



Billing Code 3410–10

**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**7 CFR Part 1486**

**RIN 0551-AA95**

**Emerging Markets Program**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule is revising the Emerging Markets Program (EMP) regulations to incorporate legislative changes introduced in the Agriculture Improvement Act of 2018 and to incorporate changes that conform the operation of the program to the requirements in the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (Uniform Guidance) and Federal grant–making best practices.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Curt Alt, (202) 690–4784, [curt.alt@usda.gov](mailto:curt.alt@usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The EMP is authorized by Section 203 of the Agricultural Trade Act of 1978 (7 U.S.C. 5623), as amended. The EMP regulations appear at 7 CFR part 1486. The Agriculture Improvement Act of 2018 (Pub. L. 115-334), which reauthorized the program for fiscal

years 2019–2023, introduced legislative changes to the program that improve the program’s flexibility and usefulness to stakeholders, such as the delinking of proposed technical assistance activities from an assessment and an expansion of permitted travel activities. In addition, this rule updates the regulations to bring the operation of the program into conformance with the requirements in the Uniform Guidance. Additional changes are desirable to bring the administration of the program into line with the current best practices in Federal grantmaking.

### **Notice and Comment**

This rule is being issued as a final rule without prior notice and opportunity for comment. The Administrative Procedure Act (5 U.S.C. 553) exempts rules “relating . . . to public property, loans, grants, benefits, or contracts” from the statutory requirements for prior notice and opportunity for comment and publication of the rule not less than 30 days before its effective date (5 U.S.C. 553(a)(2)). Accordingly, this final rule is effective when published in the Federal Register.

### **Catalog of Federal Domestic Assistance**

The program covered by this regulation is listed in the Catalog of Federal Domestic Assistance (CFDA) under the following FAS CFDA number: 10.603, Emerging Markets Program.

### **E-Government Act Compliance**

The Foreign Agricultural Service (FAS) is committed to complying with the E-Government Act of 2002 (44 U.S.C. chapter 36), to promote the use of the Internet and other information technologies to provide increased opportunities for citizens’ access to Government information and services, and for other purposes.

### **Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform.” This rule does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule will not be retroactive.

### **Executive Order 12372**

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with officials of State and local governments that would be directly affected by the proposed Federal financial assistance. The objectives of the Executive order are to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This rule will not directly affect State or local governments, and, for this reason, it is excluded from the scope of Executive Order 12372.

### **Executive Order 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

### **Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs has designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

**Executive Order 13175**

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments, proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. FAS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to the knowledge of FAS, have tribal implications that require tribal consultation under Executive Order 13175. If a tribe requests consultation, FAS will work with USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

**Executive Order 13771**

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that for every new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

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

Agricultural commodities, Exports.

For the reasons discussed in the preamble, 7 CFR part 1486 is revised to read as follows:

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

Sec.

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

1486.100 General purpose and scope.

1486.101 Definitions.

1486.102 Regional projects.

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

1486.200 Participation eligibility.

1486.201 Eligible commodities.

1486.202 Application process.

1486.203 Application review and formation of agreements.

1486.204 Funding limits.

#### **Subpart C—Program Operations**

1486.300 Applicant notification.

1486.301 Amendments.

1486.302 Subrecipients.

#### **Subpart D—Cost Share and Reimbursements**

- 1486.400 Cost share.
- 1486.401 Eligible cost share.
- 1486.402 Ineligible cost share.
- 1486.403 Reimbursement rules.
- 1486.404 Ineligible expenditures.
- 1486.405 Reimbursement procedures.
- 1486.406 Advances.

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

- 1486.500 Reports.
- 1486.501 Evaluation.
- 1486.502 Compliance reviews and notices.
- 1486.503 Records retention.
- 1486.504 Program income.
- 1486.505 Audit requirements.
- 1486.506 Disclosure of program information.
- 1486.507 Ethical conduct.
- 1486.508 Suspension and termination.
- 1486.509 Noncompliance with an agreement.
- 1486.510 Paperwork reduction requirements.

Authority: 7 U.S.C. 5623, 5662–5663.

## Subpart A—General Information

### §1486.100 General purpose and scope.

(a) The E (Kika) de la Garza Emerging Markets Program (EMP) is established to develop, maintain, or expand markets for exports of United States agricultural commodities and to promote cooperation and exchange of information between agricultural institutions and agribusinesses in the United States and emerging markets.

While the program is primarily intended to support the export market development efforts of the private sector, the program's resources may also be used to assist public agricultural organizations.

(b) This part sets forth the general terms, conditions, and policies governing the Commodity Credit Corporation's (CCC) operation of the EMP.

(c)(1) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200. In 2 CFR 400.1, the U.S. Department of Agriculture (USDA) adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as USDA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards.

