist U.S. entities in developing, maintaining, or expanding the exports of U.S. agricultural commodities and products by providing partial funding for technical assistance activities that promote U.S. agricultural exports to emerging markets, a consistent with U.S. foreign policy interests. The Program is intended primarily to support export market development efforts of the private sector, but the Program's resources may also be used to assist public agricultural organizations as well. Technical assistance may include activities such as feasibility studies, market research, sector assessments, orientation visits, specialized training, business workshops, and similar undertakings.

(b) The EMP may be used to support exports of U.S. agricultural commodities and products only through generic activities.

(c) Only initiatives that support the export of U.S. agricultural commodities and products are eligible for assistance from the program. The program's resources may not be used to support the export of another country's products to the United States, or to promote the development of a foreign economy as a primary objective.

(d) The program is administered by personnel of USDA's Foreign Agricultural Service.

§ 1486.101 What special definitions apply to this program?

For purposes of this subpart, the following definitions apply:

Activities—components of a project which, when implemented collectively, are intended to achieve a specific market development objective.

Administrator—the Administrator of FAS, or designee.

Advisory Committee—a group of representatives from the private sector

appointed by the Secretary of Agriculture whose primary mission is to review proposals requesting funding under the EMP and make recommendations on projects and programs that can enhance exports through the use of program funds.

Agreement—a written assistance agreement under this part.

Agricultural Commodity—an agricultural commodity, food, feed, fiber, wood, livestock, or insect, and any product thereof; and fish harvested from a U.S. aquaculture farm or harvested by a vessel as defined in Title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

Attache/Counselor—the Foreign Agricultural Service employee representing United States Department of Agriculture interests in the foreign country in which promotional activities are conducted.

CCC—Commodity Credit Corporation.

Compliance Review Staff—the office within the Foreign Agricultural Service responsible for performing reviews of Recipients to ensure compliance under this part.

Constraint—a condition in a particular country or region which inhibits the development, expansion, or maintenance of exports of a specific U.S. agricultural commodity or product.

Cost Share/Contribution—the amount of funding (cash and in-kind) U.S. entities are willing to commit from their own resources in support of an approved project.

Deputy Administrator—the Deputy Administrator, Commodity and Marketing Programs, Foreign Agricultural Service, or designee.

Emerging Market—any country or regional grouping that is taking steps toward a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; has the potential to provide a viable and significant market for United States agricultural commodities or products; a population greater than 1 million; and a per capita income level below the level for upper middle-income countries as determined by the World Bank.

EMP—Emerging Markets Program.

FAS—Foreign Agricultural Service.

Generic Promotion—an activity that does not involve or promote the exclusive or predominant use of an individual company name or logo or brand name.

Project—an approach or undertaking made up of one or more activities which, taken together, are intended to achieve a specific market development objective.

Project Funds—the funds made available to a Recipient by the Commodity Credit Corporation under an agreement, and authorized for expenditure in accordance with this part.

Proposal—an application for funding.

Recipient—a U.S. entity receiving financial assistance directly from the Commodity Credit Corporation or Foreign Agricultural Service to carry out a project.

SRTG—State Regional Trade Group.

STRE—sales and trade relations expenses including meals, receptions, refreshments, checkroom fees, tips, and dining decorations.

UES—Unified Export Strategy.

USDA—United States Department of Agriculture.

§ 1486.102 Is there a list of eligible emerging market countries?

The World Bank periodically redefines the income limits on upper middle-income economies. Consequently, an absolute list of “emerging market” countries has not been established. However, CCC will provide general guidance on country eligibility in each program announcement.

§ 1486.103 Are regional projects possible under the program?

Projects that focus on regions, such as the Caribbean Basin, rather than individual countries, are eligible for consideration provided such projects target qualifying emerging markets in the specified region. CCC may consider activities which target qualified emerging markets in a specific region, but are conducted in a non-emerging market because of its importance as a central location and ease of access to that region.

Subpart B—Eligibility, Applications, and Funding

§ 1486.200 What entities are eligible to participate in the program?

