



Billing Code 3410–10

**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**7 CFR Part 1484**

**RIN 0551-AA96**

**Foreign Market Development Program**

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises the Foreign Market Development (FMD) program regulations 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 FMD is authorized under Section 203 of the Agricultural Trade Act of 1978 (7 U.S.C. 5623), as amended. The FMD program regulations appear at 7 CFR part 1484.

This rule updates the FMD program regulations to bring the operation of the program into conformance with the requirements in the Uniform Guidance (2 CFR part 200).

Additional changes, such as the flexibility to announce program funding opportunities on the Grants.gov portal and edits to bring more consistency between the Market Access Program (MAP) and FMD program regulations, are desirable to bring the administration of the program into line with the current best practices in Federal grant-making.

### **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 the Foreign Agricultural Service (FAS) CFDA number: 10.600, Foreign Market Development Cooperator Program.

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

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 1484**

Agricultural commodities, Exports.

For the reasons discussed in the preamble, 7 CFR part 1484 is revised to read as follows:

### **PART 1484—PROGRAMS TO HELP DEVELOP FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES**

Sec.

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AUTHORITY: 7 U.S.C. 5623, 5662–5663.

#### Subpart A—General Information

§1484.10 General purpose and scope.

(a) This part sets forth the general terms and conditions governing the Commodity Credit Corporation's (CCC) operation of the Foreign Market Development (FMD) Cooperator program.

(b)(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 subpart, applies to the Cooperator program.

(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, and IV, also apply to the Cooperator

program, 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 Cooperator program.

(c) Under the Cooperator program, CCC enters into agreements with eligible nonprofit U.S. trade organizations to share the costs of certain overseas marketing and promotion activities that are intended to create, maintain, or expand foreign markets for U.S. agricultural commodities. When considering eligible nonprofit U.S. trade organizations, CCC generally gives priority to organizations that are nationwide in membership and scope and have the broadest producer representation and affiliated industry participation of the commodity being promoted. Agreements involve the promotion of agricultural commodities on a generic basis. CCC does not provide brand promotion assistance to Cooperators under this program. Agreements may not involve activities targeted directly toward consumers purchasing as individuals. Activities must contribute to the creation, maintenance, or growth of demand for U.S. agricultural commodities and must generally address long-term foreign import constraints and export growth opportunities by focusing on matters such as reducing infrastructural or historical market impediments, improving processing capabilities, modifying codes and standards, and identifying new markets or new applications or uses for the agricultural commodity in the foreign market.

(d) The Cooperator program generally operates on a reimbursement basis.

(e) CCC policy is to ensure that benefits generated by Cooperator agreements are broadly available throughout the relevant agricultural sector and no one entity gains an

undue advantage or sole benefit from program activities. CCC also endeavors to enter into Cooperator agreements covering a broad array of agricultural commodity sectors. The Cooperator program is administered by the Foreign Agricultural Service (FAS) on behalf of CCC.

(f) 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 0551–0026 for this information collection.

#### §1484.11 Definitions.

For purposes of this part the following definitions apply:

*Activity* means a specific foreign market development effort undertaken by a Cooperator to address a constraint or opportunity.

*Administrative expenses or costs* means expenses or costs of administering, directing, and controlling an organization that is a Cooperator. Generally, this would include expenses or costs such as those related to:

(1) Maintaining a physical office (including, but not limited to: rent, office equipment, office supplies, office décor, office furniture, computer hardware and software, maintenance, extermination, parking, and business cards);

(2) Personnel (including, but not limited to: salaries, benefits, payroll taxes, individual insurance, and training);

(3) Communications (including, but not limited to: phone expenses, internet, mobile phones, personal digital assistants, email, mobile email devices, postage, courier services, television, radio, and walkie talkies);

(4) Management of an organization or unit of an organization (including, but not limited to: planning, supervision, supervisory travel, teambuilding, recruiting, and hiring);

(5) Utilities (including, but not limited to: sewer, water, and energy); and

(6) Professional services (including, but not limited to: accounting expenses, financial services, and investigatory services).

*Affiliate* means any partnership, association, company, corporation, trust, or any other such party in which the Cooperator has an investment, other than a mutual fund.

*Agreement* means a document entered into between CCC and a Cooperator setting forth the terms and conditions of approved activities under the Cooperator program, including any subsequent amendments to such agreement.

*Approval letter* means a document by which CCC informs an applicant that its FMD application for a program year has been approved for funding. This letter may also approve specific activities and contain terms and conditions in addition to the agreement. This letter requires a countersignature by the Cooperator before it becomes effective.

*Attaché/Counselor* means the FAS employee representing USDA interests in the foreign country in which promotional activities are conducted.

*Constraint* means a condition in a particular country or region that needs to be addressed in order to develop, expand, or maintain exports of a specific eligible commodity.

*Consumer promotion* means activities that are designed to directly influence consumers by changing attitudes or purchasing behaviors towards eligible commodities and that involve activities targeted directly toward consumers purchasing as individuals.

*Cooperator* means a nonprofit U.S. agricultural trade organization that has entered into a foreign market development agreement with CCC.

*Cooperator program* means the Foreign Market Development Cooperator program.

*Contribution* means the funds, e.g., money, personnel, materials, services, facilities, or supplies, provided by an FMD Cooperator, State agency, or entities in the FMD Cooperator's industry ("U.S. industry") in support of an approved activity as well as funds provided by the FMD Cooperator, U.S. industry, or State agency in support of related promotion activities in the markets covered by the FMD Cooperator's agreement.

*Credit memo* means a commercial document, also known as a credit memorandum, issued by the Cooperator to a commercial entity that owes the Cooperator a certain sum. A credit memo is used when the Cooperator owes the commercial entity a sum less than the amount the entity owes the Cooperator. The credit memo reflects an offset of the amount the Cooperator owes the entity against the amount the entity owes to the Cooperator.

*Demonstration projects* means activities involving the erection or construction of a structure or facility or the installation of equipment.

*Eligible commodity* means 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.

*Expenditure* means either payment via the transfer of funds or offset reflected in a credit memo in lieu of a transfer of funds.

*Foreign subrecipient* means a foreign entity that a Cooperator works with, in accordance with this part, to promote the export of an eligible commodity under the Cooperator program.

