

FEDERAL-STATE MARKETING IMPROVEMENT PROGRAM (FSMIP)

Catalog of Federal Domestic Assistance Number 10.156

FY 2012 FSMIP General Terms and Conditions

September 18, 2012



CONTENTS

1.	LEGAL AUTHORITY AND APPLICABLE REGULATIONS	3
2.	DEFINITIONS	3
3.	ASSURANCES AND CERTIFICATIONS	5
4.	FEDERAL AGENCY AND PROJECT COORDINATOR RESPONSIBILITIES	9
5.	PRIOR APPROVAL REQUIREMENTS.....	11
6.	UNALLOWABLE COSTS	13
7.	FINANCIAL MANAGEMENT STANDARDS	15
8.	MATCHING REQUIREMENT	16
9.	PROCUREMENT.....	17
10.	CONSULTANTS	19
11.	SUBAWARDS	20
12.	TRAFFICKING IN PERSONS	20
13.	SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS	23
14.	REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION	25
15.	LIMIT OF FEDERAL LIABILITY	29
16.	PAYMENTS.....	29
17.	PERFORMANCE REPORTING	30
18.	SITE VISITS AND PROJECT RECORDS	32
19.	FRAUD, WASTE, OR ABUSE	33
20.	SUSPENSION/TERMINATION	34
21.	RECORD RETENTION AND CLOSEOUT	34

1. LEGAL AUTHORITY AND APPLICABLE REGULATIONS

a. **Administrative Provisions.** This award, and subawards at any tier under this award, shall be governed to the extent applicable by the following provisions:

- (1) 7 CFR 3015, “Uniform Federal Assistance Regulations;”
- (2) 7 CFR Part 3016, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;” and
- (3) 7 CFR Part 3019, “Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, Non-profit Organizations, and For-Profit Organizations.”

The Code of Federal Regulations (CFR) is accessible through the National Archives and Records Administration: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=%2Findex.tpl>

b. **Federal Cost Principles.** Allowable costs will be determined in accordance with the applicable program legislation, the purpose of the award, the terms and conditions of award as contained herein and, if this award is to a recipient other than a Federal agency, by the following Federal cost principles that are applicable to the type of organization receiving the award, regardless of type of award or tier (i.e., grantee, subgrantee), as are in effect at the time of award:

- (1) 2 CFR 225 (OMB Circular No. A-87), “Cost Principles for State, Local, and Indian Tribal Governments.”
- (2) 2 CFR 220 (OMB Circular No. A-21), “Cost Principles for Educational Institutions.”
- (3) 2 CFR 230 (OMB Circular No. A-122), “Cost Principles for Nonprofit Organizations.”
- (4) Federal Acquisition Regulations (FAR) (48 CFR Part. 31.2), Principles for determining costs with profit making firms, “Contracts with Commercial Organizations.” The FAR regulations are accessible through the Government Printing Office at www.access.gpo.gov/nara/cfr/waisidx_02/48cfr31_02.html

The most current Circulars are available at: www.whitehouse.gov/OMB/circulars/

2. DEFINITIONS

Federal Agency – Federal-State Marketing Improvement Program, Agricultural Marketing Service, United States Department of Agriculture.

Federal Agency Project Manager – the individual, acting within the scope of delegated authority, who is responsible for executing and administering awards on behalf of the U.S. Department of Agriculture. The Federal Agency project manager is:

Janise Zygmunt, FSMIP Staff Officer
Federal-State Marketing Improvement Program
Agricultural Marketing Service, USDA
1400 Independence Avenue SW, Room 4549 – South
Washington, D.C. 20250
Telephone: (202) 720-5024
Fax: (202) 690-1144
Email: janise.zygmunt@ams.usda.gov

Grant – an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term Awardee is interchangeable with the term grantee.

Grantee – the eligible entity to which a FSMIP grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. The term subaward is interchangeable with the term subgrant.

