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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1485

RIN 0551-AA97

Market Access Program

AGENCY: Commodity Credit Corporation and Foreign Agricultural Service, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is revising the Market Access Program (MAP) regulations to eliminate the 5-year limit on participation by branded products in the program, as required in the Agriculture Improvement Act of 2018, and to incorporate changes that conform the operation of the program to the requirements in the Uniform Guidance and Federal grant-making best practices.

DATES: This rule is effective on January 13, 2020.

FOR FURTHER INFORMATION CONTACT: Curt Alt, (202) 690-4784, curt.alt@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The MAP is authorized under Section 203 of the Agricultural Trade Act of 1978 (7 U.S.C. 5623), as amended. The MAP program regulations appear at 7 CFR part 1485. The Agriculture Improvement Act of 2018 (Pub. L. 115-334), which reauthorized the program for fiscal years 2019–2023, increased the program's flexibility and usefulness to stakeholders by eliminating the 5-year limit on participation by branded products in the program and making minor legislative changes to the program. In addition, FAS is updating the regulations to bring the operation of the program into conformance with the requirements in the Uniform Guidance. Additional changes, such as the flexibility to announce program funding opportunities on the *Grants.gov* portal

and edits to bring more consistency between the Market Access Program (MAP) and the Foreign Market Development (FMD) program, are desirable to bring the administration of the program into line with current best practices in Federal grant-making.

Notice and Comment

This rule is being issued as a final rule without prior notice and opportunity for comment. The Administrative Procedure Act (5 U.S.C. 553) exempts rules "relating . . . to public property, loans, grants, benefits, or contracts" from the statutory requirements for prior notice and opportunity for comment and publication of the rule not less than 30 days before its effective date (5 U.S.C. 553(a)(2)). Accordingly, this final rule is effective when published in the **Federal Register**.

Catalog of Federal Domestic Assistance

The program covered by this regulation is listed in the Catalog of Federal Domestic Assistance (CFDA) under the following FAS CFDA number: 10.601, Market Access Program.

E-Government Act Compliance

FAS is committed to complying with the E-Government Act of 2002 (44 U.S.C. chapter 36), to promote the use of the internet and other information technologies to provide increased opportunities for citizens' access to Government information and services, and for other purposes.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, "Civil Justice Reform." This rule does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule will not be retroactive.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with officials of State and local governments that would be directly affected by the proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local

government coordination and review of proposed Federal financial assistance and direct Federal development. This rule will not directly affect State or local governments, and, for this reason, it is excluded from the scope of Executive Order 12372.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments, proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. FAS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to the knowledge of FAS, have tribal implications that require tribal consultation under Executive Order 13175. If a tribe requests consultation, FAS will work with USDA Office of Tribal Relations to ensure

meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that for every new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

List of Subjects in 7 CFR Part 1485

Agricultural commodities, Exports.

For the reasons discussed in the preamble, CCC revises 7 CFR part 1485 to read as follows:

PART 1485—GRANT AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR U.S. AGRICULTURAL COMMODITIES

Subpart A—[Reserved]

Subpart B—Market Access Program

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Authority: 7 U.S.C. 5623, 5662–5663

Subpart A—[Reserved]

Subpart B—Market Access Program

§ 1485.10 General purpose and scope.

(a) This subpart sets forth the general terms and conditions governing the Commodity Credit Corporation's (CCC) operation of the Market Access Program (MAP).

(b)(1) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200. In 2 CFR 400.1, the U.S. Department of Agriculture (USDA) adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as USDA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards.

(2) The OMB guidance at 2 CFR part 200, as supplemented by 2 CFR part 400 and this subpart, applies to the Market Access Program (MAP) Program.

(3) In addition to the provisions of this subpart, other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, and IV, also apply to the MAP, to the extent that these regulations do not directly conflict with the provisions of this subpart. The provisions of the CCC Charter Act (15 U.S.C. 714 *et seq.*) and any other statutory or regulatory provisions that are generally applicable to CCC also apply to the MAP.

(c) Under the MAP, CCC may provide grants to eligible U.S. entities to conduct certain marketing and promotion activities aimed at developing, maintaining, or expanding commercial export markets for U.S. agricultural commodities. MAP Participants may receive assistance for either generic or brand promotion activities. While activities generally take place overseas, reimbursable activities may also take place in the United States. CCC expects all activities that occur in the United States for which MAP reimbursement is sought to develop, maintain, or expand the commercial export market for the relevant U.S. agricultural commodity in accordance with the MAP Participant's approved MAP program.

(d) The MAP generally operates on a reimbursement basis.

(e) CCC's policy is to ensure that benefits generated by MAP agreements are broadly available throughout the relevant agricultural sector and that no single entity gains an undue advantage or sole benefit from program activities.

CCC also endeavors to enter into MAP agreements covering a broad array of agricultural commodity sectors. The MAP is administered by the Foreign Agricultural Service (FAS) acting on behalf of CCC.

§ 1485.11 Definitions.

For purposes of this subpart the following definitions apply:

Activity means a specific foreign market development effort undertaken by a MAP Participant.

Administrative expenses or costs means expenses or costs of administering, directing, and controlling an organization that is a MAP Participant. Generally, this would include expenses or costs such as those related to:

(1) Maintaining a physical office (including, but not limited to: Rent, office equipment, office supplies, office décor, office furniture, computer hardware and software, maintenance, extermination, parking, and business cards);

(2) Personnel (including, but not limited to: Salaries, benefits, payroll taxes, individual insurance, and training);

(3) Communications (including, but not limited to: Phone expenses, internet, mobile phones, personal digital assistants, email, mobile email devices, postage, courier services, television, radio, and walkie talkies);

(4) Management of an organization or unit of an organization (including, but not limited to: Planning, supervision, supervisory travel, teambuilding, recruiting, and hiring);

(5) Utilities (including, but not limited to: Sewer, water, and energy);

(6) Professional services (including, but not limited to: Accounting expenses, financial services, and investigatory services).

Affiliate means any partnership, association, company, corporation, trust, or any other such party in which the Participant has an investment, other than a mutual fund.

Agreement means a legally binding grant entered into between CCC and a MAP applicant setting forth the terms and conditions to implement approved activities under the MAP program, including any subsequent amendments to such agreement.

Approval letter means a document by which CCC informs an applicant that its MAP application for a program year has been approved for funding. This letter may also approve specific activities and contain terms and conditions in addition to the agreement. This letter requires a countersignature by the MAP Participant before it becomes effective.

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

Brand participant means a small-sized U.S. for-profit entity or a U.S. agricultural cooperative that owns the brand(s) of the eligible commodity to be promoted or has the exclusive rights to use such brand(s) and that is participating in the MAP brand promotion program of another MAP Participant. This definition does not include any U.S. agricultural cooperatives that are MAP Participants that apply for MAP funds to implement their own brand programs.

Brand promotion means an activity that involves the exclusive or predominant use of a single U.S. company name, or the logo or brand name of a single U.S. company, or the brand of a U.S. agricultural cooperative, or any activity undertaken by a MAP Participant in the brand program.

Constraint means a condition in a particular country or region that needs to be addressed in order to develop, expand, or maintain exports of a specific eligible commodity.

Contribution means the funds, e.g., money, personnel, materials, services, facilities, or supplies, provided by a MAP Participant, State agency or entities in the MAP Participant's industry ("U.S. industry") in support of a MAP Participant's generic promotion program as well as funds provided by the MAP Participant, U.S. industry, or State agency in support of related promotion activities in the markets covered by the MAP Participant's agreement.

Cost share means the funds, e.g., money, personnel, materials, services, facilities, or supplies, provided by a MAP Participant, entities in the MAP Participant's industry, or State agency in support of an approved activity.

Credit memo means a commercial document, also known as a credit memorandum, issued by the MAP Participant to a commercial entity that owes the MAP Participant a certain sum. A credit memo is used when the MAP Participant owes the commercial entity a sum less than the amount the entity owes the Participant. The credit memo reflects an offset of the amount the MAP Participant owes the entity against the amount the entity owes to the MAP Participant.

Demonstration projects means activities involving the erection or construction of a structure or facility or the installation of equipment.

Eligible commodity means any agricultural commodity or product thereof, excluding tobacco, that is

comprised of at least 50 percent by weight, exclusive of added water, of agricultural commodities grown or raised in the United States.

Expenditure means either payment via the transfer of funds or offset reflected in a credit memo in lieu of a transfer of funds.

FAS website means a website maintained by FAS providing information on the MAP. It is currently accessible at www.fas.usda.gov/programs/market-access-program-map.

Foreign subrecipient means a foreign entity that a MAP Participant works with, in accordance with this subpart, to promote the export of an eligible commodity under the MAP program.

Generic promotion means an activity that is not a brand promotion but, rather, promotes an eligible commodity generally. A generic promotion activity may include the promotion of a foreign brand (i.e., a brand owned primarily by foreign interests and being used to market a commodity or product in a foreign market), if the foreign brand uses the promoted eligible commodity or product from multiple U.S. suppliers. A generic promotion activity may also involve the use of specific U.S. company names, logos, or brand names. However, in that case, the MAP Participant must ensure that all U.S. companies seeking to promote such eligible commodity in the market have an equal opportunity to participate in the activity and that at least two U.S. companies participate. In addition, an activity that promotes separate items from multiple U.S. companies will be considered a generic promotion only if the promotion of the separate items maintains a unified theme (i.e., a dominant idea or motif) and style and is subordinate to the promotion of the generic theme.

MAP is the acronym for the Market Access Program.

MAP Participant or Participant means an entity that has entered into an agreement with CCC.

Market means a country or region targeted by an activity.

Notification means a document from the MAP Participant by which the MAP Participant proposes to CCC changes to the activities and/or funding levels in an approved agreement and/or approval letter.

Product samples means a representative part of a larger whole promoted commodity or group of promoted commodities. Product samples include all forms of a promoted commodity (e.g., fresh or processed), independent of the ultimate utilization of the sample. Product samples might be used in support of international

marketing activities including, but not limited to: Displays, food process testing, cooking demonstrations, or trade and consumer tastings.

