

DEPARTMENT OF AGRICULTURE**Foreign Agricultural Service****7 CFR Part 1550**

RIN 0551-AA26

Programs to Help Develop Foreign Markets for Agricultural Commodities (Foreign Market Development Cooperator Program)

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise regulations applicable to the Foreign Market Development Cooperator (Cooperator) Program. The revisions would provide more detailed regulations concerning program administration, including participant eligibility, the application review process, allocation criteria, strategic planning and goal setting requirements, reimbursement rules and procedures, financial reporting and program evaluation requirements, appeal procedures, and program controls. The intent of this proposal is to improve the effective administration of the Cooperator Program by formalizing the existing Cooperator Program guidelines.

DATES: Written comments must be received by July 14, 1999, to be assured of consideration.

ADDRESSES: Comments should be submitted to: Kent Sisson, Director, Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Avenue SW, Ag Box 1042, Room 4932S, Washington, DC 20250-1042. Fax: (202) 720-9361, e-mail: mosadmin@fas.usda.gov.

FOR FURTHER INFORMATION CONTACT: Kent Sisson or Denise Huttenlocker by phone at (202) 720-4327, by fax at (202) 720-9361, or by e-mail at mosadmin@fas.usda.gov.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

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

based enterprises in domestic or foreign markets.

Executive Order 12988

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

Executive Order 12372

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

Regulatory Flexibility Act

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

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this proposed rule have been submitted for emergency reinstatement to the Office of Management and Budget (OMB). OMB has previously assigned control number 0551-0026 to the information collection and recordkeeping requirements. There are no new information collection requirements associated with this proposed rule. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for Agriculture, Washington, DC 20503. Please also send a copy of your comments to Kent Sisson, director, Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Avenue SW, Ag Box

1042, Room 4932S, Washington, DC 20250-1042. Fax: (202) 720-9361, e-mail: mosadmin@fas.usda.gov.

The reporting and recordkeeping requirements associated with the Foreign Market Development Cooperator Program include information necessary to apply for the program and determine eligibility as well as program performance information such as financial reporting and program evaluation reports. FAS uses this information to manage, plan, evaluate and account for the proper and judicious use of public funds disbursed to private trade organizations. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. We need this outside input to help us accomplish the following:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 20.5 minutes per response.

Respondents: not for profit institutions and state, local, or tribal governments.

Estimated number of respondents: 30.

Estimated number of responses per respondent: 2134.

Estimated total annual burden on respondents: 43,748 hours.

Copies of this information collection can be obtained from: Information Clearance Officer, OCIO, USDA, Room 404-W, 1400 Independence Avenue, Washington, DC 20250.

Background**General Background**

The Foreign Market Development Cooperator Program's first participants (known as Cooperators) entered into agreements with FAS in 1954. The Cooperator program is currently authorized by Title VII of the Agricultural Trade Act of 1978, which directs the Secretary of Agriculture to "establish and, in cooperation with

eligible trade organizations, carry out a foreign market development cooperator program to maintain and develop foreign markets for United States agricultural commodities and products." FAS implements this provision by entering into agreements with non-profit U.S. agricultural trade organizations that have the broadest possible producer representation of the commodity being promoted and gives priority to those organizations that are nationwide in membership and scope. A program participant may not, during the term of an agreement with FAS, make export sales of the agricultural commodity being promoted or charge fees for facilitating an export sale if promotional activities designed to result in that specific sale are supported by Cooperator program funds.

Project Agreements involve the promotion of agricultural commodities on a generic basis and, therefore, do not involve activities targeted directly toward individual consumers. Approved activities contribute to the maintenance or growth of demand for the agricultural commodities and generally address long-term foreign import constraints by focusing on matters such as:

- Reducing infra-structural or historical market impediments;
- Improving processing capabilities;
- Modifying codes and standards; and
- Identifying new markets or new applications or uses for the agricultural commodity or product in the foreign market.

Significant Provisions

The proposed rule describes the current program and incorporates the majority of the guidelines and procedures currently in effect under the Cooperator program. The proposed regulation would, among other things:

1. Describe procedures for establishing project agreements;
2. List eligible and ineligible Cooperator contributions and the consequences of a Cooperator failing to meet its required contribution level;
3. List reimbursable and non-reimbursable Cooperator expenditures;
4. Explain the procedures followed in the submission and payment of reimbursement claims;
5. Detail required Cooperator employment practices;
6. Provide financial management guidelines for Cooperators;
7. Identify the reports FAS requires of Cooperators;
8. Explain FAS' position on program evaluation and the associated requirements of Cooperators;
9. Detail the steps a Cooperator should follow to appeal compliance findings;

10. List the standards of ethical conduct required of Cooperators;

11. Describe contracting procedures to be used by Cooperators; and

12. Outline the travel restrictions placed on Cooperators by FAS, including the Federal Travel Regulation and the Fly America Act.