(2) The OMB guidance at 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to the EMP.

(3) In addition to the provisions of this part, other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, IV, also apply to the EMP, to the extent that these regulations do not directly conflict with the provisions of this part. The provisions

of the CCC Charter Act (15 U.S.C. 714 et seq.) and any other statutory or regulatory provisions that are generally applicable to CCC also apply to the EMP.

(d) Under the EMP, CCC provides grants to eligible U.S. private or government entities who demonstrate a role or interest in the export of U.S. agricultural commodities to conduct assessments of food and rural business system needs of emerging markets, make recommendations on measures necessary to enhance the effectiveness of such systems, including potential reductions in trade barriers, and identify and carry out specific opportunities and projects to enhance the effectiveness of such systems. The EMP may only be used to support exports of U.S. agricultural commodities through generic activities.

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

(f) The EMP generally operates on a reimbursement basis. The program is administered by the Foreign Agricultural Service (FAS) acting on behalf of CCC.

(g) EMP recipients are responsible for complying with all applicable laws and regulations.

#### §1486.101 Definitions.

For purposes of this part, the following definitions apply:

*Activities* means components of a project that carries out one or more statutorily-authorized activities, e.g., activities that assess the food and rural business system needs

of emerging markets; promote information exchange with such markets; and/or carry out recommendations, projects, and opportunities in emerging markets to enhance the effectiveness of such systems.

*Agreement* means a legally binding grant entered into between CCC and an EMP applicant setting forth the terms and conditions of approved activities under the EMP, including any subsequent amendments to such agreement.

*Approval letter* means a document by which CCC informs an applicant that its EMP proposal has been approved for funding. This letter may also approve specific activities and contain terms and conditions in addition to the agreement.

*Attaché/Counselor* means the FAS employee representing United States Department of Agriculture interests in a foreign country.

*Cost share* means the portion of project costs not paid by Federal funds (unless otherwise authorized by Federal statute). In terms of the EMP program, cost share is the funds provided by the Recipient, the U.S. industry, or a State agency in support of an approved activity.

*Emerging market* means generally any country, foreign territory, customs union, or other economic market that CCC determines is taking steps toward a market-oriented economy through its food, agriculture, or rural business sectors of the economy and has the potential to provide a viable and significant market for U.S. agricultural commodities.

CCC has determined that any country that is not designated as a high-income country by the World Bank is an eligible emerging market under this program. The World Bank periodically redefines the income limits for its country classification. Consequently, the

list of “emerging market” countries may change over time. CCC will provide guidance on country eligibility in each program announcement.

*Generic activities* mean an activity that does not involve or promote the exclusive or predominant use of an individual company name, logo, or brand name, or the brand of a U.S. agricultural cooperative, but rather promotes a U.S. agricultural commodity generally.

*Project* means an approach or undertaking made up of one or more activities that, taken together, carries out one or more statutorily–authorized activities under the EMP (*e.g.*, activities that assess the food and rural business system needs of emerging markets and develop recommendations on measures necessary to enhance the effectiveness of such systems; promote information exchange with such markets; or identify and carry out specific recommendations, opportunities, or projects to enhance the effectiveness of such systems).

*Project funds* means the funds made available to a Recipient by CCC under an agreement and authorized for expenditure in accordance with this part.

*Proposal* means an application for funding.

*Recipient* means a U.S. entity receiving financial assistance from CCC to carry out a project under the EMP.

*SRTG* is the acronym for State Regional Trade Group. An STRG is a non–profit association of state–funded agricultural promotion agencies.

*STRE* is the acronym for sales and trade relations expenditures. Expenditures made on breakfast, lunch, dinner, receptions, and refreshments at approved activities; miscellaneous courtesies such as checkroom fees, taxi fares and tips for approved

activities; and decorations for a special promotional occasion that is part of an approved activity.

*Unified Export Strategy (UES) system* means an online Internet system maintained by FAS through which applicants may apply to the EMP and other FAS market development programs. The system is currently accessible at <https://apps.fas.usda.gov/ues/webapp/>.

FAS may prescribe a different system through which applicants may apply to EMP and will announce such system in the applicable Notice of Funding Opportunity (NOFO).

*U.S. agricultural commodity* means any agricultural commodity of U.S. origin, including food, feed, fiber, forestry product, livestock, insects, and fish harvested from a U.S. aquaculture farm or harvested by a vessel (as defined in Title 46 of the United States Code) in waters that are not waters (including the territorial sea) of a foreign country, and any product thereof.

#### §1486.102 Regional projects.

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 also consider activities that 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 Participation eligibility.

