

(2) Marshall area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of F Drive North and 15 Mile Road; then south on 15 Mile Road to C Drive North; then south from that point along an imaginary line to A Drive North; then east on A Drive North to West Hughes Street; then east on West Hughes Street to South Kalamazoo Street/M-227; then north on South Kalamazoo/M-227 to Old U.S. 27 North; then north on Old U.S. 27 North to F Drive North; then west on F Drive North to the point of beginning.

*Eaton County.* (1) Delta Township area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Nixon Road and Willow Highway; then east on Willow Highway to North Canal Road; then south on North Canal Road to East Saint Joseph Highway; then west on East Saint Joseph Highway to Upton Road; then north on Upton Road to East Saginaw Highway; then west on East Saginaw Highway to Nixon Road; then north on Nixon Road to the point of beginning.

(2) Potterville area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Otto Road and East Gresham Highway; then east on East Gresham Highway to North Royston Road; then south on North Royston Road to Interstate 69; then south from that point along an imaginary line to the intersection of Vermontville Road and the southern portion of North Royston Road; then south on North Royston Road to Packard Highway; then west on Packard Highway to Otto Road; then north on Otto Road to the point of beginning.

*Genesee County.* The entire county.

*Ingham County.* The entire county.

*Jackson County.* The entire county.

*Kent County.* Kentwood/Wyoming area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of 36th Street SW. and Byron Center Avenue SW.; then east on 36th Street SW., across U.S. Highway 131, and continuing east on 36th Street SE. and 36th Street NW. to Eastern Avenue SE.; then south on Eastern Avenue SE. to 68th Street SW.; then west on 68th Street SW. to Burlingame Avenue SW.; then north on Burlingame Avenue SW. to 64th Street SW.; then west on 64th Street SW. to Byron Center Avenue SW.; then north on Byron Center Avenue SW. to the point of beginning.

*Lapeer County.* The entire county.

*Lenawee County.* The entire county.

*Livingston County.* The entire county.

*Macomb County.* The entire county.

*Monroe County.* The entire county.

*Oakland County.* The entire county.

*Roscommon County.* Saint Helen area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Marl Lake Road and North Saint Helen Road; then south on North Saint Helen Road to the School Road; then east on School Road to Meridian Road; then south on Meridian Road to Carter Lake Road; then west on Carter Lake Road to Michigan Route 76; then south on Michigan Route 76 to Interstate 75; then west on Interstate 75 to Maple Valley Road; then north on Maple Valley Road to its terminus; then north from the terminus of Maple Valley Road along the Higgins/Richland Townships boundary line across Lake St. Helen to the intersection of Richland Township, Sections 18 and 19, and Higgins Township, Sections 13 and 24; then east along the southern boundary of Higgins Township Section 18 to Moore Road; then north on Moore Road to Marl Lake Road, then east on Marl Lake Road to the point of beginning.

*Saginaw County.* (1) Saint Charles area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of South Raucholz Road and Marion Road; then east on Marion Road, across Michigan Route 52, then continuing east along an imaginary line to West Birch Run Road; then east on West Birch Run Road to Turner Road; then north on Turner Road to Ryan Road; then continuing north from that point along an imaginary line to the boundary line between Saint Charles Township and James Township; then west along the boundary line between Saint Charles Township and James Township to West Townline Road; then west on West Townline Road to South Raucholz Road; then south on South Raucholz Road to the point of beginning.

(2) Shields area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Kennely Road and Geddes Road; then east on Geddes Road to North River Road; then south on North River Road and continuing on South River Road to Dutch Road; then west on Dutch Road to South Miller Road; then south on South Miller Road to Ederer Road; then west on Ederer Road to Van Wormer Road; then north on Van Wormer Road to Gratiot Road (Michigan Route 46); then west on Gratiot Road (Michigan Route 46) to Kennely Road; then north, west, and north on Kennely Road to the point of beginning.

*Shiawassee County.* The entire county.