To participate in the EMP, U.S. private or government entities must demonstrate a role or interest in the exports of U.S. agricultural commodities or products. Government organizations consist of federal, state, and local agencies. Private entities include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups, and profit-making entities and consulting businesses.

§ 1486.201 Under what conditions may research and consultant organizations, individuals, or any other for-profit entity apply to the program?

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

(b) For-profit entities shall not use program funds to conduct private business or to promote private self-interests. For-profit entities may 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.

§ 1486.202 Are there any ineligible entities?

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.

§ 1486.203 Which commodities/products are eligible for consideration under the program?

All U.S. agricultural commodities/products except tobacco are eligible for consideration. Agricultural product(s) should be comprised of at least 50 percent U.S. origin content by weight, exclusive of added water, to be eligible for funding. Projects which seek sup-

port for multiple commodities are also eligible.

§ 1486.204 Are multi-year proposals eligible for funding?

Proposals for projects exceeding 1 year in duration may be considered. If approved, funding for multi-year projects is normally provided 1 year at a time, with commitments beyond the first year subject to interim evaluations intended to assess the progress of the project toward meeting its intended objectives.

§ 1486.205 What types of funding are available under the program?

CCC has established three pools of funding within the EMP—the Central Fund, the Quick Response Marketing Fund, and the Technical Issues Resolution Fund. Each year CCC will inform the public of the process by which interested eligible entities may submit proposals for funding under the Central Fund. Because of the time sensitive nature of issues intended to be addressed, the Quick Response Marketing Fund and the Technical Issues Resolution Fund will be available continuously with no application deadline.

§ 1486.206 What is the Quick Response Marketing Fund?

(a) This fund was established to address priority constraints to market access that arise because of unforeseen events; market conditions in emerging markets are often less predictable than in more developed countries. It allows responsiveness to time-sensitive marketing problems or opportunities, such as a change in an import regime or the removal of a trade embargo; an unexpected or unusual change in the political or financial situation in a country; or a significant change in crop conditions—any of which may have an immediate impact on the access of particular commodities or products to specific markets.

(b) Proposals for the Quick Response Marketing Fund must identify specific market access issues that also face time constraints. Application content, evaluation, and reporting requirements are the same as for the Central Fund.

§ 1486.207 What is the Technical Issues Resolution Fund?

(a) This fund was established to address technical barriers to trade in emerging markets worldwide by providing technical assistance, training, and exchange of expertise. These include plant quarantine, animal health, food safety, and other technical barriers to U.S. exports based on unsound or incomplete scientific information.

(b) Funding priorities are principally those issues that are time sensitive and are strategic areas of longer term interest. Funding decisions are determined primarily through a review process that includes FAS and relevant regulatory agencies. The review is based upon the following criteria:

- (1) The activity occurs in an eligible country or region of market priority;
- (2) The trade constraint warrants intervention;
- (3) The proposed activity is likely to achieve an impact in the short-or long-term;
- (4) The Recipient is qualified to undertake the proposed activity;
- (5) The budget requested is reasonable and includes leveraged resources;
- (6) If applicable, a U.S. domestic constraint or trade issue can be resolved in support of a proposed activity; and
- (7) The activity has support from USDA field offices.

(c) Because of the time sensitive nature of the issues intended to be addressed by these funds, proposals, whether private or government, may be submitted at any time during the year. Reviews of proposals are scheduled on a monthly basis. An expedited review may be requested but must be justified.

(d) Application content, evaluation, and reporting requirements are the same as for the Central Fund.

§ 1486.208 How does an entity apply to the program?

CCC will periodically announce that it is accepting proposals for participation in the EMP. All relevant information, including application deadlines (for the Central Fund) and proposal content, will be noted in the announcement, and proposals must be submitted in accordance with the terms and requirements specified in the announcement. CCC may request any additional

information it deems necessary from any applicant in order to evaluate properly any proposal.

§ 1486.209 How are program applications evaluated and approved?

(a) *General.* Proposals received by the application deadline stated in the announcement for the Central Fund undergo a multi-phase review by FAS staff and the EMP Advisory Committee to determine qualifications, quality and appropriateness of projects, and reasonableness of project budgets.