(a) 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. Government organizations consist of Federal, state, and local agencies. Private entities include non-profit trade associations, universities, agricultural cooperatives, SRTGs, consulting businesses, research institutions, and profit-making entities. Foreign organizations, whether government or private, may participate as subrecipients in activities carried out by U.S. entities, but are not eligible for direct funding assistance from the program.

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

(c) For-profit entities shall not use program funds to conduct private business, promote private self-interests, or promote their own products or services beyond specific uses approved in a given project. For-profit entities shall not use program funds to supplement the costs of normal day-to-day operations.

#### §1486.201 Eligible commodities.

Any agricultural commodity or product thereof, excluding tobacco, that is comprised of at least 50 percent by weight, exclusive of added water, of agricultural commodities grown or raised in the United States is eligible for funding. Projects that seek support for multiple commodities are also eligible.

#### §1486.202 Application process.

(a) *Announcement of accepting EMP applicants.* CCC will periodically announce that it is accepting applications for participation in the EMP. All relevant information, including application deadlines 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 and in this part. Currently, applicants are encouraged to submit applications through the UES system but are not required to do so. CCC may request any additional information it deems necessary from any applicant in order to properly evaluate any proposal.

(b) *Universal identifier and System for Award Management (SAM).* In accordance with 2 CFR part 25, each entity that applies to the EMP and does not qualify for an exemption under 2 CFR 25.110 must:

- (1) Be registered in the SAM prior to submitting an application or plan;
- (2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and
- (3) Provide its DUNS number, or a unique identifier designated as a DUNS replacement, in each application or plan it submits to CCC.

(c) *Reporting subaward and executive compensation information.* In accordance with 2 CFR part 170, each entity that applies to the EMP and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive EMP funding.

§1486.203 Application review and formation of agreements.

(a) *General*. Proposals received in accordance with the announcement and this part will undergo a multi-phase review by CCC to determine eligibility for the program, the qualifications, quality, and appropriateness of proposed projects, and the reasonableness of proposed project budgets.

(b) *Evaluation criteria*. CCC will review all proposals for eligibility and completeness. CCC will evaluate and score each proposal against the factors described in the NOFO. All proposals that meet the eligibility and completeness criteria described in the NOFO and receive a passing score will be recommended for funding to the FAS Administrator. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal, and submit the proposals and funding recommendations to appropriate officials for decision. CCC may, when appropriate to the subject matter of the proposal, request the assistance of other U.S. Government experts in evaluating the merits of a proposal. Demonstration of substantial U.S. industry participation in or financial or other support of a proposal will be a positive factor in the consideration of proposals. The degree of commitment to a proposed project, represented by the amount and type of cost share, is used in determining which proposals will be approved. 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. All reviewers will be required to sign a conflict of interest form, and when conflicts of interests are identified the reviewer will be recused from the objective review process.

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

§1486.204 Funding limits.

(a) The EMP is a relatively small program intended to develop, maintain, or expand access to qualified emerging markets. Its funds are intended for focused projects with specific activities, rather than expansive concept papers that contain only broad ideas. Large, overly expensive projects (*i.e.*, in excess of \$500,000) will not be funded.

(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 that have significant financial contributions from other sources, especially U.S. private industry.

(c) Proposals for projects exceeding one year in duration may be considered, but proposals for projects that last longer than five years will not be considered. If approved, funding for multi-year projects may be provided one 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.

(d) Funding for continuing and substantially similar projects is generally limited to three calendar years, although FAS will entertain requests to extend an agreement's expiration date up to a maximum of five calendar 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. Recipients must submit in writing a valid

justification for why an extension is necessary no later than 60 days before the end of the period of performance. If warranted, extensions generally will be granted in one-year increments. Recipients must wait for written approval from FAS before proceeding with the project.

#### Subpart C—Program Operations

##### §1486.300 Applicant notification.

(a) CCC will notify each applicant in writing of the final decision on its application. CCC will send an agreement and an approval letter to each approved applicant. An applicant that accepts the terms and conditions contained in the agreement must so indicate by having the appropriate authorizing official sign the agreement and return it to CCC. The applicant may not begin to implement approved activities until the applicant's authorizing official and CCC have signed the agreement. The applicant is authorized to begin implementation of the project as of the date specified in the approval letter, unless otherwise indicated.

(b) The approval letter and agreement will outline the activities and budgets that are approved and will specify the terms and conditions applicable to the project, including the levels of EMP funding and cost-share requirements.

##### §1486.301 Amendments.

(a) Recipients may request to modify approved projects if circumstances change in such a way that they would likely affect the progress and ultimate success of a project. Such

modification must be made through a written amendment to the agreement. All requests for project modifications must be made in writing to CCC 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; and
- (3) A description of necessary changes in the project's time line(s) and/or budget (*e.g.*, shifting of budgetary resources from one-line item to another in order to accommodate the changes).