Grantee Project Coordinator– the individual who is authorized to commit the grantee’s time and other resources to the project, to commit the grantee to comply with the terms and conditions of the award instrument including those set out herein, and to otherwise act for or on behalf of the grantee.

Subgrant – an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of grant in this part.

Subgrantee – the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. The terms subawardee and subrecipient are interchangeable with the term subgrantee.

3. ASSURANCES AND CERTIFICATIONS

Assurances. As a condition of this grant award, the grantee assures that it is in compliance and will comply in the course of grant performance with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, as prescribed by 7 CFR 3015, which hereby are incorporated in this grant award by reference, and such other provisions as are specified herein.

Certifications. In accepting this grant award, the grantee specifically certifies that it:

- a. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the required non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
- b. Will give the Federal Agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- c. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- d. Will initiate and complete the work within the applicable time frame after receipt of approval of the Federal Agency.
- e. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
- f. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:

- (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin;
- (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;
- (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of disabilities;
- (d) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age;
- (e) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
- (f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
- (i) Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and,
- (j) The requirements of any other nondiscrimination statute(s) which may apply to the application.

g. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all

interests in real property acquired for project purposes regardless of Federal participation in purchases.

h. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328), which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

i. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction sub agreements.

j. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

k. Will comply with environmental standards which may be prescribed pursuant to the following:

- (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
- (b) Notification of violating facilities pursuant to EO 11738;
- (c) Protection of wetlands pursuant to EO 11990;
- (d) Evaluation of flood hazards in floodplains in accordance with EO 11988;
- (e) Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- (f) Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
- (g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and,
- (h) Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93- 205).

- l. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

- m. Will assist the Federal Agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

- n. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

- o. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

- p. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

- q. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

- r. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

- s. Will make a good-faith effort to provide and maintain a drug-free environment by prohibiting illicit drugs in the workplace, providing employees with drug-free policy statements (including penalties for noncompliance), and establishing necessary awareness programs to keep employees informed about the availability of counseling, rehabilitation, and related services (§5151-5610 of the Drug-Free Workplace Act of 1988, as implemented by 7 CFR Part 3017, Subpart F, Section 3017.600, Purpose).

- t. Has not used and will not use Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award or modification of any

contract, grant, cooperative agreement, or loan; will disclose the name, address, payment details, and purpose of any agreements with lobbyists for whom it or its contractors or grantees have paid or will pay with profits or *non-appropriated* funds on or after December 23, 1989, for any award action in excess of \$100,000 (or \$150,000 for loans); will file quarterly updates about the use of lobbyists if material changes occur; and will require its nonexempt contractors or grantees to certify and disclose accordingly [§319, Pub. L. No. 101-121 (31 U.S.C. 1352), as implemented by 7 CFR Part 3018].

u. (It) and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency; have not been convicted or indicted under criminal or civil statutes or had one or more public transactions terminated for cause or default within the past three years; will provide immediate written notice to the Authorized Departmental Officer if at any time it learns that this certification was erroneous when made or has become erroneous by reason of changed circumstances; and will require recipients of lower-tier covered transactions under this grant award to similarly certify (Executive Order 12549, as implemented by 7 CFR Part 3017, Section 3017.510, Participants' responsibilities).

4. FEDERAL AGENCY AND PROJECT COORDINATOR RESPONSIBILITIES

The Federal Agency is responsible for:

- a. Assisting in defraying not more than one-half of the costs of the project by reimbursing the grantee for expenses incurred in the conduct of the project as mutually agreed to and outlined in the approved project budget.
- b. Monitoring work performed under the grant by reviewing progress reports, final reports and documentation relating to grant and matching fund expenditures.

The Grantee Project Coordinator is responsible for:

- a. Monitoring the performance of all project activities, ensuring that the work is completed within the required time frame, maintaining control of the project's objectives and setting policy for all aspects of the project.

