

Many of those warehouses no longer exist and may have been replaced by other marketing opportunities. Further, as in the past, it is expected that sufficient information will be available to allow the proper assignment of inspectors or that appropriate changes can be made to address that problem without the formal designation system of the current provisions of 7 CFR part 723, which, moreover, apply only to burley and flue-cured tobacco. We thus propose to rescind the requirement that calls for burley and flue-cured tobacco farmers to designate where they will sell their tobacco.

#### Executive Order 12372

This proposed rule is not subject to the provisions of Executive Order 12372, which require consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

#### Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this proposed rule because USDA is not required by 5 U.S.C 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

#### Unfunded Mandates

This rule contains no Federal mandates under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local and tribal governments or the private sector. Therefore, this rule is not subject to sections 202 and 205 of the UMRA.

#### Federal Assistance Programs

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance to which this rule applies, are: 10.051—Commodity Loans and Loan Deficiency Payments.

#### Environmental Evaluation

FSA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, consistent with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), neither an Environmental Impact Statement nor an environmental assessment is required.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 5501 *et seq.*), the information collection or recordkeeping requirements covered in this proposed rule approved by the Office of Management and Budget (OMB) under OMB control numbers 0560–0058 and 0560–0217. Because this action will reduce the information collected, a reduction in the approved burden estimate will be made.

Accordingly, the Commodity Credit Corporation proposes to amend 7 CFR part 1464 as follows:

#### PART 1464—TOBACCO

1. The authority citation for 7 part CFR 1464 continues to read as follows:

**Authority:** 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b, 714c.

##### § 1464.2 [Amended]

2. Amend § 1464.2 by removing paragraph (b)(2) and redesignating paragraphs (b)(3), (b)(4) and (b)(5) as (b)(2), (b)(3) and (b)(4), respectively.

Signed in Washington, DC on June 10, 2004.

**James R. Little,**

*Executive Vice-President, Commodity Credit Corporation.*

[FR Doc. 04–14063 Filed 6–21–04; 8:45 am]

**BILLING CODE 3410–05–P**

#### DEPARTMENT OF AGRICULTURE

#### Commodity Credit Corporation

#### 7 CFR Part 1486

**RIN 0551–AA62**

#### Emerging Markets Program

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

**ACTION:** Proposed rule.

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

**DATES:** Written comments must be received by July 22, 2004 to be assured of consideration.

**ADDRESSES:** Comments should be submitted to: Denise Huttenlocker, Director, Marketing Operations Staff, Foreign Agricultural Service, United

States Department of Agriculture, 1400 Independence Avenue SW., Ag Box 1042, Room 4932–S, Washington, DC 20250–1042. Fax: (202) 720–9361; e-mail: [mosadmin@fas.usda.gov](mailto:mosadmin@fas.usda.gov).

#### FOR FURTHER INFORMATION CONTACT:

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

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. It has been determined significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

#### 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 Commodity Credit Corporation (CCC) is not required by any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

#### The Unfunded Mandates Reform Act of 1995

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

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), CCC requests approval of a new

information collection in support of the Emerging Markets Program.

*Title:* Emerging Markets Program.

*OMB Control Number:* Not yet assigned.

*Type of Request:* Approval of an information collection.

*Abstract:* This information is needed to administer CCC's Emerging Markets Program. The information will be gathered from applicants seeking assistance under the program to determine the viability of requests for funds.

