

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation through the Foreign Agricultural Service

Interim Guidelines for the Local and Regional Food Aid Procurement Pilot Project

SUMMARY: The Foreign Agricultural Service (FAS) is establishing interim guidelines to implement the Local and Regional Food Aid Procurement Pilot Project (PPP). The PPP is a five-year pilot established in the Food, Conservation, and Energy Act of 2008 for the purpose of evaluating approaches and methodologies by which the local and regional purchase of eligible agricultural commodities can be used to expedite the provision of food aid to vulnerable populations affected by food crises and disasters. FAS will provide Commodity Credit Corporation (CCC) funds in the form of grants to qualified organizations during fiscal years 2009 through 2011, for the implementation of field-based projects. The primary purpose of such projects will be to expedite the provision of food aid to vulnerable populations affected by food crises and disasters. A secondary purpose will be to provide development assistance that will enhance the food consumption security of such populations. The purpose of these interim guidelines is to inform prospective participants about the qualification and application processes, as well as procedures and requirements for program implementation, monitoring and reporting.

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I. General Statement.

(a) These guidelines set forth the general terms and conditions governing the donation of funds by the Commodity Credit Corporation (CCC) to participants in the Local and Regional Food Aid Procurement Pilot Project (PPP). Under the PPP, participants use CCC-provided funds, pursuant to an agreement with CCC, to purchase

eligible commodities in developing countries and to cover associated program and operational costs related to the implementation of field-based projects targeted at populations affected by food crises and disasters. A field-based project may be implemented to respond to an emergency, provide development assistance, or do both. The Foreign Agricultural Service (FAS) of the Department of Agriculture (Department) administers the PPP on behalf of CCC.

(b) In addition to the provisions of these guidelines, other regulations of general application issued by the Department, including those set forth in Chapter XXX of Title 7 of the Code of Federal Regulations, are applicable to the PPP. All provisions of the CCC Charter Act (15 U.S.C. 714 et seq.) and any other statutory provisions that are generally applicable to CCC are applicable to the PPP and to these guidelines.

(c) These guidelines shall not apply to an intergovernmental organization participating in the PPP. A donation made by CCC to an intergovernmental organization shall be subject to the provisions set forth in an agreement between CCC and such organization.

II. Definitions.

The following definitions are applicable to these guidelines:

Affected populations means one or more of the three types of *vulnerable groups* whose food consumption is under threat or has worsened significantly as a result of a food crisis or disaster.

Agreement means a legally binding agreement entered into by CCC and a participant to fund a field-based project under the PPP.

CCC means the Commodity Credit Corporation and includes any official of the United States delegated the responsibility to act on behalf of CCC.

CCC-provided funds means U.S. dollars provided under an agreement to a participant to pay for: (1) the local or regional procurement of eligible commodities to implement a field-based project under the PPP, (2) expenses for technical assistance related to the procurement of the eligible commodities, (3) expenses associated with the inland and internal transportation, storage and handling of the eligible commodities, and (4) expenses involved in the administration and monitoring of the activities under the agreement in the recipient country or countries.

Codex Alimentarius means the program of the United Nations Food and Agriculture Organization (FAO) and the World Health Organization (WHO) that was created to develop food standards, guidelines and related texts, such as codes of practice to protect the health of consumers, ensure fair trade practices in the food trade, and promote the coordination of all food standards work undertaken by international governmental and nongovernmental organizations.

Developing country means one of the countries included in the list of developing countries maintained by FAS at www.fas.usda.gov/food-aid.asp.

Development assistance means an activity implemented through a field-based project that: (1) responds to the food needs of those affected by a food crisis or disaster in order to facilitate the recovery or the strengthening of market systems that directly affect food consumption and that, therefore, will help to restore or improve the food consumption security of those affected, (2) makes food more physically accessible and

affordable to vulnerable consumers, thus improving the food consumption security of those who are affected by previous disasters and crises or vulnerable to future disasters or crises, or (3) improves food consumption security through raising smallholder farmer incomes, linking local purchases to school feeding, or strengthening productive safety nets.

Disaster means any natural event that creates a need for emergency food assistance. It can be either a slow-onset natural event, such as a drought, or a rapid-onset natural event, such as a flood or an earthquake.

Economically vulnerable means the group of consumer households that faces a direct threat of reduced access to food due to short-run or long-run market changes associated with a disruption in market supply, an increase in food prices, and, in extreme cases, a total market collapse.

Eligible commodity means an agricultural commodity, or the product of an agricultural commodity, that is produced in and procured from a developing country, and meets each nutritional, quality, and labeling standard of the recipient country, as well as the criteria specified in section VI(i)(2) of these guidelines.

Eligible organization means:

(a) A private voluntary organization or cooperative:

(1) That is either:

(i) Registered with the Administrator of the United States Agency for International Development; or

(ii) Not registered with the Administrator of the United States Agency for International Development and FAS has determined such registration was impracticable; and

(2) Subject to these guidelines, including United States audit requirements that are applicable to nongovernmental organizations; or

(b) An intergovernmental organization.

Emergency response means an activity implemented through a field-based project that responds to the food and nutritional needs of those affected during a food crisis or disaster.

FAS means the Foreign Agricultural Service.

Field-based project means a project that is carried out by a participant, directly or through a subrecipient, using locally or regionally procured eligible commodities to meet the objectives of an agreement. A field-based project may consist of an emergency response, development assistance, or both. It can either be a stand-alone activity or an add-on component to another program or project activity that provides other forms of assistance to the food insecure.

Food aid means food that is purchased using donor funds to meet the food needs of targeted vulnerable groups.

Food assistance means assistance that is provided by a participant, directly or through a subrecipient, to members of a targeted vulnerable group to meet their food needs. Forms of food assistance include food aid, food vouchers to enable them to

purchase their food from predetermined commodity vendors, and cash to enable them to continue to purchase their food in the local market.