Program notice means documents that CCC issues for informational purposes. These notices are currently made available electronically through the FAS website. These notices have no legal effect. They are intended to alert MAP Participants of various aspects of CCC's current administration of the MAP program. For example, CCC issues notices to alert Participants of applicable Federal pay scale rates and lists of economic and trade sanctions against certain foreign countries.

Program year means, unless otherwise agreed to in writing between CCC and a MAP Participant, a 12-month period during which a MAP Participant can undertake activities consistent with this subpart and its agreement and approval letter with CCC. This is also known as a project period, which in multiple year awards will be divided into budget periods.

Promoted commodity means an eligible commodity the sale of which is the intended result of a promotional activity under the MAP.

Sales and trade relations expenditures (STRE) means expenditures made on breakfast, lunch, dinner, receptions, and refreshments at approved activities; miscellaneous courtesies such as checkroom fees, taxi fares, and tips for approved activities; and decorations for a special promotional occasion that is part of an approved activity.

Sales team means a group of individuals engaged in an approved activity intended to result in specific sales.

Small-sized entity means a U.S. commercial entity that meets the small business size standards published at 13 CFR part 121, Small Business Size Regulations.

SRTG is the acronym for State Regional Trade Group. An SRTG is a nonprofit association of state-funded agricultural promotion agencies.

Supergrade means a salary level above the reimbursable salary range generally allowable under the MAP, which CCC may approve on a case by case basis. This salary level is available only for certain non-U.S. employees who direct MAP Participants' overseas offices.

Temporary contractor means a contractor, typically a consultant or other highly paid professional, that is hired on a short-term basis to assist in the performance of an activity.

Trade team means a group of individuals engaged in an approved

activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

Unified Export Strategy (UES) means a holistic marketing plan that outlines an applicant's proposed foreign market development activities and requested funding under each of the FAS market development programs.

Unified Export Strategy (UES) system means an online internet system maintained by FAS through which applicants may currently apply to the MAP and other FAS market development programs. The system is currently accessible at <https://apps.fas.usda.gov/ues/webapp/>. FAS may prescribe a different system through which applicants may apply to MAP and will announce such system in the applicable Notice of Funding Opportunity (NOFO).

U.S. agricultural commodity means any agricultural commodity of U.S. origin, including food, feed, fiber, forestry product, livestock, insects, and fish harvested from a U.S. aquaculture farm or harvested by a vessel (as defined in Title 46 of the United States Code) in waters that are not waters (including the territorial sea) of a foreign country, and any product thereof.

U.S. for-profit entity means an organized or incorporated firm, association, or other entity that is located and doing business for profit in the United States and is engaged in the export or sale of an eligible commodity.

§ 1485.12 Participation eligibility.

(a) To participate in the MAP, an entity shall be:

- (1) A nonprofit U.S. agricultural trade organization;
- (2) A nonprofit SRTG;
- (3) A U.S. agricultural cooperative; or
- (4) A State agency.

(b) CCC will enter into an agreement only for the promotion of an eligible commodity.

(c) FAS may set forth specific eligibility information, including any factors or priorities that will affect the eligibility of an applicant or application for selection, in the full text of the applicable NOFO posted on the U.S. Government website for grant opportunities.

§ 1485.13 Application process.

(a) *General application requirements.* CCC will periodically announce through a NOFO that it is accepting applications for participation in the MAP for a specified program year. This announcement will be posted on the U.S. Government website for grant opportunities. Applications shall be

submitted in accordance with the terms and requirements specified in the announcement and in this part.

Currently, applicants are encouraged to submit applications through the UES system but are not required to do so. Applicants may apply to conduct a generic promotion program and/or a brand promotion program that provides MAP funds to brand participants for branded promotion. An applicant that is a U.S. agricultural cooperative may also apply for funds to conduct its own brand promotion program.

(b) *Universal identifier and System for Award Management (SAM).* In accordance with 2 CFR part 25, each entity that applies to the MAP program and does not qualify for an exemption under 2 CFR 25.110 must:

- (1) Be registered in the SAM prior to submitting an application or plan;
- (2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and
- (3) Provide its DUNS number, or a unique identifier designated as a DUNS replacement, in each application or plan it submits to CCC.

(c) *Reporting subaward and executive compensation information.* In accordance with 2 CFR part 170, each entity that applies to the MAP program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive MAP funding.

§ 1485.14 Application review and formation of agreements.

(a) *General.* (1) CCC will, subject to the availability of funds, approve those applications that it considers to present the best opportunity for developing, maintaining, or expanding export markets for U.S. agricultural commodities. CCC will review all proposals for eligibility and completeness. CCC will evaluate and score each proposal against the factors described in the NOFO. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal, and submit the proposals and funding recommendations to appropriate officials for decision. CCC may, when appropriate to the subject matter of the proposal, request the assistance of other U.S. Government experts in evaluating the merits of a proposal.

(2) When considering eligible nonprofit U.S. trade organizations, CCC may weigh which organizations have the broadest producer representation

and affiliated industry participation of the commodity being promoted. CCC may require that an applicant participate in the MAP through another MAP Participant or applicant. All reviewers will be required to sign a conflict of interest form, and when conflicts of interests are identified the reviewer will be recused from the objective review process.

(b) *Application review criteria.* CCC follows results-oriented management principles and considers the following criteria when assessing the likelihood of success of the applications it receives, determining which applications to recommend for approval, and developing preliminary recommended funding levels:

- (1) Strategic planning (25%);
- (2) Program implementation (25%); and
- (3) Program results and evaluation (50%).

(c) *Allocation factors.* CCC determines final funding levels after allocating available funds to approved applications on the basis of criteria that will be fully described in each program year's MAP announcement. Generally, extensions will not be allowable.

(d) *Approval decision—(1) Approval decision.* CCC will approve those applications that it determines best satisfy the criteria and factors specified in paragraphs (a), (b), and (c) of this section.

(2) *Notification of decision.* CCC will notify each applicant in writing of the final disposition of its application. CCC will send an agreement, an approval letter, and a signature card to each approved applicant. The agreement and the approval letter will outline which activities and budgets are approved and will specify any special terms and conditions applicable to a MAP Participant's program, including any requirements with respect to contribution, cost share and program evaluations. An applicant that decides to accept the terms and conditions contained in the agreement and the approval letter must so indicate by having its Chief Executive Officer (CEO) or designee sign the agreement and the approval letter and submit these to CCC. Final agreement shall occur when the agreement and the approval letter are signed by both parties. The agreement, approval letter, and this subpart shall establish the terms and conditions of a MAP agreement between CCC and the approved applicant.

(e) *Signature cards.* The MAP Participant shall designate at least two individuals in its organization to sign agreements and amendments, approval letters, reimbursement claims, and

advance requests. The MAP Participant shall submit the signature card signed by those designated individuals and by the MAP Participant's CEO to CCC prior to the start of the program year. The Participant shall immediately notify CCC of any changes in signatories (e.g., removal or addition of individuals, name changes, etc.), and shall submit a revised signature card accordingly.

(f) *UES ID and passwords.* CCC will provide each MAP Participant with IDs and passwords for the UES system, as necessary. MAP Participants shall protect these IDs and passwords in accordance with USDA's information technology policies. MAP Participants shall immediately notify CCC whenever a person who possesses the ID and password information no longer needs such information or a person who is not authorized gains such information.

(g) *Annual size certification.* A MAP Participant through which small-sized U.S. for-profit entities and/or U.S. agricultural cooperatives are participating in the MAP program shall obtain annual certifications from all such entities that they are small-sized U.S. entities or U.S. agricultural cooperatives as defined in these regulations. The Participant shall retain these certifications in accordance with the recordkeeping requirements of this subpart.

(h) *Changes to activities and funding—(1) Adding a new activity.* (i) A MAP Participant may not conduct a new activity without first obtaining an approved activity budget for such change. To request approval of such activity budget, the MAP Participant shall submit a notification to CCC.

(ii) A notification for a new activity shall provide an activity justification and identify any related adjustments to the approved strategic plan, including changes in the market, constraint, or opportunity that the activity proposes to address. The notification shall contain the activity description, the proposed budget, and a justification for the transfer of funds.

(iii) After receipt of the notification, CCC will inform the MAP Participant via the UES system whether the requested budget is approved.

(2) *Modifying existing activities and their funding levels.* (i) A MAP Participant desiring to increase the funding level for existing, approved activities addressing a single constraint or opportunity by more than \$25,000 or 25 percent of the approved funding level, whichever is greater, must first submit a notification explaining the adjustment to CCC before making such change.

(ii) A MAP Participant may make significant adjustments below that threshold to the funding levels for existing, approved activities without prior notification to CCC, but only if it submits a notification explaining the adjustments to CCC no later than 30 calendar days after the change. Minor adjustments to existing, approved activities and/or funding levels do not require notification.

(iii) Notifications shall describe the activity and any changes to the activity, the existing funding level, or the proposed funding level and shall include a justification for the transfer of funds, if applicable.

§ 1485.15 Operational procedures for brand programs.

(a) Where CCC approves an application by a MAP Participant to run a brand promotion program that will include brand participants, the MAP Participant shall establish brand program operational procedures. The MAP Participant annually shall submit to CCC for approval its proposed brand program operational procedures for such program year. CCC will notify all new and existing MAP Participants in writing in each Participant's approval letter and through the FAS website as to applicable submission dates for brand program operation procedures. Such procedures shall include, at a minimum, a brand program application, application procedures, application review criteria, brand participant eligibility requirements, a participation agreement, reimbursement requirements, compliance requirements, reporting and recordkeeping requirements, employment practices, financial management requirements, contracting procedures, and evaluation requirements.

(b) The MAP Participant shall not enter into any participation agreements with brand participants nor shall it implement any MAP brand activities for the applicable program year unless and until CCC has communicated in writing its approval of the proposed operational procedures to the MAP Participant.