*St. Clair County.* The entire county.

*Washtenaw County.* The entire county.

*Wayne County.* The entire county.

*Ohio*

*Defiance County.* Hicksville Township.

*Fulton County.* (1) That portion of Fulton Township east of Township Road 5.

(2) That portion of Swan Creek Township north of County Road B and east of County Road 5.

*Henry County.* That portion of Henry County east of State Route 109 and north of the Maumee River.

*Lucas County.* (1) That portion of Monclova Township west of Weckerly Road.

(2) That portion of Springfield Township west of Crissy Road.

(3) Swanton Township.

Done in Washington, DC, this 28th day of December 2004.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 05-38 Filed 1-3-05; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1486

**RIN 0551-AA62**

#### Emerging Markets Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes regulations applicable to the Emerging Markets Program (EMP). The regulations provide details concerning program administration, including participant eligibility, application requirements, review and allocation process, reimbursement rules and procedures, financial reporting and project evaluation requirements, appeal procedures, and program controls.

**DATES:** *Effective date:* February 3, 2005.

*Applicability date:* This rule does not apply to projects approved prior to the effective date.

**ADDRESSES:** Denise Huttenlocker, Director, Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Avenue SW., Ag Box 1042, Room 4932-S, Washington, DC 20250-1042. Fax: (202) 720-9361; e-mail: [mosadmin@fas.usda.gov](mailto:mosadmin@fas.usda.gov).

**FOR FURTHER INFORMATION CONTACT:** Douglas Freeman by phone at (202) 720-4327, by fax at (202) 720-9361, or by e-mail at [emo@fas.usda.gov](mailto:emo@fas.usda.gov).

**SUPPLEMENTARY INFORMATION:****Executive Order 12866**

This rule is issued in conformance with Executive Order 12866. It has been determined that this final rule will not have an annual economic effect in excess of \$100 million; will not cause a major cost increase in costs to consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The rule would have preemptive effect with respect to any State or local laws, regulations or policies which conflict with such provisions or which otherwise impede their full implementation; would not have retroactive effect; and would require administrative proceedings before suit may be filed.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (see the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115).

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**The Unfunded Mandates Reform Act of 1995**

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 204 of the UMRA.

**Executive Order 13132**

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism impact statement. The provisions contained in this rule will not have a substantial direct effect on

States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

**Paperwork Reduction Act of 1995**

In accordance with provisions of the Paperwork Reduction Act of 1995, the Foreign Agricultural Service (FAS) submitted an information collection package to the Office of Management and Budget (OMB). OMB assigned control number 0551-0043 to the information collection and record keeping requirements. Copies of the information collection may be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, on (202) 720-2568 or by e-mail to [Kimberly.Chisley@fas.usda.gov](mailto:Kimberly.Chisley@fas.usda.gov).

**Government Paperwork Elimination Act**

The Foreign Agricultural Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Accordingly, applications for participation in the Emerging Markets Program may be submitted online. Payment transactions will be handled both electronically and in paper form.

**Background**

The EMP is authorized by Section 1542(d) of the Food, Agriculture, Conservation, and Trade Act of 1990. The Act directs the Secretary to make available to emerging markets the expertise of the United States to "identify and carry out specific opportunities and projects," including potential reductions in trade barriers, "in order to develop, maintain, or expand markets for United States agricultural exports." The EMP provides funding for technical assistance activities that develop, maintain, or expand the export of U.S. agricultural commodities to overseas emerging markets, and which benefit primarily U.S. industry as a whole.

The EMP is administered by personnel of the Foreign Agricultural Service. FAS implements this provision by providing CCC funds for specific projects to various entities, including government agencies and U.S. private entities, representing a wide range of agricultural commodities and products.

