

AGREEMENT
BETWEEN
THE COMMODITY CREDIT CORPORATION
AND
THE STATE OF NEW YORK
FOR THE PURPOSE OF ESTABLISHING A STATE GRANT
TO PROVIDE ASSISTANCE TO ELIGIBLE AQUACULTURE PRODUCERS

The Commodity Credit Corporation (CCC) agrees to provide a grant to the State of New York for distribution to eligible aquaculture producers that suffered financial losses associated with high feed input costs during the 2008 calendar year, in accordance with the terms of this Agreement.

A. BACKGROUND AND PURPOSE

Section 102(d) of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub.L. 111-5) provides not more than \$50 million for a 2008 Aquaculture Grant Program (AGP). To provide assistance to eligible aquaculture producers under this program, CCC will provide a grant to New York. The State may choose one of the following methods to provide assistance to eligible aquaculture producers in the State:

1. Provide cash payments directly to eligible aquaculture producers; or
2. Provide assistance in the form of feed credits, vouchers, or similar instruments to be applied to future aquaculture feed purchases.

B. DEFINITIONS

For the purpose of this Agreement, the following definitions apply.

1. Controlled environment means an environment in which everything that can practicably be controlled with structures, facilities, growing media (including but not limited to water or nutrients) by the producer, is in fact controlled by the producer, as determined by industry standards.
2. Eligible aquaculture producer means a producer who, meets all of the following:
 - During the 2008 calendar year:
 - raised an aquaculture species in a controlled environment
 - maintained the aquaculture species as part of a farming operation
 - had a financial risk in the production of such species.
 - Raises aquaculture, as of the date of their AGP application with the State.

- Meets the program loss requirements provided in item D3.

Note: State and Federal-owned hatcheries are not considered an eligible aquaculture producer.

3. Farming operation means a business enterprise engaged in the production of agricultural products that is operated by an individual, entity, or joint operation.

C. DETERMINING AMOUNT OF ASSISTANCE

1. The Recovery Act specifically states that AGP funding will be allocated on a pro rata basis, based on the amount of aquaculture feed used in each State during the 2007 calendar year. Therefore, the amount of the grant to the State from CCC is based on the total aquaculture feed delivered in the State in the 2007 calendar year, as determined by the State. The State's 2007 feed deliveries must include feed for **all** aquaculture species in the State that was delivered to an individual or entity that is still in operation in 2009. In addition, the State's 2007 feed deliveries must **not** include 2007 feed deliveries to Federal or State-owned hatcheries.
2. The grant amount for the State of New York is \$56,773.
3. The State shall establish a 2003-2007 5-year average feed price for each aquaculture species in the State.
4. The amount of assistance provided to each eligible aquaculture producer from the State shall be equal to the result of multiplying:
 - The payment rate as determined in item C5, times
 - The producer's total feed deliveries (that is, deliveries to the producer for use in the producer's aquaculture operation) in calendar year 2008 for the applicable aquaculture species.

In accordance with items C6 and C7, adjustments shall be applied to the amount of assistance provided to each eligible aquaculture producer determined above.

5. The payment rate shall be that amount which the State has determined is equal to the result of subtracting:
 - The producer's 2008 average feed price for the applicable aquaculture species, minus
 - The State's 2003-2007 5-year average feed price for the applicable aquaculture species, as established in item C3.

6. If the total amount of benefits calculated in item C4, after applying the payment limitation in item C7, for all eligible applicants in a State exceeds the grant amount provided in item C2, the State shall reduce the amount of assistance calculated for each applicant on a pro rata basis.
7. The total amount of assistance that a person may receive from the funds made available under this and any other state's Agreement for this program shall not exceed \$100,000 in aggregate, except for general partnerships and joint ventures in which case assistance shall not exceed \$100,000 times the number of members that constitute the general partnership or joint venture. The rules of 7 CFR Part 1400 shall apply to "person" determinations (the rules for attributing payments in addition to the owners of entities and sub-entities will not apply). 7 CFR Part 1400 is available at www.access.gpo.gov/nara/cfr/waisidx_04/7cfr1400_04.html. The payment limitation shall be applied to an applicant based on the applicant's business structure as it existed during calendar year 2008.
8. No person shall be eligible for assistance if they are not in compliance for calendar year 2008 with the conservation compliance provisions of 7 CFR Part 12. Likewise, no person shall be eligible to receive assistance if their adjusted gross income, as computed under 7 CFR Part 1400 with respect to 2008 programs, averaged more than \$2.5 million for calendar years 2005-2007.