(b) *Evaluation criteria.* FAS will consider a number of factors when reviewing proposals, including:

- (1) The ability of the entity to provide an experienced U.S.-based staff with knowledge and expertise to ensure adequate development, supervision, and execution of the proposed project;
- (2) The entity's willingness to contribute resources, including cash and goods and services of the U.S. industry, with greater weight given to cash contributions (for private sector proposals only);
- (3) The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodity/product;
- (4) The degree to which the proposed project is likely to contribute to the development, maintenance, or expansion of U.S. agricultural exports to emerging markets;
- (5) Demonstration of how a proposed project will benefit a particular industry as a whole; and
- (6) Past program results and evaluations, if applicable.
- (7) The following priority technical assistance activities:
 - (i) Projects and activities which use technical assistance designed specifically to improve market access in emerging markets such as activities intended to mitigate the impact of sudden political events or economic and currency crises in order to maintain U.S. market share;
 - (ii) Marketing and distribution of value-added products, including new products or new uses. Examples include food service development, market research on potential for consumer-ready foods or new uses of a product, and export feasibility studies.

(iii) Studies of food distribution channels in emerging markets, including infrastructural impediments to U.S. exports; such studies may include cross-commodity activities which focus on problems which affect more than one industry, e.g., grain storage handling and inventory systems development;

(iv) Projects that specifically address various constraints to U.S. exports, including sanitary and phytosanitary issues and other non-tariff barriers;

(v) Assessments and follow-up activities designed to improve country-wide food and business systems, to reduce trade barriers, to increase prospects for U.S. trade and investment in emerging markets, or to determine the potential use for general export credit guarantees;

(vi) Projects that help foreign governments collect and use market information and develop free trade policies that benefit American exporters as well as the target country or countries; and

(vii) Short-term training in agriculture and agribusiness trade that will benefit U.S. exporters, including seminars and training at trade shows designed to expand the potential for U.S. agricultural exports by focusing on the trading system.

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

§ 1486.210 Are there any limits on the funding of proposals?

(a) The EMP is a relatively small program intended primarily to promote access to qualified emerging markets. Its funds are intended for focused projects with specific activities, rather than expansive concept papers which contain only broad ideas. Large, overly expensive projects (e.g., in excess of approximately \$500,000) are rarely appropriate for the program.

(b) CCC will not reimburse 100 percent of the cost of any project undertaken by the private sector. The program is intended to provide appropriate assistance to projects which also have a significant amount of financial

contributions from other sources, especially U.S. private industry.

(c) Funding for continuing and substantially similar projects is generally limited to 3 years. After that time, the project is assumed to have proven its viability and, if necessary, should be continued by the Recipient with its own or with alternative sources of funding.

Subpart C—Program Operations

§ 1486.300 How are applicants notified of decisions on their applications?

FAS will notify each applicant in writing of the final decision on its application. For approvals, letters will contain the notice of approval and any required qualifications or adjustments to the original proposal. For rejections, letters will explain reasons why the proposals were not approved for funding.

§ 1486.301 How is the working relationship established between CCC and the Recipient of program funding?

(a) FAS will send an approval letter followed by a project agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of EMP funding and cost-share contribution requirements. The applicant is authorized to begin implementation of the project as of the date of the approval letter, unless otherwise indicated.

(b) An applicant who accepts the terms and conditions contained in the agreement should so indicate by having the appropriate authorizing official sign the agreement and submit it to the Director, Marketing Operations Staff, FAS, USDA. The applicant may not be reimbursed for approved project expenses until the Recipient's authorizing official and CCC have signed the agreement.

§ 1486.302 Can changes be made to a project once it has been approved?

(a) Approved projects may be modified if circumstances change in such a way that they would likely affect the progress and ultimate success of a

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project. All requests for project modifications must be made in writing to FAS 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;

(3) A description of necessary changes in the project's time line(s); and

(4) Necessary changes to the project's budget (e.g., shifting of budgetary resources from one line item to another in order to accommodate the changes).

(b) Extensions of project time lines must be approved and made by FAS.

§ 1486.303 What specific contracting procedures must be adhered to?