*Generic promotion* means a promotion that does not involve the exclusive or predominant use of a single company name, logo, or brand name, or the brand of a U.S. agricultural cooperative, but rather promotes an eligible commodity generally. A generic promotion activity may include the promotion of a foreign brand (i.e., a brand owned primarily by foreign interests and being used to market an agricultural commodity in a foreign market), if the foreign brand uses the promoted eligible commodity from multiple U.S. suppliers. A generic promotion activity may also involve the use of specific U.S. company names, logos, or brand names. However, in that case, the Cooperator must ensure that all U.S. companies seeking to promote such eligible commodity in the market have an equal opportunity to participate in the activity and that at least two U.S. companies participate. In addition, an activity that promotes separate items from multiple U.S. companies will be considered a generic promotion only if the promotion of the separate items maintains a unified theme (i.e., a dominant idea or motif) and style and is subordinate to the promotion of the generic theme.

*Market* means a country or region targeted by an activity.

*Notification* means a document from the Cooperator by which the Cooperator proposes to CCC changes to the activities and/or funding levels in an approved agreement and/or approval letter.

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

*Program notice* means documents that CCC issues for informational purposes. These notices are currently made available electronically through the FAS website. These notices have no legal effect. They are intended to alert Cooperators of various aspects of CCC's current administration of the FMD program. For example, CCC issues notices to alert Cooperators of applicable Federal pay scale rates and lists of economic and trade sanctions against certain foreign countries.

*Program year* means, unless otherwise agreed to in writing between CCC and a Cooperator, a 12-month period during which a Cooperator can undertake activities consistent with this part and its agreement and approval letter with CCC. This is also known as a project period, which in multiple year awards will be divided into budget periods.

*Sales and trade relations expenditures (STRE)* means 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.

*Trade team* means a group of individuals engaged in an approved activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

*Unified Export Strategy (UES)* means a holistic marketing plan that outlines an applicant's proposed foreign market development activities and requested funding under each of the FAS market development programs.

*Unified Export Strategy (UES) system* means an online Internet system maintained by FAS through which applicants may apply to the Cooperator program 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 the FMD program 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.

#### §1484.12 Participation eligibility.

(a) To participate in the Cooperator program, an entity must be a nonprofit U.S. agricultural trade organization that promotes the exports of one or more U.S. agricultural commodities, does not have a business interest in or receive remuneration from specific sales of agricultural commodities, and contributes at least 50 percent of the value of resources reimbursed by CCC for activities conducted under the agreement.

(b) CCC may require that an agreement include a contribution level greater than that specified in paragraph (a) of this section. In requiring a higher contribution level, CCC will take into account such factors as past Cooperator contribution level, previous

Cooperator program funding levels, the length of time an entity participates in the program, and the entity's ability to increase its contribution level.

(c) CCC will enter into agreements only for the promotion of eligible commodities.

#### Subpart B—Application and Funding Allocation

##### §1484.20 Application process.

(a) *General application requirements.* CCC will periodically announce through a NOFO that it is accepting applications for participation in the Cooperator program for a specified program year. This announcement will be posted on the U.S. Government website for grant opportunities. Applications shall 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.

(b) *Universal identifier and System for Award Management (SAM).* In accordance with 2 CFR part 25, each entity that applies to the Cooperator program 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 Cooperator program 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 Cooperator program funding.

§1484.21 Application review and formation of agreements.

(a) *General.* CCC will, subject to the availability of funds, approve those applications that it considers to present the best opportunity for creating, maintaining, or expanding export markets for U.S. agricultural commodities. CCC will review all proposals for eligibility and completeness. CCC will evaluate and score each proposal against the factors described in the NOFO. 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. When considering eligible nonprofit U.S. trade organizations, CCC may weigh which organizations have the broadest producer representation and affiliated industry participation of the commodity being promoted. 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.

(b) *Approval review criteria.* CCC follows results-oriented management principles and considers the following criteria when assessing the likelihood of success of

the applications it receives, determining which applications to recommend for approval, and developing preliminary recommended funding levels:

- (1) Strategic planning (25%);
- (2) Program implementation (25%); and
- (3) Program results and evaluation (50%).

§1484.22 Allocation factors.

CCC determines final funding levels after allocating available funds to approved applications on the basis of criteria that will be fully described in each program year's Cooperator program announcement. Generally, extensions will not be allowable.

Subpart C—Program Operations

§1484.30 Approval decision.

CCC will notify each applicant in writing of the final disposition of its application. CCC will send an agreement, an approval letter, and a signature card to each approved applicant. The agreement and the approval letter will outline which activities and budgets are approved and will specify any special terms and conditions applicable to a Cooperator's program, including the required level of Cooperator contribution and program evaluations. An applicant that decides to accept the terms and conditions contained in the agreement and approval letter must so indicate by having its Chief Executive Officer (CEO) or designee sign the agreement and approval letter and submit them to CCC. Final agreement shall occur when the agreement and approval letter are signed by both parties. The agreement, the approval letter, and this part shall establish the

terms and conditions of a Cooperator agreement between CCC and the approved applicant. CCC will provide each Cooperator with IDs and passwords for the UES, as necessary. Cooperators shall protect these IDs and passwords in accordance with USDA's information technology policies. Cooperators shall immediately notify CCC whenever a person who possesses the ID and password information no longer needs such information or a person who is not authorized gains such information.

#### §1484.31 Signature cards.

The Cooperator shall designate at least two individuals in its organization to sign agreements and amendments, approval letters, reimbursement claims, and advance requests. The Cooperator shall submit the signature card signed by those designated individuals and by the Cooperator's CEO to CCC prior to the start of the program year. The Cooperator shall immediately notify CCC of any changes in signatories (e.g., removal or addition of individuals, name changes, etc.), and shall submit a revised signature card accordingly.

#### §1484.32 Employment practices.

(a) A Cooperator shall enter into written contracts with all overseas employees who are paid in whole or in part with project funds and shall ensure that all terms, conditions, and related formalities of such contracts conform to governing local law.

(b) A Cooperator shall, in its overseas offices, conform its office hours, work week, and holidays to local law and to the custom generally observed by U.S. commercial entities in the local business community.

(c) A Cooperator may pay salaries or fees in any currency (U.S. or foreign) in conformance with contract specifications. Cooperators should consult local laws regarding currency restrictions.

#### §1484.33 Financial management.

(a) A Cooperator shall implement and maintain a financial management system that conforms to generally accepted accounting principles and complies with the standards in 2 CFR part 200.