*Information to be Collected:*

#### A. For Proposals

- Date of proposal;
- Name of organization submitting proposal;
- Organization address, telephone and fax numbers, and tax ID and Dun & Bradstreet federal D-U-N-S numbers (for private sector applicants);
- Primary contact person;
- Full title of proposal;
- Target market(s);
- Current conditions in the target market(s) affecting the intended commodity or product;
- Description of problem(s), *i.e.*, constraint(s), to be addressed by the project— inadequate knowledge of the market, insufficient trade contacts, lack of awareness by foreign officials of U.S. products and business practices, impediments: infrastructure, financing, regulatory or other non-tariff barriers, etc.;
- Project objectives;
- Performance measures: benchmarks for quantifying progress in meeting the objectives;
- Rationale: explanation of the underlying reasons for the project proposal and its approach, including especially the anticipated benefits, and any additional pertinent analysis;
- Clear demonstration that successful implementation will benefit a particular industry as a whole, not just the applicant(s);
- Explanation as to what specifically could not be accomplished without federal funding assistance and why participating organization(s) are unlikely to carry out the project without such assistance;
- Specific description of activity/activities to be undertaken;
- Time line(s) for implementation of activity, including start and end dates;
- Information on whether similar activities are or have previously been funded with USDA sources in target country/countries (*e.g.*, under MAP and/or FMD programs);
- Detailed line item activity budget. Cost items should be allocated

separately to each participating organization. Expense items constituting a proposed activity's overall budget (*e.g.*, salaries, travel expenses, consultant fees, administrative costs, etc.), with a line item cost for each, should be listed, clearly indicating (a) which items are to be covered by EMP funding; (b) which by the participating U.S. organization(s); and (c) which by third parties (if applicable). Cost items for individual consultant fees should show calculation of daily rate and number of days. Cost items for travel expenses should show number of trips, destinations, cost, and objective for each trip.

#### B. For Performance Reports

Quarterly progress reports must contain the following information:

- Benchmarks achieved, summary of activities accomplished, including commitments on the part of other organizations, U.S. and/or foreign, which may be participating in the project;
  - Problems encountered in implementation, if any; and
  - Activities projected for the following reporting period.
- The final report must contain the following information:
- Introduction including an acknowledgement of the funding received from the Emerging Markets Program;
  - Concise executive summary;
  - Objectives of the project and description of the activities undertaken;
  - Specific accomplishments, *e.g.*, research results, impact on markets and/or exports, results of training, seminars, etc. and successes, failures, and lessons learned.

**Note:** Successes are specific, measurable results that are a direct outcome of a project or activity, *e.g.*, increases in existing U.S. agricultural exports (amounts of trade, actual and/or projected sales in dollars or tonnage), entry of U.S. products into new markets, elimination of specific market constraints/barriers, adoption of U.S. regulations and standards, etc.

- Description of the difficulties encountered in implementing the project;
- Description of the cooperation received from participating parties (U.S. organizations, foreign governments, or other entities); principal persons and organizations involved in the project (U.S. and foreign); and
- Recommendations for follow up (if appropriate).

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 177 hours per year per respondent.

*Respondents:* U.S. government agencies, State and local government agencies, non-profit trade associations, universities, agricultural cooperatives, and private companies.

*Estimated Number of Respondents:* 130.

*Estimated Number of Responses per Respondent:* 13.

*Estimated Total Annual Burden on Respondents:* 42,430 hours.

Proposed topics for comments are: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget at [david\\_rostker@omb.eop.gov](mailto:david_rostker@omb.eop.gov) and to: Director, Marketing Operations Staff, Foreign Agricultural Service, Room 4932-S, Stop 1042, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250-1042.

Copies of this information collection may be obtained from Kimberly Chisley, FAS' Information Collection Coordinator, at (202) 720-2568.

All responses to this notice will be summarized. All comments will also become a matter of public record.

#### Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

#### Government Paperwork Elimination Act

The Foreign Agricultural Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government

agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Accordingly, applications for participation in the Emerging Markets Program may be submitted online. Payment transactions will be handled both electronically and in paper form.

### Background

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

The EMP is administered by personnel of the Foreign Agricultural Service (FAS). FAS implements this provision by providing CCC funds for specific projects to various entities, including government agencies and U.S. private organizations, representing a wide range of agricultural commodities and products. Proposals from research organizations and consulting entities will be considered for funding assistance with evidence of substantial participation in and financial support by U.S. industry. This support would assure that the particular agricultural industry perceives a market development benefit from the funded activity. Individuals/consultants may not use program funds to conduct private business or to promote private self-interests.