(a) The Recipient has full and sole responsibility for the legal sufficiency of all contracts it may enter into with one or more third parties 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 contracts entered into by the Recipient. Neither CCC nor any other agency of the United States Government or any official or employee of CCC or the United States Government has any obligation or responsibility with respect to Recipient contracts with third parties.

(b) Recipients are responsible for ensuring to the extent possible that the terms, conditions, and costs of contracts constitute the most economical and effective use of project funds.

(c) All fees for professional and consulting services paid to third parties in any part with project funds must be covered by written contracts.

(d) A Recipient shall:

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

(2) Ensure that no employee or officer participates in the selection or award of a contract in which such employee or officer, or the employee's or officer's family or partners has a financial interest or gains a financial benefit;

(3) Conduct all contracting in an open manner. Individuals who develop

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or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals for procurement of any goods or services shall be excluded from competition for such procurement;

(4) Base each solicitation for professional or consulting services on a clear and accurate description of the requirements for the services to be procured;

(5) Perform 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; and

(6) Document the decision-making process.

Subpart D—Contributions and Reimbursements

§ 1486.400 What are the rules on cost sharing?

(a) The EMP is intended to complement, not supplant, the efforts of the U.S. private sector. Therefore, no private sector proposal will be considered without the element of cost-share from the participant and/or U.S. partners.

(b) There is no minimum or maximum amount of cost share. The degree of commitment to a proposed project represented by the amount and type of private funding are both used in determining which proposals will be approved. The type of cost share is also not specified, though some contributions are ineligible (§1486.402 below). Cost-share may be actual cash invested or professional time of staff assigned to the project. Proposals in which the private sector is willing to commit funds, rather than in-kind items such as staff resources, and those with higher amounts of cost-share, will be given priority consideration.

(c) Cost-sharing is not required for proposals from federal, state, or local government agencies. It is mandatory from all other eligible entities, even when they are party to a joint proposal with a government agency.

(d) Contributions from federal, state, or local government agencies or programs may not be counted toward the

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cost share requirement. Similarly, contributions from foreign (non-U.S.) organizations may not be counted toward the cost share requirement, but may be included in the total cost of the project.

(e) An activity that is initiated by FAS, and undertaken by an entity at the request of FAS, may be exempted from the contribution requirement. This determination is made at the discretion of FAS.

§ 1486.401 What cost share contributions are eligible?

(a) Eligible contributions are those expenses that:

(1) Have not been or will not be reimbursed by any other source outside of the Recipient or other participating U.S. entity;

(2) Are incurred during the period covered by the project agreement;

(3) Are directly related to activities necessary to implement an approved project; and

(4) Are not proscribed under § 1486.402.

(b) Contributions must be included in a project's line item budget.

§ 1486.402 What are ineligible contributions?

(a) The following are not eligible as contributions:

(1) Normal operating expenses and other costs not directly related to the project;

(2) Any portion of salary or compensation of an individual who is the focus of a promotional activity;

(3) Depreciation, e.g., office equipment;

(4) The cost of insuring articles owned by private individuals;

(5) The cost of product development or product modifications;

(6) Slotting fees or similar sales expenditures;

(7) Funds, services, capital goods, or personnel provided by any U.S. government agency;

(8) Capital investments made by a third party, such as permanent structures, real estate, and the purchase of office equipment and furniture;

(9) The value of any services generated by a third party which involve no expenditure by the Recipient or third party, e.g., free publicity;

(10) The cost of developing any application/proposal for EMP funding;

(11) Costs included as contributions for any other federally-assisted project or program;

(12) Membership fees in clubs and social or professional organizations; and

(13) Any expenditure made prior to approval of an EMP-funded project.

(b) The Deputy Administrator shall determine, at his or her discretion, whether any cost not expressly listed in this section may be included as an eligible contribution.

§ 1486.403 What expenditures may CCC reimburse under the program?

(a) A Recipient may seek reimbursement for an expenditure if:

(1) The expenditure is reasonable and is specified in the project budget in furtherance of an approved activity; and

(2) The Recipient has not been or will not be reimbursed for such expenditure by any other source.