(b) A Cooperator shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with this part.

(c) Each Cooperator shall retain all records relating to program activities for three calendar years from the date of submission of the final financial report and permit authorized officials of the U.S. Government to have full and complete access, for such three-year period, to such records.

(d) A Cooperator shall also maintain all documents related to employment of any employees whose salaries are reimbursed in whole or in part with project funds, such as employment applications, contracts, position descriptions, leave records, salary changes, and all records pertaining to contractors, whether such employees or contractors are based in the United States or overseas.

(e) A Cooperator shall also maintain adequate documentation related to the proper disposition of all personal property having a useful life of over one year and an acquisition cost of \$500 or more purchased by the Cooperator and for which the Cooperator is reimbursed, in whole or in part, with project funds.

(f) A Cooperator shall maintain its records of expenditures and contribution in a manner that allows it to provide information by program year, country or region, activity number, and cost category (as applicable). Such records shall include copies of:

(1) Receipts for all STRE (actual vendor invoices or restaurant checks, rather than credit card receipts);

(2) Receipts for any other program-related expenditure in excess of a minimum level that CCC shall determine and announce in writing to all Cooperators via a program notice issued on the FAS website. Receipts for all actual meal and incidental expenses (M&IE) reimbursements must be maintained, regardless of the amount;

(3) The exchange rate used to calculate the dollar equivalent of each expenditure made in a foreign currency and the basis for such calculation;

(4) Reimbursement claims;

(5) An itemized list of claims charged to the Cooperator's FMD account;

(6) Documentation, with accompanying English translation, supporting each reimbursement claim, including evidence to support the financial transactions, such as canceled checks, receipted paid bills, contracts, purchase orders, per diem calculations, travel vouchers, and credit memos; and

(7)(i) Each Cooperator must keep records documenting all claimed contribution, to include:

(A) Copies of invoices or receipts for expenses paid by the U.S. industry or State agency and not reimbursed by the Cooperator for the joint activity; or

(B) If invoices are not available, an itemized statement from the U.S. industry or State agency as to what costs it incurred; or

(C) If neither of the foregoing is available, a statement from the U.S. industry or State agency as to what goods and services it provided; or

(D) If none of the foregoing are available, a memo to the files of the Cooperator's estimate of what contribution was made by the U.S. industry or State agency, item by item, and the method used to assign a value to each.

(ii) Documentation supporting contribution must include the date(s), purpose, and location(s) of each activity for which cash or in-kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; and the method of computing the claimed contribution. Cooperators must retain and make available for compliance reviews and audits documentation related to claimed contribution.

(g) Upon request, a Cooperator shall provide to CCC copies of the documents that support the Cooperator's reimbursement claims. CCC may deny a claim for reimbursement if the claim is not supported by adequate documentation.

#### §1484.34 Ethical conduct.

(a) A Cooperator 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 Cooperator shall conduct its business in the United States in accordance with applicable Federal, state, and local laws and regulations.

(b) Neither a Cooperator nor its affiliates shall make export sales of eligible commodities covered under the terms of an agreement. Neither a Cooperator nor its

affiliates shall charge a fee for facilitating an export sale. A Cooperator may collect check-off funds and membership fees that are required for membership in the Cooperator's organization.

(c) The Cooperator shall not use program activities or project funds to promote private self-interests or conduct private business, except as members of trade teams.

(d) A Cooperator shall not limit participation in its FMD activities to members of its organization. Cooperators shall ensure that their FMD-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.

(e) A Cooperator shall select U.S. agricultural industry representatives to participate in activities such as trade teams or trade fairs 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 Cooperator shall submit such selection criteria to CCC for approval.

(f) All Cooperators should endeavor to ensure fair and accurate fact-based advertising. Deceptive or misleading promotions may result in cancellation or termination of an agreement and recovery of CCC funds related to such promotions from the Cooperator.

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

§1484.35 Contracting procedures.

(a) Cooperators have full and sole responsibility for the legal sufficiency of all contracts and assume financial liability for any costs or claims resulting from suits, challenges, or other disputes based on contracts entered into by the Cooperator. 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 Cooperator contracts with third parties.

(b) Cooperators are responsible for ensuring to the greatest 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 technical services paid in any part with project funds must be covered by written contracts.

(d) A Cooperator shall:

(1) 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 in this paragraph (d)(1) participates in the review, selection, award, or administration of a contract in which such entities or their affiliates have a financial or other interest;

(2) 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;

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

(4) Perform and document some form of price or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices for procurements in excess of the simplified acquisition threshold in 2 CFR 200.88; and

(5) Document the decision-making process.

#### §1484.36 Property.

(a) A Cooperator shall maintain an inventory of all personal property having a useful life of more than one year and an acquisition cost of \$500 or more that was acquired in furtherance of program activities. The inventory shall list and number each item and include the date of purchase or acquisition, cost of purchase, replacement value, serial number, make, model, and electrical requirements, as applicable.

(b) The Cooperator shall insure all real property and equipment that was acquired, in whole or in part, with project funds at a level minimally equal to the equivalent insurance coverage for property owned by the Cooperator. The Cooperator shall safeguard such property and equipment against theft, damage, and unauthorized use. The Cooperator shall promptly report any loss, theft, or damage of such property and equipment to the insurance company.

(c) Personal property having a useful life of more than one year and an acquisition cost of \$500 or more purchased by the Cooperator, and for which the Cooperator is reimbursed, in whole or in part, with project funds, that is unusable, unserviceable, or no

longer needed for project purposes shall be disposed of in one of the following ways. The Cooperator may:

(1) Exchange or sell the property, provided that it applies any exchange allowance, insurance proceeds, or sales proceeds toward the purchase of other property needed in the project;

(2) With CCC approval, transfer the property to other Cooperators for their activities, or to a foreign subrecipient; or

(3) Upon Attaché/Counselor approval, donate the property to a local charity, or convey the property to the Attaché/Counselor, along with an itemized inventory list and any documents of title.

(d) The Cooperator is responsible for reimbursing CCC for the value of any uninsured property at the time of the loss or theft of the property.

§1484.37 Federal Travel Regulations.

Except as otherwise provided in this part, travel funded by the Cooperator program shall conform to the U.S. Federal Travel Regulations (41 CFR parts 300 through 304) and 2 CFR part 200, and FMD-funded air travel shall conform to the requirements of the Fly America Act (49 U.S.C. 40118). The Cooperator shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel. 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.