Food consumption security means a state in which the food and nutritional needs of all vulnerable groups have been met and are not under threat.

Food crisis means a temporary or prolonged food emergency that generally involves a natural disaster, man-made factors (e.g., political crisis, conflict, or economic turmoil), or both, and that results in conditions of severe, chronic hunger and food insecurity.

Food security means a state in which all people, at all times, have both physical and economic access to sufficient food to meet their caloric and nutritional needs in order to lead productive and healthy lives.

Force majeure is a common clause in contracts, exempting the parties for non-fulfillment of their obligations as a result of conditions beyond their control, such as earthquakes, floods or war.

Geographically vulnerable means the group of households that live in a geographic area facing a direct threat of a reduction in food consumption due to a potential or actual disaster or other food crisis.

Income means resources received by a participant as a result of carrying out a field-based project. The term may include sales proceeds resulting from the disposal of eligible commodities that have been deemed unfit for human consumption or resources from VAT refunds, activity fees, interest on loans, and other sources.

Local procurement or **local purchase** means the purchase of food by a participant, directly or through a subrecipient, in a country affected by a food crisis or disaster to assist targeted beneficiaries within that same country.

Participant means an entity with which CCC has entered into an agreement.

PPP means the Local and Regional Food Aid Procurement Pilot Project.

Purchase country means a developing country in which agricultural commodities are produced and purchased by a participant for implementation of a field-based project under the PPP.

Qualified organization means an eligible organization that has been determined by FAS to be qualified to submit applications for funding for the implementation of field-based projects under the PPP.

Recipient country means the developing country in which the locally or regionally purchased eligible commodities are distributed during the implementation of a field-based project under the PPP.

Region means an area that includes the countries on the same continent as the recipient country but excludes the recipient country.

Regional procurement or **regional purchase** means the purchase of food by a participant, directly or through a subrecipient, in a country other than the recipient country that is on the same continent as the recipient country in order to assist targeted beneficiaries.

Special needs vulnerable means a group of people who have a demographic or health condition or both that makes their food consumption highly insecure. They typically have special caloric and other nutritional needs that require specific types of food aid.

Subrecipient means a legal entity that receives locally or regionally procured eligible commodities, cash for the procurement of eligible commodities on the local or regional market, income, or other resources from a participant for the purposes of implementing a field-based project under the PPP, and that is accountable to such participant for the use of such eligible commodities, funds, or other resources.

Targeted beneficiaries mean members of affected populations that have been targeted to receive food assistance during the implementation of a field-based project under an agreement.

USDA means the United States Department of Agriculture.

Vulnerable group means one of the following groups: the economically vulnerable, the geographically vulnerable, or the special needs vulnerable.

III. Overview of Qualification and Agreement Process.

(a) Preference for funding local and regional purchase projects will be given to eligible organizations that satisfy the following criteria:

(1) Organizations organized under the applicable laws of the United States, including any of the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States;

(2) Organizations not owned or controlled directly or indirectly by any entity not organized under such laws; and

(3) Among private voluntary organizations, those that are not-for-profit organizations exempt from Federal income taxes under section 501(c)(3) of the Internal Revenue Code of 1986.

(b) An eligible organization must become qualified by FAS before it can submit an application for funding for a field-based project under the PPP. It must submit an application setting forth the information specified in section IV of the guidelines. This information will enable FAS to determine whether the organization satisfies the required qualification criteria. An eligible organization may apply to become qualified to apply for funding for field-based projects in specific countries that respond to emergencies, or provide developmental assistance, or both. Unless FAS publishes a notice in the Federal Register to close or extend the application period, it will accept applications for qualification until April 1, 2011.

(c) A qualified organization may submit an application to CCC to fund a specific field-based project. Unless FAS publishes a notice in the Federal Register to close or extend the application period, it will accept applications for funding until June 1, 2011. The implementation of all approved field-based projects must be completed by September 30, 2011.

(d) If CCC approves an application by a qualified organization for funding of a specific field-based project, it will enter into an agreement with the applicant. At that time, the qualified organization will become a participant in the PPP.

IV. Application for Qualification.

(a) An eligible organization shall include the information specified in this section in its application for qualification, which should be submitted electronically to FAS at the address set forth at www.fas.usda.gov/food-aid.asp.

(b) General qualification criteria. An applicant shall include information that will enable FAS to determine that the organization has:

(1) Experience in implementing and managing food assistance programs, and the capability and the personnel to develop, implement, monitor, report on, and be accountable for field-based projects in accordance with these guidelines;

(2) Experience working in food-insecure countries that are or have been affected by food crises or disasters;

(3) An adequate financial framework to implement field-based projects under the PPP. In order to make a determination about an organization's fiscal responsibility, FAS may require it to submit corporate policies and financial materials that have been audited or otherwise reviewed by a third party; and

(4) A person or agent located in the United States with respect to which service of judicial process may be obtained by FAS on behalf of the organization.

(c) Specific qualification criteria. An applicant shall include the following information:

(1) A statement indicating whether the organization is seeking to qualify to apply for future funding for:

(i) Field-based projects that would provide an emergency response;

(ii) Field-based projects that would provide non-emergency, development assistance; or

(iii) Field-based projects that would do both.

(2) The recipient country or countries for which the organization seeks to become qualified to submit an application(s) for a field-based project(s);

(3) The purchase country or countries that may be identified in an application(s) for a field-based project(s);

(4) Information regarding the organization's registration in the proposed recipient country or countries or its ability to become registered to operate in such country or countries;

(5) An operating financial account in the proposed recipient country or countries, or a satisfactory explanation for not having such an account and a description of how a PPP agreement would be administered without such an account; and

(6) Information about the organization's past experience in implementing food assistance projects that took place in the proposed recipient country or countries.