Funds for private organizations are made available on the basis of a competitive application and review process. Approved projects and activities address generic market development and market access issues in emerging markets, focusing on such topics as:

- Technical assistance designed to improve food and rural business systems;
- Marketing and distribution of value-added products, including new products or uses;
- Studies of food distribution channels in emerging markets;

- Constraints to U.S. exports, including food safety/sanitary and phytosanitary issues and other non-tariff barriers;
- Collection and use of market information that benefit American exporters as well as the target country or countries; and
- Training in agriculture and agribusiness trade, including assessments, seminars, workshops, training, research studies, etc.

The definition of "emerging market" in 7 U.S.C. 5622(f) note, includes the requirement that the country has the potential to be a viable and significant market for U.S. agricultural commodities. Therefore, this proposed rule would provide that, in order to best reflect that requirement, an emerging market country or regional country grouping have a population greater than 1 million and a per capita income level below the level of upper-middle income countries as determined by the World Bank.

Under the EMP, CCC will enter into agreements with those organizations whose proposals have been approved. After implementation of an EMP project for which CCC has agreed to provide funding, Recipients may submit claims for reimbursement of the costs associated with completing the project, to the extent that CCC has agreed to pay such costs. A Recipient will be reimbursed after CCC reviews its claim and determines that the claim is complete. Reimbursement claims will be subject to verification by the FAS Compliance Review Staff (CRS). Advances may be authorized by CCC up to 40 percent of an approved project budget.

### Significant Provisions

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

1. Describe procedures for establishing project agreements;
2. List eligible and ineligible contributions and the consequences of a Recipient failing to meet its required contribution level;
3. List reimbursable and non-reimbursable project expenditures;
4. Explain the procedures followed in the submission and payment of reimbursement claims;
5. Provide financial management guidelines for Recipients;
6. Identify the reports FAS requires of Recipients;
7. Explain FAS's position on program evaluations and the associated requirements of Recipients;

8. Detail the steps a Recipient should follow to appeal compliance findings;

9. List the standards of ethical conduct required of Recipients;

10. Describe contracting procedures to be used by Recipients; and

11. Outline the travel limitations placed on Recipients by FAS, including the Federal Travel Regulations and the Fly America Act.

### List of Subjects in 7 CFR Part 1486

Agricultural commodities, Exports, Grant programs—agriculture, Technical assistance.

Accordingly, it is proposed that title 7 of the Code of Federal Regulations is amended by adding a new part 1486 to read as follows:

## PART 1486—EMERGING MARKETS PROGRAM

### Subpart A—General Information

Sec.

1486.100 What is the Emerging Markets Program?

1486.101 What special definitions apply to this program?

1486.102 Is there a list of eligible emerging market countries?

1486.103 Are regional projects possible under the program?

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

1486.200 What entities are eligible to participate in the program?

1486.201 Under what conditions may research and consultant groups and individuals apply to the program?

1486.202 Are there any ineligible organizations?

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

1486.204 Are multi-year or multi-country proposals eligible for funding?

1486.205 What types of funding are available under the program?

1486.206 What is the Quick Response Marketing Fund?

1486.207 What is the Technical Issues Resolution Fund?

1486.208 How does an organization apply to the program?

1486.209 How are program applications evaluated and approved?

1486.210 Are there any limits on the scope of proposals?

### Subpart C—Program Operations

1486.300 How are applicants notified of decisions on their applications?

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

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

1486.303 What specific contracting procedures must be adhered to?

**Subpart D—Contributions and Reimbursements**

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

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

- 1486.500 What are the reporting requirements of the program?
- 1486.501 What is the rule on notifying field offices of international travel?
- 1486.502 How is project effectiveness measured?
- 1486.503 How is program compliance monitored?
- 1486.504 How does a Recipient respond to a compliance report?
- 1486.505 Can a Recipient appeal the determinations of the Deputy Administrator?
- 1486.506 When will a project be reviewed?
- 1486.507 What is the effect of failing to make required contributions?
- 1486.508 How long must Recipients maintain original project records?
- 1486.509 Are Recipients allowed to charge fees for specific activities in approved projects?
- 1486.510 What is the policy regarding disclosure of program information?
- 1486.511 What is the general policy regarding ethical conduct?