- b. Serving as the contact with the Federal Agency and with subgrantees about all grant and project matters. Subgrantees should be instructed to communicate directly with the grantee, not with the FSMIP Staff Officer, on matters relating to the project.
- c. Contacting the FSMIP Staff Officer immediately if problems arise that will interfere with or delay the project.
- d. Ensuring that both FSMIP funds and matching funds are used only for activities outlined in the approved project and work plan. Use of grant and matching funds must conform to the budget submitted with the application as accepted or as modified by mutual consent when the proposal was selected for funding. However, it is the Federal Agency's policy to allow grantees to shift expenditures from any one cost category or project element to another without obtaining prior approval, provided that the budget for cost categories or project elements is not increased or decreased by more than 20 percent of the total FSMIP grant amount.
- e. Ensuring that proper accounting procedures are followed for grant and matching funds, both by the grantee institution and any subgrantees and project partners. Records of receipts and expenditures of Federal funds, matching funds and in-kind resources must be identifiable within the grantee's accounting system.
- f. Making available for review by the Federal Agency any records or reports relating to the project.
- g. Making available for review by the Federal Agency any contract or secondary agreement relating to the project.
- h. Submitting progress reports at 6-month intervals, and a final report no later than 90 days after the grant ending date. The Grantee Project Coordinator must review and approve any documents prepared by a subgrantee before forwarding them to the FSMIP Staff Officer.
- i. Submitting financial reports (SF 270) in a timely manner, and, no later than 90 days after the grant ending date, submitting a final financial report (SF 425).
- j. Requesting grant funds at reasonable intervals, and providing a justification if the initial drawdown is not made in the first year of the grant period.

k. Seeking written approval from the FSMIP Staff Officer under the following circumstances:

- Changes in project contact or project leader;
- Budget changes: Shifts of expenditures from any one cost category or project element to another if the budget for cost categories or project elements is increased or decreased by more than 20 percent of the total FSMIP grant amount;
- Changes or substantive revisions to the scope or objectives of the project;
- No-cost time extensions;
- Appropriate use of any program income generated by the project that was not outlined in the approved proposal; and
- Foreign travel.

l. Ensuring that all travel expenses follow Federal Travel Regulations (41 CFR Chapters 300-304) unless State travel requirements are in place.

m. Understanding that the results of the grant project(s) may be published by the Federal Agency, the grantee, or by appropriate subcontractors or subgrantees, as mutually agreed. All publications resulting from the grant should acknowledge the Federal Agency as a cooperator in the project and bear a statement that credits the grant program such as the following: *“State funds for this project were matched with Federal funds under the Federal-State Marketing Improvement Program of the Agricultural Marketing Service, U.S. Department of Agriculture.”* A similar acknowledgment is required on other media products of the grant such as audio-visuals unless the grantee received a waiver from the FSMIP Staff Officer.

n. Ensuring that subgrantees who receive a subgrant of \$25,000 or more comply with the reporting requirements as outlined in Section 14 – Reporting Subawards and Executive Compensation of this document.

5. PRIOR APPROVAL REQUIREMENTS

Changes in Project Contact or Project Leader. When it is necessary to change the grantee’s program contact, submit the update via email to the FSMIP Staff Officer. The update should contain the new individual’s name and contact information, the capacity in which this new individual will serve, and a brief outline of qualifications if the project leader changes.

Budget Changes. Modifications to the project budget must be approved in writing by the FSMIP Staff Officer if the cumulative amount of such modifications exceeds 20 percent (20%) of the total grant amount. A request for a budget change shall include a description of the change, a justification for the change, and a revised budget spreadsheet.

Revisions of Scope or Objectives. When it is necessary to modify the scope or objectives of the award, submit a written justification for the change along with a description of the revisions along with a revised budget spreadsheet, if applicable.

No-cost Time Extensions. The grantee must contact the FSMIP Staff Officer no later than 60 days before the grant ending date to request a no-cost time extension if for any reason the project cannot be completed within the time frame established in the grant agreement. The grantee must prepare a letter addressed to the FSMIP Staff Officer that includes the following information:

- The number of additional months needed and the new ending date.
- A justification for the request for more time.
- A summary of progress to date in terms of the project timeline and objectives. The summary may reference the most recent Progress Report and indicate how circumstances have changed since then.
- An estimate of the remaining grant and matching funds.
- A projected timetable to complete the project.