(d) Qualification Criteria for Emergency Response Projects. An organization that is applying for qualification for emergency response projects shall provide information that will enable FAS to determine that the organization has the analytical skills and operational capacity to perform the tasks required in making local and regional purchases for emergency response interventions. This shall include information demonstrating that the organization has existing staff or contract personnel who have such skills and capacity or a plan to hire or contract with such personnel if it receives funding for a field-based project. The organization's methodological analyses and operational approaches must be appropriate in relationship to the severity of the food need, as well as to the timing of the food response. The organization shall specifically demonstrate that it has the ability:

(1) To conduct a suitable pre-purchase analysis, using an appropriate methodology and approach, to:

(i) Quickly and effectively assess the severity of the food security threat posed by a food crisis or disaster, identify those who are most vulnerable and in need of assistance, and identify the nature of their food need in order to make an appropriate determination about how best to respond;

(ii) Determine what type(s) of food assistance will best meet the food needs of the identified vulnerable groups and, more specifically, whether food aid is required, or whether an alternative form of assistance is needed in order to help them to purchase their own food;

(iii) Determine what food aid-specific purchase responses are appropriate to reach recipients and what are the anticipated impacts of these purchases; and

(iv) Determine what other specific purchase responses are appropriate for those requiring assistance so that they can purchase their own food and what the anticipated impacts are of those purchases;

(2) To make cost-effective food purchases to meet food needs of identified vulnerable groups that would ensure that such purchases are appropriate, timely and in accordance with the terms set forth in section VI(i) of these guidelines; and

(3) To monitor progress in achieving the objectives of the purchases made during emergencies, including ensuring that the targeted food aid arrives when it is required.

(e) Qualification Criteria for Development Assistance Projects. An organization that is applying for qualification for development assistance projects shall provide information that will enable FAS to determine that the organization has the analytical skills and operational capacity to perform the tasks required in making local and regional purchases for development purposes, such as to make food more affordable and accessible to chronically food insecure consumers, especially those who have been affected by emergencies or those who could be affected by future disasters or food crises; to strengthen food and agricultural market systems that will make food more physically accessible and affordable to vulnerable consumers during non-emergencies, especially those who have been affected by emergencies or those who could be affected by future disasters or food crises; to strengthen the purchasing power of vulnerable groups by raising smallholder incomes; and to strengthen food consumption-related safety net

systems in recipient countries, such as through local purchase for school feeding. This shall include information demonstrating that the organization has existing staff or contract personnel who have such skills and capacity or a plan to hire or contract with such personnel if it receives funding for a field-based project. The organization shall specifically demonstrate that it has the ability:

(1) To conduct a suitable pre-purchase analysis, using an appropriate methodology and approach, to:

(i) Determine the nature of the food insecurity experienced by groups affected by previous disasters or food crises who have not adequately recovered or who are highly vulnerable to future disasters or food crises;

(ii) Determine the food needs of the vulnerable groups identified;

(iii) Determine what food aid-specific purchase responses are appropriate to reach those requiring assistance and what are the anticipated impacts of these purchases; and

(iv) Determine what other specific purchase responses are appropriate for those requiring assistance so that they can purchase their own food and the anticipated impacts of those purchases;

(2) To make cost-effective food purchases that meet development outcomes such as those set forth in paragraph (e) of this section; that meet the food needs of identified vulnerable groups in a timely manner; and that are in accordance with the terms set forth in section VI(i) of these guidelines; and

(3) To monitor progress in achieving the objectives of the purchases made during non-emergencies, including ensuring that the targeted food aid arrives when it is required.

(f) An applicant shall include any additional required items as set forth by FAS at www.fas.usda.gov/food-aid.asp.

(g) In determining whether an eligible organization meets the qualification criteria, FAS may consider the organization's previous compliance or noncompliance with the provisions of 7 CFR parts 1499 and 1599, governing the Food for Progress and the McGovern-Dole International Food for Education and Child Nutrition Programs, respectively. FAS may consider matters such as whether the organization corrected deficiencies in the implementation of its activities under one of these programs in a timely manner and whether the organization has filed timely and accurate reports and other documentation required by FAS and other agencies of the United States Government.

(h) After a review of the application for qualification, FAS may request further information or a telephone or an in-person interview with the applicant to discuss the application. FAS will notify the applicant, in writing, whether or not it has been qualified to submit a proposal for funding of a field-based project. FAS will specify whether the applicant has been found qualified to submit a proposal for funding of a project to provide an emergency response, development assistance, or both, and the country or countries in which the participant might carry out such a project. An organization that has not been qualified may submit a revised application at any time prior to the closing date for submission of qualification applications. An organization that has not been

qualified may request FAS to provide an explanation of its determination and, to the extent practicable, FAS will provide an explanation.

V. Application for Funding of a Field-Based Project.

(a) A qualified organization seeking to enter into an agreement with CCC shall submit an application for funding of a field-based project, in accordance with this section of the guidelines. If the organization is qualified to carry out only one type of field-based project, i.e., emergency response or development assistance, then FAS will only consider an application for funding the type of project for which the organization is qualified. FAS will only consider an application to fund a project if the proposed recipient country is one in which the applicant is qualified to carry out a project. An application must contain the items specified in paragraph (b) of this section and should be submitted electronically to FAS at www.fas.usda.gov/food-aid.asp. A qualified organization may submit applications for funding more than one field-based project during the course of the PPP, but the organization must submit a separate application for each proposed project.

(b) An applicant shall include the following items in its application for funding:

(1) A completed Form SF-424, which is a standard application for Federal assistance;

(2) An introduction summarizing the proposal request that specifies whether the proposed field-based project would provide an emergency response, development assistance, or both;

(3) A section that describes the food problem and proposed response and that contains the elements specified in paragraph (c) of this section;

(4) An explanation of the approach and methodology that the organization intends to use to procure local or regional eligible commodities;

(5) A plan of operation for the proposed field-based project that contains the elements specified in paragraph (d) of this section;

(6) A detailed budget as specified in paragraph (e) of this section;

(7) A monitoring plan that will enable the organization to provide to FAS the information required by section XIV(f) of these guidelines; and

(8) A statement that there have been no changes since the organization was qualified that would adversely affect its capacity or ability to perform the pre-purchase, purchase and monitoring functions described in section IV(d) for a proposed emergency response or section IV(e) for a proposed development assistance field-based project.