D. PROVIDING ASSISTANCE

In the provision of assistance under this grant Agreement to eligible aquaculture producers:

1. Application procedures for 2008 aquaculture feed funds will be as determined by each State.
2. Assistance may be provided by the State to eligible aquaculture producers using one of the following methods:
 - a. Provide cash payments directly to eligible producers; or
 - b. Provide assistance in the form of feed credits, vouchers, or similar instruments to be applied to future aquaculture feed purchases.
3. Assistance shall only be provided to an eligible aquaculture producer that:
 - a. Produced an aquaculture species for which 2008 feed costs represented at least 25 percent of the producer's total input costs for the aquaculture operation, as certified by the producer;

- b. Experienced at least a 25 percent price increase of 2008 feed costs above the State's previous 5-year average (2003-2007) established for the applicable species. A 25 percent price increase for a species shall be determined by multiplying the State's previous 5-year average established in item C3 for the applicable species times 1.25.
- c. Submits to the State acceptable documentation, determined by the State, which establishes, at a minimum:
 - i. The producer's total feed deliveries in calendar year 2008 for the applicable aquaculture species; and
 - ii. The producer's 2008 average feed price for the applicable aquaculture species.

Such documentation may include a certification from the feed mill that provides, at a minimum, the producer's total feed deliveries in calendar year 2008 and the producer's 2008 average feed price.

- 4. The amount of assistance provided to an eligible aquaculture producer shall not exceed the amount of losses suffered by the producer as a result of high feed input costs during the 2008 calendar year, as determined in item C4 by the State.
- 5. Assistance shall only be provided to eligible aquaculture producers who certify to the State or agree that:
 - a. **The producer will not apply for or receive any assistance covered by the Supplemental Agricultural Disaster Assistance Programs** established under section 531 of the Federal Crop Insurance Act and section 901 of the Trade Act of 1974 (these programs include the Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish (ELAP), Livestock Forage Disaster Program (LFP), Livestock Indemnity Program (LIP), Supplemental Revenue Assistance Program (SURE), and Tree Assistance Program (TAP)) for any losses in 2008 relating to the same species of aquaculture;
 - b. Funds received by the producer under this program will be used for costs associated with their current aquaculture operation; and
 - c. Records on file for the producer at an applicable Farm Service Agency county office show:
 - i. That their average adjusted gross income does not exceed \$2.5 million for the three preceding tax years (2005-2007), as calculated under regulations in 7 CFR Part 1400; and

- ii. Compliance with the conservation compliance eligibility provisions for other programs found at 7 CFR Part 12. 7 CFR Part 12 is available at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title07/7cfr12_main_02.tpl
 - d. Access will be provided by the producer as needed to assure compliance with the program.
 - e. Feed credits, vouchers, or other similar instruments can not be traded, sold or redeemed for cash, if the State implements the program according to Item A2 of this agreement.
6. The State shall have producers and feed mills certify that the statements producers and feed mills make on the program application and any other program documents are true and correct and that they understand that any false statements made as part of the application, or any other program documents, can be the subject of substantial civil and/or criminal liability and sanctions. The State is responsible for enforcing diligently all program requirements applicable to participants in the program.
 7. The State must have producers and feed mills, if applicable, execute whatever documents as are necessary to assure that CCC can determine that there has been full compliance with this Agreement, including, but not limited to, program application and required supporting documentation.
 8. The State must have producers and feed mills, if applicable, retain financial and other records relating to the funds for a period of 3 years after completion of the distribution of grant funds or until final resolution of any audit findings or litigation claims relating to the distribution of such funds.
 9. The failure of a producer or feed mill, if applicable, to provide access to such documents described in item D7 shall result in that part of the grant to the State to be considered to have been improperly made for which the producer and feed mill, if applicable, shall be responsible for a full refund to the State and for the State to refund to CCC plus interest from the initial date of disbursement from CCC.
 10. Payments are subject to the availability of funds and any requirements of law that may apply.