The letter should be scanned and emailed to the FSMIP Staff Officer, and the original should be retained in the grantee's project file.

Program Income. Prior approval is required with regard to any program income generated by the project that was not approved in the original proposal. Appropriate uses for program income include: 1) expanding the project or program; 2) continuing the project or program after the grant or subgrant support ends; 3) supporting other projects or programs that further the broad objectives of the grant program; or 4) obtaining equipment or other assets needed for the project or program; or 5) for other activities that further the grant program's objectives.

Foreign Travel. Prior approval is required for trips taken outside the United States in connection with a FSMIP project. Before the travel takes place, the grantee should prepare a

letter addressed to the FSMIP Staff Officer that includes the following: 1) travel destination; 2) dates of travel; 3) purpose of travel; 4) names and titles of travelers whose expenses will be paid in full or in part with FSMIP funds; and 5) an estimate of the amount of FSMIP and matching funds to be expended on the travel.

6. UNALLOWABLE COSTS

The following costs are unallowable under this award unless otherwise permitted by law or approved by the Federal Agency:

- a. Costs which lie outside the scope of the approved project and any amendments thereto.
- b. Costs of advertising and public relations designed solely to promote the governmental unit.
- c. Alcoholic beverages except when the costs are associated with implementing a project and prior approval is given from the Federal Agency.
- d. Bad debts, including losses (whether actual or estimated) arising from uncollectable accounts and other claims, related collection costs, and related legal costs.
- e. Capital expenditures for general purpose, including purchases of building(s); construction, repair, or rehabilitation of building(s); and land acquisition.
- f. Costs associated with capital expenditures for special purpose equipment with a unit cost of \$5,000 or more without prior approval from the Federal Agency. Special purpose equipment listed in the approved project budget is considered approved by the Federal Agency. "Special purpose equipment" means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines surgical instruments and spectrometers.
- g. Contributions to a contingency reserve or any similar provision (rainy day funds) made for events the occurrence which cannot be foretold with certainty as to time, intensity, or with assurance of their happening.

- h. Donated or volunteer services may be furnished to a grantee by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost.
- i. Contributions or donations, including cash, property, and services, made by the grantee, regardless of the recipient.
- j. Entertainment costs including amusement, diversion, and social activities, and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) regardless of their apparent relationship to project objectives.
- k. Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare, State Government contract airfare if applicable, or the lowest commercial discount airfare.
- l. Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the State or local governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations.
- m. Organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions regardless of the purpose for which the funds will be used.
- n. General costs of State or local government including:
 - (1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executive of federally-recognized Indian tribal government;
 - (2) Salaries and other expenses of a State legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;
 - (3) Costs of the judiciary branch of a government;

(4) Costs of prosecutorial activities; and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police.

o. Costs of goods or services for personal use do the governmental unit's employees regardless of whether the cost is reported as taxable income to the employees.

p. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments.

q. Development or participation in lobbying activities including costs of membership in organizations substantially engaged in lobbying.

r. Development or participation in political activities in accordance with provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7326).

s. Costs that are incurred after the grant ending date.

This list is not all-inclusive. Questions regarding allowability of particular cost items should be directed to the FSMIP Staff Officer.