(c) Participation agreements between MAP Participants and brand participants. Where CCC approves a MAP Participant's application to run a brand promotion program that will include brand participants, the MAP Participant shall enter into participation agreements with brand participants. These agreements must:

(1) Specify a time period for such brand promotion and require that all brand promotion expenditures be made within the MAP Participant's approved program year;

(2) Make no allowance for extension or renewal;

(3) Limit reimbursable expenditures to those made in countries and for activities approved in the brand participant's activity plan;

(4) Specify the percentage of promotion expenditures that will be reimbursed, reimbursement procedures, and documentation requirements;

(5) Include a written certification by the brand participant that it either owns the brand of the product it will promote or has exclusive rights to promote the brand in each of the countries in which promotion activities will occur;

(6) Require: That all product labels, promotional material, and advertising will identify the origin of the eligible commodity as "American," "Product of the United States of America," "Product of the U.S.," "Product of the U.S.A.," "Product of America," "Grown in the United States of America," "Grown in the U.S.," "Grown in the U.S.A.," "Grown in America," "Made in the United States of America," "Made in the U.S.," "Made in the U.S.A.," "Made in America," or product of, grown in, or made in any state or territory of the United States of America spelled out in its entirety, or other U.S. regional designation if approved in advance by CCC; that such origin identification will be conspicuously displayed in a manner easily observed as identifying the origin of the product; and that such origin identification will conform, to the extent possible, to the U.S. standard of 1/6 inch (.42 centimeters) in height based on the lower case letter "o." The use of these terms as a descriptor or in the name of the product (e.g., Texas style chili, Bob's American Pizza) does not satisfy the product origin requirement. Phrases "product of," "grown in," or "made in" are encouraged, but not required. A MAP Participant may request an exemption from this requirement on a case by case basis. All such requests shall be in writing and include justification satisfactory to CCC that this labeling requirement would hinder a MAP Participant's promotional efforts. CCC will determine, on a case by case basis, whether sufficient justification exists to grant an exemption from the labeling requirement. In addition, CCC may temporarily waive this requirement where CCC has determined that such labeling will likely harm sales rather than help them. Such determinations will be announced to MAP Participants via a program notice issued on FAS' website;

(7) Include a written certification by the brand participant that it is either a small-sized entity as defined in this

subpart or a U.S. agricultural cooperative;

(8) Require that the brand participant submit to the MAP Participant a statement certifying that any Federal funds received will supplement, but not supplant, any private or third-party funds or other contribution or cost share to program activities; and

(9) Require the brand participant to maintain all original records and documents relating to program activities for five calendar years following the end of the applicable program year and make such records and documents available upon request to authorized officials of the U.S. Government.

§ 1485.16 Contribution and cost share rules.

(a) A MAP Participant implementing a MAP generic promotion program shall make contributions equal to at least 10 percent of the total amount reimbursed by CCC for all approved generic promotion activities undertaken by the MAP Participant. The contribution amount will be reflected in the award budget.

(b) A MAP Participant conducting its own brand promotion or a brand participant that is participating in the MAP brand promotion program of another MAP Participant shall provide funds for the branded activity in an amount that is at least equivalent to the amount of assistance they get from MAP for that activity.

(c) A MAP Participant must use its own funds and may not use MAP funds to pay any administrative costs of the MAP Participant's U.S. office(s), including legal fees, except as set forth in this subpart. Where the MAP Participant uses its own funds to pay for administrative costs, such costs may be counted in calculating the amount of contribution or cost share the MAP Participant contributes to MAP generic or brand promotion programs.

(d)(1) In calculating the amount of contribution or cost share that it will make, and the contribution or cost share that the U.S. industry (including expenditures to be made by entities in the applicant's industry in support of the entities' related promotion activities in the markets covered by the applicant's application) or State or local agency will make, the MAP applicant may include the costs (or such prorated costs) listed under paragraph (d)(2) of this section if:

(i) Expenditures are necessary and reasonable for accomplishment of an approved activity;

(ii) Expenditures are not included as cost share for any other Federal award;

(iii) Expenditures are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs; and

(iv) The contribution or cost share is made during the period covered by the agreement.

(2) Subject to paragraph (d)(1) of this section, as well as the cost principles in 2 CFR part 200 to the extent these principles do not directly conflict with the provisions of this subpart, the following are eligible contribution or cost share:

(i) Cash;

(ii) Compensation paid to personnel;

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

(iv) The cost of office space, including legal fees;

(v) A reasonable and justifiable proportion of general administrative costs and overhead;

(vi) Payments for indemnity and fidelity bond expenses;

(vii) The cost of business cards that target a foreign audience;

(viii) Fees for office parking;

(ix) The cost of subscriptions that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the MAP Participant;

(x) The cost of activities conducted overseas;

(xi) Credit card fees;

(xii) The cost of any independent evaluation or audit that is not required by CCC to ensure compliance with agreement or regulatory requirements;

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

(xiv) The cost of product samples;

(xv) Fees for participating in U.S. Government sponsored or endorsed export promotion activities;

(xvi) The cost of air and local travel in the United States related to a foreign market development effort;

(xvii) Transportation and shipping costs;

(xviii) The cost of displays and promotional materials;

(xix) Advertising costs;

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

(xxi) The costs associated with trade shows, seminars, and STRE conducted in the United States, and costs associated with entertainment conducted in the United States where such entertainment costs have a programmatic purpose and are

authorized in the agreement and/or the approval letter or are authorized by prior written approval of CCC;

(xxii) Product research that is undertaken to benefit an industry and has a specific export application;

(xxiii) Other administrative expenses (e.g., supervisory travel from the U.S. to an overseas office); and

(xxiv) The cost of any activity expressly listed as reimbursable in this subpart.

(3) The following are not eligible contribution or cost share:

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

(ii) Any expenditure, including that portion of salary and time spent, related to promoting membership in the Participant's organization;

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

(iv) The cost of refreshments and related equipment provided to office staff;

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

(vi) The cost of any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(vii) The cost of product development, product modifications, or product research;

(viii) Slotting fees or similar sales expenditures;

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

(x) The value of any services generated by a MAP Participant or third party that involve no expenditure by the MAP Participant or third party, e.g., free publicity;

(xi) Membership fees in clubs and social organizations; and

(xii) Any expenditure for an activity prior to CCC's approval of that activity.

(4) CCC shall determine, at CCC's discretion, whether any cost not expressly listed in this section may be included by the MAP Participant as an eligible contribution or cost share.

§ 1485.17 Reimbursement rules.

(a) A MAP Participant may seek reimbursement for an eligible expenditure if:

(1) The expenditure was necessary and reasonable for the performance of an approved activity; and

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

(b) Subject to paragraphs (a) and (d) of this section, as well as the cost principles in 2 CFR 200 to the extent these principles do not directly conflict with the provisions of this subpart, for

either brand or generic promotion activities, CCC will reimburse, in whole or in part, the cost of:

(1) Production and placement of advertising, including in print, electronic media, billboards, or posters, which may include advertising the availability of price discounts, except that advertising associated with a coupon or price discount for the MAP-promoted product is not reimbursable. If advertising is related to both coupons or price discounts for products other than the MAP Participant's promoted products as well as for MAP-promoted products, expenditures for such advertising will not be reimbursed in whole or in part (*e.g.*, expenditures may not be prorated and submitted for reimbursement). Electronic media includes, but is not limited to, radio, television, electronic mail, internet, telephone, text messaging, and podcasting;

(2) Production and distribution of banners, recipe cards, table tents, shelf talkers, and other similar point of sale materials;

(3) Direct mail advertising;

(4) In-store and food service promotions, product demonstrations to the trade and to consumers, and distribution of product samples (but not the purchase of the product samples), including shipment of samples or other program materials from the United States to foreign countries;

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

(6) Expenditures, other than travel expenditures, associated with seminars and educational training, whether conducted in the United States or outside the United States, including space rental, equipment rental, and duplication of seminar materials;

(7) Subject to paragraph (b)(18) of this section, non-travel expenditures, including participation fees, booth construction, transportation of related materials, rental of space and equipment, and duplication of related printed materials, associated with retail, trade, and consumer exhibits and shows, whether held outside or inside the United States. However, non-travel expenditures associated with retail, trade, and consumer exhibits and shows held inside the United States are reimbursable only if the exhibit or show is included on the list of approved U.S. exhibits and shows announced via a program notice issued on FAS' website and the exhibit or show is one that the MAP Participant has not participated in within the last three years using funds from a source other than the MAP. Retail, trade, and consumer exhibits and shows held inside the United States

may be considered for inclusion on the list of approved exhibits and shows if they are:

(i) A food or agricultural exhibit or show with no less than 30% of exhibitors selling food or agricultural products; and

(ii) An international exhibit or show that targets buyers, distributors, and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country;

(8) Subject to paragraph (b)(18) of this section, international travel expenditures (with airfare limited to the full fare economy rate), including per diem and any fees for passports, visas, inoculations, and modifying the originally purchased airline ticket, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304), for no more than two representatives of a single brand participant (or MAP Participant directly running its own brand program) to exhibit their company's (or cooperative's) products at a retail, trade, or consumer exhibit or show held outside the United States.

Representatives may include employees and board members of private companies, employees or members of cooperatives, or any broker, consultant, or marketing representative contracted by the company or cooperative to represent the company or cooperative in sales transactions;

(9) Subscriptions that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the MAP Participant;

(10) Demonstrators, interpreters, translators, receptionists, and similar temporary workers who help with the implementation of individual promotional activities, such as trade shows, in-store promotions, food service promotions, and trade seminars;

(11) Giveaways, awards, prizes, gifts, and other similar promotional materials, subject to such reimbursement limitation as CCC may determine and announce in writing to MAP Participants via a program notice issued on FAS' website. Reimbursement is available only when:

(i) The items are described in detail with a per unit cost in an approved strategic plan; and

(ii) Distribution of the promotional item is not contingent upon the consumer, or other target audience, purchasing a good or service to receive the promotional item;

(12) The design and production of packaging, labeling, or origin identification to be used during the

program year in which the expenditure is made, if such packaging, labeling, or origin identification is necessary to meet the importing requirements of a foreign country;

(13) The design, production, and distribution of coupons for products other than the MAP Participant's promoted products. If such activities include both coupons or price discounts for products other than the MAP Participant's promoted products as well as for MAP-promoted products, expenditures for such activities will not be reimbursed in whole or in part (*e.g.*, expenditures may not be prorated and submitted for reimbursement);

(14) An audit of a MAP Participant as required by 2 CFR part 200, subpart F if the MAP is the MAP Participant's largest source of Federal funding;

(15) The translation of written materials as necessary to carry out approved activities;

(16) Expenditures associated with developing, updating, and servicing websites on the internet that clearly target a foreign audience;

(17) International travel expenditures (with airfare limited to the full fare economy rate), including per diem and any fees for passports, visas, inoculations, and modifying the originally purchased airline ticket, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304), incurred for a foreign trade mission conducted outside the United States that is an activity under an approved branded program and that has met the following conditions:

(i) Trade mission travel for company (or cooperative) representatives was identified as a separate approved activity in the MAP Participant's UES;

(ii) The trade mission included representatives, as defined in paragraph (b)(8) of this section, from a minimum of five different companies (or cooperatives), and no more than two representatives from each participating company (or cooperative);

(iii) The appropriate FAS overseas office supported the trade mission by dedicating meaningful funding or other resources (such as facilities or staff time) to the activity; and

(iv)(A) The MAP Participant with the approved brand program produced an itinerary or agenda for the trade mission that demonstrated that company (or cooperative) representatives would be engaged for a minimum of 6 hours per day (except for the first and last days of the mission) in trade mission activities that include, at a minimum, each of the following:

(1) A product showcase where the FAS overseas office approved an invitation list of qualified buyers;

(2) Pre-arranged one-on-one business meetings; and

(3) Evaluation and feedback sessions with FAS staff and trade mission sponsors.