(c) The problem and response section shall include:

(1) A description of the food crisis or disaster if the proposed project is for an emergency response, or the food problem if the proposed project is to provide development assistance, and an explanation of the affected populations and how they are affected;

(2) An explanation of which vulnerable groups require food assistance and which targeted beneficiaries will receive food assistance in the proposed project;

(3) An explanation of why food assistance is an appropriate response, including why local or regional purchase is preferred over in-kind food aid, or how local or regional purchase will be used to strengthen the impact of an existing, United States Government-funded in-kind food aid program;

(4) Any relevant data and information about poverty levels, food deficits, and other food assistance programs being implemented in the recipient country by other nongovernmental or international organizations; and

(5) If the proposed project is for an emergency response, an 'exit strategy' related to phasing out the emergency food assistance provided.

(d) A plan of operation shall include:

(1) The name of the recipient country or countries in which the proposed field-based project would be implemented;

(2) The type and quantity of the eligible commodities to be purchased, including acceptable commodity substitutions, the purchase country or countries, and the proposed delivery schedule;

(3) A description of each of the activities that would be implemented under the proposed field-based project, its objectives and anticipated completion date, and, if the proposed project is for development assistance, a description of:

(i) The specific interventions that are proposed to help make food more physically accessible and affordable to vulnerable consumers who have been affected by previous or current disasters or crises or who are vulnerable to future disasters or crises;

(ii) The specific approach being proposed to improve food security through raising smallholder incomes, linking local purchases to school feeding, or strengthening productive safety nets;

(4) The geographic area in the recipient country or countries in which the eligible commodities would be distributed, the anticipated number and type of targeted beneficiaries, and how they would be selected;

(5) For each proposed activity under a field-based project:

(i) An explanation of whether the activity would be carried out through the distribution of locally or regionally purchased food aid or both;

(ii) The amount of eligible commodities to be purchased and whether the proposed purchase modality is a competitive or non-competitive purchase;

(iii) For a competitive purchase, the details of the proposed purchase, including:

(A) The timing, location, and manner of the purchase (e.g., tender, etc.);

(B) How the purchase will be made ‘at a reasonable market price’; and

(C) How the purchase will not suppress the competition of potential suppliers in the market.

(iv) For a non-competitive purchase, the details of the proposed purchase, including:

(A) The timing, location, and manner of the purchase (e.g., spot purchase, contract with a community farmer association, etc.);

(B) Which of the non-competitive conditions in section VI(i)(3) applies;

(C) How the non-competitive purchase is necessary for meeting the objectives of the proposed field-based project;

(D) How the purchase will be made 'at a reasonable market price';

(E) A brief explanation of what actions will be taken to ensure the transparency and integrity of the non-competitive purchase; and

(F) How the non-competitive purchase will not have an adverse economic effect on producers, consumers or market systems;

(6) Any cash or non-cash contributions that the organization expects to receive from non-CCC sources, including other donors, that:

(i) Are critical to the implementation of the proposed field-based project; or

(ii) Would enhance the implementation of the field-based project;

(7) Any subrecipient that will be involved and a description of its responsibilities and capacity to perform those responsibilities;

(8) Any government agencies that would be involved and the extent to which their involvement would strengthen or increase their capacity to assist those affected by food crises and disasters in the recipient country or further economic development in the recipient country;

(9) The method by which the organization intends to inform the project beneficiaries about the source of the funding for the locally or regionally purchased eligible commodities and how to prepare, store and use them properly;

(10) An implementation timeline, baseline indicators, and proposed outcomes that would enable FAS to measure the organization's progress towards achieving the objectives of the proposed field-based projects;

(11) A description of any port, transportation, storage, and warehouse facilities that would be used that includes sufficient detail to demonstrate that they would be adequate to handle the eligible commodities without undue spoilage or waste, and a description of how the eligible commodities would be transported to the point at which they would be distributed to the beneficiaries;

(12) Any reprocessing or repackaging of the eligible commodities that would take place prior to distribution;

(13) The action that the organization would take to ensure that any regionally purchased eligible commodities are imported, and all eligible commodities are distributed, free from all customs, duties, tolls, and taxes;

(14) A plan that shows how regionally purchased eligible commodities could be imported, and all eligible commodities could be distributed, without a disruptive impact upon production, prices and marketing of the same or like products in the recipient country or countries; and

(15) Any additional required items set forth on the FAS website at www.fas.usda.gov/food-aid.asp.

(e) A budget plan for a proposed field-based project shall include the amount of CCC-provided funds that the organization proposes to use to fund:

- (1) Procurement of eligible commodities;
- (2) Administrative costs;
- (3) Ocean freight, inland freight and internal transportation, storage, handling costs; and
- (4) Other program implementation or operational costs.

(f) After a review of the application for project funding, FAS may request further information. A qualified organization may submit a revised application for funding at any time prior to the closing date for submission of applications.

VI. Agreements.

(a) After FAS approves an organization's application for funding for a field-based project, FAS will develop an agreement in consultation with the organization. The agreement will set forth the obligations of CCC and of the participant. A participant must comply with the terms of the agreement in order to receive funding for the project.

(b) A participant shall not use CCC-provided funds for any activity under a field-based project or any expenses incurred by the participant prior to the date of the agreement or after the agreement is suspended or terminated, except as approved by FAS.

(c) The agreement will include a budget that sets forth the maximum amounts of CCC-provided funds that may be expended for various purposes under the agreement. A participant may make adjustments to this budget without prior approval from FAS only as specified in the agreement.