7. FINANCIAL MANAGEMENT STANDARDS

1. **General Provisions.** Grantees must comply with the following:

a. The grantee must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds, and meet the requirements of 7 CFR Part 3016.20 or 7 CFR Part 3019.21.

b. Grant and subgrant records shall provide for complete accurate and current disclosure of financial results.

c. The source and application of funds shall be readily identified by the continuous maintenance of updated records. Records, as such, shall contain information pertaining to grant or subgrant

awards, authorizations, obligations, unobligated balances, assets, outlays, and income. When the recipient is a governmental entity, the records shall also contain liabilities.

d. Effective control over and accountability for all grant or subgrant funds and real and personal property assets shall be maintained. Grantees and subgrantees shall adequately safeguard all such property and shall ensure that it is used solely for authorized purposes. In cases where projects are not 100 percent Federally funded, grantees and subgrantees must have effective internal controls to assure that expenditures financed with Federal funds are properly chargeable to the grant supported project.

e. The actual and budgeted amounts for each grant or subgrant shall be compared. Financial information shall be related to performance and unit cost data. Estimates based on available documentation may be accepted for unit cost data.

f. There shall be specific procedures established for minimizing the time elapsing between the transfer of funds from the Federal Agency and disbursement by grantees and subgrantees.

g. Established procedures shall be used for determining the reasonableness, allowability, and allocability of costs in accordance with the cost principles prescribed by Section A.2. of this part and the provisions of this grant award.

h. Accounting records shall be supported by source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract, and subgrant award documents.

i. A systematic method shall be employed by each recipient to assure timely and appropriate resolution of audit findings and recommendations.

8. MATCHING REQUIREMENT

FSMIP grants must be matched one-to-one with non-Federal resources. Documentation of matching funds must be in compliance with the applicable Federal administrative provisions listed in Article 1.a. of these General Terms and Conditions. Allowable match costs shall be determined by the Federal cost principles listed in Article 1.b. of these General Terms and Conditions. The match may consist of cash and/or properly valued in-kind resources. State

appropriations, as well as funds or other resources contributed by farm organizations, trade associations and other project participants, can be used to satisfy the matching fund requirement. In-kind matching contributions must be properly documented. This documentation does not have to be provided to the Federal Agency but it must be retained in the grantee's project file and made available upon request to the Federal Agency.

Documentation of personnel time contributed to the project may include the following:

- (1) If the contribution is valued based on a rate per day or hours worked, include the rate and the dates and/or hours worked;
- (2) If the contribution is based on a rate per unit of service provided, such as the number of producers receiving one-on-one technical assistance, include the rate, the number of units of service provided, and the beginning and ending dates of the overall period of service; or
- (3) If the fee is determined on some other basis, include the basis for determining the fee and the beginning and ending dates of the period in which services were provided.

If the matching contribution is in a form other than personnel time, consult the FSMIP Staff Officer about how to properly document the contribution. Program income cannot be offered as a match.

Relevant regulations are at 7 CFR Part 3015, Subpart G—Cost-Sharing or Matching and 7 CFR Part 3016, Subpart C—Post-Award Requirements, or 7 CFR 3019 Subpart C—Post-Award Requirements.

9. PROCUREMENT

Procurement Policy. The grantee's procurement policies and procedures shall meet the standards specified in 7 CFR 3016.36 or 7 CFR 3019.40 through 3019.48.

a. The grantee shall maintain written standards of conduct that prohibit its officers, employees, agents, or others engaged in awarding and administering contracts supported by Federal funds from using their positions for any purpose that is, or gives the appearance of being, motivated by a desire for private financial gain for themselves or others with whom they have close ties.

These standards must include provisions that govern the conduct of the grantee's employees in connection with procurement activities. Such standards should reflect State and local laws and must cover financial interests, gifts, bribes, gratuities, favors, and related areas as appropriate and necessary. In addition, they must identify the conditions under which outside activities or interests are proper or improper, provide for prompt notification of violations to a responsible and objective institutional official, and make provision for disciplinary action against those who violate the standards.

b. A copy of these written standards does not have to be submitted to the Federal Agency for approval or recordkeeping purposes; however, they must be made available for review by the Federal Agency or its designated representatives, if requested.

c. All procurement transactions, regardless of whether by sealed bids or by negotiation, and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition.