#### §1484.38 Program income.

Program income is gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. Any income generated from an activity, the expenditures for which have been wholly or partially reimbursed with FMD funds, shall be used by the FMD Cooperator in furtherance of its approved FMD activities in the program year during which the FMD funds are available for obligation by the FMD Cooperator, or must be returned to CCC. The use of such income shall be governed by this subpart. Interest earned on funds advanced by CCC is not program income. Reasonable activity fees or registration fees, if identified as such in a project budget, may be charged for approved activities. 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 FAS. Such fees may not be used as profit or counted as contribution.

#### §1484.39 Changes to activities and funding.

(a) *Adding a new activity.* (1) A Cooperator may not conduct a new activity without first obtaining an approved activity budget for such change. To request approval of such activity budget, the Cooperator shall submit a notification to CCC.

(2) A notification for a new activity shall provide an activity justification and identify any related adjustments to the approved strategic plan, including changes in the market, constraint, or opportunity that the activity proposes to address. The notification shall contain the activity description, the proposed budget, and a justification for the transfer of funds.

(3) After receipt of the notification, CCC will inform the Cooperator via the UES system whether the requested budget is approved.

(b) *Modifying existing activities and their funding levels.* (1) A Cooperator desiring to increase the funding level for existing, approved activities addressing a single constraint or opportunity by more than \$25,000 or 25 percent of the approved funding level, whichever is greater, must first submit a notification explaining the adjustment to CCC before making such change.

(2) A Cooperator may make significant adjustments below the threshold in paragraph (b)(1) of this section to the funding levels for existing, approved activities without prior notification to CCC, but only if it submits a notification explaining the adjustments to CCC no later than 30 calendar days after the change. Minor adjustments to existing, approved activities and/or funding levels do not require notification.

(3) Notifications shall describe the activity and any changes to the activity, the existing funding level, or the proposed funding level and shall include a justification for the transfer of funds, if applicable.

#### Subpart D—Contribution and Reimbursements

§1484.50 Contribution rules.

(a) A Cooperator must use its own funds and may not use FMD program funds to pay any administrative costs of the Cooperator's U.S. office(s), including legal fees, except as set forth in this subpart. Where the Cooperator uses its own funds to pay for administrative costs, such costs may be counted in calculating the amount of contribution the Cooperator contributes to its FMD program. The contribution amount will be reflected in the award budget.

(b) In calculating the amount of contribution that it will make and the contribution that a U.S. industry or a State or local agency will make, a Cooperator program applicant may include the costs (or such prorated costs) listed under paragraph (c) of this section if:

(1) Expenditures are necessary and reasonable for accomplishment of the Cooperator's overall foreign market development program;

(2) Expenditures are not included as cost share for any other Federal award;

(3) 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 contribution is made during the period covered by the agreement.

(c) Subject to paragraph (b) of this section, as well as the cost principles in 2 CFR part 200, to the extent these principles do not directly conflict with the provisions of this part, the following are eligible contribution:

(1) Cash;

(2) Compensation paid to personnel;

(3) The cost of acquiring materials, supplies, or services;

- (4) The cost of office space, including legal fees;
- (5) A reasonable and justifiable proportion of general administrative costs and overhead;
- (6) Payments for indemnity and fidelity bond expenses;
- (7) The cost of business cards that target a foreign audience;
- (8) Fees for office parking;
- (9) The cost of subscriptions to publications that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the Cooperator's program;
- (10) The cost of activities conducted overseas;
- (11) Credit card fees;
- (12) The cost of any independent evaluation or audit that is not required by CCC to ensure compliance with agreement or regulatory requirements;
- (13) The cost of giveaways, awards, prizes, and gifts;
- (14) The cost of product samples;
- (15) Fees for participating in U.S. Government sponsored or endorsed export promotion activities;
- (16) The cost of air and local travel in the United States related to a foreign market development effort;
- (17) Transportation and shipping costs;
- (18) The cost of displays and promotional materials;
- (19) Advertising costs;

(20) Reasonable travel costs and expenses related to undertaking a foreign market development activity;

(21) The costs associated with trade shows, seminars, and STRE conducted in the United States, and costs associated with entertainment conducted in the United States where such entertainment costs have a programmatic purpose and are authorized in the agreement and/or approval letter or are authorized by prior written approval of CCC;

(22) Product research that is undertaken to benefit an industry and has a specific export application;

(23) Consumer promotions; and

(24) The cost of any activity expressly listed as reimbursable in this part.

§1484.51 Ineligible contribution.

(a) The following are not eligible contribution:

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

(2) Any expenditure, including that portion of salary and time spent, related to promoting membership in the Cooperator's organization;

(3) Any land costs other than allowable costs for office space;

(4) The cost of refreshments and related equipment provided to office staff;

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

(6) The cost of any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

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

(8) Slotting fees or similar sales expenditures;

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

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

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

(12) 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 by the Cooperator as eligible contribution.

#### §1484.52 Reimbursement rules.

(a) A Cooperator 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 Cooperator has not been and will not be reimbursed for such expenditure by any other source.

(b) Subject to paragraph (a) of this section and § 1484.53, as well as the 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) Production and placement of advertising, including in print, electronic media, billboards, or posters. Electronic media includes, but is not limited to, radio, television, electronic mail, internet, telephone, text messaging, and podcasting;

(2) Production and distribution of banners, recipe cards, table tents, shelf talkers, and similar point of sale materials;

(3) Direct mail advertising;

(4) Food service promotions, product demonstrations to the trade, and distribution of product samples (but not the purchase of the product samples);

(5) Temporary displays and rental of space for temporary displays;

(6) Subject to paragraph (b)(7) of this section, non-travel expenditures, including participation fees, booth construction, transportation of related materials, rental of space and equipment, and duplication of related printed materials, associated with retail and trade exhibits and shows, whether held outside or inside the United States. However, non-travel expenditures associated with retail and trade exhibits and shows held inside the United States are reimbursable only if the exhibit or show is included on the list of approved U.S. exhibits and shows announced via a program notice issued on FAS' website and the exhibit or show is one that the Cooperator has not participated in within the last three calendar years using funds from a source other than FMD. Retail and trade exhibits and shows held inside the United States may be considered for inclusion on the list of approved exhibits and shows if they are:

(i) A food or agricultural exhibit or show with no less than 30% of exhibitors selling food or agricultural products; and

(ii) An international exhibit or show that targets buyers, distributors, and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country;

(7) Where USDA has sponsored or endorsed a U.S. pavilion at a retail or trade exhibit or show, whether held outside or inside the United States, project funds may be used to reimburse the travel and/or non-travel expenditures of only those Cooperators located within the U.S. pavilion. Such expenditures must also adhere to the standard terms and conditions of the U.S. pavilion organizer. Upon written request, CCC may temporarily waive this paragraph (b)(7), on a case by case basis, where the trade show is segregated into product pavilions or a company's distributor or importer is located outside the U.S. pavilion. Such waiver will be provided to the Cooperator in writing;

(8) Expenditures, other than travel expenditures, associated with seminars and educational training, whether conducted in the United States or outside the United States, including space rental, equipment rental, and duplication of seminar materials;

(9) Production and distribution of publications;

(10) Demonstrators, interpreters, translators, receptionists, and similar temporary workers who help with the implementation of individual promotional activities, such as trade shows, food service promotions, and trade seminars;

(11) Giveaways, awards, prizes, gifts, and other similar promotional materials, subject to such reimbursement limitation as CCC may determine and announce in writing to Cooperators via a program notice issued on FAS' website. Reimbursement is available only when:

(i) The items are described in detail with a per unit cost in an approved strategic plan; and

(ii) Distribution of the promotional item is not contingent upon the target audience purchasing a good or service to receive the promotional item;

(12) Compensation and allowances for housing, educational tuition, and cost of living adjustments paid to U.S. citizen employees or U.S. citizen contractors stationed overseas, provided such benefits are granted under established written policies, subject to the limitation that CCC shall not reimburse that portion of:

(i) The total of compensation and allowances that exceed 125 percent of the level of a GS–15, Step 10 salary for U.S. Government employees; or

(ii) Allowances that exceed the rate authorized for U.S. Embassy personnel;

(13) Foreign transfer, temporary lodging, and post hardship differential allowances for U.S. citizen employees, provided such benefits are granted under established written policies;

(14) Approved salaries or compensation for non–U.S. citizen employees and non–U.S. contractors stationed overseas. Generally, CCC will not reimburse any portion of a non–U.S. citizen employee’s compensation that exceeds the compensation prescribed for the most comparable position in the Foreign Service National (FSN) salary plan applicable to the country in which the employee works. However, if the local FSN salary plan is inappropriate, a Cooperator may request a higher level of reimbursement for a non–U.S. citizen in accordance with the annual program announcement;

(15) Temporary contractor fees for contractors stationed overseas, except CCC will not reimburse any portion of any such fee that exceeds the daily gross GS–15, Step 10 salary for U.S. Government employees in effect on the date the fee is earned, unless a bidding process reveals that such a contractor is not available at or below that salary rate;

(16) A retroactive salary adjustment for non-U.S. citizen staff employees or non-U.S. contractors stationed overseas that conforms to a change in FSN salary plans, effective as of the date of such change;

(17) Accrued annual leave as of the time employment is terminated or as of such time as required by local law;

(18) Overtime paid to clerical staff of approved FMD-funded overseas offices;

(19) Fees for professional and consultant services;

(20) Subject to paragraph (b)(7) of this section, international travel expenditures, including per diem and any fees for passports, visas, inoculations, and modifying the originally purchased airline ticket, for activities held outside the United States or in the United States, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304), except that if the activity is participation in a retail or trade exhibit or show held inside the United States, international travel expenditures are reimbursable only if the exhibit or show is included on the list of approved U.S. exhibits and shows announced via a program notice issued on FAS' website and the exhibit or show is one that the Cooperator has not participated in within the last three calendar years using funds from a source other than FMD. Retail and trade exhibits and shows held inside the United States may be considered for inclusion on the list of approved exhibits and shows if they are: a food or agricultural exhibit or show with no less than 30% of exhibitors selling food or agricultural products, and an international exhibit or show that targets buyers, distributors, and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country;

(i) CCC generally will not reimburse any portion of air travel, including any fees for modifying the originally purchased ticket, in excess of the full fare economy rate. If a traveler flies in business class or a different premium class, the basis for reimbursement will be the full fare economy class rate for the same flight and the Cooperator shall provide documentation establishing such full fare economy class rate to support its reimbursement claim. If economy class is not offered for the same flight or if the traveler flies on a charter flight, the basis for reimbursement will be the average of the full fare economy class rate for flights offered by three different airlines between the same points on the same date and the Cooperator shall provide documentation establishing such average of the full fare economy class rates to support its reimbursement claim;

(ii) In very limited circumstances, the Cooperator may be reimbursed for air travel up to the business class rate (i.e., a premium class rate other than the first-class rate).

Such circumstances are:

(A) Regularly scheduled flights between origin and destination points do not offer economy class (or equivalent) airfare and the Cooperator receives written documentation to that effect at the time the tickets are purchased;

(B) Business class air travel is necessary to accommodate an eligible traveler's disability. Such disability must be substantiated in writing by a physician; or

(C) An eligible traveler's origin and/or destination are outside of the continental United States and the scheduled flight time, beginning with the scheduled departure time and ending with the scheduled arrival time, including stopovers and changes of planes, exceeds 14 hours. In such cases, per diem and other allowable expenses will also be reimbursable for the day of arrival. However, no expenses will be reimbursable for a rest

period or for any non–work days (e.g., weekends, holidays, personal leave, etc.) immediately following the date of arrival. A stopover is the time a traveler spends at an airport, other than the originating or destination airport, which is a normally scheduled part of a flight. A change of planes is the time a traveler spends at an airport, other than the originating or destination airport, to disembark from one flight and embark on another. All travel should follow a direct or usually traveled route. Under no circumstances should a traveler select flights in a manner that extends the scheduled flight time to beyond 14 hours in part to secure eligibility for reimbursement of business class travel; and

(iii) Alternatively, in lieu of reimbursing up to the business class rate in such circumstances, CCC will reimburse economy class airfare plus per diem and other allowable travel expenses related to a rest period of up to 24 hours, either en route or upon arrival at the destination. For a trip with multiple destinations, each origin/destination combination will be considered separately when applying the 14-hour rule for eligibility of reimbursement of business class travel or rest period expenses;

(21) Automobile mileage at the local U.S. Embassy rate, or rental cars while in travel status;