List of Subjects in 7 CFR Part 1550

Agricultural commodities, Exports, Grant programs—agriculture, Reporting and recordkeeping requirements.

Accordingly, FAS proposes to revise part 1550 of chapter XV of title 7 of the Code of Federal Regulations to read as follows:

PART 1550—PROGRAMS TO HELP DEVELOP FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

Sec.

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Authority: 7 U.S.C. 5721–5723.

Subpart A—General Information

§ 1550.10 What is the effective date of this part?

This part applies to activities that are conducted in accordance with the Cooperators' FY 2000 and subsequent marketing plan years.

§ 1550.11 Has the Office of Management and Budget reviewed the paperwork and record keeping requirements contained in this part?

The paperwork and record keeping requirements imposed by this part have been submitted to the Office of Management and Budget (OMB) for emergency review and reinstatement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously assigned control number 0551–0026 for this information collection.

§ 1550.12 What is the Cooperator program?

(a) Under the Foreign Market Development Cooperator (Cooperator) Program, FAS enters into project agreements with eligible nonprofit U.S. trade organizations to share the costs of certain overseas marketing and promotion activities that are intended to create, expand, or maintain foreign markets for U.S. agricultural commodities and products. FAS does not provide brand promotion assistance to Cooperators under this program.

(b) FAS enters into project agreements with those eligible nonprofit U.S. trade organizations that have the broadest

possible producer representation of the commodity being promoted and gives priority to those organizations that are nationwide in membership and scope. Project agreements involve the promotion of agricultural commodities on a generic basis and, therefore, do not involve activities targeted directly toward individual consumers. Activities must contribute to the maintenance or growth of demand for the agricultural commodities and generally address long-term foreign import constraints by focusing on matters such as reducing infra-structural or historical market impediments; improving processing capabilities; modifying codes and standards; and identifying new markets or new applications or uses for the agricultural commodity or product in the foreign market.

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

(d) FAS 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.

§ 1550.13 What special definitions apply to the Cooperator program?

For purposes of this part the following definitions apply:

Activity—a specific market development effort undertaken by a Cooperator to address a constraint.

Administrator—the Administrator, FAS, USDA, or designee.

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

Attache/Counselor—the FAS employee representing USDA interests in the foreign country in which promotional activities are conducted.

Commodity Division—the office within the Foreign Agricultural Service responsible for the commodity covered by the project agreement.

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

Constraint—a condition in a particular country or region which needs to be addressed in order to develop, expand, or maintain exports of a specific U.S. agricultural commodity.

Contribution—the cost-share expenditure made by a Cooperator or

the U.S. industry in support of an activity; e.g., money, personnel, materials, services, facilities, or supplies.

Cooperator or U.S. Cooperator—a nonprofit U.S. agricultural trade organization which has entered into a foreign market development agreement with FAS.

Cooperator program—the Foreign Market Development Cooperator Program.

Deputy Administrator—the Deputy Administrator, Commodity and Marketing Programs, FAS, USDA, or designee.

Division Director—the director of a commodity division, Commodity and Marketing Programs, FAS, USDA.

Eligible Commodity—an agricultural commodity that is comprised of at least 50 percent U.S. origin content by weight, exclusive of added water.

Eligible Trade Organization—a United States trade organization that promotes the exports of one or more United States agricultural commodities or products and does not have a business interest in or receive remuneration from specific sales of agricultural commodities or products.

FAS—Foreign Agricultural Service, USDA.

Foreign Third Party—a foreign entity that assists, in accordance with this part, in promoting the export of a U.S. agricultural commodity.

Generic Promotion—a promotion that does not involve the exclusive or predominant use of a single company name or logo(s) or brand name(s) of a single company.

Market—a country or region in which an activity is conducted.

Marketing Plan Year—the program year beginning on October 1 and ending on September 30, during which Cooperators can undertake activities, consistent with this part and their agreements with FAS, and seek reimbursement. For example, marketing plan year 2000 begins on October 1, 1999, and ends on September 30, 2000.

Project Agreement—a contract between FAS and a Cooperator in which the basic working relationship is described including the program and financial obligations of each.

Project Funds—the funds made available to a Cooperator by FAS under a project agreement, and authorized for expenditure in accordance with this part.

STRE—sales and trade relations expenditures.

Trade Team—a group of individuals engaged in an activity intended to promote the interests of an entire

agricultural sector rather than to result in specific sales by any of its members.