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

**Subpart A—General Information****§ 1486.100 What is the Emerging Markets Program?**

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

(b) The EMP is a generic program; its resources may be used to support exports of U.S. agricultural commodities and products only through generic activities. Projects that endorse or promote branded products are not eligible for the program.

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

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

**§ 1486.101 What special definitions apply to this program?**

For purposes of this subpart, the following definitions apply:

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

*Administrator*—the Administrator of FAS, or designee.

*Advisory Committee*—a group of representatives from the private sector appointed by the Secretary of Agriculture whose primary mission is to review proposals requesting funding under the EMP and make recommendations on projects and programs that can enhance exports through the use of program funds.

*Agreement*—a written assistance agreement under this part 1486.

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

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

*CCC*—Commodity Credit Corporation.

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

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

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

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

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

*EMP*—Emerging Markets Program.

*FAS*—Foreign Agricultural Service.

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

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

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

*Proposal*—an application for funding.

*Recipient*—an organization receiving financial assistance directly from the Commodity Credit Corporation or Foreign Agricultural Service to carry out a project.

*SRTG*—State Regional Trade Group.

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

*UES*—Unified Export Strategy.

*USDA*—United States Department of Agriculture.

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

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

**§ 1486.103 Are regional projects possible under the program?**

Projects that focus on regions, such as the Caribbean Basin, rather than individual countries, are eligible for consideration provided such projects target qualifying emerging markets in the specified region. In certain circumstances, the CCC may consider activities which target qualified emerging markets in a specific region, but are conducted in a non-emerging

market because of its importance as a central location and ease of access to that region.

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

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

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

#### **§ 1486.201 Under what conditions may research and consultant groups and individuals apply to the program?**

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

(b) Consulting individuals or organizations shall not use program funds to conduct private business or to promote private self-interests.

#### **§ 1486.202 Are there any ineligible organizations?**

Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. organizations, but are not eligible for funding assistance from the program.

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

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

#### **§ 1486.204 Are multi-year or multi-country proposals eligible for funding?**

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

for multiple commodities are also eligible.

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

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

#### **§ 1486.206 What is the Quick Response Marketing Fund?**

(a) This fund is established to address priority constraints to market access that arise because of unforeseen events; market conditions in emerging markets are often less predictable than in more developed countries. It allows responsiveness to time-sensitive marketing problems or opportunities, such as a change in an import regime or the removal of a trade embargo; an unexpected or unusual change in the political or financial situation in a country; or a significant change in crop conditions—any of which may have an immediate impact on the access of particular commodities or products to specific markets. Timing concerns in and of themselves do not justify use of these funds.

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

#### **§ 1486.207 What is the Technical Issues Resolution Fund?**

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

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

(1) The activity occurs in an eligible country or region of market priority;

(2) The trade constraint warrants intervention;

(3) The proposed activity is likely to achieve an impact in the short- or long-term;

(4) The Recipient is qualified to undertake the proposed activity;

(5) The budget requested is reasonable and includes leveraged resources;

(6) If applicable, a U.S. domestic constraint or trade issue can be resolved in support of a proposed activity; and

(7) The activity has support from USDA field offices.

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

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

#### **§ 1486.208 How does an organization apply to the program?**

*General.* CCC will periodically announce that it is accepting proposals for participation in the EMP. All relevant information, including application deadlines (for the Central Fund) and proposal content, will be noted in the announcement, and proposals shall be submitted in accordance with the terms and requirements specified in the announcement. CCC may request any additional information it deems necessary from any applicant in order to properly evaluate any proposal.