(d) Prior to providing any CCC-provided funds to a participant under an agreement, FAS may require the participant to complete a training program administered by FAS that is designed to ensure that the participant is aware of, and has the capacity to complete, all required reporting and audit functions set forth in these guidelines.

(e) A participant will be prohibited from using CCC-provided funds to acquire goods and services, either directly or indirectly through another party, from certain countries that will be specified in the agreement. Any violation of this provision of the agreement will be a basis for immediate termination of the agreement by CCC, in addition to the imposition of any other applicable civil and criminal penalties.

(f) The agreement will prohibit the resale or transshipment of the eligible commodities to a country other than a recipient country.

(g) The agreement will prohibit the use of the eligible commodities for any purpose other than food aid.

(h) CCC may provide funding under a multi-year agreement contingent upon the availability of funds.

(i) The agreement will include terms regarding the following:

(1) *Developing countries:* A participant must use PPP funding that is designated for the purchase of eligible commodities to purchase commodities that have

been produced and sold in the developing country that has been designated as the purchase country in the agreement.

(2) *Eligible commodities and markets:*

(i) A participant must use PPP funding that is designated for the purchase of eligible commodities to purchase eligible commodities that will meet the specifications, as well as the nutritional, quality and labeling standards, of the purchase country and the recipient country. If the recipient county lacks applicable standards, the eligible commodities must meet the corresponding specifications or standards set forth in the Codex Alimentarius.

(ii) For eligible commodities purchased through a competitive tender, the participant shall specify the minimally acceptable commodity quality standards and product specifications in the tender. Purchases that are made from commercial wholesalers in a regional market shall meet internationally-accepted commercial quality standards.

(iii) The participant shall include commodity quality standards, product specifications, price per metric ton and delivery terms for purchases in the contract between the participant and the commodity vendor. Participants will be required to make such contracts available to FAS upon request.

(iv) A participant shall hire a professional commodity inspection service to survey and report on the quality of all commodities purchased under an agreement, unless otherwise specified in the agreement. Participants will be required to submit survey reports to FAS upon request.

(v) If a participant purchases an unprocessed commodity, it must ensure that the commodity has been produced either in an agricultural surplus-producing area of the recipient country or in an agricultural surplus-producing area in a developing country in the region.

(vi) If a participant purchases a processed commodity, it must ensure that the processing took place, and the primary ingredient in the processed commodity has been produced, either in the proposed recipient country or in a developing country in the region. The primary ingredient is determined on the basis of weight in the case of solid foods, or volume in the case of liquid foods.

(3) *Method of Purchase:*

A participant shall purchase the eligible commodities in the purchase country on a competitive basis, unless one or more of the following conditions apply and FAS approves a non-competitive purchase:

(i) A spot purchase will speed the delivery of food required during the life-threatening phase of a food crisis or disaster;

(ii) The purchase will support small-scale targeted development activities with a highly localized purpose, such as to assist a community farmer association to sell food to the local community school for a local school's feeding program; or

(iii) The purchase will support the economic development and food security-related objective of strengthening a specific market in which low-income consumers purchase their food.

(4) *Reasonable Market Price:*

A participant shall purchase eligible commodities at a ‘reasonable market price.’ The determination of what constitutes a reasonable market price is context-specific and depends upon whether or not the prevailing situation is a life-threatening food emergency. It also depends upon whether the effects of the potential price increases resulting from the local or regional purchases will reduce the affordability of staple foods for low-income consumers in the purchase country. FAS will provide information at www.fas.usda.gov/food-aid.asp about methodological approaches for meeting these purchase conditions that it considers to be appropriate. Other methodological approaches might also be appropriate in determining reasonable market price conditions.

(5) *‘Do No Harm’ Conditions:*

A participant shall purchase eligible commodities in a manner that meets ‘do no harm’ conditions. ‘Do-no-harm’ conditions are designed to prevent local and regional purchases that would have a disruptive impact on farmers located in, or the economy of, the recipient country or any country in the region in which the eligible commodities may be procured; unduly disrupt world prices for agricultural commodities or normal patterns of commercial trade with foreign countries; or significantly increase commodity costs for low-income consumers who procure commodities sourced from the same markets in which the eligible commodities are procured. The determination of what constitutes meeting ‘do no harm’ conditions is context-specific. FAS will provide information at www.fas.usda.gov/food-aid.asp about methodological approaches for meeting ‘do no

harm' conditions that it considers to be appropriate. Other methodological approaches might also be appropriate.

VII. Payments.

(a) The participant will be reimbursed, to the extent and in the manner set forth in the agreement, for the costs of procuring, transporting, storing, and distributing the eligible commodities and the costs of administering and monitoring the field-based project. The participant's budget will be subject to allowable costs, as provided for on the FAS website at www.fas.usda.gov/food-aid.asp.

(b) CCC will pay these funds to the participant on a reimbursement for expenses basis, except as provided in paragraph (c)(1) of this section. The participant shall request the payment of CCC-provided funds to reimburse it for authorized expenses in the manner set forth in the agreement. Each payment request shall be submitted on the letterhead of the participant; signed by an officer or agent of the participant; and specify the name of the entity to receive payment, the bank ABA number to which payment is to be made, the account number for the deposit at the bank, the participant's taxpayer identification number, and the type of the account into which the payment will be deposited.

(c)(1) A participant may request an advance of the amount of funds specified in the agreement. FAS will not approve any request for an advance if:

(i) It is received earlier than 60 days after the date of a previous advance made in connection with the same agreement; or

(ii) Any required report, as specified in section XIV and in the agreement, is more than six months in arrears.

(2) Except as may otherwise be specified in the agreement, the participant shall deposit and maintain in a bank account located in the United States all funds advanced by CCC. The account shall be interest-bearing, unless the exceptions in 7 C.F.R. § 3019.22(k) apply, or FAS determines that this requirement would constitute an undue burden. The participant shall remit semi-annually to CCC any interest earned on the advanced funds. The participant shall, no later than 10 days after the end of each calendar quarter, submit a financial statement to FAS accounting for all funds advanced and all interest earned.