USDA—the United States Department of Agriculture.

§ 1550.14 Is my organization eligible to participate in the Cooperator program?

(a) To participate in the Cooperator program, an entity must be a nonprofit U.S. agricultural trade organization and contribute at least 50 percent of the value of resources provided by FAS for activities conducted under the project agreement.

(b) FAS may require that a project agreement include a contribution level greater than that specified in paragraph (a) of this section. In requiring a higher contribution level, FAS will take into account such factors as past Cooperator contributions, previous Cooperator program funding levels, the length of time an entity participates in the program, and the entity's ability to increase its contribution.

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

Subpart B—Application and Fund Allocation

§ 1550.20 How can my organization apply to the Cooperator program?

FAS will publish a Notice in the **Federal Register** that it is accepting applications for participation in the Cooperator program for a specified marketing plan year. Applications shall be submitted in accordance with the terms and requirements specified in the Notice. An application shall contain basic information about the applicant and the proposed program, a strategic plan, and performance measures. FAS may request any additional information which it deems necessary to evaluate a Cooperator program application.

(a) *Basic applicant and program information.* All Cooperator program applications shall contain:

- (1) The name and address of the applicant;
- (2) The name of the Chief Executive Officer (or designee);
- (3) The name and telephone number of the applicant's primary contact person;
- (4) A description of management and administrative capability;
- (5) The name(s) of the person(s) responsible for managing the program;
- (6) A description of prior export promotion experience;
- (7) A description of the organization, its membership, and membership criteria;
- (8) A list of affiliated organizations;
- (9) The applicant's Federal Tax Identification Number;

(10) The dollar amount of FAS resources requested under the Cooperator program;

(11) The value of the applicant's contribution, stated in dollars or as a percentage of paragraph (a)(10) of this section;

(12) The value of contributions from other sources, stated in dollars or as a percentage of paragraph (a)(10) of this section;

(13) A description of the eligible commodity(s); the associated commodity aggregate code(s), obtained from FAS; and the percentage of U.S. origin content by weight, exclusive of added water; and

(14) A certification statement, and, if requested by the Deputy Administrator, a written explanation supporting the certification, that any funds received will supplement, but not supplant, any private or third party funds or other contributions to program activities. The written explanation, if necessary, shall indicate why the Cooperator is unlikely to carry out the activities without Federal financial assistance. The certification shall also state that information contained in the application is true and accurate and that all records supporting the claim that project funds do not supplant other funds will be made available to authorized officials of the U.S. Government.

(b) *Strategic plan and performance measures.* All Cooperator program applications shall also contain:

(1) A description of the U.S. and world market situation for the eligible commodity;

(2) Data summarizing historical and projected U.S. production, U.S. exports to the world, world trade, and U.S. market share;

(3) A summary of proposed activity budgets by country or region;

(4) A summary of proposed administrative budgets by country or region;

(5) A list of all countries that define any designated region;

(6) For each country or region for which activities are proposed:

(i) A market assessment, including the constraint(s) impeding U.S. exports, the performance of competing suppliers, expected changes in demand, etc.;

(ii) The long-term strategy that will be used to counteract the constraints and achieve additional U.S. exports;

(iii) Previous activities, performance, and evaluation results;

(iv) Projected export goals and U.S. market share; and

(v) Performance indicators against which future success in addressing the constraint(s) may be measured;

(7) A description of all proposed activities, including the requested FAS resources and the specific goals and benchmarks to be used to measure the effectiveness of each activity;

(8) A justification for any new overseas office, including a list of job titles, corresponding position descriptions, salary ranges, and any request for approval of salaries above the Foreign Service National (FSN) salary plan. To request approval of a salary above the FSN salary plan, the Cooperator shall include a detailed description of both the duties and responsibilities of the position, and of the qualifications and background of the individual concerned. The Cooperator shall also justify, based on a verifiable local salary survey or other documented local salary information, why the highest FSN salary level is inappropriate.

§ 1550.21 How does FAS determine which Cooperator program applications are approved?

(a) *General.* FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 (5 U.S.C. 306; 31 U.S.C. 1105, 1115–1119, 3515, 9703–9704). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, FAS seeks to identify those projects that would demonstrate a clear, long-term agricultural trade strategy by market or product and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country or region goals. These performance indicators are part of FAS' resource allocation strategy to fund applicants which can demonstrate performance based on a long-term strategic plan and address the performance measurement objectives of the GPRA.