(b) Subject to paragraph (a) of this section, CCC will reimburse, in whole or in part, the cost of:

(1) Salaries and benefits of the Recipient's existing personnel or any other participating entity that are assigned to EMP-funded projects; however, reimbursement is limited to:

(i) The actual daily rate paid by the Recipient for the employee's salary or the daily rate of a General Schedule U.S. Government employee, GS-15/Step 10 in effect during the calendar year in which the project or activity is approved for funding, whichever is less;

(ii) The actual assigned time of the employee to the project; and

(iii) Benefits at a maximum rate of 30 percent of the existing salary of the employee, prorated to the time assigned to the project. In addition, reimbursement for an employee's time spent on an EMP-funded project must be in lieu of compensation from the Recipient or any other participating entity.

(2) Consulting fees for professional services; however, reimbursement for consulting fees is limited to the daily rate of a General Schedule U.S. Government employee, GS-15/Step 10 in effect during the calendar year in which the project or activity is approved for funding. Reimbursement is authorized

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only for actual days worked and is not authorized for travel and rest days. Benefits are not reimbursable.

(3) STRE, including breakfast, lunch, dinner, and refreshments when part of an approved overseas trade activity; miscellaneous courtesies such as checkroom fees, taxi fares, and tips; and representation expenses such as the costs of social events or receptions that are primarily attended by foreign officials, and which are held at foreign venues. Such expenses must conform to the American Embassy representational funding guidelines as the standard for judging the appropriateness of STRE event costs. STRE incurred in the United States is not authorized for reimbursement, but may be counted as a cost-share contribution to the project.

(4) Travel expenses, subject to the following:

(i) Air travel, limited to the full-fare economy class rate and must comply with the Fly America Act, 49 U.S.C. App. 1517. The CCC will not reimburse any portion of air travel in excess of the full fare economy rate or when the participant fails to notify the Counselor/Attache in the destination country in advance of the travel unless the Deputy Administrator determines it was impractical to provide such notification.

(ii) Per diem, limited to the allowable rate for each domestic or foreign locale (41 CFR Chapter 301). Expenses in excess of the authorized per diem rates may be allowed in special or unusual circumstances (41 CFR Chapter 301, subpart D), and must be approved in advance.

(iii) All other expenses while in travel status must conform to U.S. Federal Travel Regulations (41 CFR Chapters 301 and 304).

(5) Direct administrative costs.

(6) Indirect costs not identified as direct costs but which are necessary to the implementation of a project. Indirect costs must be specified to be eligible for reimbursement. Indirect costs incurred by private entities (other than those identified below) may be reimbursed up to a maximum of 10 percent of the EMP funded portion of the project budget, excluding indirect costs. Market development coopera-

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tors, state regional trade groups, for-profit entities, and government Recipients (excluding FAS) may not be reimbursed for indirect costs. Indirect costs are not reimbursable for any project funded under the Technical Issues Resolution Fund or the Quick Response Marketing Fund.

(7) Rental costs for equipment necessary to carry out approved projects. Equipment rentals must be returned by the Recipient to the supplier in accordance with the lease agreements, but in no case later than 90 calendar days from the completion date of the project.

(8) Procuring samples of specific commodities or agricultural products, which are appropriate and necessary to the success of a technical assistance activity.

§ 1486.404 What expenditures are not eligible for program funding?

(a) CCC will not reimburse expenditures made prior to approval of a Recipient's proposal, unreasonable expenditures, or any cost of:

(1) Branded product promotions—in-store, restaurant advertising, labeling, etc.;

(2) Administrative and operational expenses for trade shows;

(3) Advertising;

(4) Preparation and printing of magazines, brochures, flyers, posters, etc., except in connection with specific approved activities such as training;

(5) Design, development, and maintenance of Internet Web sites;

(6) Purchase and depreciation of equipment, e.g., office equipment or other fixed assets;

(7) Subsidizing or otherwise providing funds for graduate programs at colleges and/or universities (salaries or fees for individual students who are directly assigned to specific project activities appropriate to their backgrounds may be covered on a pro-rated basis);