#### **§ 1486.209 How are program applications evaluated and approved?**

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

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

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

(2) The organization's willingness to contribute resources, including cash and goods and services of the U.S. industry, with greater weight given to cash contributions (for private sector proposals only);

(3) The conditions or constraints affecting the level of U.S. exports and

market share for the agricultural commodity/product;

(4) The degree to which the proposed project is likely to contribute to the development, maintenance, or expansion of U.S. agricultural exports to emerging markets;

(5) Demonstration of how a proposed project will benefit a particular industry as a whole; and

(6) Past program results and evaluations, if applicable. Priority consideration will be given to the following types of technical assistance activities:

(i) Projects and activities which use technical assistance designed specifically to improve market access in emerging markets such as activities intended to mitigate the impact of sudden political events or economic and currency crises in order to maintain U.S. market share;

(ii) Marketing and distribution of value-added products, including new products or new uses. Examples include food service development, market research on potential for consumer-ready foods or new uses of a product, and export feasibility studies.

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

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

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

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

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

(c) *Approval decision.* CCC will approve those applications that it determines best satisfy the criteria and factors specified in paragraph (b) of this

section. All decisions regarding the disposition of an application are final.

#### **§ 1486.210 Are there any limits on the scope of proposals?**

(a) CCC will not reimburse 100 percent of any project's cost. The program is intended to provide appropriate assistance to projects which also have a significant amount of financial contributions from other sources, especially U.S. private industry.

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

### **Subpart C—Program Operations**

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

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

#### **§ 1486.301 How is the working relationship established between CCC and the Recipient of project funding?**

(a) FAS will notify all applicants in writing of the final disposition of its application. FAS will send an approval letter followed by a project agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of EMP funding and cost-share contribution requirements. The applicant is authorized to begin implementation of the project as of the date of the approval letter.

(b) The agreement will specify the terms and conditions applicable to the project, including the levels of EMP funding and cost-share contribution requirements. An applicant who accepts the terms and conditions contained in the agreement should so indicate by having the appropriate authorizing official sign the agreement and submit it to the Director, Marketing Operations Staff, FAS, USDA. The agreement will become effective when the Recipient's authorizing official has signed on behalf of the organization and the Deputy Administrator has countersigned the agreement on behalf of CCC.

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

(a) Approved projects may be modified if circumstances change in such a way that they would likely affect the progress and ultimate success of a project. All requests for project modifications must be made in writing to FAS and must include:

(1) A justification as to why changes to the project as originally designed are needed;

(2) An explanation of the necessary adjustments in approach or strategy;

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

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

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

#### **§ 1486.303 What specific contracting procedures must be adhered to?**

(a) The Recipient has full and sole responsibility for the legal sufficiency of all contracts it may enter into with one or more third parties in order to carry out an approved project and shall assume financial liability for any costs or claims resulting from suits, challenges, or other disputes based on contracts entered into by the Recipient. Neither CCC nor any other agency of the United States Government or any official or employee of CCC or the United States Government has any obligation or responsibility with respect to Recipient contracts with third parties.

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

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

(d) A Recipient shall:

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

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

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

(4) Base each solicitation for professional or consulting services on a

clear and accurate description of the requirements for the services to be procured;

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

(6) Document the decision-making process.

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

##### **§ 1486.400 What are the rules on cost sharing?**

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

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

(c) Cost-sharing is not required for proposals from U.S. Government agencies, but is mandatory from all other eligible organizations, even when they may be party to a joint proposal with a U.S. Government agency.

(d) Contributions from USDA or other U.S. Government agencies or programs may not be counted toward the stated cost share requirement. Similarly, contributions from foreign (non-U.S.) organizations may not be counted toward the cost share requirement, but may be counted in the total cost of the project.

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

##### **§ 1486.401 What cost share contributions are eligible?**

(a) Eligible contributions are those cost items that:

(1) Have not been or will not be reimbursed by any source outside of the Recipient organization;

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

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

(4) Are not proscribed under § 1486.402.