(b) *Approval criteria.* FAS will consider a number of factors when reviewing proposed projects, including:

(1) The ability of the organization to provide an experienced U.S.-based staff with technical and international trade expertise to ensure adequate development, supervision, and execution of the proposed project;

(2) The organization's willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties;

(3) The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodities and products;

(4) The degree to which the proposed project is likely to contribute to the creation, expansion, or maintenance of foreign markets;

(5) The degree to which the strategic plan is coordinated with other private or U.S. government-funded market development projects;

(6) Past program results and evaluations, if applicable; and

(7) Previous Cooperator program funding.

§ 1550.22 How are Cooperator program funds allocated?

After determining which applications to recommend for approval, the Commodity Divisions recommend funding levels for the approved applicants within their respective divisions. Applications then compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor). Data used in the calculations for contribution levels, past export performance and past demand expansion performance will cover not more than a 6-year period, to the extent such data is available. The method for applying the following criteria will be described in the Cooperator program announcement in the **Federal Register**:

(a) Contribution Level (40%).

(b) Past Export Performance (20%).

(c) Past Demand Expansion

Performance (20%).

(d) Future Demand Expansion Goals (10%).

(e) Accuracy of Past Demand Expansion Projections (10%).

Subpart C—Program Operations

§ 1550.30 How does FAS formalize its working relationship with approved Cooperators?

FAS will notify each applicant in writing of the final disposition of its application. FAS will send a program agreement, allocation approval letter, and a signature card to each approved applicant. The allocation approval letter will specify any special terms and conditions applicable to a Cooperator's program, including the required level of Cooperator contribution. An applicant that accepts the terms and conditions contained in the program agreement and allocation approval letter should so indicate by having its Chief Executive Officer sign the program agreement and submit the signed agreement to the Director, Marketing Operations Staff, FAS, USDA. Final agreement shall occur when the Administrator signs the agreement on behalf of FAS. The application, the program agreement, the allocation approval letter, and this part shall establish the terms and conditions

of a Cooperator agreement between FAS and the approved applicant.

§ 1550.31 Who acts on behalf of each Cooperator?

The Cooperator shall designate at least two individuals in its organization to sign program agreements, reimbursement claims, and requests. The Cooperator shall submit the signature card signed by those designated individuals and by the Cooperator's Chief Executive Officer to the Director, Marketing Operations Staff, FAS, USDA, prior to the start of the marketing plan year. The Cooperator shall immediately notify the Director of any changes in signatories (e.g., removal or addition of individuals, name changes, etc.), and shall submit a revised signature card accordingly.

§ 1550.32 Must Cooperators follow specific employment practices?

(a) A Cooperator shall enter into written contracts with all overseas employees 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 are cautioned to consult local laws regarding currency restrictions.

§ 1550.33 Must Cooperators follow any financial management guidelines?

(a) A Cooperator shall implement and maintain a financial management system that conforms to generally accepted accounting principles.

(b) A Cooperator shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with these provisions. Each Cooperator shall maintain all original records and documents relating to program activities for 5 calendar years following the end of the applicable marketing plan year and shall make such records and documents available upon request to authorized officials of the U.S. Government. A Cooperator shall also maintain all documents related to employment, such as employment applications, contracts, position descriptions, leave records, and salary changes; and all records pertaining to contractors. A Cooperator shall also maintain adequate documentation related to the proper

disposition of all capital goods purchased by the Cooperator and for which the Cooperator is reimbursed with program funds.

(c) A Cooperator shall maintain its records of expenditures and contributions in a manner that allows it to provide information by marketing plan year, country or region, activity number, and cost category. Such records shall include:

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

(2) Original receipts for any other program related expenditure in excess of \$25.00;

(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) Copies of 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 original evidence to support the financial transactions, such as canceled checks, receipted paid bills, contracts or purchase orders, per diem calculations, and travel vouchers; and

(7) Documentation supporting contributions including: 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 contributions. Cooperators must retain, and make available for audit, documentation related to claimed contributions.

(d) Upon request, a Cooperator shall provide to FAS the original documents which support the Cooperator's reimbursement claims. FAS may deny a claim for reimbursement if the claim is not supported by adequate documentation.

§ 1550.34 Must Cooperators adhere to specific standards of 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.

(b) Neither a Cooperator nor its affiliates shall make export sales of agricultural commodities covered under the terms of a project agreement. Neither a Cooperator nor its affiliates shall charge a fee for facilitating an export sale. For the purposes of this paragraph, "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. 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 program funds to promote private self interests or conduct private business, except as members of sales teams.

(d) 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, a Cooperator shall submit such selection criteria to FAS for approval.

(e) All Cooperators should endeavor to ensure fair and accurate fact-based advertising. Deceptive or misleading promotions may result in cancellation or termination of a project agreement.