(3) The participant shall return to CCC any funds that are advanced by CCC if such funds have not been obligated as of the 180th day after the advance was made. Such funds and interest shall be transferred to FAS within 30 days of such date.

(d) If a participant is required to pay funds to CCC in connection with an agreement, the participant shall make such payment in U.S. dollars, unless otherwise approved in advance by FAS.

(e) Suppliers of eligible commodities shall seek payment according to the purchase contract with the participant.

(f) If the participant arranges for ocean freight transportation in accordance with section VIII(a), and the participant seeks payment directly from CCC, the participant shall, as specified in the agreement, either submit to FAS, or maintain on file and make available to FAS upon request, the following documents:

(1) The original, or a true copy of, each on-board bill of lading, indicating the vessel name, flag of registry, and freight rate and signed by the originating carrier;

(2) For all non-containerized cargoes:

(i) A signed copy of the Vessel Hold Certificate or other such certification from the relevant port authority or independent surveyor hired by the participant attesting to the cleanliness of the vessel hold;

(ii) A signed copy of the Certificate of Loading or other such certification from the relevant port authority or independent surveyor hired by the participant attesting to the vessel load quantity; and

(iii) Any other documents required by FAS;

(3) For all containerized cargoes, a copy of the Container Condition Inspection Certificate or other such certification from the relevant port authority or independent surveyor hired by the participant attesting to the number and condition of the containers loaded onto the vessel;

(4) A signed copy of the liner booking note or charter party covering ocean transportation of the cargo;

(5) In the case of charter shipments, a notice of arrival at the first discharge port signed by the participant or the participant's designee, unless FAS has determined that circumstances of force majeure have prevented the vessel's arrival at the first port of discharge; and

(6) A request by the participant for reimbursement of freight, survey costs and other expenses approved by CCC, indicating the amount due and accompanied by a certification from the carrier or other parties that payments have been received from the participant.

(g) If the participant has used a freight forwarder, the participant shall cause the freight forwarder to submit the documents specified in paragraph (f) of this section in order to receive payment from CCC.

(h) In no case will CCC reimburse a participant for demurrage costs or pay demurrage to any other entity.

VIII. Transportation of Goods.

(a) Transportation of eligible commodities and other goods such as bags under the PPP will be acquired by the participant, with reimbursement by CCC, in the manner specified in the agreement.

(b) The participant shall declare in the transportation contract the point at which the ocean carrier will take custody of the eligible commodities to be transported.

IX. Entry and Handling of Regionally Procured Eligible Commodities.

(a) The participant shall make all necessary arrangements for receiving the regionally procured eligible commodities in the recipient country, including obtaining appropriate approvals for entry and transit. The participant shall store and maintain the

eligible commodities in good condition from the time of delivery at the port of entry or the point of receipt from the originating carrier until their distribution.

(b) The participant shall, as provided in the agreement, arrange for transporting, storing, and distributing the eligible commodities from the designated point and time at which title to the eligible commodities passes to the participant by contracting directly with suppliers of services.

(c)(1) If a participant arranges for the packaging or repackaging of the eligible commodities, the participant shall ensure that the packaging:

(i) Is plainly labeled in the language of the recipient country;

(ii) Contains the name of the eligible commodities;

(iii) Includes a statement indicating that the eligible commodities will be distributed through a project funded by the people of the United States of America; and

(iv) Includes a statement indicating that the eligible commodities shall not be sold, exchanged or bartered.

(2) If a participant arranges for the reprocessing and repackaging of the eligible commodities, the participant shall ensure that the packaging:

(i) Is plainly labeled in the language of the recipient country;

(ii) Contains the name of the reprocessed product;

(iii) Includes a statement indicating that the reprocessed product will be distributed through a project funded by the people of the United States of America; and

(iv) Includes a statement indicating that the reprocessed product shall not be sold, exchanged or bartered.

(3) If a participant distributes eligible commodities that are not packaged, the participant shall, to the extent practicable, display:

(i) Banners, posters or other media informing the public of the name of the eligible commodities and that they are being distributed through a project funded by the people of the United States of America; and

(ii) A statement that the eligible commodities may not be sold, exchanged, or bartered.

(d) A participant shall arrange with the government of the recipient country that the eligible commodities will be imported and distributed free from all customs, duties, tolls, and taxes.

X. Damage to or Loss of Eligible Commodities.

(a) The participant will be responsible for the eligible commodities following the transfer of title to the eligible commodities from the commodity vendor(s) to the participant.

(b) A participant shall inform FAS, in the manner and within the time period specified in the agreement, of any damage to or loss of the eligible commodities that occurs following the transfer of title to the eligible commodities to the participant. The participant shall take all steps necessary to protect its interests and the interests of CCC with respect to any damage to or loss of the eligible commodities that occurs after title

has been transferred to the participant. The agreement will specify whether the participant is responsible for obtaining a survey in the event that the eligible commodities are damaged or lost following the transfer of title to the eligible commodities to the participant.

(c) If the eligible commodities are damaged or lost during the time that they are in the care of a carrier:

(1) And the participant engages the services of an independent cargo surveyor, the surveyor will provide to the participant any report, narrative chronology or other commentary that it prepares;

(2) Upon request, the participant will provide to FAS the survey report noted in paragraph (c) (1) and the names and addresses of any individuals known to be present at the time of discharge, delivery, or both, or during the survey who can verify the quantity of damaged or lost eligible commodities;

(3) And the participant engages the services of the surveyor, CCC will reimburse the participant for the reasonable costs, as determined by FAS, of the survey, unless:

(i) The participant was required by the agreement to pay for the survey;

(ii) In the case of regionally purchased eligible commodities requiring ocean freight transportation, the survey was a delivery survey and the surveyor did not also prepare a discharge survey; or

(iii) The survey was not conducted contemporaneously with the discharge of the vessel, unless FAS determines that such action was justified under the circumstances;