E. REPORTING REQUIREMENTS

1. The State shall file a 2008 Aquaculture Grant Program work plan with CCC **as soon as possible**. Advancing grant funding to the State is contingent upon CCC's approval of the work plan. The work plan shall provide a summary of how the State will implement the program, including, but not limited to, a copy of the State's application form, payment calculation, loss requirements, required documentation, and the State's methodology for conducting internal reviews of the program, as required in item F1.
2. As required by Section 102(d)(2)(D)(iii) of the Recovery Act, the State agrees to, not later than 30 days after the date on which the State provides assistance to eligible aquaculture producers, submit a report to CCC that describes the:
 - a. Manner in which the State provided assistance
 - b. Amount of assistance provided **per aquaculture species**
 - c. Process by which the State determined the levels of assistance to eligible aquaculture producers.
3. The State agrees to submit a report to CCC not later than 30 days after the State provides assistance to eligible aquaculture producers that provides the amount of assistance provided **per producer and aquaculture species**, in a format determined by CCC, to ensure compliance with Section 102(d)(3) of the Recovery Act. An update will be provided by the States every 30 days until all funds have been disbursed or all receivables have been collected.
4. The State agrees to comply with the reporting and registration requirements of Section 1512 of the Recovery Act as provided in Appendix A and the award terms in 2 CFR Part 176. 2 CFR Part 176 is available at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title02/2cfr176_main_02.tpl
5. The State agrees to do the following in order to establish mechanisms to meet Recovery Act data collection requirements described in item 4:
 - Establish a Dun and Bradstreet Universal Numbering System (DUNS) number or update an existing DUNS record. States may obtain a DUNS number at www.dnb.com.
 - Register in the Central Contractor Registration (CCR) database at www.ccr.gov.
 - Ensure producers that are NOT individuals establish a DUNS number or update an existing DUNS record and register in the CCR database.

- Submit a report no later than 10 calendar days after the initial calendar quarter in which the State receives funds and thereafter no later than 10 calendar days after each quarter in accordance with Section 1512 of the Recovery Act and as referenced in Appendix A of this Agreement.
6. The State is responsible for reporting all the funds expended under this program, as may be required by the United States Internal Revenue Service, and generally accepted accounting principles.

F. TRANSPARENCY AND ACCOUNTABILITY

1. The State agrees to conduct internal random reviews of the program, not later than 60 days after providing assistance to eligible aquaculture producers, to ensure applicants are equitably compensated for losses and to ensure that applicants' losses are verified. As part of the State's internal random reviews, the State agrees to review feed mill records, if applicable, to determine program compliance. The State agrees to conduct internal random reviews on 5 percent of the total applications the State receives from applicants. The 5 percent of applications shall be selected in a way that ensures all participating feed mills are included in the review, if applicable.
2. The State agrees to submit results of the internal random reviews electronically to FSA not later than 90 days after providing assistance to eligible aquaculture producers. Results of internal random reviews shall be emailed to Amy Mitchell, Special Programs Manager, at amy.mitchell1@wdc.usda.gov.
3. The State agrees to have an annual audit of this program as required by the Single Audit Act Amendments of 1996, OMB Circular A-133, and 7 CFR Part 3052, Audits of States, Local Governments, and Non-Profit Organizations. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. 7 CFR Part 3052 is available at www.access.gpo.gov/nara/cfr/waisidx_07/7cfr3052_07.html
4. The State agrees to their responsibilities with respect to preparing audit documentation and reports in accordance with OMB Circular A-133 as provided in Appendix B.

