



Billing Code: 3410-10

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1485

#### RIN 0551-AA72

### Market Access Program

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

**ACTION:** Final rule.

**SUMMARY:** This final rule revises and amends the regulation used to administer the Market Access Program (MAP) by updating and merging the application requirements and the activity plan requirements to reflect the Unified Export Strategy (UES) system currently in place; clarifying the eligibility of activities designed to address international market access issues; modifying the list of eligible and ineligible contributions; revising the portions of the regulation regarding evaluations, contracting procedures, and the compliance review and appeals process; eliminating the Export Incentive Program/Market Access Program (EIP/MAP) as a separate subcomponent; and making other administrative changes for clarity and program integrity. This final rule adopts the substantive provisions of the proposed rule published September 8, 2009, revising and amending MAP regulations, with changes made to reflect public comments to the proposed rule.

**DATES:** *Effective Date:* This rule is effective [Insert the date of publication in the **Federal Register**]. *Applicability Date:* This regulation will become applicable for each MAP participant at the beginning of the MAP participant's 2013 program year (i.e., 01/01/2013 or 07/01/2013).

**FOR FURTHER INFORMATION CONTACT:** Mark Slupek, 202-720-1169, U.S. Department of Agriculture, Foreign Agricultural Service, Office of Trade Programs, Program Operations Division,

Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024; or by phone: (202) 720-4327; or by fax: (202) 720-9361; or by e-mail: *podadmin@fas.usda.gov*.

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#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Order 12866**

This rule is issued in conformance with Executive Order 12866. It has been determined to be not significant for the purposes of Executive Order 12866 and was not reviewed by the Office of Management and Budget. A cost-benefit assessment of this rule was not completed.

##### **Executive Order 12988**

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

##### **Executive Order 12372**

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

##### **Executive Order 13175**

This rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000) that will preempt Tribal law.

## **Executive Order 13132**

This rule does not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States was not required.

## **Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject matter of the rule.

## **Environmental Assessment**

CCC has determined that this rule does not constitute a major State or Federal action that would significantly affect the human or natural environment. Consistent with the National Environmental Policy Act (NEPA), no environmental assessment or environmental impact statement will be prepared.

## **Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because it does not impose any enforceable duty or contain any unfunded mandate as described under the UMRA.

## **Paperwork Reduction Act of 1995**

In accordance with the Paperwork Reduction Act of 1995, FAS has previously received approval from OMB with respect to the information collection required to support this program. The information collection is described below:

*Title:* Foreign Market Development Program (FMD) and Market Access Program (MAP);

OMB Control Number: 0551-0026.

The current OMB approval of this information collection is scheduled to expire on August 31, 2012. Consequently, CCC will submit a request to OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., for the continued use of this information collection. CCC's request will reflect changes to the new paperwork collection requirements that were made in the final rule in response to public comments. A separate Notice of Request for Extension and Revision of Currently Approved Information Collection for the Market Access Program will be published in the Federal Register for comment.

### **E-Government Act Compliance**

CCC is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes. The forms, regulations, and other information collection activities required to be utilized by a person subject to this rule are available at: <http://www.fas.usda.gov>.

### **Background**

Section 203 of the Agricultural Trade Act of 1978, as amended, directs CCC to carry out a program to encourage the development, maintenance, and expansion of commercial export markets for agricultural commodities through cost-share assistance to eligible trade organizations. Such assistance may be provided in the form of CCC funds or CCC-owned commodities.

Since the inception of the MAP, CCC has monitored the program closely, strengthened program controls, and implemented changes to improve the effectiveness of the program. In administering the program, CCC is committed to ensuring efficient and effective use of public funds. In this regard, CCC considers an applicant's need for Federal financial assistance, an applicant's use of rigorous performance measurements in its plans, and increasing contribution levels from Participants as important factors in the overall management of the MAP.

## **Summary and Analysis of Comments**

On May 23, 2007, the CCC published an advance notice of proposed rulemaking and public hearing in the Federal Register (72 FR 28901). This notice was intended to solicit comments on whether to amend and revise the current MAP regulations. In addition, CCC held a public hearing on July 25, 2007, to receive oral and written comments.

On September 8, 2009 (74 FR 46027), a proposed rule was published governing the operations of MAP.

CCC received nearly 1,300 comments from nonprofit U.S. trade associations, U.S. companies, state organizations, regional trade associations, Participants, and consulting firms in response to the proposed rule. Following is a summary of the comments that specifically address the proposed rule and CCC's responses to these comments. General comments relating to the value of the program, editorial suggestions, and non-substantive comments have been omitted.