(8) Subsidizing normal, day-to-day operating costs of an entity; exception: indirect costs incurred during implementation of an approved project;

(9) Honoraria for speakers;

(10) Costs of product research or new product development;

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(11) Costs of developing technical assistance proposals submitted to the program;

(12) Refundable deposits or advances;

(13) STRE expenses within the United States;

(14) All costs related to the shipping, over land and sea, of commodity samples;

(15) Expenses, fees, fines, settlements, or claims resulting from suits, challenges, or disputes emanating from contractual terms, conditions, provisions, and related formalities;

(16) Legal fees, including fees and costs associated with trade disputes;

(17) Real estate costs other than allowable costs for office space whose use is assigned specifically to a project funded by the EMP; and

(18) Any expenditure that has been or will be reimbursed by any other source.

(b) The Deputy Administrator may determine whether any cost not expressly listed in this section will be reimbursed.

§ 1486.405 How are Recipients reimbursed for project expenditures?

(a) After implementation of an EMP project for which CCC has agreed to provide funding, Recipients may submit claims for reimbursement of the expenses incurred to the extent CCC has agreed to pay for such costs. Reimbursement for approved project expenses is limited to 85 percent of the amount specified in the project agreement. The Recipient may be reimbursed for the remaining 15 percent of the funds after the final performance report containing the information required by the agreement is submitted to and approved by FAS.

(b) A format for reimbursement claims is available from the Marketing Operations Staff, FAS, USDA.

(c) Final reimbursement claims must be made no later than 90 days after the completion date of the project, and are subject to a complete final performance report acceptable to FAS.

(d) Any duplicate payment or overpayment made by CCC shall be returned by the Recipient promptly after discovery of the overpayment by the Recipient or within 30 days after notification by FAS, either by submitting a check made payable to the Commodity

Credit Corporation and referencing the applicable project, or by offsetting as a credit on the next reimbursement claim. All checks shall be mailed to the Director, Marketing Operations Staff, FAS, USDA.

§ 1486.406 Will CCC make advance payments to Recipients?

(a) *Policy.* In general, CCC operates the EMP on a cost reimbursable basis.

(b) *Exception.* Upon request, CCC may make advance payments to a Recipient against an approved project budget. Up to 40 percent of the approved project budget may be provided as an advance, either at one time or in incremental payments. 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 Recipient. Reimbursement claims will be used to offset advances. Recipients shall deposit and maintain advances in insured, interest-bearing accounts.

(c) *Refunds due CCC.* A Recipient shall expend all advances within 90 calendar days after the date of disbursement by CCC. A Recipient shall return all interest earned by advances plus any unexpended portion of the advance within 90 calendar days after the date of disbursement by CCC by submitting a check payable to CCC. All checks shall be mailed to the Director, Marketing Operations Staff, FAS, USDA.

Subpart E—Reporting, Evaluation, and Compliance

§ 1486.500 What are the reporting requirements of the program?

(a) *Performance Reports.* (1) Recipients are required to submit regular progress reports in accordance with the project agreement. Quarterly progress reports are required for all projects with a duration of 1 year or longer. Projects of less than 1 year in duration generally require a mid-term report.

(2) Final performance reports must be submitted no later than 90 days after completion of the project, both electronically (preferably in PDF format) and in hard copy.

(3) Reporting requirements and formats for both quarterly progress reports and final performance reports are

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specified in the project agreement between CCC and the Recipient entity.

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

(b) *Financial Reports.* Final financial reports must be submitted no later than 90 days after completion of the project. Such reports must provide a final accounting of all project expenditures by cost category, and include the accounting of actual contributions made to the project by the Recipient and all other participating entity or entities.

§ 1486.501 What is the rule on notifying field offices of international travel?

The Recipient must advise the Agricultural Counselor(s) or Attache(s) in the country or countries of any planned visits by the Recipient or its consultants or other participants to such country or countries under terms of its agreement. Failure to notify the Counselor/Attache may result in disallowance of the travel expenditures.

§ 1486.502 How is project effectiveness measured?

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

§ 1486.503 How is program compliance monitored?