Contractor Records. Grantees shall include a provision for access to the contractor's records by the grantee and the Federal Agency. The provision must require the contractor to place the same provision in any subcontract which would have to have the provision were it awarded by the grantee. The provision must require retention of records for three years after final payment is made under the contract or subcontract and all pending matters are closed. The provision must also require that, if any audit, litigation, or other action involving the records is started before the end of the three year period, the records must be retained until all issues arising out of the action are resolved or until the end of the three year period, whichever is later.

a. In contracts and subcontracts under a subgrant, the provision must require that access to the records be provided to the grantee as well as the subgrantee and the Federal Agency.

b. In contracts in excess of \$10,000, a provision requiring compliance with Executive Order 11246, concerning equal employment opportunity as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Chapter 60) is required.

10. CONSULTANTS

Charges for consulting payments must be supported in the records of the grantee or cost-type contractor by an invoice from the consultant and a copy of the written report (if a report is appropriate) or other documented evidence of the work performed from the consultant.

If any of the following information is not shown on the invoice and/or report from the consultant, the information must be shown in a memorandum or other document prepared by the recipient or contractor for its files, or noted in handwriting on the consultant's invoice by the recipient or contractor. The memorandum, other document, or handwritten notation must be signed by an official of the recipient or contractor and show:

- a. The name of the consultant;
- b. The nature of the services provided (such as statistical analysis of data, participation on project advisory committee, etc.);
- c. The relevance of the services to the project or program, if not apparent from the nature of the services; and
- d. Whichever of the following is applicable:
 - (1) (If the fee was based on a rate per day or hours worked) the rate and the dates and/or hours worked;
 - (2) (If the fee was based on a rate per unit of service provided, such as the number of producers receiving one-on-one technical assistance) the rate, the number of units of service provided, and the beginning and ending dates of the overall period of service; or
 - (3) (If the fee was determined on some other basis) the basis for determining the fee and the beginning and ending dates of the period in which services were provided.

If the consultant services were in a form other than personnel time, consult the FSMIP Staff Officer about how to properly document the services.

11. SUBAWARDS

Grantees must:

- a. Not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal Assistance program under Executive Order 12549, “Debarment and Suspension.”
- b. Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations.
- c. Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.
- d. Ensure that a provision for compliance with §3016.42 “Retention and access requirements for records” or 7 CFR 3019.53 “Retention and access requirements for records” is placed in every cost reimbursement subgrant.
- e. Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

12. TRAFFICKING IN PERSONS

- a. Provisions applicable to a recipient that is a private entity.
 1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
 2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 7 CFR part 3017.

b. Provision applicable to a recipient other than a private entity . We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

i. Associated with performance under this award; or

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 7 CFR part 3017.

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

- i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions . For purposes of this award term:

1. “Employee” means either:

- i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

- ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:

- i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

- ii. Includes:

- A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

13. SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

A. Requirement for System for Award Management (SAM)

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) Numbers

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions

For purposes of this award term:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <https://www.sam.gov/portal/public/SAM/>).
2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS

number may be obtained from D&B by telephone (currently 866–705–5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian Tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, *see* Sec. __.210 of the attachment to OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations”).
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

14. REPORTING SUBAWARDS AND EXECUTIVE

a. Reporting of first-tier subawards.

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2011, the obligation must be reported by no later than December 31, 2011.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov>.

b. Reporting Total Compensation of Recipient Executives.

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at <https://www.sam.gov/portal/public/SAM/>.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __ .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus.

ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in

accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax-qualified.

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

15. LIMIT OF FEDERAL LIABILITY

The maximum liability of the Federal Agency to the grantee is the amount indicated in the award as obligated by the Federal Agency. Nothing in this document or other requirements of this award requires the Federal Agency to make additional award of funds or limits its discretion with respect to the amount of funding to be provided for the same or any other purpose. In the event that an erroneous amount is stated in the award, the approved budget, or any supporting documentation, the Federal Agency shall have the unilateral right to make corrections and make appropriate adjustments in the Federal Agency share of the award to align with the Federal amount authorized.