(4) Any survey obtained by the participant shall, to the extent practicable, be

conducted jointly by the surveyor, the participant, and the carrier, and the survey report shall be signed by all parties;

(5) And the damage or loss occurred with respect to a bulk grain shipment, if the agreement provides that the participant is responsible for survey and outturn reports, the participant shall engage the services of an independent cargo surveyor to:

(i) Observe the discharge of the cargo;

(ii) Report on discharging methods, including scale type, calibrations and any other factor that may affect the accuracy of scale weights, and, if scales are not used, state the reason therefore and describe the actual method used to determine weight;

(iii) Estimate the quantity of cargo, if any, lost during discharge through carrier negligence;

(iv) Advise on the quality of sweepings;

(v) Obtain copies of port or vessel records, if possible, showing the quantity discharged; and

(vi) Notify the participant immediately if the surveyor has reason to believe that the correct quantity was not discharged or if additional services are necessary to protect the cargo.

(6) And the damage or loss occurred with respect to a container shipment, if the agreement provides that the participant is responsible for survey and outturn reports, the participant shall engage the services of an independent cargo surveyor to list the container numbers and seal numbers shown on the containers, indicate whether the seals

were intact at the time the containers were opened, and note whether the containers were in any way damaged.

(d) If the participant has title to the eligible commodities, and the value of any damaged eligible commodities is in excess of \$1,000, the participant shall immediately arrange for an inspection by a public health official or other competent authority approved by FAS and provide to FAS a certification by such public health official or other competent authority regarding the exact quantity and condition of the damaged eligible commodities. The value of the damaged eligible commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the participant with respect to such eligible commodities. The participant shall inform FAS of the results of the inspection and indicate whether the damaged eligible commodities are:

(1) Fit for the use authorized in the agreement and, if so, whether there has been a diminution in quality; or

(2) Unfit for the use authorized in the agreement.

(e)(1) If the participant has title to the eligible commodities, the participant shall arrange for the recovery of that portion of the eligible commodities designated as suitable for the use authorized in the agreement. The participant shall dispose of eligible commodities that are unfit for such use in the following order of priority:

(i) Sale for the most appropriate use, i.e., animal feed, fertilizer, industrial use, or another use approved by FAS, at the highest obtainable price;

(ii) Donation to a governmental or charitable organization for use as animal feed or for other non-food use; or

(iii) Destruction of the eligible commodities if they are unfit for any use, in such a manner as to prevent their use for any purpose.

(2) The participant shall arrange for any U.S. Government markings to be obliterated or removed before the eligible commodities are transferred by sale or donation.

(f) A participant may retain any proceeds generated by the disposal of the eligible commodities in accordance with paragraph (e)(1) of this section and shall use the proceeds for expenses related to the disposal of the eligible commodities and for activities specified in the agreement.

(g) The participant shall notify FAS immediately and provide detailed information about the actions taken in accordance with paragraph (e) of this section, including the quantities, values, and dispositions of eligible commodities determined to be unfit.

XI. Claims for Damage to or Loss of Eligible Commodities.

(a) If the participant has title to the eligible commodities, and the value of the damaged or lost eligible commodities is estimated to be \$20,000 or greater, the participant will be responsible for:

(1) Initiating a claim arising out of such damage or loss, including actions relating to collections pursuant to commercial insurance contracts; and

(2) Notifying FAS immediately and providing detailed information about the circumstances surrounding such damage or loss, the quantity of damaged or lost eligible commodities, and the value of the damage or loss.

(b) If the participant has title to the eligible commodities, and the value of the damaged or lost eligible commodities is estimated to be less than \$20,000, the participant will be responsible for providing detailed information about the damage or loss in the next report required to be filed under section XIV(c) and shall not be required to initiate a claim collection action.

(c)(1) The value of a claim for lost eligible commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the participant with respect to such eligible commodities.

(2) The value of a claim for damaged eligible commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the participant with respect to such eligible commodities, less any funds generated if such commodities are sold in accordance with section X(e)(1).

(d) If FAS determines that a participant is not exercising due diligence in the pursuit of a claim, FAS may require the participant to assign its rights to pursue the claim to FAS.

(e)(1) The participant may retain any funds obtained as a result of a claims collection action initiated by it in accordance with this section, or recovered pursuant to any insurance policy or other similar form of indemnification, but such funds shall only be expended for purposes approved in advance by FAS.

(2) CCC will retain any funds obtained as a result of a claims collection action initiated by it under this section; provided, however, that FAS will use a portion of such funds to reimburse the participant for expenses incurred by the participant, as deemed appropriate by CCC, on a prorated basis.

XII. Use of Eligible Commodities.

(a) A participant must use the eligible commodities in accordance with the agreement.

(b) A participant shall not permit the distribution, handling, or allocation of the eligible commodities on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliation of the potential consumers or beneficiaries.

(c) A participant shall not permit the distribution, handling, or allocation of the eligible commodities by the military forces of any government or insurgent group without the specific authorization of FAS.

(d) A participant may not sell or barter eligible commodities under the PPP, except as permitted in section X(e) of these guidelines.

(e) The participant shall deposit all program income into a separate, interest-bearing account unless the exceptions in 7 CFR § 3019.22(k) apply, the account is in a country where the laws or customs prohibit the payment of interest, or FAS determines that this requirement would constitute an undue burden.

(f) A participant shall endeavor to comply with 7 CFR §§ 3019.41 through 3019.43 when procuring goods and services and when engaging in construction work to

implement the agreement. The participant shall also establish procedures to prevent fraud. As provided for in the agreement, the participant shall enter into a written contract with each provider of goods, services or construction work that requires the provider to maintain adequate records to account for all eligible commodities and funds provided to the provider by the participant and to submit periodic reports to the participant. The participant shall submit a copy of the signed contracts to FAS upon request.