(a) The CRS, FAS, performs periodic on-site reviews of Recipients to ensure compliance with this part, applicable federal regulations, and the terms of the project agreements. Program funds spent inappropriately or on unapproved activities must be returned to CCC. The CRS will review contributions from Recipients for compliance with project budgets as approved and specified in the agreements.

(b) The Director, CRS, will notify a Recipient through a compliance report when, in the opinion of the Director, CRS, it appears that CCC is entitled to recover funds from that Recipient. The report will state the basis for this action.

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§ 1486.504 How does a Recipient respond to a compliance report?

(a) A Recipient shall, within 60 days of the date of the compliance report, submit a written response to the Director, CRS. The Director, CRS, at his or her discretion, may extend the period for response up to an additional 30 days. The response shall include:

(1) Repayment of any funds determined to be due to CCC;

(2) Submission of documentation or evidence of any other required action; or

(3) A request for reconsideration of any finding and the supporting justification.

(b) If after review of the compliance report and response, the Director, CRS determines that the Recipient owes money to CCC, the Director, CRS, will so inform the Recipient and provide a detailed basis for the decision. The Recipient has 30 days from the date of the Director's, CRS, determination to submit any money owed to CCC or to request reconsideration.

(c) If the Recipient does not respond to the compliance report within the required time period, the Director, CRS, may initiate action to collect any amount owed to CCC pursuant to 7 CFR Part 1403, Debt Settlement Policies.

§ 1486.505 Can a Recipient appeal the determinations of the Director, CRS?

(a) A Recipient may appeal the determinations of the Director, CRS, to the Deputy Administrator, CMP. The request must be in writing and be submitted to the Office of the Deputy Administrator, CMP, within 30 days following the date of the original determination. The Recipient may request a hearing.

(b) If the Recipient submits its appeal and requests a hearing, the Deputy Administrator, or the Deputy Administrator's designee, will set a date and time, generally within 60 days. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Recipient bears the cost of the transcript; however, the Deputy Administrator or designee may have a transcript prepared at FAS's expense.

(c) The Deputy Administrator or the Deputy Administrator's designee will base the determination on appeal upon information contained in the administrative record and will endeavor to make a determination within 60 days after submission of the appeal, hearing, or receipt of any transcript, whichever is later. The determination of the Deputy Administrator will be the final determination of FAS. The Recipient must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by the Deputy Administrator.

§ 1486.506 When will a project be reviewed?

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.

§ 1486.507 What is the effect of failing to make required contributions?

A Recipient's contribution requirement is specified in the project agreement. If a Recipient fails to contribute the total specified in the agreement, the difference between the amount contributed and the total must be repaid to the CCC in U.S. dollars. If a Recipient is reimbursed by CCC for less than the amount of funds approved in the agreement, then the final cost share shall equal, on a percentage basis, the original ratio of private contributions to the authorized EMP funding level.

§ 1486.508 How long must Recipients maintain original project records?

Each Recipient shall maintain all original records and documents relating to the project for 3 calendar years following the end of the project's completion. All documents and records related to the project, including records pertaining to contractors, shall be made available upon request.

§ 1486.509 Are Recipients allowed to charge fees for specific activities in approved projects?

Reasonable activity fees or registration fees, if identified as such in a project budget, may be charged for projects approved for program funding.

Income or refunds generated from an activity, however, for which the expenditures have been wholly or partially reimbursed, shall be repaid by submitting a check payable to CCC or offsetting the Recipient's reimbursement claim. Any activity fees charged must be used to offset activity expenses. Such fees may not be used as profit or counted as cost-share. 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.

§ 1486.510 What is the policy regarding disclosure of program information?

(a) Documents submitted to CCC by Recipients are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, 7 CFR Part 1, Subpart A—Official Records, and specifically 7 CFR 1.11, Handling Information from a Private Business.

(b) Progress reports, final performance reports, and the results of any research or other activity conducted by a Recipient under an agreement, shall be the property of the U.S. Government.

§ 1486.511 What is the general policy regarding ethical conduct?

(a) The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent and any member of his or her immediate family, his or her partner, or an entity which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub-agreements. However, Recipients 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