(B) Reimbursement is conditional on the MAP Participant having notified in writing the Attaché/Counselor in the destination country in advance of the travel;

(18) Where USDA has sponsored or endorsed a U.S. pavilion at a retail, trade, or consumer exhibit or show, whether held outside or inside the United States, MAP funds may be used to reimburse the travel and/or non-travel expenditures of only those MAP Participants located within the U.S. pavilion. Such expenditures must also adhere to the standard terms and conditions of the U.S. pavilion organizer. Upon written request, CCC may temporarily waive this subsection, on a case by case basis, where the trade show is segregated into product pavilions or a company's distributor or importer is located outside the U.S. pavilion. Such waiver will be provided to the MAP Participant in writing; and

(19) Contracts with U.S.-based organizations when the only contracted service such organizations provide to a MAP Participant is carrying out a specific market promotion activity in the United States directed to a foreign audience (e.g., a trade mission of foreign buyers coming to the United States to visit U.S. exporters). Such contracts may be reimbursable as a direct promotional expense. If a U.S.-based organization provides administrative services to the MAP Participant's domestic home office during a program year, any direct promotional services such organization provides to the Participant, whether for the Participant's domestic or overseas offices, during the same program year are not reimbursable.

(c) Subject to paragraphs (a) and (d) of this section, as well as the cost principles in 2 CFR part 200 to the extent these principles do not directly conflict with the provisions of this subpart, but for generic promotion activities only, CCC will also reimburse, in whole or in part, the cost of:

(1) Compensation and allowances for housing, educational tuition, and cost of living adjustments paid to a U.S. citizen employee or a U.S. citizen contractor stationed overseas, provided such benefits are granted under established written policies, except CCC will not reimburse that portion of:

(i) The total of compensation and allowances that exceed 125 percent of

the level of a GS-15 Step 10 salary for U.S. Government employees; or

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

(2) Approved Supergrade salaries for non-U.S. citizen employees and non-U.S. contractors stationed overseas;

(3) Compensation of non-U.S. citizen staff employees or non-U.S. contractors stationed overseas, subject to the following limitations:

(i) Where there is a local U.S. Embassy Foreign Service National (FSN) salary plan, CCC will not reimburse any portion of such compensation that exceeds the compensation prescribed for the most comparable position in the FSN salary plan, except for approved Supergrades; or

(ii) Where an FSN salary plan does not exist, CCC will not reimburse any portion of such compensation that exceeds locally prevailing levels, which the MAP Participant shall document by a salary survey or other means, except for approved Supergrades;

(4) A retroactive salary adjustment for non-U.S. citizen staff employees or non-U.S. contractors stationed overseas that conforms to a change in FSN salary plans, effective as of the date of such change;

(5) Accrued annual leave as of the time employment is terminated or as of such time as required by local law;

(6) Overtime paid to clerical staff of approved MAP-funded overseas offices;

(7) Temporary contractor fees for contractors stationed overseas, except CCC will not reimburse any portion of any such fee that exceeds the daily gross GS-15, Step 10 salary for U.S.

Government employees in effect on the date the fee is earned, unless a bidding process reveals that such a contractor is not available at or below that salary rate;

(8)(i) Subject to paragraph (b)(18) of this section, international travel expenditures, including per diem and any fees for passports, visas, inoculations, and modifying the originally purchased airline ticket, for activities held outside the United States or in the United States, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304), except that if the activity is participation in a retail, trade, or consumer exhibit or show held inside the United States, international travel expenditures are reimbursable only if the exhibit or show is included on the list of approved U.S. exhibits and shows announced via a program notice issued on FAS' website and the exhibit or show is one that the Participant has not participated in within the last three years using funds from a source other than the MAP. Retail, trade, and

consumer exhibits and shows held inside the United States may be considered for inclusion on the list of approved exhibits and shows if they are:

(A) A food or agricultural exhibit or show with no less than 30% of exhibitors selling food or agricultural products; and

(B) An international exhibit or show that targets buyers, distributors, and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country.

(ii) CCC generally will not reimburse any portion of air travel, including any fees for modifying the originally purchased ticket, in excess of the full fare economy rate. If a traveler flies in business class or a different premium class, the basis for reimbursement will be the full fare economy class rate for the same flight and the MAP Participant shall provide documentation establishing such full fare economy class rate to support its reimbursement claim. If economy class is not offered for the same flight or if the traveler flies on a charter flight, the basis for reimbursement will be the average of the full fare economy class rate for flights offered by three different airlines between the same points on the same date and the MAP Participant shall provide documentation establishing such average of the full fare economy class rates to support its reimbursement claim.

(iii) In very limited circumstances, the MAP Participant may be reimbursed for air travel up to the business class rate (i.e., a premium class rate other than the first class rate). Such circumstances are:

(A) Regularly scheduled flights between the origin and destination points do not offer economy class (or equivalent) airfare and the MAP Participant receives written documentation to that effect at the time the tickets are purchased;

(B) Business class air travel is necessary to accommodate an eligible traveler's disability. Such disability must be substantiated in writing by a physician; or

(C) An eligible traveler's origin and/or destination are outside of the continental United States and the scheduled flight time, beginning with the scheduled departure time and ending with the scheduled arrival time, including stopovers and changes of planes, exceeds 14 hours. In such cases, per diem and other allowable expenses will also be reimbursable for the day of arrival. However, no expenses will be reimbursable for a rest period or for any non-work days (e.g., weekends, holidays, personal leave, etc.)

immediately following the date of arrival. A stopover is the time a traveler spends at an airport, other than the originating or destination airport, which is a normally scheduled part of a flight.

A change of planes is the time a traveler spends at an airport, other than the originating or destination airport, to disembark from one flight and embark on another. All travel should follow a direct or usually traveled route. Under no circumstances should a traveler select flights in a manner that extends the scheduled flight time to beyond 14 hours in part to secure eligibility for reimbursement of business class travel;

(iv) Alternatively, in lieu of reimbursing up to the business class rate in such circumstances, CCC will reimburse economy class airfare plus per diem and other allowable travel expenses related to a rest period of up to 24 hours, either en route or upon arrival at the destination. For a trip with multiple destinations, each origin/destination combination will be considered separately when applying the 14-hour rule for eligibility of reimbursement of business class travel or rest period expenses;

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

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

(11) Organization costs for overseas offices approved in agreements. Such costs include incorporation fees, brokers' fees, fees to attorneys, accountants, or investment counselors, whether or not employees of the organization, incurred in connection with the establishment or reorganization of the overseas office, and rent, utilities, communications originating overseas, office supplies, accident liability insurance premiums (provided the types and extent and cost of coverage are in accordance with the MAP Participant's policy and sound business practice), and routine accounting and legal services required to maintain the overseas office;

(12) With prior CCC approval, the purchase, lease, or repair of, or insurance premiums for, capital goods that have an expected useful life of at least one year, such as furniture, equipment, machinery, removable fixtures, draperies, blinds, floor coverings, computer hardware and software, and portable electronic communications devices (including mobile phones, wireless email devices, and personal digital assistants);

(13) Such premiums for health or accident insurance and other benefits

for foreign national employees that the employer is required by law to pay, provided that such benefits are granted under established written policies;

(14) Accident liability insurance premiums for facilities used jointly with third-party participants for MAP activities or for MAP-funded travel of third-party participants, provided the types and extent and cost of coverage are in accordance with the MAP Participant's policy and sound business practice;

(15) Market research, including research to determine the types of products that are desired in a market;

(16) Independent evaluations and audits, if not otherwise required by CCC, to ensure compliance with program requirements;

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

(18) Employment agency fees;

(19) STRE incurred outside of the United States, and STRE incurred in conjunction with an approved activity taking place within the United States with prior written approval from CCC. MAP Participants are required to use the appropriate American Embassy representational funding guidelines for breakfasts, lunches, dinners, and receptions. MAP Participants may exceed Embassy guidelines only when they have received written authorization from the FAS Attaché/Counselor at the Embassy. The amount of unauthorized STRE expenses that exceed the guidelines will not be reimbursed. MAP Participants must pay the difference between the total cost of STRE events and the appropriate amount as determined by the guidelines. For STRE incurred in the United States, the MAP Participant should provide, in its request for approval, the basis for determining its proposed expenses;

(20) Evacuation payments (safe haven) and shipment and storage of household goods and motor vehicles for relocations lasting at least 12 months;

(21) U.S. office(s) administrative support expenses for the National Association of State Departments of Agriculture, the SRTGs, and the Intertribal Agriculture Council;

(22) Non-travel expenditures associated with conducting international staff conferences held either in or outside the United States;

(23) Subject to paragraph (b)(18) of this section, domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304), for international retail, trade, and consumer exhibits and shows conducted in the United States. Domestic travel expenses to such a show or exhibit are covered only if the

exhibit or show is included on the list of approved U.S. exhibits and shows announced via a program notice issued on FAS' website and the exhibit or show is one that the Participant has not participated in within the last three years using funds from a source other than the MAP. Retail and trade exhibits and shows held inside the United States may be considered for inclusion on the list of approved exhibits and shows if they are:

(i) A food or agricultural exhibit or show with no less than 30% of exhibitors selling food or agricultural products; and

(ii) An international exhibit or show that targets buyers, distributors, and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country;

(24) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304), for seminars and educational training conducted in the United States;

(25) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304), for one home office MAP Participant employee, one MAP Participant board member, or a state department of agriculture employee paid by the MAP Participant, when such individual accompanies foreign trade missions or technical teams while traveling in the United States where the following conditions are met:

(i) Such trade missions or technical team visits are identified in the MAP Participant's UES;

(ii) Such trade missions or technical team visits have been approved by CCC; and

(iii) The MAP-sponsored traveler submits a follow-up trip report to CCC that includes the following:

(A) Purpose for the individual's participation;

(B) Any pre-arranged business meetings;

(C) Itinerary and/or agenda for the trip; and

(D) Feedback from sponsors and trade mission/technical team members on the success of the trip.