16. PAYMENTS.

It is the responsibility of grantee Project Coordinators (not subgrantees) to prepare, sign and submit requests for payment and financial status reports to the FSMIP Staff Officer. If third parties contribute matching resources, it is the grantee's responsibility to obtain from them the necessary financial data to complete requests for payment and financial status reports. Copies of the appropriate forms are available at: www.whitehouse.gov/omb/grants/grants_forms.html.

Requests for Payment – SF 270

Grant funds must be requested using standard form (SF) 270. Grant funds will be paid electronically to the bank account specified by the grantee. In addition to the request for grant funds, the SF 270 should indicate the value of any matching funds expended on the project for the period covered by the payment request. The SF 270 should be scanned and emailed to the FSMIP Staff Officer, and the original form should be retained in the grantee's project file. Grant funds should be requested at reasonable intervals during the project. The Federal Agency will require a justification in any case where the initial drawdown of grant funds is not made in the first year of the grant period, and at reasonable intervals thereafter.

Advances of grant funds are limited to the minimum amount needed to meet current disbursement needs and should be scheduled so the funds are available to the recipient as close as possible to the actual disbursements by the grantee for program costs.

Requests for payment should be scheduled so that grant funds are obligated no later than the grant ending date, and disbursed no later than 90 days after the grant ending date. Grant funds already paid to the grantee, but not used, must be refunded to the Federal Agency immediately. Contact the FSMIP Staff Officer to obtain instructions for handling the refund. Late payments are subject to an interest charge of 18 percent per annum and all penalties and administrative charges as provided under the Debt Collection Act of 1996.

Federal Financial Report – SF 425

A final SF 425 *Federal Financial Report* is required not later than 90 days after the grant ending date. The final SF 425 should reflect the cumulative financial activity, including both grant and matching funds, over the entire grant period. The SF 425 should be scanned and emailed to the FSMIP Staff Officer. The original form should be retained in the grantee's project file.

17. PERFORMANCE REPORTING

Progress Reports are due at six month intervals. A Final Report is required no later than 90 days after the grant expiration date. If the grant period is one year or less, then only one Progress Report and a Final Report are required. If the grantee does not prepare the Progress Report(s) or Final Report, it is nevertheless the grantee Project Coordinator's responsibility to review and

approve any reports prepared by a third party before forwarding them to the FSMIP Staff Officer.

Progress Reports

Progress Reports are required at the midpoint of projects approved for one year and at six-month intervals for projects of longer duration. Progress Reports should:

- Briefly summarize activities performed and milestones achieved for each objective or sub-element of the narrative.
- Note unexpected delays or impediments as well as favorable or unusual developments.
- Outline work to be performed during the succeeding period.
- Comment on the level of grant funds and matching contributions expended to date on the project.

Final Report

A Final Report of results and accomplishments is due no later than 90 days after the grant ending date. Final Reports are required to fulfill the terms of the grant agreement, and they also represent an important vehicle for sharing research findings with Federal and State agencies and the public. The Final Report will be posted on the FSMIP website. It must include:

- An outline of the issue or problem. Provide enough background information for the reader to understand the importance of the project. This section may draw from the background and justification contained in the approved project proposal.
- A description of how the issue or problem was approached via the project. Reference the project objectives and work plan.
- A description of the contribution of public or private agency cooperators and partners.
- A summary of results, conclusions, and lessons learned. Lessons learned should cover both positive and negative aspects. Include a discussion of how the project was evaluated

and whether or not project objectives were met. To the extent possible, include measurable results.

- A discussion of current or future benefits to be derived from the project.
- Recommendations for future research and, if applicable, an outline of next steps or additional research that might advance the project goals.
- A description of the project beneficiaries including the number, type and scale of producers, processors, and other businesses.
- Additional information generated by the grant project such as publications, presentations, and websites.
- A contact person for the project with telephone number and email address.