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

##### **§ 1486.402 What are ineligible contributions?**

(a) The following are not eligible as contributions:

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

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

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

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

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

(6) Slotting fees or similar sales expenditures;

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

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

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

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

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

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

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

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

##### **§ 1486.403 What expenditures may CCC reimburse under the program?**

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

(1) The expenditure is reasonable and has been made in furtherance of an approved activity or project; and

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

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

(1) Salaries and benefits of the Recipient's existing personnel or any

other participating organization that are assigned to EMP-funded projects; however, reimbursement is limited to:

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

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

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

(2) Consulting fees for professional services; however, reimbursement for consulting fees is limited to the daily rate of a General Schedule U.S. Government employee, GS-15/Step 10 in effect during the calendar year in which the project or activity is approved for funding. Reimbursement is authorized only for actual days worked. Benefits are not reimbursable.

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

(4) Travel expenses, subject to the following:

(i) Air travel is limited to the full-fare economy class rate;

(ii) Per diem is limited to the allowable rate for each domestic or foreign locale (41 CFR Chapter 301);

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

(iv) Air travel must comply with the Fly America Act, 49 U.S.C. App. 1517. Expenses in excess of the authorized per diem rates may be allowed in special or unusual circumstances (41 CFR part 301, subpart D), and must be approved in advance. The CCC will not reimburse any portion of air travel in excess of the full fare economy rate or when the participant fails to notify the Counselor/Attache in the destination country in advance of the travel unless the Deputy Administrator determines it was impractical to provide such notification.



(5) Direct administrative expenses other than those included in overhead costs.

(6) Indirect costs (overhead expenses) include those administrative expenses not identified elsewhere in a project's budget but which are necessary to the implementation and completion of the project. Such expenses may include the cost of rent, utilities, telephone and fax, postage, express couriers, photocopying, office supplies, etc., on a pro-rated basis. Any indirect cost not identified will not be eligible for reimbursement. Indirect costs for overhead and administrative expenses incurred by both private (excluding market development cooperators, state regional trade groups, and for-profit organizations) and government Recipients (excluding FAS) may be reimbursed up to a maximum of 10 percent of the portion of the project budget funded by the EMP. Indirect costs shall be calculated on the basis of project costs before adding the indirect charges. These expenses may be charged only for those items not covered elsewhere in the project budget, and must be specified. Overhead costs are not reimbursable for any project funded under the Technical Issues Resolution Fund or the Quick Response Marketing Fund.

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

**§ 1486.404 What expenditures are not eligible for program funding?**

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

(1) Branded product promotions—in-store, restaurant, advertising, etc.; this includes labeling and supplementing normal company sales activities designed to increase awareness and stimulate sales of branded products;

(2) Administrative and operational expenses for trade shows;

(3) Advertising;

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

(5) Design and development of Internet web sites;

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

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

(8) Subsidizing normal, day-to-day operating costs of an organization;

(9) Honoraria for speakers;

(10) The costs of new product development;

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

(12) Refundable deposits or advances;

(13) STRE expenses within the United States;

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

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

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

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

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

**§ 1486.405 How are Recipients reimbursed for project expenditures?**

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

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

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

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

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

**§ 1486.406 Will CCC make advance payments to Recipients?**

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

(b) *Exception.* Upon request, CCC may make advance payments to a Recipient against an approved project budget. Up to 40 percent of the approved project budget may be provided as an advance, either at one time or in incremental payments. Advances should be limited to the minimum amounts needed and requested as close as is administratively feasible to the actual time of disbursement by the Recipient. Reimbursement claims will be used to offset advances. Recipients shall deposit and maintain advances in insured, interest-bearing accounts.

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

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

**§ 1486.500 What are the reporting requirements of the program?**

(a) *Performance reports.* (1) Recipients are required to submit regular progress reports in accordance with the project agreement. Quarterly progress reports are required for all projects with a duration of 6 months or longer. Projects of less than 6 months in duration generally require a mid-term report.