(26) Approved demonstration projects;

(27) Expenditures related to copyright, trademark, or patent registration, including attorney fees;

(28) Rental or lease expenditures for storage space for program-related materials;

(29) Business cards that target a foreign audience;

(30) Expenditures associated with developing, updating, and servicing

websites on the internet that: Contain a message related to exporting or international trade, include a discernible "link" to the FAS/ Washington homepage or an FAS overseas homepage, and have been specifically approved by FAS. Expenditures related to websites or portions of websites that are accessible only to an organization's members are not reimbursable. Reimbursement claims for websites that include any sort of "members only" sections must be prorated to exclude the costs associated with those areas subject to restricted access;

(31) Expenditures not otherwise prohibited from reimbursement that are associated with activities held in the United States or abroad designed to improve market access by specifically addressing temporary, permanent, or impending technical barriers to trade that prohibit or threaten U.S. exports of agricultural commodities;

(32) Membership fees in professional, industry-related organizations;

(33) Travel costs for dependents, as allowed in 2 CFR part 200 (e.g., for travel of duration of six months or more with prior approval of CCC);

(34) That portion of airtime for wireless phones that is devoted to program activities and monthly service fees prorated at the proportion of program-related airtime to total airtime; and

(35) Production and distribution of publications.

(d) CCC will not reimburse any cost of:

(1) Forward year financial obligations, such as severance pay, attributable to employment of foreign nationals;

(2) Expenses, fines, settlements, judgments, or payments relating to legal suits, challenges, or disputes, except as otherwise allowed in 2 CFR part 200;

(3) The design and production of packaging, labeling, or origin identification, except as specifically allowed in this subpart;

(4) Product development, product modification, or product research;

(5) Product samples;

(6) Slotting fees or similar sales expenditures;

(7) The purchase, construction, or lease of space for permanent, non-mobile displays, *i.e.*, displays that are constructed to remain permanently in the same location beyond one program year. However, CCC may, at its discretion, reimburse the construction or purchase of permanent displays on a case by case basis, if the Participant sought and received prior written approval from CCC of such construction or purchase;

(8) Rental, lease, or purchase of warehouse space, except for storage space for program-related material;

(9) Coupon redemption or price discounts of the promoted commodity;

(10) Refundable deposits or advances;

(11) Giveaways, awards, prizes, gifts, and other similar promotional materials in excess of the limitation that CCC will determine. Such determination will be announced in writing via a program notice issued on FAS' website;

(12) Alcoholic beverages that are not a promoted commodity and part of an approved promotional activity;

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

(14) Travel of applicants for employment interviews;

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

(16) Independent evaluations or audits, including evaluations or audits of the activities of a subcontractor, if CCC determines that such a review is needed in order to confirm past or to ensure future agreement or regulatory compliance;

(17) Any arrangement that has the effect of reducing the selling price of an agricultural commodity;

(18) Goods, services, and salaries of personnel provided by a third party;

(19) Membership fees in clubs and social organizations;

(20) Indemnity and fidelity bonds, except as otherwise allowed in 2 CFR part 200;

(21) Fees for participating in U.S. Government sponsored activities, other than trade fairs, shows, and exhibits;

(22) Business cards that target a U.S. domestic audience;

(23) Seasonal greeting cards;

(24) Office parking fees;

(25) Subscriptions to publications that are not of a technical, economic, or marketing nature or that are not relevant to the approved activities of the MAP Participant;

(26) U.S. office(s) administrative expenses, including communication costs, except as noted in paragraph (c)(21) of this section and except that usage costs for communications devices incurred while on reimbursable international or domestic travel for approved MAP brand or generic promotion activities are reimbursable as eligible travel expenditures as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304);

(27) Any expenditure on an activity that includes any derogatory reference or comparison to other U.S. agricultural commodities;

(28) Payment of U.S. and foreign employees' or contractors' share of personal taxes, except where a foreign country's laws require the MAP Participant to pay such employees' or contractors' share;

(29) Any expenditure made for an activity prior to CCC's approval of that activity;

(30) Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening;

(31) Credit card fees;

(32) Entertainment, *e.g.*, amusements, diversions, cover charges, personal gifts, or tickets to theatrical or sporting events;

(33) Refreshments, or related equipment, for office staff; and

(34) Expenditures associated with a MAP Participant's creation or review of their fraud prevention program, contracting procedures, or brand program operational procedures.

(e) Paragraphs (e)(1) through (4) of this section shall apply to the approval of Supergrades.

(1) With respect to individuals who are not U.S. citizens and who are hired by MAP Participants either as employees or contractors acting as employees, CCC will not ordinarily reimburse any portion of such individual's compensation that exceeds the compensation prescribed for the most comparable position in the FSN salary plan applicable to the country in which the employee or contractor works. However, a MAP Participant may seek a higher level of reimbursement for a non-U.S. citizen employee or contractor who will be employed as a country director or regional director by requesting that CCC approve that employee or contractor as a Supergrade.

(2) To request approval of a Supergrade, the MAP Participant shall provide CCC with a detailed description of both the duties and responsibilities of the position and the qualifications and background of the employee or contractor concerned. The Participant shall also justify why the comparable FSN salary level is insufficient.

(3) Where a non-U.S. citizen employee or contractor will be employed as a country director, the MAP Participant may request approval for a "Supergrade I" salary level, equivalent to a single grade increase over the existing top grade of the FSN salary plan. The Supergrade I and its step increases are calculated by increasing each of the steps in the top FSN grade by the percentage difference between the second highest and the

highest grade in the FSN salary plan. Where the non-U.S. citizen employee or contractor will be employed as a regional director, with responsibility for activities and/or offices in more than one country, the MAP Participant may request approval for a "Supergrade II" salary level, which is calculated relative to a Supergrade I in the same way the latter is calculated relative to the highest grade in the FSN salary plan.

(4) A U.S. citizen with dual citizenship with another foreign country or countries shall not be considered a non-U.S. citizen.

(f) For a brand promotion activity, CCC will reimburse no more than 50 percent of the total eligible expenditures made on that activity.

(g) CCC will reimburse for expenditures made after the conclusion of a MAP Participant's program year provided:

(1) The activity was approved by CCC prior to the end of the program year;

(2) The activity was completed within 30 calendar days following the end of the program year; and

(3) All expenditures were made for the activity within 6 months following the end of the program year.

(h) A MAP Participant shall not use MAP funds for any activity, or any expenses incurred by the MAP Participant prior to the date specified in the approval letter or after the date the agreement is suspended or terminated, except as otherwise permitted by CCC.

(i) Except as otherwise provided in this subpart, MAP-funded travel shall conform to the U.S. Federal Travel Regulations (41 CFR parts 300 through 304) and 2 CFR part 200, and MAP-funded air travel shall conform to the requirements of the Fly America Act (49 U.S.C. 40118). The MAP Participant shall notify the Attaché/Counselor in the destination country(ies) in writing in advance of any proposed travel. The timing of such notice should be far enough in advance to enable the Attaché/Counselor to schedule appointments, make preparations, or otherwise provide any assistance being requested. Failure to provide advance notification of travel generally will result in disallowance of the expenses related to the travel, unless CCC determines it was impractical to provide such notification.

(j) CCC may determine, at CCC's discretion, whether any cost not expressly listed in this section will be reimbursed.

§ 1485.18 Reimbursement procedures.

(a) Following the implementation of a project for which CCC has agreed to provide funding, a Participant may

submit claims for reimbursement of eligible expenses incurred in implementing MAP activities, to the extent that CCC has agreed to pay such expenses. Any changes to approved activities must be approved in writing by CCC before any reimbursable expenses associated with the change can be incurred. A Participant will be reimbursed after CCC reviews the claim and determines that it is complete.

(b) All claims for reimbursement shall be submitted by the MAP Participant's U.S. office to CCC. CCC will make all payments to Participants in U.S. dollars. FAS will initiate payment within 30 days after receipt of the billing, unless the billing is improper.

(c) Participants will be authorized to submit requests for reimbursement or advance at least monthly when electronic fund transfers (EFTs) are not used, and as frequently as desired when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

(d) CCC will not reimburse claims submitted later than 6 months after the end of a MAP Participant's program year.

(e) If CCC overpays a reimbursement claim, the MAP Participant shall repay CCC within 30 calendar days of such overpayment the amount of the overpayment either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(f) If a MAP Participant receives a reimbursement or offsets an advanced payment which is later disallowed, the MAP Participant shall repay CCC within 30 calendar days of such disallowance the amount disallowed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(g) MAP funds may be expended by MAP Participants only on legitimate, approved activities as set forth in the agreement and approval letter. If a MAP Participant discovers that MAP funds have not been properly spent, it shall notify CCC and shall within 30 calendar days of its discovery repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(h) The MAP Participant shall report any actions that may have a bearing on the propriety of any claims for

reimbursement in writing to the appropriate Attaché/Counselor and its U.S. office shall report such actions in writing to the appropriate FAS Division Director.

§ 1485.19 Advances.

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

(b) *Exception.* A MAP Participant may request an advance of MAP funds from CCC for generic promotion activities, provided the MAP Participant meets the criteria for advance payments in 2 CFR part 200. CCC will not approve any request for an advance submitted after the end of a MAP Participant's program year. At any given time, total payments advanced shall not exceed 40 percent of a MAP Participant's total approved generic activity budget for the program year. CCC will not advance funds to a MAP Participant for brand promotion activities. When approving a request for an advance, CCC may require the MAP Participant to carry adequate fidelity bond coverage when the absence of such coverage is considered to create an unacceptable risk to the interests of the MAP. Whether an "unacceptable risk" exists in a particular situation will depend on a number of factors, such as, for example, the Participant's history of performance in the MAP, the Participant's perceived financial stability and resources, and any other factors presented in the particular situation that may reflect on the Participant's responsibility or the riskiness of its activities.