**Summary and Analysis of Contents**

On June 22, 2004, CCC published a rule in the **Federal Register** (69 FR 34616) proposing to establish

regulations for the Emerging Markets Program. That rule also requested interested parties to submit comments by July 22, 2004. CCC received 10 comments on the proposed rule. Following is a summary of the comments that specifically address the proposed rule and CCC's responses to these comments. General comments relating to the value of the program, editorial suggestions, and non-substantive comments have been omitted.

**Discussion of Comments***General Information*

**Comment:** Does the Emerging Markets Program support both public and private applications equally?

**Response:** While the EMP is available to assist both public and private entities, its primary purpose is to support the market development efforts of the U.S. private sector. CCC has clarified this point in section 1486.100.

*Eligibility, Applications and Funding*

**Comment:** Under what conditions may "profit-making" entities (section 1486.200) apply for program funding? Section 1486.201 references research and consulting firms, but does not discuss other for-profits.

**Response:** CCC has revised section 1486.201 to include other for-profit entities. CCC also clarified that such entities must justify the use and need for federal funding assistance and that the use of program funds to supplement the costs of normal day-to-day operations is prohibited.

**Comment:** If the basic objective of the EMP is the expanded export of value-added foods, why does section 1468.100 refer to agricultural commodities which is more inclusive?

**Response:** CCC assumes reference is to section 1486.100, not 1468.100.

The first sentence under section 1486.100 clearly states that the EMP is not limited to value-added products, but to assist in the export of all U.S. agricultural commodities and products except tobacco.

**Comment:** No foreign involvement should be tolerated.

**Response:** Foreign organizations, government or private, may participate as third parties in activities carried out by U.S. entities. Their participation is often critical to the success of a given project. Foreign entities are not, however, eligible for funding assistance from the program.

*Contributions and Reimbursements*

**Comment:** Will the Emerging Markets Program pay for the cost of commodity

samples for an Emerging Markets funded project?

Response: The EMP will reimburse the cost of commodity samples for an approved project assuming that the expense is reasonable and it is included in the application budget. However, the shipping costs for commodity samples are not eligible for reimbursement, but can be included as a contribution to the project. CCC has revised section 1486.403 by adding paragraph (b) (8) to clarify this point.

Comment: There should never be advance payments.

Response: The EMP is primarily intended to assist small- and medium-sized agricultural entities that may not have the available funds to implement a project without assistance from the EMP. Therefore, while the majority of the program's funds are disbursed on a reimbursement basis, the program allows advances on a limited basis and for short periods of time. CCC is adopting the rule as proposed.

#### *Reporting, Evaluation and Compliance*

Comment: There is a need for a repository for the conclusions and outcome of these completed projects.

Response: Reporting is required for each project, and final performance reports must contain a description of the findings and evaluations resulting from completed projects. Final reports are made available to the public on the program's Web site accessed through <http://www.fas.usda.gov>.

Comment: Performance reports should be closely monitored. Reports last audited by Government Accountability Office (GAO) show severe fraud irregularities. GAO should audit this program every three (3) months for several years.

Response: Approved projects are monitored regularly by EMP staff for the full duration. In addition, the Foreign Agricultural Service's Compliance Review Staff conducts regular reviews of EMP-funded projects to ensure compliance with all applicable federal regulations, requirements and terms of the agreements including financial integrity and accountability. CCC is not aware of any GAO report that cites findings related to fraud or other irregularities under the EMP. Therefore, CCC is adopting the rule as proposed.

This rule includes other clarifying changes to accompany the substantive changes discussed herein.

#### **List of Subjects in 7 CFR Part 1486**

Agricultural Commodities, Exports, Grant Programs—Agriculture, Technical Assistance.

■ Title 7 of the Code of Federal Regulations is amended by adding a new part 1486 to read as follows:

#### **PART 1486—EMERGING MARKETS PROGRAM**

##### **Subpart A—General Information**

Sec.

- 1486.100 What is the Emerging Markets Program?  
 1486.101 What special definitions apply to this program?  
 1486.102 Is there a list of eligible emerging market countries?  
 1486.103 Are regional projects possible under the program?