Sometimes, a project will result in a large study completed by a third party. If the Final Report completed by a third party does not address the points listed above, the grantee Project Coordinator is responsible for providing a document that discusses each of those points. An electronic version of the Final Report and all supporting documents should be e-mailed or sent to the FSMIP Staff Officer via express mail on diskette or CD.

All publications resulting from the grant should acknowledge the Federal Agency as a cooperator in the project and bear a statement that credits the grant program such as the following: *“State funds for this project were matched with Federal funds under the Federal-State Marketing Improvement Program of the Agricultural Marketing Service, U.S. Department of Agriculture.”* A similar acknowledgment is required on other media products of the grant such as audio-visuals unless the grantee Project Coordinator receives a waiver from the FSMIP Staff Officer.

18. SITE VISITS AND PROJECT RECORDS

Work performed under this grant is subject to inspection and evaluation at all times by Federal Agency officials, or by any of their duly authorized representatives through such mechanisms as

the review of performance reports and site visits. To the extent possible, all site visits will be made at mutually acceptable intervals and will be timed to avoid disruption to the construction work and to grantee programs and personnel.

The Federal Agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have the right of access to any books, documents, papers, or other project-related records of the grantee and its contractors under this grant for examination and audit purposes and to obtain excerpts and transcripts.

Financial records, supporting documents, statistical records, and other records pertinent to this grant award shall be retained by the grantee and its contractors for a period of three years after submission and acceptance of the final SF 425, "Federal Financial Report." Records relating to audits, appeals, litigation, or the settlement of claims arising out of project performance shall be retained until such audits, appeals, litigation, or claims have been settled.

19. FRAUD, WASTE OR ABUSE. Anyone who becomes aware of the existence (or apparent existence) of fraud, waste, or abuse related to FSMIP grants or use of grant funds should report this information to USDA. The USDA Office of the Inspector General (OIG) provides several means, including toll-free numbers, for this purpose. The OIG hotline may be reached by:

Office of the Inspector General, United States Department of Agriculture,

Attn: HOTLINE

PO Box 23399

Washington, DC 20026-3399

Telephone: 1-800-424-9121 (toll free) or 202-690-1202 (TDD);

Fax: 202-690-2474

E-mail: usda.hotline@oig.usda.gov

Internet: <http://www.usda.gov/oig/hotline.htm>

Fraud, waste, and abuse includes, but is not limited to, embezzlement, misuse, or misappropriation of grant funds or property, and false statements, whether by organizations or individuals. Examples are theft of grant funds for personal use; using funds for non-grant-related purposes; theft of federally owned property or property acquired or leased under a grant; charging inflated building rental fees for a building owned by the recipient; submitting false

financial reports; and submitting false financial data in bids submitted to the recipient (for eventual payment under the grant). Callers are not required to give their names and, if they do, their identities are kept confidential.

The Federal government may pursue administrative, civil, or criminal action under a variety of statutes that relate to fraud and false statements or claims. Even if a grant is not awarded, the applicant may be subject to penalties if the information contained in or submitted as part of an application, including its certifications and assurances, is found to be false, fictitious, or fraudulent.

20. SUSPENSION/TERMINATION

If the Federal Agency, after reasonable notice to a grantee, finds that there has been a failure by the grantee to comply substantially with any provision of this award, or other applicable laws or regulations the Federal Agency may disqualify the grantee, for one or more years, from receiving future grants under FSMIP.

21. RECORD RETENTION AND CLOSEOUT

Record Retention. In accordance with Federal regulations, grantees and subgrantees must retain all records relating to the grant for a period of 3 years from the date of the final SF 425 financial status report that is submitted to the Federal Agency.

Closeout Checklist. Before the grant can be closed, the following must be submitted to the Federal Agency no later than 90 days after the grant ending date:

- 1) Final Report
- 2) Final financial statement (SF 425)
- 3) Outstanding requests for payment, if applicable (SF 270)
- 4) Refund check of any unused grant funds previously paid in advance, if applicable.