### ***Sec. 1485.10 General Purpose & Scope***

#### **Policy Clarifications**

CCC received 164 comments on this section.

*Comment:* Nineteen respondents expressed their concern with regard to whether previous policy clarifications will remain in effect or if the new MAP regulation will supersede the policy clarifications currently in effect. The respondents asked for clarification on this and stated that if previous policy clarifications remain in effect, that the notices should be incorporated into the new regulation.

*Response:* CCC understands that the commenters are referring to the "Market Access Program notices" available at <http://www.fas.usda.gov/mos/programs/mnotice.html>. CCC issues these MAP notices for informational purposes. These notices have no legal effect. They are intended to alert

MAP Participants of various aspects of CCC's administration of the MAP program. For example, CCC issues MAP notices to alert MAP Participants of procedures for requesting advances, applicable federal pay scale rates, lists of economic and trade sanctions against certain foreign countries, reporting formats and computer codes to use with the UES.

The content of some MAP notices were already codified in the proposed rule. In response to the commenters, CCC has incorporated into the final rule several additional MAP notices that CCC has judged to be more substantive in nature. Those MAP notices that have been so codified will be deleted from the FAS web site.

CCC will remove certain other of the remaining MAP notices that are now obsolete or inconsistent with the final rule before or concurrent with the final rule's effective date. The remaining MAP notices will continue to be available on the web site for informational purposes and reflect details related to CCC's current administration of the MAP program.

*Comment:* One respondent stated that although domestic travel is not addressed in the new MAP regulation, this is one area with respect to which a policy clarification exists. Fourteen additional comments were made regarding E-ticketing and internet purchasing of tickets (not through a travel agency). The respondents stated that this is an area that was previously covered by a policy clarification but is not covered in the new regulation; so the question whether previous policy clarifications will remain in effect or if the new MAP regulation will supersede the policy clarifications applies here as well.

*Response:* Domestic travel was addressed in a limited fashion in the proposed rule at §1485.17(c)(25), which would have allowed, *inter alia*, reimbursement, solely in connection with generic promotion, only of domestic travel expenditures associated with meetings of international organizations conducted in the United States. In response to the comment, however, CCC has addressed domestic travel more extensively in several new subsections of §1485.17(c).

New §1485.17(c)(24) lays out the conditions under which domestic travel related to international retail, trade and consumer exhibits and shows conducted in the United States can be reimbursed.

New §1485.17(c) (25) allows reimbursement for domestic travel for seminars and educational training conducted in the United States.

New §1485.17(c) (26) allows reimbursement of domestic travel expenditures of certain individuals accompanying foreign trade missions or technical teams while traveling in the United States. This change codifies MAP Notice 06-002. MAP Notice 06-002 will be removed from FAS' web site.

CCC has decided to eliminate the provision allowing reimbursement of domestic travel expenditures for a MAP Participant's attendance at meetings of international technical organizations when such meetings are conducted in the United States.

These provisions are discussed in more detail in a later response.

Domestic travel expenditures are not reimbursable for brand promotion activities.

The comments regarding E-ticketing and internet purchase of tickets appear to refer to MAP Notice 02-004. This notice reminds MAP Participants that the reimbursement of allowable travel expenses when using E-Tickets is subject to the availability of sufficient documentation to support the expenses, as is the case with all travel expenses. The notice provides examples of information that such documentation must include, such as the complete routing codes (i.e., layover and flight information for each segment of a trip in which a change of airplane or flight designation is made) and the fare amount charged (i.e., point-to-point faring). The notice also informs MAP Participants that reimbursable travel expenditures include associated reasonable and common fees that travel agents or other ticketing sources may charge for providing E-Ticket itineraries, invoices and/or receipts. The MAP final rule now sets broad guidance on the reimbursement of a MAP Participant's domestic travel. CCC believes the final rule's provisions provide sufficient guidance to MAP Participants and does not believe it necessary to codify MAP Notice 02-004's explanation of the particulars of program administration. MAP Notice 02-004 shall remain on the FAS web site for informational purposes.

*Comment:* Six respondents asked for further clarification on the types of activities in the U.S. that are reimbursable.

*Response:* In response to the comments, CCC has made a clarification to §1485.10(c) that, to be reimbursable, all activities that occur in the United States must 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.

*Comment:* Fourteen respondents recommended that the threshold in the regulations for Miscellaneous/Fixed Asset Category be raised to \$500 and proposed that software be subject to the same threshold as fixed assets.

*Response:* These comments refer to a threshold in §1485.23(d)(2) of the current MAP regulations. This provision was not included in the proposed rule and is not included in the final rule. Section 1485.30 of the MAP final rule provides the final property standards for the program. In addition, MAP Participants are subject to the applicable property management standards described in 7 CFR Parts 3015, 3016 and 3019, depending on the nature of the MAP Participant organization.