(f) The Cooperator must report any actions or circumstances that have a bearing on the propriety of program activities to the Attache/Counselor and the Cooperator's U.S. office shall report such actions in writing to the appropriate Division Director.

§ 1550.35 Must Cooperators follow specific 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 FAS nor any other agency of the United States Government or any official or employee of FAS 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 extent possible that the terms, conditions, and costs of contracts constitute the most economical and effective use of project funds.

(c) All fees for personnel and professional services paid in any part with project funds must be covered by contracts.

(d) A Cooperator shall:

(1) Ensure that all expenditures for goods and services reimbursed, in excess of \$25.00, by FAS are documented by a purchase order, invoice, or contract;

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

(3) Conduct all contracting in an open manner. Individuals who develop or draft specifications, requirements,

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

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

(5) Perform some form of price or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices; and

(6) Document the decision-making process.

§ 1550.36 How do Cooperators dispose of disposable capital goods?

(a) Capital goods purchased by the Cooperator and for which the Cooperator is reimbursed by FAS that are 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 goods, provided that it applies any exchange allowance, insurance proceeds, or sales proceeds toward the purchase of other property needed in the project;

(2) With FAS approval, transfer the goods to other Cooperators for their activities, or to a foreign third party; or

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

(b) A Cooperator shall maintain an inventory of all capital goods valued at \$100 or more which were 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.

(c) The Cooperator shall insure all capital goods which were acquired with program funds and safeguard such goods against theft, damage, and unauthorized use. The Cooperator shall promptly report any loss, theft, or damage of such property to the insurance company.

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

§ 1550.37 Must Cooperators adhere to Federal Travel Regulations?

All travel shall conform to the U.S. Federal Travel Regulation (41 CFR chapters 300 through 304) and air travel shall conform to the requirements of the

“Fly America Act” (49 U.S.C. 1517). The Cooperator shall notify the Attache/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 Attache/Counselor to schedule appointments, make preparations, or otherwise provide any assistance being requested. Failure to provide advance notification of travel may result in disallowance of the expenses related to the travel.

§ 1550.38 Can a Cooperator keep proceeds generated from an activity?

Any income or refunds generated from an activity, i.e., participation fees, proceeds of sales, refunds of value added taxes (VAT), the expenditures for which have been wholly or partially reimbursed, shall be repaid by submitting a check payable to FAS or by offsetting the Cooperator's next reimbursement claim.

Subpart D—Contributions and Reimbursements

§ 1550.50 What cost share contributions are eligible?

(a) The Cooperator shall pay all costs necessary for the operation of the Cooperator's U.S. office.

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

(1) Expenditures will be made in furtherance of the Cooperator's overall foreign market development program;

(2) The contributor has not been or will not be reimbursed by any other source for such costs; and

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

(c) Subject to paragraph (b) of this section, eligible contributions are:

(1) Cash;

(2) Compensation paid to personnel;

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

(4) The cost of office space;

(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;

(8) The cost of seasonal greeting cards;

(9) Fees for office parking;

(10) The cost of subscriptions to publications;

(11) The cost of activities conducted overseas;

(12) Credit card fees;

(13) The cost of any independent evaluation or audit that is not required by FAS to ensure compliance with program requirements;

(14) The cost of giveaways, awards, prizes and gifts;

(15) The cost of product samples;

(16) Fees for participating in U.S. government activities;

(17) The cost of air and local travel in the United States;

(18) Transportation and shipping costs;

(19) The cost of displays and promotional materials;

(20) Advertising costs;

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

(22) Payment of employee's or contractor's share of personal taxes; and

(23) The cost associated with trade shows, seminars, entertainment and STRE conducted in the United States.

§ 1550.51 What are ineligible contributions?

(a) The following are not eligible contributions:

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

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

(3) Depreciation;

(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 which has the effect of reducing the selling price of an agricultural commodity;

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

(8) Slotting fees or similar sales expenditures;

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

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

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

(12) Membership fees in clubs and social organizations.

(b) The Deputy Administrator shall determine, at the Deputy Administrator's discretion, whether any cost not expressly listed in this section may be included by the Cooperator as an eligible contribution.

§ 1550.52 What are the guidelines for computing the value of non-cash contributions?

(a) *Computing the value of an individual's time.* If an individual's salary is known, allocate the individual's salary on the basis of time spent on foreign market development activities. If the individual's salary is unknown, claim up to the equivalent of a step 10, GS-15 for professional personnel and up to the current estimated industry rate at the person's level of employment for nonprofessional personnel.

(b) *Computing the value of indirect expenditures.* Allocate value on the basis of sound management and accounting procedures when considering indirect expenditures, such as overhead and facilities, which are furnished by the industry.