5. If the State chooses to provide assistance to eligible aquaculture producers in the form of feed credits, vouchers, or similar instruments to be applied to future aquaculture feed purchases, the State agrees to execute, with the applicable feed mills, a legally-binding document that:
 - Requires the feed mill to accept aquaculture feed vouchers from eligible aquaculture producers or apply aquaculture feed credits to eligible aquaculture producers for the purpose of future aquaculture feed purchases by the applicable eligible aquaculture producer. Feed vouchers or credits shall not be used to pay-off a producer's debt previously established at a feed mill.
 - Prohibits the feed mills from allowing eligible aquaculture producers to redeem feed vouchers, credits, or other similar instruments, for cash.
 - Is structured such that the feed mill is responsible for compliance with the applicable laws, regulations and provisions of this Agreement.
 - Requires the feed mill to report to the State, by producer and aquaculture species, funds provided under this Agreement that are obligated and expended. States shall require the feed mill to file such report as needed to ensure the State's compliance with Recovery Act reporting requirements outlined in Section E of this Agreement.
 - Requires the feed mill to return to the State any overpayment made to a feed mill and insure that all payments to the feed mill are completed by September 30, 2010. All refunds by Feed Mills to the State must include interest that accrues from the initial date of disbursement from the State for any time in which such funds were under the control of the feed mill.
 - Requires the feed mill to certify that the statements it makes in such document are true and correct and that it understands that any false statements made as part of these certifications can be the subject of substantial civil and/or criminal liability and sanctions.
6. If an eligible aquaculture producer has an aquaculture operation in more than one State and/or purchases aquaculture feed from a feed mill located outside the State in which the aquaculture operation is located, the State agrees to coordinate with the applicable State Department(s) of Agriculture to ensure the eligible aquaculture producer does not exceed the payment limitation provided in Item C7. If an eligible aquaculture producer has aquaculture operations in more than one State, all States, in which the eligible aquaculture producer has an aquaculture operation, are responsible for oversight with respect to this issue. If an eligible aquaculture producer purchases feed outside the State in which the aquaculture operation is located, the State in which the aquaculture operation is located is responsible for oversight with respect to this issue.

G. TERMS OF THIS AGREEMENT

1. The State agrees to accept the funds for the purposes for which they were granted and to use the funds only in a manner that is in accordance with this Agreement. More specifically, the State agrees to comply with Section 1604 of the Recovery Act that prohibits the use of funds for any casino, or other gambling establishment, aquarium, zoo, golf course, or swimming pool but rather agrees, as set forth above, that funds received by the producer under this program may be used only for costs associated with their current aquaculture farming operation. The entire amount authorized will be paid to the State by a one-time electronic transfer using bank information supplied by the State. The State will have sole responsibility for any costs that may be associated with the distribution of the funds advanced. Any violation of this Agreement will result in a refund being due for the amount of any unauthorized disbursement in addition to interest which shall accrue from the date of initial disbursement to the State.
2. The State's administration of the funds, as well as its financial obligations with respect to this grant and its obligation to file reports and other information, will be governed by this Agreement and by the provisions of 7 CFR Part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. 7 CFR Part 3016 is available at www.access.gpo.gov/nara/cfr/waisidx_01/7cfr3016_01.html
3. Interest earned on advances of funds from the date of the CCC disbursement, must be refunded promptly, at least quarterly, to CCC. Such interest shall also apply for any return of any monies under this Agreement. It is agreed in this regard that funds advanced by CCC shall be placed in an interest bearing account and the interest earned on the funds shall be returned to CCC to the extent that the interest earned exceeds \$100. Such interest, as indicated, shall be returned to CCC on a quarterly basis. For all other interest payments required in this Agreement the rate shall be that which is applied generally to CCC claims under the rules in 7 CFR Part 1403 provided that interest on all such matters shall run from the date of the CCC disbursement. In no instance shall the State advance funds to any claimant or participant in the program prior to the time at which a valid, present claim has been established by, in the case of a payment to a producer, the filing by the producer of a completed application establishing the producer's eligibility for payment or, in the case of a feed mill, the feed mill requesting by a completed application reimbursement for feed already delivered.
4. CCC will decide only how much the grant, funds advance, shall be and any unused grant money shall be returned by the State including interest that accrues from the initial date of disbursement from CCC.