(c) *Interest.* A MAP Participant shall deposit and maintain all funds advanced by CCC in an insured account in the United States. The account shall be interest-bearing, unless the exceptions in 2 CFR part 200 apply. Interest earned by the MAP Participant on funds advanced by CCC is not program income. Up to \$500 of interest earned per year may be retained by the MAP Participant for administrative expenses. Any additional interest earned on MAP advances shall be remitted annually to the appropriate entity as required in 2 CFR part 200.

(d) *Refunds due CCC.* A MAP Participant shall fully expend all advances on approved generic promotion activities within 90 calendar days after the date of disbursement by CCC. By the end of the 90 calendar days, the MAP Participant must submit reimbursement claims to offset the advance and submit a check made payable to CCC for any unexpended balance. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

§ 1485.20 Employment practices.

(a) A MAP Participant shall enter into written contracts with all overseas employees who are paid in whole or in part with MAP funds and shall ensure that all terms, conditions, and related formalities of such contracts conform to governing local law.

(b) A MAP Participant shall, in its overseas offices, conform its office hours, work week, and holidays to local law and to the custom generally observed by U.S. commercial entities in the local business community.

(c) A MAP Participant may pay salaries or fees in any currency (U.S. or foreign) in conformance with contract specifications. Participants should consult local laws regarding currency restrictions.

§ 1485.21 Financial management.

(a) A MAP Participant shall implement and maintain a financial management system that conforms to generally accepted accounting principles and complies with the standards in 2 CFR part 200.

(b) A MAP Participant shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with these regulations.

(c) A MAP Participant shall retain all records concerning a MAP program transaction for a period of five years after completion of the transaction and permit authorized officials of the U.S. Government to have full and complete access, for such five-year period, to such records. These records shall include all documents related to employment of any employees whose salaries are reimbursed in whole or in part with MAP funds, whether such employees are based in the United States or overseas, such as employment applications, contracts, position descriptions, leave records, salary changes, and all records pertaining to contractors.

(d) A MAP Participant shall also maintain adequate documentation related to the proper disposition of all personal property having a useful life of more than one year and an acquisition cost of \$500 or more purchased by the Participant and for which the Participant is reimbursed, in whole or in part, with MAP funds.

(e) A MAP Participant shall maintain its records of expenditures, contributions, and cost share in a manner that allows it to provide information by program year, activity plan, country or region (as applicable), activity number, and cost category. Such records shall include copies of:

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

(2) Receipts for any other program-related expenditure in excess of a minimum level that CCC shall determine and announce in writing to all MAP Participants via a program notice issued on the FAS website.

Receipts for all actual M&IE reimbursements must be maintained, regardless of the amount;

(3) The exchange rate used to calculate the dollar equivalent of expenditures made in a foreign currency and the basis for such calculation;

(4) Reimbursement claims;

(5) An itemized list of claims charged to each of the MAP Participant's MAP accounts;

(6) Documentation, with accompanying English translation, supporting each reimbursement claim, including evidence to support the financial transactions, such as canceled checks, receipted paid bills, contracts, purchase orders, per diem calculations, travel vouchers, and credit memos; and

(7)(i) Each MAP Participant must keep records documenting all claimed contributions and cost share, to include:

(A) Copies of invoices or receipts for expenses paid by the U.S. industry or State agency and not reimbursed by the MAP Participant for the joint activity, or

(B) If invoices are not available, an itemized statement from the U.S. industry or State agency as to what costs it incurred pursuant to the joint activity, or

(C) If neither of the foregoing is available, a statement from the U.S. industry or State agency as to what goods and services it provided, or

(D) If none of the foregoing are available, a memo to the files of the MAP Participant's estimate of what contribution or cost share was made by the U.S. industry or State agency, item by item, and the method used to assign a value to each.

(ii) The documentation required in paragraph (e)(7)(i) of this section must include the dates, purpose, and location of the activity for which the cash or in-kind items were claimed as a contribution or cost share, who conducted the activity, the participating groups or individuals, and the method of computing the claimed contribution or cost share. MAP Participants must retain and make available for compliance reviews and audits documentation related to claimed contribution or cost share.

(f) Upon request, a MAP Participant shall provide documents supporting reimbursement claims to CCC. CCC may deny a claim for reimbursement if the

claim is not supported by adequate documentation.

§ 1485.22 Reports.

(a) Participants are required to submit regular financial and performance reports in accordance with their agreement. Reporting requirements and formats for the required financial and performance reports will be specified in the agreement between CCC and the Participant.

(b)(1) In addition to the information required in 2 CFR 200.328(b)(2), a Participant's performance reports must include pertinent information regarding the Participant's progress, measured against established indicators, baselines, and targets, towards achieving the expected results specified in the agreement. This reporting must include, for each performance indicator, a comparison of actual accomplishments with the baseline and the targets established for the period. When actual accomplishments deviate significantly from targeted goals, the Participant must provide an explanation in the report.

(2) A Participant must ensure the accuracy and reliability of the performance data submitted to FAS in performance reports. At any time during the period of performance of the agreement, FAS may review the Participant's performance data to determine whether it is accurate and reliable. The Participant must comply with all requests made by FAS or an entity designated by FAS in relation to such reviews.

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

(d) Not later than 45 calendar days after the completion of travel (other than local travel), a MAP Participant shall submit a trip report. The report must be submitted to the appropriate Attaché/Counselor(s) and must include the name(s) of the traveler(s), purpose of travel, itinerary, names and affiliations of contacts, and a brief summary of findings, conclusions, recommendations, and specific accomplishments.

(e) Not later than 90 calendar days after the end of its program year, a MAP Participant shall submit a report on any research conducted pursuant to the approved MAP program.

(f) If requested by FAS, a Participant must provide to FAS additional information or reports relating to the agreement.

(g) If a Participant requires an extension of a reporting deadline, it must ensure that FAS receives an extension request at least five business days prior to the reporting deadline. FAS may decline to consider a request

for an extension that it receives after this time period. FAS will consider requests for reporting deadline extensions on a case by case basis and will make a decision based on the merits of each request. FAS will consider factors such as unforeseen or extenuating circumstances and past performance history when evaluating requests for extensions.

§ 1485.23 Evaluation.

(a)(1) The Government Performance and Results Act (GPRA) of 1993 (5 U.S.C. 306; 31 U.S.C. 1105, 1115–1119, 3515, 9703–9704) requires performance measurement of Federal programs, including the MAP. Evaluation of the MAP's effectiveness will depend on a clear statement by Participants of the constraints and opportunities facing U.S. exports, goals to be met within a specified time, schedule of measurable milestones for gauging success, plan for achievement, and assessment of results of activities at regular intervals. The overall goal of the MAP and of individual Participants' programming is to achieve or maintain sales that would not have occurred in the absence of MAP funding. A MAP Participant that can demonstrate such sales, taking into account extenuating factors beyond the Participant's control, will have met the overall objective of the GPRA and the need for evaluation.

(2) Evaluation is an integral element of program planning and implementation, providing the basis for the strategic plan. The evaluation results guide the development and scope of a MAP Participant's program, contribute to program accountability, and provide evidence of program effectiveness.

(b) A MAP Participant shall complete at least one program evaluation each year. A program evaluation is a review of the MAP Participant's entire program, or an appropriate portion of the program as agreed to by the MAP Participant and CCC, to determine the effectiveness of the MAP Participant's strategy in meeting specified goals. The actual scope and timing of the program evaluation shall be determined by the MAP Participant and CCC and specified in the approval letter. A MAP Participant may contract with an independent evaluator to satisfy this requirement, although CCC reserves the right to have direct input and control over the design, scope, and methodology of any such evaluation, including direct contact with and provision of guidance to the independent evaluator. A MAP Participant shall submit, via a cover letter to CCC, an executive summary that assesses the program evaluation's

findings and recommendations and proposed changes in program strategy or design as a result of the evaluation. In addition to the requirements set forth in 2 CFR part 200, a program evaluation shall contain:

- (1) The name of the party conducting the evaluation;
- (2) The scope of the evaluation;
- (3) A concise statement of the market constraint(s)/opportunity(ies) and the goals specified in the approved strategic plan;
- (4) A description of the evaluation methodology;
- (5) A description of additional export sales achieved, including the ratio of additional export sales in relation to the MAP Participant's program funding received;
- (6) A summary of the findings, including an analysis of the strengths and weaknesses of the program(s); and
- (7) Recommendations for future programs.

(c) MAP Participants conducting a branded program must also complete a brand promotion evaluation. A brand promotion evaluation is a review of the U.S. and foreign commercial entities' export sales to determine whether the activity achieved the goals specified in the approved MAP program. This evaluation shall be completed and submitted to CCC no later than 6 months following the end of the Participant's program year.

(d) On an annual basis, or more often when appropriate or required by CCC, a MAP Participant shall complete and submit program success stories. CCC will announce to all MAP Participants the detailed requirements for completing and submitting program success stories.

§ 1485.24 Compliance reviews and notices.

(a) USDA staff may conduct compliance reviews of the Participant's activities under this program to ensure compliance with this subpart, applicable Federal laws and regulations, and the terms of the agreements and approval letters. Participants shall cooperate fully with relevant USDA staff conducting compliance reviews and shall comply with all requests from USDA staff to facilitate the conduct of such reviews. Program funds spent inappropriately or on unapproved activities must be returned to CCC.

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

(c) Upon conclusion of the compliance review, USDA staff will

provide a written compliance report to the Participant. The compliance report will detail any instances where it appears that the Participant is not complying with any of the terms or conditions of the agreement, approval letter, or the applicable laws and regulations. The report will also specify if it appears that CCC may be entitled to recover funds from the Participant and will explain the basis for any recovery of funds from the Participant. If, as a result of a compliance review, CCC determines that further review is needed in order to ensure compliance with the requirements of the program, CCC may require the Participant to contract for an independent audit.