§ 1550.53 What are the requirements for documenting and reporting contributions?

(a) Each claimed contribution must be documented by the Cooperator, showing the method of computing non-cash contributions, salaries, and travel expenses.

(b) Each Cooperator must keep records of the methods used to compute the value of non-cash contributions, and:

(1) Copies of invoices or receipts for expenses paid by the third party and not reimbursed by the Cooperator for the joint activity; or

(2) If invoices are not available, an itemized statement from the third party as to what costs it incurred pursuant to the joint activity; or

(3) If neither of the foregoing is available, a statement from the third party as to what goods and services it provided; or

(4) If none of the foregoing are available, a memo to the files of the U.S. Cooperator's estimate of what contributions were made by the third party, item by item, and the method used to assign a value to each.

(c) Each Cooperator must report its contributions as described in § 1550.70(a).

§ 1550.54 What expenditures may FAS reimburse under the Cooperator program?

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

(1) An expenditure has been made in furtherance of a market development activity;

(2) The Cooperator or third party has transferred funds to pay for the expenditure; and

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

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

(1) Production and placement of advertising in print or electronic media or on billboards or posters;

(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 promotional samples;

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

(6) Fees for participation in retail and trade exhibits and shows, and booth construction and transportation of related materials to such exhibits and shows;

(7) Trade seminars, including space rental, equipment rental, and duplication of seminar materials;

(8) Production and distribution of publications;

(9) Part-time contractors, such as interpreters, translators, and receptionists, to help with the implementation of promotional activities, such as trade shows, food service promotions, and trade seminars;

(10) Giveaways, awards, prizes, gifts, and other similar promotional materials, subject to the limitation that FAS will not reimburse more than \$1.00 per item;

(11) 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, subject to the limitation that FAS 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; and

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

(12) Approved salaries or compensation for non-U.S. citizens and non-U.S. contractors. Generally, FAS 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 § 1550.20(b)(8);

(13) A retroactive salary adjustment that conforms to a change in FSN salary plans, effective as of the date of such change;

(14) Accrued annual leave at such time when employment is terminated or when required by local law;

(15) Overtime paid to clerical staff;

(16) Fees for personnel and professional services, subject to the limitation that project funds may only be used to pay consultant fees for actual work days and may not be used to pay consultant fees for travel and rest days;

(17) Air travel, plus passports, visas, and inoculations, subject to the limitation that FAS will not reimburse any portion of air travel in excess of the full fare economy rate or when the Cooperator fails to notify the Attache/Counselor in the destination country in advance of the travel, unless the Deputy Administrator determines it was impractical to provide such notification;

(18) Per diem, subject to the limitation that FAS will not reimburse per diem in excess of the rates allowed under the U.S. Federal Travel Regulation (41 CFR chapters 300 through 304);

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

(20) Other allowable expenditures while in travel status as authorized by the U.S. Federal Travel Regulation (41 CFR chapters 300 through 304);

(21) An overseas office, including rent, utilities, communications originating overseas, office supplies, accident liability insurance premiums, and legal and accounting services;

(22) 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, and computer hardware and software;

(23) Premiums for health or accident insurance or other benefits for foreign national employees that the employer is required by law to pay;

(24) Accident liability insurance premiums for facilities used jointly with third party participants for Cooperator program activities, or such insurance premiums for travel of non-Cooperator personnel;

(25) Market research;

(26) Evaluations, if not required by FAS to ensure compliance with program requirements;

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

(28) Employment agency fees;

(29) STRE, including breakfast, lunch, dinner, receptions, and refreshments at activities; miscellaneous courtesies such as checkroom fees, taxi fares, and tips; and decorations for a special promotional occasion;

(30) Educational travel of dependent children, visitation travel, rest and

recuperation travel, home leave travel, and emergency visitation travel for U.S. overseas employees as allowed under the Foreign Affairs Manual;

(31) Evacuation payments (safe haven), and shipment and storage of household goods and motor vehicles;

(32) Demonstration projects;

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

(34) Training expenses in the U.S. for FSNs;

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

(36) Shipment of samples or other program materials from the U.S. to foreign countries; and

(37) That portion of airtime for wireless phones that is devoted to program activities and monthly service fees.

§ 1550.55 What expenditures may not be reimbursed under the Cooperator program?