(22) Subject to §1484.37 and paragraph (b)(7) of this section, other allowable expenditures while in travel status;

(23) Organization costs for overseas offices approved in agreements. Such costs include incorporation fees, brokers' fees, fees to attorneys, accountants, or investment counselors, whether or not employees of the organization, incurred in connection with the establishment or reorganization of the overseas office, and rent, utilities, communications

originating overseas, office supplies, accident liability insurance premiums (provided the types and extent and cost of coverage are in accordance with the Cooperator's policy and sound business practice), and routine accounting and legal services required to maintain the overseas office;

(24) With prior CCC approval, the purchase, lease, or repair of, or insurance premiums for capital goods that have an expected useful life of at least one year, such as furniture, equipment, machinery, removable fixtures, draperies, blinds, floor coverings, computer hardware and software, and portable electronic communications devices (including mobile phones, wireless email devices, and personal digital assistants);

(25) Premiums for health or accident insurance or other benefits for foreign national employees that the employer is required by law to pay, provided that such benefits are granted under established written policies;

(26) Accident liability insurance premiums for facilities used jointly with third party participants for Cooperator program activities, or such insurance premiums for Cooperator program-funded travel of non-Cooperator personnel, provided the types and extent and cost of coverage are in accordance with the Cooperator's policy and sound business practice;

(27) Market research, including research to determine the types of products that are desired in a market;

(28) Independent evaluations and audits, if not otherwise required by CCC, to ensure compliance with program requirements;

(29) Legal fees to obtain advice on the host country's labor laws;

(30) Employment agency fees;

(31) STRE incurred outside of the United States, and STRE incurred in conjunction with an approved activity taking place within the United States with prior written approval from CCC. Cooperators are required to use the appropriate American Embassy representational funding guidelines for breakfasts, lunches, dinners, and receptions. Cooperators may exceed Embassy guidelines only when they have received written authorization from the FAS Attaché/Counselor at the Embassy. The amount of unauthorized STRE expenses that exceed the guidelines will not be reimbursed. Cooperators must pay the difference between the total cost of STRE events and the appropriate amount as determined by the guidelines. For STRE incurred in the United States, the Cooperator should provide, in its request for approval, the basis for determining its proposed expenses;

(32) Travel costs for dependents as allowed in 2 CFR part 200 (e.g., for travel of duration of six months or more with prior approval of CCC);

(33) Evacuation payments (safe haven) and shipment and storage of household goods and motor vehicles for relocations lasting at least 12 months;

(34) Approved demonstration projects;

(35) Purchase of trade and business periodicals containing material related to market development activities for use by overseas staffs;

(36) Training expenses in the United States for FSNs;

(37) Language training for U.S. citizen employees at the foreign post of assignment;

(38) Forward year financial obligations required by local law or custom, such as severance pay, attributable to employment of foreign nationals, or forfeiture of rent or deposits, attributable to the closure of an office;

(39) Rental or lease expenditures for storage space for program–related materials;

(40) Shipment of samples or other program materials from the United States to foreign countries;

(41) That portion of airtime for wireless phones that is devoted to program activities and monthly service fees prorated at the proportion of program–related airtime to total airtime;

(42) Non–travel expenditures associated with conducting international staff conferences held either in or outside the United States;

(43) An audit of a Cooperator as required by 2 CFR part 200, subpart F, if the Cooperator program is the Cooperator’s largest source of Federal funding;

(44) The translation of written materials as necessary to carry out approved activities;

(45) Business cards that target a foreign audience;

(46) Expenditures associated with developing, updating, and servicing websites on the Internet that: contain a message related to exporting or international trade, include a discernible “link” to the FAS/Washington homepage or an FAS overseas homepage, and have been specifically approved by FAS. Expenditures related to websites or portions of websites that are accessible only to an organization’s members are not reimbursable. Reimbursement claims for websites that include any sort of “members only” sections

must be prorated to exclude the costs associated with those areas subject to restricted access;

(47) Expenditures related to copyright, trademark, or patent registration, including attorney fees;

(48) Expenditures not otherwise prohibited from reimbursement that are associated with activities held in the United States or abroad designed to improve market access by specifically addressing temporary, permanent, or impending technical barriers to trade that prohibit or threaten U.S. exports of agricultural commodities;

(49) Membership fees in professional, industry-related organizations; and

(50) Contracts with U.S.-based organizations when the only contracted service such organizations provide to a Cooperator is carrying out a specific market promotion activity in the United States directed to a foreign audience (e.g., a trade mission of foreign buyers coming to the United States to visit U.S. exporters). Such contracts may be reimbursable as a direct promotional expense. If a U.S.-based organization provides administrative services to the Cooperator's domestic home office during a program year, any direct promotional services such organization provides to the Cooperator, whether for the Cooperator's domestic or overseas offices, during the same program year are not reimbursable.

§1484.53 Expenditures not reimbursed under the Cooperator program.

(a) CCC will not reimburse unreasonable expenditures or any cost of:

(1) Expenses, fines, settlements, judgements, or payments relating to legal suits, challenges, or disputes, except as otherwise allowed in 2 CFR part 200;

- (2) Product development, product modification, or product research;
- (3) Product samples;
- (4) Slotting fees or similar sales expenditures;
- (5) The purchase, construction, or lease of space for permanent, non–mobile displays, i.e., displays that are constructed to remain permanently in the same location beyond one program year. However, CCC may, at its discretion, reimburse the construction or purchase of permanent displays on a case–by–case, if the Cooperator sought and received prior written approval from CCC of such construction or purchase;
- (6) Rental, lease, or purchase of warehouse space, except for storage space for program–related materials;
- (7) Office parking fees;
- (8) Coupon redemption or price discounts;
- (9) Refundable deposits or advances;
- (10) Giveaways, awards, prizes, gifts, and other similar promotional materials in excess of the limitation that CCC will determine. Such determination will be announced in writing via a program notice issued on FAS’ website;
- (11) Alcoholic beverages that are not a promoted commodity and part of an approved promotional activity;
- (12) The purchase, lease (except for use in authorized travel status), or repair of motor vehicles;
- (13) Travel of applicants for employment interviews;
- (14) Unused non–refundable airline tickets or associated penalty fees, except where travel was restricted by U.S. Government action or advisory;