(d) In addition, CCC may notify a Participant in writing at any time if CCC determines that CCC may be entitled to recover funds from the Participant. CCC will explain the basis for any recovery of funds from the Participant in the written notice. The Participant shall, within 30 calendar days of the date of the notice, repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. If, however, a Participant notifies CCC within 30 calendar days of the date of the written notice that the Participant intends to file an appeal pursuant to the provisions of this subpart, the amount owed to CCC by the Participant is not due until the appeal procedures are concluded and CCC has made a final determination as to the amount owed.

(e) The fact that a compliance review has been conducted by USDA staff does not signify that a Participant is in full compliance with its agreement, approval letter, and/or applicable laws and regulations.

(f) For a Participant response to compliance report:

(1) A Participant shall, within 60 calendar days of the date of the issuance of a compliance report, submit a written response to CCC. The response may include additional documentation for consideration or a request for reconsideration of any finding along with supporting justification. If the Participant does not wish to contest the compliance report, the response shall include any money owed to CCC, which may be returned by submitting a check payable to CCC or by offsetting a reimbursement claim. The Participant shall make any payments in U.S. dollars, unless otherwise approved in advance by CCC. CCC, at its discretion, may extend the period for response.

(2) After reviewing the response, CCC shall determine whether the Participant owes any funds to CCC and will inform the Participant in writing of the basis for the determination. CCC may initiate action to collect such amount by providing the Participant a written demand for payment of the debt pursuant to debt settlement policies and procedures, 7 CFR part 1403.

(g) For Participant appeals of CCC determinations:

(1) Within 30 calendar days of the date of the issuance of a determination, the Participant may appeal the determination by making a request in writing that includes the basis for such reconsideration. The Participant may also request a hearing.

(2) If the Participant requests a hearing, CCC will set a date and time for the hearing. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Participant bears the cost of a transcript; however, CCC may, at its discretion, have a transcript prepared at CCC's expense.

(3) CCC will base its final determination upon information contained in the administrative record. The Participant must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by CCC.

§ 1485.25 Failure to make required contribution or cost share.

A MAP Participant's required contribution or cost share will be specified in the approval letter. If the MAP Participant's required contribution or cost share is specified as a dollar amount and the MAP Participant does not make the required contribution or cost share, the MAP Participant shall pay to CCC in dollars the difference between the amount actually contributed and the amount specified in the approval letter. If the MAP Participant's required contribution or cost share is specified as a percentage of the total amount reimbursed by CCC, the MAP Participant may either return to CCC the necessary amount of funds reimbursed by CCC to increase its actual contribution or cost share percentage to the required level or pay to CCC in dollars the difference between the amount actually contributed and the amount of funds necessary to increase its actual contribution or cost share percentage to the required level. A MAP Participant shall remit such payment within six months after the end of its program year. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

§ 1485.26 Submissions.

For all permissible methods of delivery, submissions required by this subpart shall be deemed submitted as of the date received by CCC.

§ 1485.27 Disclosure of program information.

(a) Documents submitted to CCC by MAP Participants are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, 7 CFR part 1, subpart A, and specifically 7 CFR 1.12.

(b) Upon request, a Participant shall provide to any person a copy of any document in its possession or control containing market information developed and produced under the terms of its agreement. The Participant may charge a fee not to exceed the costs for assembling, duplicating, and distributing the materials.

(c) Any research conducted by a MAP Participant pursuant to an agreement and/or approval letter shall be subject to the provisions relating to intangible property in 2 CFR part 200.

§ 1485.28 Ethical conduct.

(a) A MAP Participant shall conduct its business in accordance with the laws and regulations of the country(s) in which an activity is carried out and in accordance with applicable U.S. Federal, state, and local laws and regulations. A MAP Participant shall conduct its business in the United States in accordance with applicable Federal, state, and local laws and regulations.

(b) Except for a U.S. agricultural cooperative or a U.S. for-profit entity, neither a MAP Participant nor its affiliates shall make export sales of eligible commodities covered under the terms of the applicable MAP agreement. Nor shall such entities charge a fee for facilitating an export sale. A MAP Participant may, however, collect check-off funds and membership fees that are required for membership in the MAP Participant's organization.

(c) A MAP Participant shall not limit participation in its MAP activities to members of its organization. Participants shall ensure that their MAP-funded programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non-merit factors. The MAP Participant shall publicize its program and make participation possible for commercial entities throughout the relevant commodity sector or, in the case of SRTGs, throughout the corresponding region. This includes providing to such commercial entities, upon request, a

copy of any document in its possession or control containing market information developed and produced under the terms of its MAP agreement. The Participant may charge a fee not to exceed the costs for assembling, duplicating, and distributing the materials. This paragraph does not apply to U.S. agricultural cooperatives when implementing their own brand program.

(d) A MAP Participant shall select U.S. agricultural industry representatives to participate in generic MAP activities such as trade teams, sales teams, and trade fairs based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested by CCC, a MAP Participant shall submit such selection criteria to CCC for approval.

(e) All MAP Participants should endeavor to ensure fair and accurate fact-based advertising. Deceptive or misleading promotions may result in cancellation or termination of a MAP Participant's agreement and the recovery of CCC funds related to such promotions from the Participant.

(f) The MAP Participant must report any actions or circumstances that may have a bearing on the propriety of its MAP program to the appropriate Attaché/Counselor, and its U.S. office shall report such actions or circumstances in writing to CCC.

§ 1485.29 Subawarding procedures.

(a) MAP Participants have full and sole responsibility for the legal sufficiency of all contracts and assume financial liability for any costs or claims resulting from suits, challenges, or other disputes based on contracts entered into by the MAP Participant. Neither CCC nor any other agency of the U.S. Government nor any official or employee of CCC, FAS, USDA, or the U.S. Government has any obligation or responsibility with respect to MAP Participant contracts with third parties.

(b) A MAP Participant shall comply with the procurement standards set forth below and in 2 CFR part 200 when procuring goods and services and when engaging in construction to implement agreements.

(c) Each MAP Participant shall establish open, fair, and competitive contracting procedures for contracts that are funded, in whole or in part, with MAP funds.

(d) Each MAP Participant shall submit to CCC, for CCC approval, written contracting guidelines for contracts that are funded, in whole or in part, with MAP funds. CCC will notify all new and existing MAP Participants in writing in

each Participant's approval letter and through the FAS website as to applicable submission dates for and dates for approvals of contracting guidelines. CCC's approval of such contracting guidelines will remain in place until CCC retracts its approval in writing, or until new guidelines are approved that supersede them. Once approved by CCC, these contracting guidelines shall govern all of a Participant's MAP-funded contracting involving contracts with an annual minimum value that CCC shall determine and announce in writing to all MAP Participants via a program notice issued on the FAS website. The guidelines shall indicate the method for evaluating proposals received for all contract competitions, the method for monitoring and evaluating performance under contracts, and the method for initiating corrective action for unsatisfactory performance under contracts. The MAP Participant may modify and resubmit these guidelines for re-approval at any time. In addition to the requirements in 2 CFR part 200, these guidelines shall include, at a minimum, the following:

(1) Procedures for developing and publicizing requests for proposals, invitations for bids, and similar documents that solicit third party offers to provide goods or services. Solicitations for professional and technical services shall be based on clear and accurate descriptions of and requirements related to the services to be procured. Such procedures must include a conflict of interest provision that states that no employee, officer, board member, or agent thereof of the MAP Participant will participate in the review, selection, award, or administration of a contract if a real or apparent conflict of interest would arise. Such a conflict would arise when an employee, official, board member, agent, or the employee's, officer's, board member's, or agent's family, partners, or an organization that employs or is about to employ any of these parties or their affiliates has a financial or other interest in the contract. Procedures shall provide that officers, employees, board members, and agents thereof shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or subcontractors. Procedures shall also provide for disciplinary actions to be applied for violations of such standards by officers, employees, board members, or agents thereof;

(2) Procedures for reviewing proposals, bids, or other offers to provide goods and services. Separate procedures shall be developed for

various situations, including, but not limited to: solicitations for highly technical services; solicitations for services that are not common in a specific market; sole source contracts; solicitations that yield receipt of three or more bids; or solicitations that yield receipt of fewer than three bids;

(3) Requirements to conduct all contracting in an openly competitive manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals for procurement of any goods or services, and such individuals' families or partners, or an organization that employs or is about to employ any of the aforementioned, shall be excluded from competition for such procurement. MAP Participants' written contracting guidelines may detail special situations where the prohibitions in this subparagraph do not apply, such as in situations involving highly specialized technical services or situations where the services are not commonly offered in a specific market;

(4) Requirements to perform and document in the procurement files some form of price or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices in connection with every procurement action that is governed by the contracting guidelines;

(5) Requirements to conduct an appropriate form of competition every 3 years on all multi-year contracts that are governed by the contracting guidelines. However, contracts for in-country representation are not required to be re-competed after the initial award. Instead, the performance of in-country representation must be evaluated and documented by the MAP Participant annually to ensure that the terms of the contract are being met in a satisfactory manner; and

(6) Requirements for written contracts with each provider of goods, services, or construction work. Such contracts shall require such providers to maintain adequate records to account for funds provided to them by the MAP Participant.

(e) A MAP Participant may undertake MAP promotional activities directly or through a domestic or foreign subrecipient. However, the MAP Participant shall remain responsible and accountable to CCC for all MAP promotional activities and related expenditures undertaken by such subrecipient and shall be responsible for reimbursing CCC for any funds that CCC determines should be refunded to CCC

in relation to such subrecipient's promotional activities and expenditures.

§ 1485.30 Property standards.

(a) A Participant shall maintain an inventory of all personal property having a useful life of more than one year and an acquisition cost of \$500 or more that was acquired in furtherance of program activities. The inventory shall list and number each item and include the date of purchase or acquisition, cost of purchase, replacement value, serial number, make, model, and electrical requirements, as applicable.

(b) The Participant shall insure all real property and equipment that was acquired, in whole or in part, with MAP funds at a level minimally equal to the equivalent insurance coverage for property owned by the Participant. The Participant shall safeguard such property and equipment against theft, damage, and unauthorized use. The Participant shall promptly report any loss, theft, or damage of such property and equipment to the insurance company.