(a) FAS will not reimburse any cost of:

(1) Expenses, fines, settlements, or claims resulting from suits, challenges, or disputes emanating from employment terms, conditions, contract provisions, or related formalities;

(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 displays, i.e., displays lasting beyond one marketing plan year;

(6) Office parking fees;

(7) Coupon redemption or price discounts;

(8) Refundable deposits or advances;

(9) Giveaways, awards, prizes, gifts, and other similar promotional materials in excess of \$1.00 per item;

(10) Alcoholic beverages that are not an integral part of a promotional activity;

(11) The purchase, lease (except for use in authorized travel status), or repair of motor vehicles;

(12) Travel of applicants for employment interviews;

(13) Unused non-refundable airline tickets or associated penalty fees, except where travel is restricted by U.S. government action or advisory;

(14) Any arrangement which has the effect of reducing the selling price of an agricultural commodity;

(15) Goods and services and salaries of third party personnel;

(16) Membership fees in clubs and social organizations;

(17) Indemnity and fidelity bonds;

(18) Fees for participating in U.S.

Government sponsored activities, other than trade fairs, shows, and exhibits;

(19) Business cards;

(20) Seasonal greeting cards;

(21) Subscriptions to non-trade

related publications;

(22) Credit card fees;

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

(24) Insurance on household goods

and personal effects, including privately-owned automobiles, whether overseas or stored in the U.S., belonging to U.S. citizen employees;

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

(26) Payment of U.S. or foreign employee's or contractor's share of personal taxes, except as legally required in a foreign country;

(27) Wireless phone equipment, equipment repair, insurance, and other related charges;

(28) STRE expenses incurred in the U.S.;

(29) Night club entertainment, cover charges, personal gifts, or tickets to theatrical or sporting events; or

(30) 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.

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

(c) FAS will reimburse for expenses incurred up to 30 calendar days beyond the conclusion of the marketing plan year.

§ 1550.56 How are Cooperators reimbursed?

(a) A format for reimbursement claims is available from the Director, Marketing Operations Staff, FAS, USDA. Claims for reimbursement shall contain at least the following information:

(1) Activity code;

(2) Country code;

(3) Cost category;

(4) Amount to be reimbursed or credited;

(5) If applicable, any reduction in the amount of reimbursement claimed to offset FAS demand for refund of amounts previously reimbursed, and reference to the relevant Compliance Report; and

(6) If applicable, any amount previously claimed that has not been reimbursed.

(b) All claims for reimbursement shall be submitted by the Cooperator's U.S. office to the Director, Marketing Operations Staff, FAS, USDA.

(c) FAS will not reimburse claims submitted later than 6 months after the end of a marketing plan year.

(d) If FAS overpays a reimbursement claim, the Cooperator shall repay FAS within 30 days the amount of the overpayment either by submitting a check payable to FAS or by offsetting its next reimbursement claim.

(e) If a Cooperator receives a reimbursement or offsets an advanced payment which is later disallowed, the Cooperator shall within 30 days of such disallowance repay FAS the amount owed either by submitting a check payable to FAS or by offsetting its next reimbursement claim.

(f) The Cooperator shall report any actions having a bearing on the propriety of any claims for reimbursement to the Attache/Counselor and its U.S. office shall report such actions in writing to the Division Director(s).

§ 1550.57 Will FAS make advance payments to a Cooperator?

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

(b) *Exception.* Upon request, FAS may make two types of advance payments to a Cooperator. The first is a revolving fund operating advance provided by FAS 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. FAS will provide this type of advance expense payment in lieu of direct payments by FAS to vendors or other third parties. All Cooperators, with or without project fund-supported foreign offices, are eligible to request special advance payments. Normally, special advance payments received from FAS must be liquidated by the Cooperator within 90 days from the date of receipt. Prior to making an advance, FAS may require the participant to submit security in a form and amount acceptable to FAS to protect FAS' financial interests. FAS will not make any special advance payment to a Cooperator where a special advance is outstanding from a prior marketing plan year.

(c) *Refunds due FAS.* A participant shall return any unexpended portion of the advance, plus any interest earned, either by submitting a check payable to FAS or by offsetting its next reimbursement claim. All checks shall be mailed to the Director, Marketing Operations Staff, FAS, USDA.

Subpart E—Reporting, Evaluation, and Compliance

§ 1550.70 Must Cooperators report to FAS?

(a) *End-of-year contribution report.* Not later than January 31 of the year following the completion of the marketing plan year, a Cooperator shall submit two copies of a report which identifies contributions made by the Cooperator and the U.S. industry during that marketing plan year. A suggested format of a contribution report is available on the FAS home page (<http://www.fas.usda.gov/mos/programs/fnotice.html>) on the Internet or from the Director, Marketing Operations Staff, FAS, USDA.

(b) *Trip reports.* Not later than 45 days after completion of travel (other than local travel), a Cooperator shall submit a trip report. The report 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, or specific accomplishments.