XIII. Subrecipients.

(a) If provided for in the agreement, a participant may utilize the services of a subrecipient to implement field-based projects under this agreement. The participant shall enter into a written sub-agreement with the subrecipient, and provide a copy of such sub-agreement to FAS, in the manner set forth in the agreement, prior to the transfer of any eligible commodities, income or CCC-provided funds to the subrecipient. Such written sub-agreement shall require the subrecipient to pay to the participant the value of any eligible commodities, income, or CCC-provided funds that are not used in accordance with the sub-agreement or are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(b) If a participant demonstrates to FAS that it is not feasible to enter into a sub-agreement with a subrecipient, FAS may grant approval to proceed without a sub-agreement; provided, however, that the participant must obtain such approval from FAS prior to transferring any eligible commodities, income, or CCC-provided funds to the subrecipient.

(c) The participant shall monitor the actions of a subrecipient as necessary to ensure that eligible commodities or funds provided to the subrecipient are used for authorized purposes in compliance with applicable laws and regulations, and the agreement, and that performance goals are achieved. The participant shall specify in the sub-agreement that the subrecipient must comply with applicable provisions of the regulations set forth in 7 CFR, Chapter XXX.

XIV. Recordkeeping and Reporting Requirements.

(a) A program participant shall retain records and permit access to records in accordance with the requirements of 7 CFR § 3019.53. The date of submission of the final expenditure report, as referenced in 7 CFR § 3019.53(b), shall be the final date of submission of the forms required by paragraphs (c)(1) and (2) of this section as prescribed by FAS.

(b) For regional purchases of eligible commodities requiring ocean freight transportation, a participant shall, within 30 days after export of a portion of the eligible commodities, submit evidence of such export to FAS, in the manner set forth in the agreement. The evidence may be submitted through an electronic media approved by FAS or by providing a signed copy of the carrier's on-board bill of lading. The evidence of export must show the kind and quantity of eligible commodities exported, the date of export, the country from which the eligible commodities were exported, and the country where the eligible commodities were delivered.

(c)(1) A participant shall submit to FAS information, using a form as prescribed by FAS, covering the receipt, handling and disposition of the locally or regionally

purchased eligible commodities. Such report shall be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the eligible commodities have been distributed and such disposition has been reported to FAS.

(2) The participant shall report, in the manner specified in the agreement, its progress, measured against established baselines, towards achieving the objectives of the activities under the agreement.

(3) The participant shall provide to FAS additional information or reports relating to the agreement if requested by FAS.

(d) A participant shall submit to FAS, in the manner specified in the agreement, an annual audit in accordance with 7 CFR § 3019.26. If FAS requires an annual financial audit with respect to a particular agreement, and CCC provides funds for this purpose, the participant shall arrange for such an audit and submit it to FAS, in the manner specified in the agreement.

(e) A participant shall submit to FAS the financial reports and information outlined in 7 CFR § 3019.52. The agreement will specify the acceptable forms and time requirements for submission.

(f) A participant shall submit to FAS, not later than September 30, 2011, the following information regarding each field-based project it implemented under the PPP, in a format agreed upon by FAS:

(1) With respect to each relevant market in which an eligible commodity was procured, a description of:

(i) The prevailing and historic supply, demand, and price movements of the market (including the extent of competition for procurement bids);

(ii) The impact of the procurement of the eligible commodities on producer and consumer prices in the market;

(iii) Each government market interference or other activity that might have significantly affected the supply or demand of the eligible commodity in the area in which the local or regional procurement occurred;

(iv) The quantities and types of eligible commodities procured in the market;

(v) The time frame for procurement of each eligible commodity; and

(vi) The total cost of the procurement of each eligible commodity (including external and internal transportation, storage, handling and administrative costs); and

(2) An assessment regarding:

(i) Whether the objective of the intervention was accomplished;

(ii) The effectiveness of the procurement methodology used;

(iii) The impact of that methodology on local and regional agricultural producers (including large and small scale agricultural producers), markets, and low-income consumers in both the purchase country and the recipient country;

(iv) The impact of the project on the food consumption security of the targeted beneficiaries;

- (v) The nutritional value, quality and safety of the food received by the targeted beneficiaries;
- (vi) The length of the period beginning on the date of the signing of the agreement and ending on the date of the final delivery of eligible commodities to the targeted beneficiaries under the agreement; and
- (vii) Any other information required by FAS under an agreement.

XV. Noncompliance with an Agreement.

If a participant fails to comply with a term of an agreement, FAS may take one or more of the enforcement actions set forth in 7 CFR § 3019.62 and, if appropriate, initiate a claim against the participant. FAS may also initiate a claim against a participant if the eligible commodities are damaged or lost or the income or CCC-provided funds are lost due to an action or omission of the participant.

XVI. Suspension, Termination, and Closeout of Agreements.

- (a) An agreement may be suspended or terminated by CCC if it determines that:
 - (1) The continuation of the assistance provided under the agreement is no longer necessary or desirable; or
 - (2) Storage facilities are inadequate to prevent spoilage or waste, or distribution of the eligible commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the recipient country, or would significantly increase commodity costs for low-income consumers in the purchase country.

(b) An agreement may be terminated in accordance with 7 CFR § 3019.61. If an agreement is terminated, the participant shall:

(1) Be responsible for the safety of any undistributed eligible commodities and dispose of such eligible commodities only as agreed to by FAS; and

(2) Follow the closeout procedures in 7 CFR §§ 3019.71 through 3019.73.

(c) An agreement will be considered completed when CCC and the participant have fulfilled their responsibilities under the agreement or the agreement has been terminated. The procedures in 7 CFR sections §§ 3019.71 through 3019.73 will apply to the closeout of a completed agreement.

XVII. Appeals.

A participant may appeal a determination arising under this part to FAS. Such an appeal will be in writing and submitted to the FAS official, and in the manner, specified in the agreement. The participant will be given an opportunity to have a hearing before a final decision is made regarding its appeal.