(b) All requests for project modifications must be reviewed and approved by CCC. Upon approval, CCC will issue an amendment to the agreement, which must be signed by CCC and the Recipient.

#### §1486.302 Subrecipients.

(a) A Recipient may utilize the services of a subrecipient to implement activities under the agreement if this is provided for in the agreement. The subrecipient may receive CCC-provided funds, program income, or other resources from the Recipient for this purpose. The Recipient must enter in to a written subaward with the subrecipient and comply with the applicable provisions of 2 CFR 200.331 and/or the Federal Acquisition Regulation (FAR), if applicable. If required by the agreement, the Recipient must provide a copy of such subaward to FAS, in the manner set forth in the agreement, prior to the transfer of CCC-provided funds or program income to the subrecipient.

(b) A Recipient must include the following requirements in a subaward:

- (1) The subrecipient is required to comply with the applicable provisions of this part and 2 CFR parts 200 and 400 and/or the FAR, if applicable. The applicable provisions are

those that relate specifically to subrecipients, as well as those relating to non-Federal entities that impose requirements that would be reasonable to pass through to a subrecipient because they directly concern the implementation by the subrecipient of one or more activities under the agreement. If there is a question about whether a particular provision is applicable, FAS will make the determination.

(2) The subrecipient must pay to the Recipient the value of CCC-provided funds, interest, or program income that are not used in accordance with the subaward, or that are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(3) In accordance with 2 CFR 200.501(h), subawards must include a description of the applicable compliance requirements and the subrecipient's compliance responsibility. Methods to ensure compliance may include pre-award audits, monitoring during the agreement, and post-award audits.

(c) A Recipient must monitor the actions of a subrecipient as necessary to ensure that CCC-provided funds and program income provided to the subrecipient are used for authorized purposes in compliance with applicable U.S. Federal laws and regulations and the subaward and that performance indicator targets are achieved for both activities and results under the agreement.

(d) Recipients have full and sole responsibility for the legal sufficiency of all subawards they may enter into with one or more subrecipients 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 subawards entered into by the Recipient. Neither CCC nor any other agency of the United States Government nor any official or employee

of CCC, FAS, USDA, or the United States Government has any obligation or responsibility with respect to Recipient subawards with third parties.

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

(f) All fees for professional and technical services paid to subrecipients in any part with project funds must be covered by written subawards.

(g) 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 or invoice;

(2) Ensure that no employee, officer, board member, agent, or the employee's, officer's, board member's, or agent's family, partners, or an organization that employs or is about to employ any of the parties indicated herein, participates in the review, selection, award or administration of a subaward in which such entities or their affiliates have a financial or other interest;

(3) Conduct all contracting in an openly competitive 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, and such individuals' families or partners, or an organization that employs or is about to employ any of the aforementioned shall be excluded from competition for such procurement;

(4) Conduct all awarding of grants and agreements in an openly competitive manner, except under the following conditions:

(i) Non-monetary awards of property or services;

- (ii) Awards of less than \$75,000;
  - (iii) Awards to fund continuing work already started under a previous award;
  - (iv) Awards that cannot be delayed due to an emergency or a substantial danger to health or safety;
  - (v) Awards when it is impracticable to secure competition; or
  - (vi) Awards to fund unique and innovative unsolicited applications;
- (5) Base each solicitation for professional or technical services on a clear and accurate description of and requirements related to the services to be procured;
- (6) Perform and document 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 for procurements in excess of the simplified acquisition threshold defined at 2 CFR 200.88; and
- (7) Document the decision-making process.

#### Subpart D—Cost Share and Reimbursements

##### §1486.400 Cost share.

- (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 Recipient and/or U.S. partners.
- (b) There is no minimum or maximum required amount of cost share. The degree of commitment to a proposed project, represented by the amount and type of private funding, is used as one factor in determining which proposals will be approved. The type of cost share is also not specified, though some contributions are ineligible (see

§1486.402). 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 share 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 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 undertaken by an entity at the request of FAS may be exempted from the cost share requirement. This determination is made at the discretion of FAS.

(f) A Recipient's cost share requirement will be specified in the agreement and approval letter. If a Recipient fails to contribute the total specified in the agreement, the difference between the amount contributed and the total amount required must be repaid to CCC in U.S. dollars within six months after the end of the period of performance of the agreement. If a Recipient is reimbursed by CCC for less than the amount of funds approved in the agreement, then the final required cost share shall equal, on a percentage basis, the original ratio of cost share to the authorized EMP funding level.

§1486.401 Eligible cost share.