##### **Subpart B—Eligibility, Applications, and Funding**

- 1486.200 What entities are eligible to participate in the program?  
 1486.201 Under what conditions may research and consultant organizations, individuals, or any other for-profit entity apply to the program?  
 1486.202 Are there any ineligible entities?  
 1486.203 Which commodities/products are eligible for consideration under the program?  
 1486.204 Are multi-year proposals eligible for funding?  
 1486.205 What types of funding are available under the program?  
 1486.206 What is the Quick Response Marketing Fund?  
 1486.207 What is the Technical Issues Resolution Fund?  
 1486.208 How does an entity apply to the program?  
 1486.209 How are program applications evaluated and approved?  
 1486.210 Are there any limits on the funding of proposals?

##### **Subpart C—Program Operations**

- 1486.300 How are applicants notified of decisions on their applications?  
 1486.301 How is the working relationship established between CCC and the Recipient of program funding?  
 1486.302 Can changes be made to a project once it has been approved?  
 1486.303 What specific contracting procedures must be adhered to?

##### **Subpart D—Contributions and Reimbursements**

- 1486.400 What are the rules on cost sharing?  
 1486.401 What cost share contributions are eligible?  
 1486.402 What are ineligible contributions?  
 1486.403 What expenditures may CCC reimburse under the program?  
 1486.404 What expenditures are not eligible for program funding?  
 1486.405 How are Recipients reimbursed for project expenditures?  
 1486.406 Will CCC make advance payments to Recipients?

##### **Subpart E—Reporting, Evaluation, and Compliance**

- 1486.500 What are the reporting requirements of the program?

- 1486.501 What is the rule on notifying field offices of international travel?  
 1486.502 How is project effectiveness measured?  
 1486.503 How is program compliance monitored?  
 1486.504 How does a Recipient respond to a compliance report?  
 1486.505 Can a Recipient appeal the determinations of the Director, CRS?  
 1486.506 When will a project be reviewed?  
 1486.507 What is the effect of failing to make required contributions?  
 1486.508 How long must Recipients maintain original project records?  
 1486.509 Are Recipients allowed to charge fees for specific activities in approved projects?  
 1486.510 What is the policy regarding disclosure of program information?  
 1486.511 What is the general policy regarding ethical conduct?  
 1486.512 Has the Office of Management and Budget reviewed the paperwork and record keeping requirements contained in this part?

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

##### **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 support 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 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 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 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 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 cooperators, 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;

(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 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.

**§ 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 violations of such standards by officers, employees, or agents of the Recipient.

(b) A Recipient shall conduct its business in accordance with the laws and regulations of the country in which an activity is carried out.

**§ 1486.512 Has the Office of Management and Budget reviewed the paperwork and record keeping requirements contained in this part?**

The paperwork and record keeping requirements imposed by this part have been submitted to the Office of Management and Budget (OMB) for review and under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has assigned control number 0551-0043 for this information collection.

Dated: December 1, 2004.

**A. Ellen Terpstra,**

*Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2004-18515; Directorate Identifier 2004-NE-12-AD; Amendment 39-13921; AD 2004-26-09]

**RIN 2120-AA64**

**Airworthiness Directives; Rolls-Royce Corporation (formerly Allison Engine Company, Allison Gas Turbine Division, and Detroit Diesel Allison) 250-B and 250-C Series Turboprop and Turboshift Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce Corporation (RRC) 250-B and 250-C series turboprop and turboshift engines with certain part numbers (P/Ns) of compressor adaptor couplings manufactured by Alcor Engine Company (Alcor), EXTEX Ltd. (EXTEx), RRC, and Superior Air Parts (SAP) installed. This AD requires operators to remove from service affected compressor adaptor couplings. This AD results from nine reports of engine shutdown caused by coupling failure. We are issuing this AD to reduce the risk of failure of the compressor adaptor coupling and subsequent loss of all engine power.

**DATES:** This AD becomes effective February 8, 2005.