(15) Independent evaluations or audits, including evaluations or audits of the activities of a subcontractor, if CCC determines that such a review is needed in order to confirm past or to ensure future agreement or regulatory compliance;

(16) Any arrangement that has the effect of reducing the selling price of an agricultural commodity;

(17) Any expenditure on an activity that includes any derogatory reference or comparison to other U.S. agricultural commodities;

(18) Goods, services, and salaries of personnel provided by a third party;

(19) Membership fees in clubs and social organizations;

(20) Indemnity and fidelity bonds, except as otherwise allowed in 2 CFR part 200;

(21) Fees for participating in U.S. Government sponsored activities, other than trade fairs, shows, and exhibits;

(22) Business cards that target a U.S. domestic audience;

(23) Seasonal greeting cards;

(24) Subscriptions to publications that are not of a technical, economic, or marketing nature or that are not relevant to the approved activities of the Cooperator;

(25) Credit card fees;

(26) Refreshments, or related equipment, for office staff;

(27) Insurance on household goods and personal effects, including privately-owned automobiles, whether overseas or stored in the United States, belonging to U.S. citizen employees;

(28) Home office domestic administrative expenses, including communication costs;

(29) Payment of a U.S. or foreign employee's or contractor's share of personal taxes, except where a foreign country's laws require the Cooperator to pay such employee's or contractor's share;

(30) STRE expenses incurred in the United States, except as otherwise provided in §1484.52(b)(31);

(31) Entertainment (e.g., amusements, diversions, cover charges, personal gifts, or tickets to theatrical or sporting events);

(32) Functions (including receptions and meals at Cooperator staff conferences) at which target groups, such as members of the overseas trade, opinion leaders, foreign government officials, and other similar groups, are not present;

(33) Promotions directed at consumers purchasing in their individual capacity;  
and

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

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

(c) CCC will reimburse for expenditures made after the conclusion of the program year provided:

(1) The activity was approved by CCC prior to the end of the program year;

(2) The activity was completed within 30 calendar days following the end of the program year; and

(3) All expenditures were made for the activity within 6 months following the end of the program year.

(d) A Cooperator shall not use project funds for any activity, or any expenses incurred by the Cooperator prior to the date specified in the approval letter or after the date the agreement is suspended or terminated, except as otherwise permitted by CCC.

§1484.54 Reimbursement procedures.

(a) Following the implementation of a project for which CCC has agreed to provide funding, a Cooperator may submit claims for reimbursement of eligible expenses incurred in implementing FMD activities, 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 Cooperator will be reimbursed after CCC reviews the claim and determines that it is complete.

(b) All claims for reimbursement shall be submitted by the FMD Cooperator's U.S. office to CCC. CCC will make all payments to Cooperators in U.S. dollars. FAS will initiate payment within 30 days after receipt of the billing, unless the billing is improper.

(c) Cooperators will be authorized to submit requests for reimbursement or advance 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) CCC will not reimburse claims submitted later than 6 months after the end of an FMD Cooperator's program year.

(e) If CCC overpays a reimbursement claim, the FMD Cooperator shall repay CCC within 30 calendar days of such overpayment the amount of the overpayment either

by submitting a check payable to CCC or by offsetting its next reimbursement claim. The FMD Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(f) If a Cooperator receives a reimbursement or offsets an advanced payment which is later disallowed, the Cooperator shall repay CCC within 30 calendar days of such disallowance the amount disallowed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(g) FMD funds may be expended by FMD Cooperators only on legitimate, approved activities as set forth in the agreement and approval letter. If a Cooperator discovers that FMD funds have not been properly spent, it shall notify CCC and shall within 30 calendar days of its discovery repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The FMD Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(h) The FMD Cooperator 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 its U.S. office shall report such actions in writing to the appropriate FAS Division Director.

§1484.55 Advances.

(a) *Policy.* In general, CCC operates the Cooperator program on a reimbursable basis.

(b) *Exception.* Upon request, CCC may make two types of advance payments to a Cooperator. The first is a revolving fund operating advance provided by CCC only to Cooperators with foreign offices supported with project funds. The second is a special advance payment used to pay an impending large cost item. CCC will provide this type of advance expense payment in lieu of direct payments by CCC to vendors or other third parties. All Cooperators, with or without project fund–supported foreign offices, are eligible to request special advance payments. CCC will not make any special advance payment to a Cooperator where a special advance is outstanding from a prior program year. When approving a request for an advance, CCC may require the Cooperator to carry adequate fidelity bond coverage when the absence of such coverage is considered to create an unacceptable risk to the interests of the Cooperator program. Whether an “unacceptable risk” exists in a particular situation will depend on a number of factors, such as, the Cooperator’s history of performance in the Cooperator program, the Cooperator’s perceived financial stability and resources, and any other factors presented in the particular situation that may reflect on the Cooperator’s responsibility or the riskiness of its activities.

(c) *Interest.* A Cooperator shall deposit and maintain in an insured account in the United States all funds advanced by CCC. The account shall be interest–bearing, unless the exceptions in 2 CFR part 200 apply. Interest earned by the Cooperator on funds advanced by CCC is not program income. Up to \$500 of interest earned per year may be retained by the Cooperator 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.

(d) *Refunds due CCC*. A Cooperator shall fully expend all advances on approved activities within 90 calendar days after the date of disbursement by CCC. By the end of the 90 calendar days, the Cooperator must submit reimbursement claims to offset the advance and submit a check made payable to CCC for any unexpended balance. The Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

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

##### §1484.70 Reports.

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

(b)(1) In addition to the information required in 2 CFR 200.328(b)(2), a Cooperator's performance reports must include pertinent information regarding the Cooperator'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 Cooperator must provide an explanation in the report.

(2) A Cooperator 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 Cooperator's performance data to determine whether it is accurate and reliable. The Cooperator 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) Not later than 45 calendar days after the completion of travel (other than local travel), a Cooperator shall submit a trip report. The report must be submitted to the appropriate Attaché/Counselor(s) and must include the name(s) of the traveler(s), purpose of travel, itinerary, names and affiliations of contacts, and a brief summary of findings, conclusions, recommendations, and specific accomplishments.

(e) Not later than 90 calendar days after the end of its program year, a Cooperator shall submit a report on any research conducted pursuant to the approved FMD program.

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

(g) If a Cooperator 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.

§1484.71 Disclosure of program information.

(a) Documents submitted to CCC by Cooperators are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, 7 CFR part 1, subpart A, and, specifically, 7 CFR 1.12.