(a) In calculating the amount of cost share that it will make and the cost share U.S. entities or a State or local agency will make, a Recipient may include those costs (or such prorated costs) not proscribed under §1486.402 if:

- (1) The expenditures are necessary and reasonable for accomplishment of the Recipient's overall EMP;
  - (2) The expenditures are not included as cost share for any other Federal award;
  - (3) The expenditures are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs; and
  - (4) The cost share is made during the period covered by the agreement.
- (b) Cost share must be included in a project's line item budget.

§1486.402 Ineligible cost share.

- (a) The following are not eligible as cost share:
- (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 target of an approved project activity;
  - (3) The cost of insuring articles owned by private individuals;
  - (4) The cost of product development, product modification, or product research;
  - (5) Slotting fees or similar sales expenditures;
  - (6) Funds, services, capital goods, or personnel provided by any U.S. Government agency;
  - (7) The value of any services generated by a Recipient or a third party that involve no expenditure by the Recipient or third party, e.g., free publicity;
  - (8) The cost of developing any application/proposal for EMP funding;

(9) Membership fees in clubs and social organizations; and

(10) Any expenditure for an activity prior to CCC's approval of that activity.

(b) CCC shall determine, at CCC's discretion, whether any cost not expressly listed in this section may be included as an eligible cost share.

§1486.403 Reimbursement rules.

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

(1) The expenditure was necessary and reasonable for the performance of an approved activity; and

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

(b) Subject to paragraph (a) of this section, as well as applicable cost principles in 2 CFR part 200, to the extent these principles do not directly conflict with the provisions of this part, 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 directly assigned to EMP-funded projects. Salaries of administrative and clerical staff should normally be treated as indirect costs. Federal, state, and local government Recipients may not be reimbursed for salaries and benefits. Reimbursement of salaries and benefits for other Recipients is limited to:

(i) The actual daily rate paid by the Recipient for the employee's salary or the daily rate of a GS-15, Step 10 U.S. Government employee 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, provided that such benefits are required and granted pursuant to the Recipient's established written policies.

(2) Consulting fees for professional services, limited to the daily rate of a GS-15, Step 10 U.S. Government employee 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 for social events or receptions that are primarily attended by foreign officials and that are held at foreign venues and are part of an approved activity. Such expenses must conform to the American Embassy representational funding guidelines as the standard for judging the appropriateness of the STRE costs. The amount of unauthorized STRE expenses that exceed the guidelines will not be reimbursed. Recipients must pay the difference between the total cost of STRE events and the appropriate amount as determined by the guidelines. STRE incurred in the United States is not authorized for reimbursement but may be counted as a cost share to the project.

(4) Travel expenses, subject to the following:

(i) All expenses while in travel status must conform to the U.S. Federal Travel

Regulations (41 CFR parts 300 through 304);

(ii) Air travel must comply with the Fly America Act (49 U.S.C. App. 1517) and is limited to the full-fare economy class rate;

(iii) Per diem is limited to the allowable rate for each domestic or foreign locale (41 CFR part 301-11). Expenses in excess of the authorized per diem rates may be allowed in

special or unusual circumstances (41 CFR part 301-11), but must be approved in advance; and

(iv) The Recipient shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel by the Recipient or its consultants or other Recipients. The timing of such notice should be far enough in advance to enable the Attaché/Counselor to schedule appointments, make preparations, or otherwise provide any assistance being requested. Failure to provide advance notification of travel generally will result in disallowance of the expenses related to the travel, unless CCC determines it was impractical to provide such notification.

(5) Direct administrative costs.

(6) Indirect costs not identified as direct costs, but which are necessary for the implementation of a project. Indirect costs must be specified to be eligible for reimbursement. Indirect costs may be reimbursed up to a maximum of 10 percent of the EMP-funded portion of the project budget, excluding indirect costs, except that Recipients in FAS' Market Access Program and the Foreign Market Development Cooperator Program, SRTGs, for-profit entities, and government Recipients may not be reimbursed for indirect costs.

(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 agricultural commodities that are appropriate and necessary to the success of a technical assistance activity.

§1486.404 Ineligible expenditures.

(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, *e.g.*, in-store promotions, 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 information technology projects;
- (6) Purchase 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, except as allowed under §1486.403(b)(6);
- (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, fines, settlements, judgments, or payments relating to legal suits, challenges, or disputes, including legal fees and costs associated with trade disputes, except as otherwise allowed in 2 CFR part 200;

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

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

(b) CCC may determine, at CCC's discretion, whether any cost not expressly listed in this section will be reimbursed.

§1486.405 Reimbursement procedures.