5. Upon any failure by the State to comply with this Agreement with respect to the administration of any monies under this Agreement, or with the provisions of 7 CFR Part 3016, the State must refund to CCC the full amount of the unauthorized disbursement by the State with interest accruing from the initial date of disbursement from CCC.
6. If the State implements the program using the authority contained in Item A1 of this Agreement, the State agrees to:
 - Provide cash to eligible aquaculture producers not later than 60 days after the date on which the State receives grant funds from CCC, as required by Section 102(d)(2)(D)(ii) of the Recovery Act; and
 - Refund to CCC funds provided under this Agreement that are not distributed, by this deadline within 30 days including interest that accrues from the initial date of disbursement from CCC.
7. If the State implements the program using the authority contained in Item A2 of this Agreement, the State agrees to:
 - Provide feed credits, vouchers, or other similar instruments to eligible aquaculture producers not later than 60 days after the date on which the State receives grant funds from CCC, as required by Section 102(d)(2)(D)(ii) of the Recovery Act; and
 - Refund to CCC funds provided under this Agreement that are not obligated, via feed vouchers, credits, or other similar instruments, to eligible aquaculture producers, by this deadline within 30 days including interest that accrues from the initial date of disbursement from CCC.
 - Refund to CCC, funds provided under this Agreement, including interest collected on reimbursements by participants (feed mills and producers).
8. The State agrees that the receipt of funds is made to the State contingent on the State meeting the reporting requirements in Section 1512 of the Recovery Act.
9. The State agrees to execute form SF-424B, "Assurances-Non-Construction Programs" (Attachment), as authorized by Office of Management and Budget Circular A-102, "Grants and Cooperative Agreements with State and Local Governments."
10. The State agrees to make a good faith effort, on a continuing basis, to maintain a drug-free workplace by complying with the requirements in Subpart B of 7 CFR Part 3021, Government-wide Requirements for Drug-Free Workplace (Financial Assistance). 7 CFR Part 3021 is available at www.access.gpo.gov/nara/cfr/waisidx_09/7cfr3021_09.html

11. In the case that the State's grant amount exceeds \$100,000, the State agrees to file the Certification Regarding Lobbying (Attachment), and file the Standard Form-LLL, "Disclosure Form to Report Lobbying" (Attachment) as required by 7 CFR Part 3018, New Restrictions on Lobbying. 7 CFR Part 3018 is available at www.access.gpo.gov/nara/cfr/waisidx_07/7cfr3018_07.html
12. The State shall retain financial and other records relating to the funds for a period of 3 years after completion of the distribution of grant funds or until final resolution of any audit findings or litigation claims relating to the distribution of such funds.
13. The State agrees to allow any representative of the CCC, Department of Agriculture (Department), including FSA and Office of the Inspector General, and the Comptroller General of the United States to have access to and the right to examine all records and documents related to this Agreement. The State agrees to require producers and feed mills, if applicable, to provide access to the State and the CCC and other branches of Federal government to facilities and records as needed to assure compliance with the program.
14. The State agrees to enforce the producer eligibility requirements of this program, to take such collection actions as are reasonable and necessary to recover funds paid to producers for which the producer was not eligible or which were not used in accord with the limits of the program, and cover all costs associated with investigations or appeals that may be conducted in relation to the administration or management of the funds made available under this Agreement. Neither the Department nor any other agency of the Federal Government shall be responsible for administrative or management costs incurred by the State or third parties in connection with these grant funds.
15. This Agreement shall be valid from the date of the last signature affixed hereto. Further, this Agreement may be amended, extended, or modified by written amendment signed by the authorized officials of CCC and the State.
16. This Agreement may be terminated by CCC through written notice to the State if CCC determines that the State has failed to comply with the provisions of this Agreement, or other applicable laws or regulations or at its convenience. In the event this Agreement is terminated for any reason due to the fault of the State or because of any false representations made by the State to CCC, to the extent allowed by law, all CCC funds expended under this agreement shall be returned to CCC along with interest that will accrue beginning on the initial date of disbursement by CCC.

17. This Agreement confers no rights on any person or entity not a party to this Agreement. The parties agree that this Agreement creates no third party rights.

It is so agreed.

for: Carolyn B. Coppess 7/22/09
Jonathan Coppess Date
Executive Vice President
Commodity Credit Corporation

Robert Haggerty 7/16/09
Robert Haggerty Date
First Deputy Commissioner
New York State Department of Agriculture

Reporting and Registration Requirements under Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5

(a) This award requires the State to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (“Recovery Act”) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) The following entities must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with Recovery Act funds:

- States receiving grant funding directly from the Federal government.
- Producers that are **not** individuals, such as corporations, joint ventures, general partnerships, if the State implements the program based on item A1 of this Agreement.

Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

(d) The State shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at www.FederalReporting.gov and ensure that any information that is pre-filled is corrected or updated as needed.

Recovery Act Transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Sub-recipients

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 “Uniform Administrative Requirements for Grants and Agreements” and OMB A-102 Common Rules provisions, States agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102/html>.

(b) For States covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” States agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix “ARRA-” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.