(b) Upon request, a Cooperator shall provide to any person a copy of any document in its possession or control containing market information that is developed and produced under the terms of its agreement. The Cooperator may charge a fee not to exceed the costs for assembling, duplicating, and distributing the materials.

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

#### §1484.72 Evaluation.

(a) The Government Performance and Results Act (GPRA) of 1993 (5 U.S.C. 306, 31 U.S.C. 1105, 1115–1119, 3515, 9703–9704) requires performance measurement of Federal programs, including the Cooperator program. Evaluation of the Cooperator program's effectiveness will depend on a clear statement by each Cooperator of the constraints and opportunities facing U.S. exports, goals to be met within a specified time, a schedule of measurable milestones for gauging success, a plan for achievement, and reports of activity results at regular intervals. The overall goal of Cooperators' programming is to achieve or maintain sales that would not have occurred in the absence of FMD funding. A Cooperator that can demonstrate such sales, taking into account extenuating factors beyond the Cooperator's control, will have met the overall objective of the GPRA and the need for evaluation.

(b) Evaluation is an integral element of program planning and implementation, providing the basis for the strategic plan. The evaluation results guide the development and scope of a Cooperator's program, contribute to program accountability, and provide evidence of program effectiveness.

(c) Cooperators shall complete at least one program evaluation each year. A program evaluation is a review of the Cooperator's entire program, or an appropriate portion of the program as agreed to by the Cooperator and CCC, to determine the effectiveness of the Cooperator's strategy in meeting specified goals. The actual scope and timing of the program evaluation shall be determined by the Cooperator and CCC and specified in the Cooperator's approval letter. A Cooperator may contract with an independent evaluator to satisfy this requirement, although CCC reserves the right to have direct input and control over the design, scope, and methodology of any such evaluation, including direct contact with and provision of guidance to the independent evaluator. In addition to the requirements set forth in 2 CFR part 200, a program evaluation shall contain:

- (1) The name of the party conducting the evaluation;
- (2) The activities covered by the evaluation;
- (3) A concise statement of the constraint(s) and opportunities and the goals specified in the approved agreement;
- (4) A description of the evaluation methodology;
- (5) A description of additional export sales achieved, including the ratio of additional export sales in relation to Cooperator program funding received;

(6) A summary of the findings, including an analysis of the strengths and weaknesses of the program(s); and

(7) Recommendations for future programs.

(d) A Cooperator shall submit, via a cover letter to CCC, an executive summary that assesses the program evaluation's findings and recommendations and proposed changes in program strategy or design as a result of the evaluation.

(e) On an annual basis, or more often when appropriate or required by CCC, a Cooperator shall complete and submit program success stories. CCC will announce to all Cooperators the detailed requirements for completing and submitting program success stories.

§1484.73 Failure to make required contribution.

A Cooperator's required contribution will be specified in the Cooperator's approval letter. If a Cooperator fails to contribute the amount specified in its approval letter, the Cooperator shall pay to CCC in U.S. dollars the difference between the amount it has contributed, and the amount specified in the approval letter. If the Cooperator's required contribution is specified as a percentage of the total amount reimbursed by CCC, the Cooperator may either return to CCC the necessary amount of funds reimbursed by CCC to increase its actual contribution percentage to the required level or pay to CCC in dollars the difference between the amount actually contributed and the amount of funds necessary to increase its actual contribution percentage to the required level. A Cooperator shall remit such payment within six months after the end of its program year.

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

§1484.74 Compliance reviews and notices.

(a) USDA staff may conduct compliance reviews of a Cooperator's activities under this program to ensure compliance with this part, applicable Federal laws and regulations, and the terms of the agreements and approval letters. Cooperators 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.

(b) 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.

(c) Upon conclusion of the compliance review, USDA staff will provide a written compliance report to the Cooperator. The compliance report will detail any instances where it appears that the Cooperator 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 Cooperator and will explain the basis for any recovery of funds from the Cooperator. 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 Cooperator program, CCC may require the Cooperator to contract for an independent audit.

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

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

#### §1484.75 Cooperator response to compliance report.

(a) A Cooperator 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 Cooperator 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 Cooperator 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.

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

§1484.76 Cooperator appeals of CCC determinations.

(a) Within 30 calendar days of the date of the issuance of a determination, the Cooperator may appeal the determination by making a request in writing that includes the basis for such reconsideration. The Cooperator may also request a hearing.

(b) If the Cooperator 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 Cooperator bears the cost of a transcript; however, CCC may, at its discretion, have a transcript prepared at CCC's expense.

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

§1484.77 Submissions.

For all permissible methods of delivery, submissions required by this part shall be deemed submitted as of the date received by CCC.

§1484.78 Amendments.

An agreement may be amended in writing with the consent of CCC and the Cooperator. All requests for program amendments must be submitted to CCC in writing and contain a justification for why the amendment is necessary. All amendment requests must be reviewed and approved by CCC before an amendment can be issued.

§1484.79 Subrecipients.

(a) A Cooperator 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 Cooperator for this purpose. The Cooperator 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 Cooperator 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 Cooperator 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 Cooperator 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 Cooperator 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.

#### §1484.80 Audit requirements.

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

(b) A Cooperator 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 Cooperator or subrecipient has the following two options to satisfy this requirement:

(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 Cooperator 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 Cooperator 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 Cooperator 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 Cooperator or subrecipient, as applicable, must arrange for such audit and submit it to FAS.

(e) When a Cooperator 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 Cooperators or subrecipients, including for-profit entities and foreign organizations. Cooperators 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).

#### §1484.81 Suspension and termination of agreements.

(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 Cooperator:

(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.

§1484.82 Noncompliance with an agreement.

(a) If a Cooperator 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 Cooperator, following the procedures set forth in this part. CCC may also initiate a claim against a Cooperator if program income or CCC–provided funds are lost due to an action or omission of the Cooperator. If any Cooperator has engaged in fraud with respect to the Cooperator program, or has otherwise violated program requirements under this part, CCC may:

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

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

(3) Collect liquidated damages from such Cooperator 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.

\_\_\_\_\_  
Robert Stephenson,  
Executive Vice President,  
Commodity Credit Corporation.

December 6, 2019  
Date

In concurrence with:

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Ken Isley,  
Administrator,  
Foreign Agricultural Service.

December 6, 2019  
Date

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