(a) Following the implementation of a project for which CCC has agreed to provide funding, a Recipient may submit claims for reimbursement of eligible expenses incurred in implementing an EMP project, to the extent that CCC has agreed to pay such expenses. Any changes to approved activities must be approved in writing by CCC before any reimbursable expenses associated with the change can be incurred. A Recipient will be reimbursed after CCC reviews the claim and determines that it is complete.

(b) CCC will make all payments to the Recipients in U.S. dollars. FAS will initiate payment within 30 days after receipt of the billing, unless the billing is improper.

(c) Recipients will be authorized to submit requests for reimbursements or advances at least monthly when electronic fund transfers (EFTs) are not used, and as frequently as desired when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

(d) Recipients may submit claims for reimbursement of the expenses incurred in implementing EMP projects, to the extent CCC has agreed to pay for such costs, limited initially to 85 percent of the total amount specified in the agreement. The Recipient may be reimbursed for the remaining 15 percent of the funds only after the final performance report containing the information required by the agreement is submitted to and approved by FAS.

(e) Final claims for reimbursement must be received no later than 90 calendar days after the completion date of the project or following the expiration or termination date of the agreement, whichever is sooner, and are subject to FAS approval of the Recipient's final performance report. Recipients are required to use a prescribed system to submit their claims. This system will be clearly stated in the NOFO. Currently the CCC's Internet-based UES system is being used to request reimbursement for eligible EMP program expenses.

(f) Recipients shall maintain complete records of all program expenditures, identified by EMP agreement number, program year, country or region, activity number, and cost category. Such records shall be accompanied by documentation that supports the expenditure and shall be made available to CCC upon request. CCC may deny a claim for reimbursement if the claim is not supported by acceptable documentation.

(g) In the event that a reimbursement claim is overpaid or is disallowed after payment already has been made, the Recipient shall repay CCC within 30 calendar days of such overpayment or disallowance the amount overpaid or disallowed either by submitting a check payable to CCC and referencing the applicable project, or by offsetting its next

reimbursement claim. The Recipient shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(h) The Recipient shall report any actions that may have a bearing on the propriety of any claims for reimbursement in writing to the appropriate Attaché/Counselor and FAS Division Director.

§1486.406 Advances.

(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, unless the exceptions in 2 CFR part 200 apply. Interest earned by the Recipient on funds advanced by CCC is not program income. Up to \$500 of interest earned per year may be retained by the Recipient for administrative expenses.

Any additional interest earned on Federal advance payments shall be remitted annually to the appropriate entity as required in 2 CFR part 200.

(c) *Refunds due CCC.* A Recipient shall fully expend all advances on approved activities within 90 calendar days after the date of disbursement by CCC. By the end of 90 calendar days, the Recipient must submit reimbursement claims to offset the advance and submit a

check made payable to CCC for any unexpended balance. The Recipient shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

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

##### §1486.500 Reports.

(a) Recipients are required to submit regular financial and performance reports in accordance with their agreement. Reporting requirements and formats for both annual financial and performance reports and final financial and performance reports will be specified in the agreement between CCC and the Recipient.

(b)(1) In addition to the information required in 2 CFR 200.328(b)(2), a Recipient's performance reports must include pertinent information regarding the Recipient's progress, measured against established indicators, baselines, and targets, towards achieving the expected results specified in the agreement. This reporting must include, for each performance indicator, a comparison of actual accomplishments with the baseline and the targets established for the period. When actual accomplishments deviate significantly from targeted goals, the Recipient must provide an explanation in the report.

(2) A Recipient must ensure the accuracy and reliability of the performance data submitted to FAS in performance reports. At any time during the period of performance of the agreement, FAS may review the Recipient's performance data to determine whether it is accurate and reliable. The Recipient must comply with all requests made by FAS or an entity designated by FAS in relation to such reviews.

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

(d) If requested by FAS, a Recipient must provide to FAS additional information or reports relating to the agreement.

(e) If a Recipient requires an extension of a reporting deadline, it must ensure that FAS receives an extension request at least five business days prior to the reporting deadline. FAS may decline to consider a request for an extension that it receives after this time period. FAS will consider requests for reporting deadline extensions on a case by case basis and will make a decision based on the merits of each request. FAS will consider factors such as unforeseen or extenuating circumstances and past performance history when evaluating requests for extensions.

#### §1486.501 Evaluation.

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

#### §1486.502 Compliance reviews and notices.

(a) *Compliance review process.* (1) USDA staff may conduct compliance reviews of Recipient's activities under the EMP to ensure compliance with this part, applicable Federal laws and regulations, and the terms of the agreements and approval letters. Recipients shall cooperate fully with relevant USDA staff conducting compliance reviews and shall comply with all requests from USDA staff to facilitate the conduct of such reviews. Program funds spent inappropriately or on unapproved activities must be returned to CCC.