(c) *Research reports.* Not later than 6 months after the end of its marketing plan year, a Cooperator shall submit a report on any research conducted in accordance with its application.

(d) *Submission of reports.* A Cooperator shall submit the reports required by this section to the appropriate Division Director. Trip reports and research reports shall also be submitted to the appropriate Attache/Counselor(s). All reports shall be in English and include the Cooperator's agreement number, the countries and period covered, and the date of the report.

(e) *Additional reports.* FAS may require the submission of additional reports.

(f) *Independent audit reports.* A Cooperator shall provide to the FAS Compliance Review Staff, upon request, any audit reports by independent public accountants.

§ 1550.71 Are Cooperator documents subject to the provisions of the Freedom of Information Act?

(a) Documents submitted to FAS 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—Official Records, and, specifically, 7 CFR 1.11—Handling Information from a Private Business.

(b) If requested by a person located in the United States, a Cooperator shall provide to such person a copy of any document in its possession or control containing market information

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) The results of any research conducted by a Cooperator under an agreement shall be the property of the U.S. Government.

§ 1550.72 How is program effectiveness measured?

(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 impeding 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.

(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) A Cooperator shall conduct periodic evaluations of its program and activities and may contract with an independent evaluator to satisfy this requirement. FAS reserves the right to have direct input and control over design, scope, and methodology of any such evaluation, including direct contact with and provision of guidance to the independent evaluator.

(d) A Cooperator shall complete at least one program evaluation each year. Actual scope and timing of the program evaluation shall be determined by the Cooperator and the Division Director and specified in the Cooperator's application approval letter. 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 the goals specified in the application;

(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.

(e) A Cooperator shall submit, via a cover letter to the Division Director, an executive summary which assesses the program evaluation's findings and recommendations and proposes changes in program strategy or design as a result of the evaluation.

§ 1550.73 Are Cooperators penalized for failing to make required contributions?

A Cooperator's contribution requirement is specified in the Cooperator program allocation letter. If a Cooperator fails to contribute the amount specified in its allocation approval letter, the Cooperator shall pay to FAS in U.S. dollars the difference between the amount it has contributed and the amount specified in the allocation approval letter. A Cooperator shall remit such payment by December 31 following the end of the marketing plan year.

§ 1550.74 How is Cooperator program compliance monitored?

(a) The Compliance Review Staff (CRS), FAS, performs periodic on-site reviews of Cooperators to ensure compliance with this part.

(b) In order to verify that federal funds received by a Cooperator do not supplant private or third party funds or contributions pursuant to § 1550.20

(a)(14), CRS will consider the Cooperator's overall marketing budget from year to year, variations in promotional strategies within a country or region, and new markets.

(c) The Director, CRS, will notify a Cooperator through a compliance report when it appears that FAS may be entitled to recover funds from that Cooperator. The compliance report will state the basis for this action.

§ 1550.75 How does a Cooperator respond to a compliance report?

(a) A Cooperator shall, within 60 days of the date of the compliance report, submit a written response to the Director, CRS. This response shall include any money owed to FAS if the Cooperator does not wish to contest the compliance report. The Director, CRS, at the Director's discretion, may extend the period for response up to an additional 30 days. If the Cooperator does not respond to the compliance report within the required time period or, if after review of the Cooperator's response, the Director, CRS, determines that FAS may be entitled to recover funds from the Cooperator, the Director, CRS, will refer the compliance report to the Deputy Administrator.

(b) If, after review of the compliance report and response, the Deputy Administrator determines that the Cooperator owes money to FAS, the

Deputy Administrator will so inform the Cooperator. The Deputy Administrator may initiate action to collect such amount pursuant to 7 CFR Part 1403, Debt Settlement Policies and Procedures. Determinations of the Deputy Administrator will be in writing and in sufficient detail to inform the Cooperator of the basis for the determination. The Cooperator has 30 days from the date of the Deputy Administrator's initial determination to submit any money owed to FAS or to request reconsideration.

§ 1550.76 Can a Cooperator appeal the determinations of the Deputy Administrator?

(a) The Cooperator may appeal the determinations of the Deputy Administrator to the Administrator. An

appeal must be in writing and be submitted to the Office of the Administrator within 30 days following the date of the initial determination by the Deputy Administrator or the determination on reconsideration. The Cooperator may request a hearing.

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

(c) The Administrator will base the determination on appeal upon

information contained in the administrative record and will endeavor to make a determination within 60 days after submission of the appeal, hearing, or receipt of any transcript, whichever is later. The determination of the Administrator will be the final determination of FAS. The Cooperator must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by the Administrator.

Signed at Washington, DC, on June 10, 1999.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service.
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