(c) Personal property having a useful life of more than one year and an acquisition cost of \$500 or more purchased by the Participant, and for which the Participant is reimbursed, in whole or in part, with MAP funds, that is unusable, unserviceable, or no longer needed for project purposes shall be disposed of in one of the following ways. The Participant may:

(1) Exchange or sell the property, provided that it applies any exchange allowance, insurance proceeds, or sales proceeds toward the purchase of other property needed in the project;

(2) With CCC approval, transfer the property to other Participants for their activities, or to a foreign entity; or

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

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

§ 1485.31 Anti-fraud requirements.

(a) *All MAP Participants.* (1) All MAP Participants annually shall submit to CCC for approval a detailed fraud prevention program. CCC will notify all new and existing MAP Participants in writing in each Participant's approval letter and through the FAS website as to applicable submission dates for and dates for approvals of fraud prevention programs. MAP Participants should review their fraud prevention programs

annually. The fraud prevention program shall, at a minimum, include an annual review of physical controls and weaknesses, a standard process for investigating and remediation of suspected fraud cases, and training in risk management and fraud detection for all current and future employees. The MAP Participant shall not conduct or permit any MAP promotion activities to occur unless and until CCC has communicated in writing approval of the MAP Participant's fraud prevention program.

(2) The MAP Participant, within five business days of receiving an allegation or information giving rise to a reasonable suspicion of misrepresentation or fraud that could give rise to a claim by CCC, shall report such allegation or information in writing to such USDA personnel as specified in the Participant's agreement and/or approval letter. The MAP Participant shall cooperate fully in any USDA investigation of such allegation or occurrence of misrepresentation or fraud and shall comply with any directives given by CCC or USDA to the MAP Participant for the prompt investigation of such allegation or occurrence.

(b) *MAP Participants with brand programs.* (1) The MAP Participant may charge a fee to brand participants to cover the cost of the fraud prevention program.

(2) The MAP Participant shall repay to CCC funds paid to a brand participant through the MAP Participant on claims that the MAP Participant or CCC subsequently determines are unauthorized or otherwise non-reimbursable expenses within 30 calendar days of the MAP Participant's determination or CCC's disallowance. The MAP Participant shall repay CCC by submitting a check to CCC or by offsetting the MAP Participant's next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. A MAP Participant operating a brand program in strict accordance with an approved fraud prevention program, however, will not be liable to reimburse CCC for MAP funds paid on such claims if the claims were based on misrepresentations or fraud of the brand participant, its employees, or agents, unless CCC determines that the MAP Participant was grossly negligent in the operation of the brand program regarding such claims. CCC shall communicate any such determination to the MAP Participant in writing.

§ 1485.32 Program income.

Program income is gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. Any income generated from an activity, the expenditures for which have been wholly or partially reimbursed with MAP funds, shall be used by the MAP Participant in furtherance of its approved MAP activities in the program year during which the MAP funds are available for obligation by the MAP Participant, or must be returned to CCC. The use of such income shall be governed by this subpart. Interest earned on funds advanced by CCC is not program income. Reasonable activity fees or registration fees, if identified as such in a project budget, may be charged for approved activities. The intent to charge a fee must be part of the original proposal, along with an explanation of how such fees are to be used. Any activity fees charged must be used to offset activity expenses or returned to FAS. Such fees may not be used as profit or counted as contribution or cost share.

§ 1485.33 Amendments.

An agreement may be amended in writing with the consent of CCC and the MAP Participant. All requests for program amendments must be submitted to CCC in writing and contain a justification for why the amendment is necessary. All amendment requests must be reviewed and approved by CCC before an amendment can be issued.

§ 1485.34 Subrecipients.

(a) A Participant may utilize the services of a subrecipient to implement activities under the agreement if this is provided for in the agreement. The subrecipient may receive CCC-provided funds, program income, or other resources from the Participant for this purpose. The Participant must enter in to a written subaward with the subrecipient and comply with the applicable provisions of 2 CFR 200.331 and/or the Federal Acquisition Regulation (FAR), if applicable. If required by the agreement, the Participant must provide a copy of such subaward to FAS, in the manner set forth in the agreement, prior to the transfer of CCC-provided funds or program income to the subrecipient.

(b) A Participant must include the following requirements in a subaward:

(1) The subrecipient is required to comply with the applicable provisions of this part and 2 CFR parts 200 and 400 and/or the FAR, if applicable. The

applicable provisions are those that relate specifically to subrecipients, as well as those relating to non-Federal entities that impose requirements that would be reasonable to pass through to a subrecipient because they directly concern the implementation by the subrecipient of one or more activities under the agreement. If there is a question about whether a particular provision is applicable, FAS will make the determination.

(2) The subrecipient must pay to the Participant the value of CCC-provided funds, interest, or program income that are not used in accordance with the subaward, or that are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(3) In accordance with 2 CFR 200.501(h), subawards must include a description of the applicable compliance requirements and the subrecipient's compliance responsibility. Methods to ensure compliance may include pre-award audits, monitoring during the agreement, and post-award audits.

(c) A Participant must monitor the actions of a subrecipient as necessary to ensure that CCC-provided funds and program income provided to the subrecipient are used for authorized purposes in compliance with applicable U.S. Federal laws and regulations and the subaward and that performance indicator targets are achieved for both activities and results under the agreement.

§ 1485.35 Audit requirements.

(a) Subpart F of 2 CFR part 200 applies to all Participants and subrecipients under this part other than those that are for-profit entities, foreign public entities, or foreign organizations.

(b) A Participant or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization and that expends, during its fiscal year, a total of at least the audit requirement threshold in 2 CFR 200.501 in Federal awards, is required to obtain an audit. Such a Participant or subrecipient has the following two options to satisfy this requirement:

(1)(i) A financial audit of the agreement or subaward, in accordance with the Government Auditing Standards issued by the United States Government Accountability Office (GAO), if the Participant or subrecipient expends Federal awards under only one FAS program during such fiscal year; or

(ii) A financial audit of all Federal awards from FAS, in accordance with GAO's Government Auditing Standards, if the Participant or subrecipient expends Federal awards under multiple

FAS programs during such fiscal year; or

(2) An audit that meets the requirements contained in subpart F of 2 CFR part 200.

(c) A Participant or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization and that expends, during its fiscal year, a total that is less than the audit requirement threshold in 2 CFR 200.501 in Federal awards, is exempt from requirements under this section for an audit for that year, except as provided in paragraphs (d) and (f) of this section, but it must make records available for review by appropriate officials of Federal agencies.

(d) FAS may require an annual financial audit of an agreement or subaward when the audit requirement threshold in 2 CFR 200.501 is not met. In that case, FAS must provide funds under the agreement for this purpose, and the Participant or subrecipient, as applicable, must arrange for such audit and submit it to FAS.

(e) When a Participant or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization is required to obtain a financial audit under this section, it must provide a copy of the audit to FAS within 60 days after the end of its fiscal year.

(f) FAS, the USDA Office of Inspector General, or GAO may conduct or arrange for additional audits of any Participants or subrecipients, including for-profit entities and foreign organizations. Participants and subrecipients must promptly comply with all requests related to such audits. If FAS conducts or arranges for an additional audit, such as an audit with respect to a particular agreement, FAS will fund the full cost of such an audit, in accordance with 2 CFR 200.503(d).

§ 1485.36 Suspension and termination of agreements.

(a) An agreement or subaward may be suspended or terminated in accordance with 2 CFR 200.338 or 200.339. FAS may suspend or terminate an agreement if it determines that:

(1) One of the bases in 2 CFR 200.338 or 200.339 for termination or suspension by FAS has been satisfied; or

(2) The continuation of the assistance provided under the agreement is no longer necessary or desirable.

(b) If an agreement is terminated, the Participant:

(1) Is responsible for using or returning any CCC-provided funds, interest, or program income that have not been disbursed, as agreed to by FAS; and

(2) Must comply with any closeout and post-closeout procedures specified in the agreement and 2 CFR 200.343 and 200.344.

§ 1485.37 Noncompliance with an agreement.

(a) If a MAP Participant fails to comply with any term in its agreement or approval letter, CCC may take one or more of the enforcement actions in 2 CFR part 200 and, if appropriate, initiate a claim against the MAP Participant, following the procedures set forth in this subpart. CCC may also initiate a claim against a MAP Participant if program income or CCC-provided funds are lost due to an action or omission of the MAP Participant. If any MAP Participant has engaged in fraud with respect to the MAP, or has otherwise violated program requirements under this subpart, CCC may:

(1) Hold such MAP Participant liable for any and all losses to CCC resulting from such fraud or violation;

(2) Require a refund of any assistance provided to such MAP Participant plus interest as determined by FAS; and

(3) Collect liquidated damages from such MAP Participant in an amount determined appropriate by FAS.

(b) The provisions of this section shall be without prejudice to any other remedy that is available under any other provision of law.

§ 1485.38 Paperwork reduction requirements.

The paperwork and recordkeeping requirements imposed by this subpart have been approved by OMB under the Paperwork Reduction Act of 1980. OMB has assigned control number 0551-0026 for this information collection.

Dated: December 6, 2019.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

In concurrence with:

Dated: December 6, 2019.

Ken Isley,

Administrator, Foreign Agricultural Service.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 11, 300, and 302

49 CFR Parts 1, 5, 7, 106, 211, 389, 553, and 601

RIN 2105-AE84

Administrative Rulemaking, Guidance, and Enforcement Procedures

Correction

In rule document 2019-26672, appearing on pages 71714 through 71734, in the issue of Friday, December 27, 2019 make the following correction:

§ 5.25 General.

On page 71726, in the second column, in the footnotes, footnote 8 should read, “⁸ See Appendix A to “Memorandum on the Review and Clearance of Guidance Documents,” available at <https://cms.dot.gov/sites/dot.gov/files/docs/regulations/328566/gen-counsel-mem-guidance-documentssigned-122018.pdf>.”

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

RIN 3038-AE82

Annual Adjustment of Civil Monetary Penalties To Reflect Inflation—2020

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending its rule governing the maximum amount of civil monetary penalties to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties (CMPs) assessable for violations of the Commodity Exchange Act (CEA) and Commission rules, regulations, and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

DATES: This rule is effective on January 13, 2020 and is applicable to penalties assessed after January 15, 2020.

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