(2) 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.

(3) Upon conclusion of the compliance review, USDA staff will provide a written compliance report to the Recipient. The compliance report will detail any instances where it appears that the Recipient is not complying with any of the terms or conditions of the agreement, approval letter, or the applicable laws and regulations. The report will also specify if it appears that CCC may be entitled to recover funds from the Recipient and will explain the basis for any recovery of funds from the Recipient. If, as a result of a compliance review, CCC determines that further review is needed in order to ensure compliance with the requirements of the EMP, CCC may require the Recipient to contract for an independent audit.

(4) In addition, CCC may notify a Recipient in writing at any time if CCC determines that CCC may be entitled to recover funds from the Recipient. CCC will explain the basis for any recovery of funds from the Recipient in the written notice. The Recipient shall, within 30 calendar days of the date of the notice, repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The Recipient shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. If, however, a Recipient notifies CCC within 30 calendar days of the date of the written notice that the Recipient intends to file an appeal pursuant to the provisions of this part, the amount owed to CCC by the Recipient is not due until the appeal procedures are concluded and CCC has made a final determination as to the amount owed.

(5) The fact that a compliance review has been conducted by USDA staff does not signify that a Recipient is in full compliance with its agreement, approval letter, and/or applicable laws and regulations.

(b) *Recipient response to compliance report.* (1) A Recipient shall, within 60 calendar days of the date of the issuance of a compliance report, submit a written response to CCC. The response may include additional documentation for consideration or a request for reconsideration of any finding along with supporting justification. If the Recipient does not wish to contest the compliance report, the response shall include any money owed to CCC, which may be returned by submitting a check payable to CCC or by offsetting a reimbursement claim. The Recipient shall make any payments in U.S. dollars, unless otherwise approved in advance by CCC. CCC, at its discretion, may extend the period for response.

(2) After reviewing the response, CCC shall determine whether the Recipient owes any funds to CCC and will inform the Recipient in writing of the basis for the determination. CCC may initiate action to collect such amount by providing the Recipient a written demand for payment of the debt pursuant to the debt settlement policies and procedures in 7 CFR part 1403.

(c) *Recipient appeals of CCC determinations.* (1) Within 30 calendar days of the date of the issuance of a determination, the Recipient may appeal the determination by making a request in writing that includes the basis for such reconsideration. The Recipient may also request a hearing.

(2) If the Recipient requests a hearing, CCC will set a date and time for the hearing. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared

unless the Recipient bears the cost of a transcript; however, CCC may, at its discretion, have a transcript prepared at CCC's expense.

(3) CCC will base its final determination upon information contained in the administrative record. The Recipient must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by CCC.

#### §1486.503 Records retention.

Each Recipient shall retain all records relating to the project for three calendar years from the date of submission of the final expenditure report. All records related to the project, including records pertaining to contractors, shall be made available upon request to authorized officials of the U.S. Government.

#### §1486.504 Program income.

Program income means gross income earned by the Recipient that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. Any such income generated from an activity, the expenditures for which have been wholly or partially reimbursed with EMP funds, shall be used by the Recipient in furtherance of its approved activities in the program period during which the EMP funds are available for obligation by the Recipient, or must be returned to CCC. The use of such income shall be governed by this part. Reasonable activity fees or registration fees, if identified as such in a project budget, may be charged for projects approved for program funding. 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. Any activity fees charged must be

used to offset activity expenses or returned to CCC. Such fees may not be used as profit or counted as cost share.

§1486.505 Audit requirements.

(a) Subpart F of 2 CFR part 200 applies to all Recipients and subrecipients under this part other than those that are for-profit entities, foreign public entities, or foreign organizations.

(b) A Recipient or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization and that expends, during its fiscal year, a total of at least the audit requirement threshold in 2 CFR 200.501 in Federal awards, is required to obtain an audit. Such a Recipient or subrecipient has the following two options to satisfy the requirement in this paragraph (b):

(1)(i) A financial audit of the agreement or subaward, in accordance with the Government Auditing Standards issued by the United States Government Accountability Office (GAO), if the Recipient or subrecipient expends Federal awards under only one FAS program during such fiscal year; or

(ii) A financial audit of all Federal awards from FAS, in accordance with GAO's Government Auditing Standards, if the Recipient or subrecipient expends Federal awards under multiple FAS programs during such fiscal year; or

(2) An audit that meets the requirements contained in subpart F of 2 CFR part 200.

(c) A Recipient or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization and that expends, during its fiscal year, a total that is less than the audit requirement threshold in 2 CFR 200.501 in Federal awards, is exempt from requirements

under this section for an audit for that year, except as provided in paragraphs (d) and (f) of this section, but it must make records available for review by appropriate officials of Federal agencies.