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

(3) Reporting requirements and formats for both quarterly progress reports and final performance reports are specified in the project agreement between CCC and the Recipient organization.

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

(b) *Financial reports.* Final financial reports must be submitted no later than 90 days after completion of the project. Such reports must provide a final



accounting of all project expenditures by cost category, and include the accounting of actual contributions made to the project by the Recipient and participating organization(s).

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

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

**§ 1486.502 How is project effectiveness measured?**

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

**§ 1486.503 How is program compliance monitored?**

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

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

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

(a) A Recipient shall, within 60 days of the date of the compliance report, submit a written response to the Director, CRS. The Director, CRS, at his or her discretion, may extend the period for response up to an additional 30 days. If the Recipient does not respond to the compliance report within the required time period or, if after review of the Recipient's response, the Director, CRS, determines that CCC may be entitled to recover funds from the Recipient, 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 Recipient owes money to CCC, the Deputy Administrator will so inform the Recipient. The Deputy Administrator may initiate action to collect such

amount pursuant to 7 CFR part 1403, Debt Settlement Policies. Determinations of the Deputy Administrator will be in writing and in sufficient detail to inform the Recipient of the basis for the determination. The Recipient has 30 days from the date of the Deputy Administrator's determination to submit any money owed to CCC or to request reconsideration.

**§ 1486.505 Can a Recipient appeal the determinations of the Deputy Administrator?**

(a) A Recipient 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 determination by the Deputy Administrator. The Recipient may request a hearing.

(b) If the Recipient 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 Recipient bears the cost of the 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 Recipient must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by the Administrator.

**§ 1486.506 When will a project be reviewed?**

Any project or activity funded under the program is subject to review or audit at any time during the course of implementation or after the completion of the project.

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

A Recipient's contribution requirement is specified in the project agreement. If a Recipient fails to contribute the total specified in the agreement, the difference between the amount contributed and the total must be repaid to the CCC in U.S. dollars. If a Recipient is reimbursed by CCC for less than the amount of funds approved in the agreement, then the final cost

share shall equal, on a percentage basis, the original ratio of private contributions to the authorized EMP funding level.

**§ 1486.508 How long must Recipients maintain original project records?**

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

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

Reasonable activity fees or registration fees, if identified as such in a project budget, may be charged for projects approved for program funding. Income or refunds generated from an activity, however, for which the expenditures have been wholly or partially reimbursed, shall be repaid by submitting a check payable to CCC or offsetting the Recipient's reimbursement claim. Any activity fees charged must be used to offset activity expenses. Such fees may not be used as profit or counted as cost-share. The intent to charge a fee must be part of the original proposal, along with an explanation of how such fees are to be used.

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

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

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

**§ 1486.511 What is the general policy regarding ethical conduct?**

(a) The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent and any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has

a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub-agreements. However, Recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Recipient.

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

Dated: June 14, 2004.

**A. Ellen Terpstra,**

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

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### 30 CFR Part 250

##### RIN 1010-AC96

#### **Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Minimum Blowout Prevention (BOP) System Requirements for Well-Workover Operations Performed Using Coiled Tubing With the Production Tree in Place**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would upgrade BOP and well control requirements for well-workover operations performed using coiled tubing with the production tree in place. Since 1997 there have been eight incidents on Outer Continental Shelf (OCS) facilities in the Gulf of Mexico OCS Region while coiled tubing operations were being conducted. The proposed rule would contribute to preventing losses of well control, and lead to increased OCS safety and environmental protection.

**DATES:** MMS will consider all comments received by August 23, 2004. MMS will begin reviewing comments then and may not fully consider comments received after August 23, 2004.

**ADDRESSES:** Mail or hand-carry comments to the Department of the

Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170-4817; Attention: Rules Processing Team (RPT). If you wish to e-mail comments, the RPT's e-mail address is:

[rules.comments@mms.gov](mailto:rules.comments@mms.gov). Reference 1010-AC96 Coiled Tubing Safety Measures in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt. Materials submitted as part of comments will not be returned.