(d) FAS may require an annual financial audit of an agreement or subaward when the audit requirement threshold in 2 CFR 200.501 is not met. In that case, FAS must provide funds under the agreement for this purpose, and the Recipient or subrecipient, as applicable, must arrange for such audit and submit it to FAS.

(e) When a Recipient or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization is required to obtain a financial audit under this section, it must provide a copy of the audit to FAS within 60 days after the end of its fiscal year.

(f) FAS, the USDA Office of Inspector General, or GAO may conduct or arrange for additional audits of any Recipients or subrecipients, including for-profit entities and foreign organizations. Recipients and subrecipients must promptly comply with all requests related to such audits. If FAS conducts or arranges for an additional audit, such as an audit with respect to a particular agreement, FAS will fund the full cost of such an audit, in accordance with 2 CFR 200.503(d).

#### §1486.506 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, and 7 CFR part 1, subpart A, including, specifically, 7 CFR 1.11.

(b) Any research conducted by a Recipient pursuant to an agreement and/or approval letter shall be subject to the provisions relating to intangible property in 2 CFR part 200.

§1486.507 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.
- (b) A Recipient shall conduct its business in accordance with the laws and regulations of the country(s) in which each activity is carried out and in accordance with applicable U.S. Federal, state, and local laws and regulations. A Recipient shall conduct its business in the United States in accordance with applicable Federal, state, and local laws and regulations.
- (c) Neither a Recipient nor its affiliates shall make export sales of U.S. agricultural commodities covered under the terms of an agreement. Neither a Recipient nor its affiliates shall charge a fee for facilitating an export sale. A Recipient may collect check-off funds and membership fees that are required for membership in the Recipient's organization.
- (d) The Recipient shall not use program activities or project funds to promote private self-interests or conduct private business.
- (e) A Recipient shall not limit participation in its EMP activities to members of its organization. Recipients shall ensure that their EMP-funded programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non-merit factors.
- (f) A Recipient shall select U.S. agricultural industry representatives to participate in activities based on criteria that ensure participation on an equitable basis by a broad cross

section of the U.S. industry. If requested by CCC, a Recipient shall submit such selection criteria to CCC for approval.

(g) The Recipient must report any actions or circumstances that may have a bearing on the propriety of program activities to the appropriate Attaché/Counselor, and the Recipient's U.S. office shall report such actions or circumstances in writing to CCC.

(h) The officers, employees, board members, and agents of the Recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, sub-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, board members, or agents of the Recipient.

#### §1486.508 Suspension and termination.

(a) An agreement or subaward may be suspended or terminated in accordance with 2 CFR 200.338 or 200.339. FAS may suspend or terminate an agreement if it determines that:

(1) One of the bases in 2 CFR 200.338 or 200.339 for termination or suspension by FAS has been satisfied; or

(2) The continuation of the assistance provided under the agreement is no longer necessary or desirable.

(b) If an agreement is terminated, the Recipient:

(1) Is responsible for using or returning any CCC–provided funds, interest, or program income that have not been disbursed, as agreed to by FAS; and

(2) Must comply with any closeout and post–closeout procedures specified in the agreement and 2 CFR 200.343 and 200.344.

#### §1486.509 Noncompliance with an agreement.

(a) If a Recipient fails to comply with any term in its agreement, approval letter, or this part, CCC may take one or more of the enforcement actions in 2 CFR part 200 and, if appropriate, initiate a claim against the Recipient, following the procedures set forth in this part. CCC may also initiate a claim against a Recipient if program income or CCC–provided funds are lost due to an action or omission of the Recipient. If any Recipient has engaged in fraud with respect to the EMP program, or has otherwise violated program requirements under this part, CCC may:

(1) Hold such Recipient liable for any and all losses to CCC resulting from such fraud or violation;

(2) Require a refund of any assistance provided to such Recipient plus interest as determined by FAS; and

(3) Collect liquidated damages from such Recipient in an amount determined appropriate by FAS.

(b) The provisions of this section shall be without prejudice to any other remedy that is available under any other provision of law.

#### §1486.510 Paperwork reduction requirements.

The paperwork and recordkeeping requirements imposed by this part have been approved by OMB under the Paperwork Reduction Act of 1980. OMB has assigned control number 0551-0048 for this information collection.

---

Margo Erny,  
Acting Executive Vice President,  
Commodity Credit Corporation.

November 27, 2019  
Date

In concurrence with:

---

Ken Isley,  
Administrator,  
Foreign Agricultural Service.

November 26, 2019  
Date

[FR Doc. 2019-27246 Filed: 12/19/2019 8:45 am; Publication Date: 12/20/2019]