#### **FOR FURTHER INFORMATION CONTACT:**

Joseph R. Levine, Engineering and Operations Division, at (703) 787-1033, FAX: (703) 787-1555, or e-mail at [joseph.levine@mms.gov](mailto:joseph.levine@mms.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

MMS is authorized to issue and enforce rules to promote safe operations, environmental protection, and resource conservation on the OCS by the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.* Under this authority, MMS regulates all safety aspects of oil and gas drilling, production, and well-workover operations on the OCS.

A search of MMS's Technical Information Management System (TIMS) database shows that eight coiled tubing related incidents occurred on the OCS from 1997 through March 2003. One of these incidents resulted in a personal injury. Six coiled tubing incidents resulted in losses of well control. Two coiled tubing incidents resulted in fires that caused extensive damage to the facilities. No fatalities were reported to MMS as a result of these incidents.

Based on these eight coiled tubing incidents, MMS has determined that the regulations under 30 CFR 250 subpart F—Oil and Gas Well-Workover Operations, do not adequately address coiled tubing operations with the production tree in place. As such, MMS proposes to amend its rules. These incidents might have been prevented if the proposed rule had been in effect.

One example was the September 9, 1999, loss of well control and fire resulting from coiled tubing operations on Newfield Exploration Inc.'s Ship Shoal Block 354, (OCS-G 15312, Well A-2). An MMS investigation team published OCS Report MMS 2001-009: "Investigation of Blowout and Fire—Ship Shoal Block 354 OCS-G 15312 Well A-2 September 9, 1999," concerning this incident in January 2001. This report is available from the Gulf of Mexico OCS Regional Office,

New Orleans, Louisiana at the following Web address: [http://www.gomr.mms.gov/homepg/offshore/safety/acc\\_repo/accindex.html](http://www.gomr.mms.gov/homepg/offshore/safety/acc_repo/accindex.html).

In the Newfield Exploration, Inc., Ship Shoal Block 354 incident, coiled tubing was being snubbed into Well A-2 when it encountered an unidentified obstruction. This obstruction caused it to stop abruptly at about 915 feet. Simultaneously, the coiled tubing buckled, split open between the stripper and the injector head, ultimately resulting in a loss of well control. The coiled tubing contractor closed the pipe and shear rams in the BOP unit, and spooled the coiled tubing string on to the reel. The buckled and parted section of the coiled tubing remained stuck between the stripper assembly and the injector head, preventing the blind rams from completely sealing the well. The contractor then attempted to close the bottom manual valve on the BOP riser assembly, the crown (swab) valve, the surface safety valve, the bottom master valve, and the subsurface safety valve. None of the valves fully closed because coiled tubing remained below the shear rams and across the valve assemblies, resulting in an uncontrolled flow. The operator activated the platform emergency shutdown system (ESD) and all personnel were evacuated. The well ignited on September 12, 1999, and burned intermittently until September 17, 1999. Newfield Exploration, Inc., succeeded in killing the well on September 20, 1999.

In OCS Report MMS 2001-009, the MMS investigation panel found that "The immediate cause of the accident, which led to the uncontrolled flow, was the parting of the coiled tubing above the stripper assembly and the subsequent inability to contain the wellbore fluids." The panel also found that a contributing cause of the accident was that back pressure valves (BPVs), also referred to as "check valves," were not installed in the coiled tubing string. BPVs allow the flow of fluids inside the coiled tubing only in the downhole direction, and close immediately if the flow direction reverses. In this example, when the fluid flow reversed its direction there were no BPVs installed to block the flow. BPVs may have prevented the flow of hydrocarbons from the well through the coiled tubing. The uncontrolled flow quickly eroded the coiled tubing string, the BOP stack, and the production tree, creating an unrestricted flow path to the atmosphere that subsequently allowed the well to ignite.

OCS Report MMS-2001-009 further found that Newfield Exploration, Inc., and the coiled tubing contractor had