*Comment:* One respondent stated more flexibility is needed for electronic communications, which are becoming a more important part of the marketing mix for Participants, both branded and generic.

*Response:* CCC believes that the flexibility provided in §1485.17(b)(1) and §1485.17(b)(16) is adequate.

*Comment:* Fourteen respondents stated that FAS refers to miscellaneous communications devices in the new regulations but did not address their usage costs and asked for clarification on whether these costs were reimbursable.

*Response:* CCC believes the reimbursement of the usage costs of various communications devices is already addressed by the various provisions in the MAP final rule. Reimbursement of such communication costs depends on the circumstances under which the communication took place. For example, where usage costs of communications devices are incurred by the MAP Participant's U.S.

offices and staff, those costs are not reimbursable pursuant to §1485.16(c) and §1485.17(d)(26). If usage costs of communications devices are incurred while on eligible international or domestic travel for approved MAP brand or generic promotion activities and are allowed under the U.S. Federal Travel Regulations (41 CFR Parts 301 through 304), they are potentially reimbursable as international or domestic travel expenditures under the circumstances laid out in the applicable provisions in §1485.17(b) and (c). If usage costs of communications devices are incurred as part of the organization costs for a MAP Participant's overseas office approved in its MAP program agreement and such communications originate overseas, §1485.17(c)(11) provides that such communications costs are reimbursable for generic promotions so long as the expenditure was made in furtherance of an approved activity. Thus, the monthly service charge for a caller usage plan with unlimited minutes that is incurred primarily in furtherance of an approved activity would be fully reimbursed under MAP. In contrast, under a caller usage plan that charges by the minute, only charges for calls incurred in furtherance of an approved activity would be reimbursed under MAP.

### ***Section 1485.11 Definitions***

CCC received 153 comments on this section. In response to the comments, CCC has edited the definitions as set forth below. In addition, CCC has made minor clarifications to the definitions of "contribution," "program year," "SRTG," and "supergrade." CCC has also included a new definition for "product samples." This definition now codifies MAP Notice 11-003, and MAP Notice 11-003 will be removed from FAS' web site. Finally, CCC has added a new definition for MAP Notice in the MAP final rule.

Comment: One respondent recommended that the generic promotions be defined more broadly as "using U.S. commodities from multiple U.S. suppliers or in cases where only one U.S. supplier is selected to supply the commodity in question, that multiple U.S. suppliers had the opportunity to

submit bids or compete for the business”. This respondent stated that as long as multiple U.S. companies had the opportunity to compete for that business, it believed promotions with these companies should be considered generic. Another respondent commented that a generic promotion should not be required to support at least two brands since this is difficult when a retailer carries only one.

*Response:* CCC disagrees with the respondents’ comments suggesting that a generic promotion not be required to support at least two brands, particularly in the case raised by the respondent, in which a single company has been competitively selected over other bidders.

For clarity, CCC has moved the substance of proposed §1485.17(d), defining what may be considered a generic promotion activity, from the section on MAP “Reimbursement rules” to the definition of “generic promotion” in §1485.11. Original subsections (e), (f), (g), (h), (i), (j), and (k) in §1485.17 have been re-designated as (d), (e), (j), (f), (g), (h), and (i), respectively.

*Comment:* Fourteen respondents recommended adding or clarifying definitions for the following terms: advertising, audits, contractors, direct promotional costs, employees, foreign brand, negative comparison, overhead costs, representative, small purchase threshold, and theme.

*Response:* CCC disagrees with the respondents in regard to the need for additional definitions of these terms, except that it has further clarified the terms “foreign brand” and “theme.” The definition of “generic promotion” now refers to a foreign brand as “a brand owned primarily by foreign interests and being used to market a commodity or product in a foreign market.” Similarly, the definition of “generic promotion” refers to the concept of a “unified theme” as “a dominant idea

or motif.” CCC has removed the term “negative comparison” from that definition in response to a different comment.

*Comment:* Fourteen respondents questioned the definition of audits. They stated that audits are mentioned in at least three places with seemingly contradictory provisions.

*Response:* CCC notes the MAP final rule does not define “audit.” However, CCC does not believe it is necessary to define this term, as CCC views this term as generally understood. In response to the comments, however, CCC agrees that the use of the term “audit” in §1485.21(d)(7) is confusing and has replaced the term “audit” with the term “compliance review” in §1485.21(d)(7).

*Comment:* Fourteen respondents commented that the use of representatives (branded) in the phrase “no more than two representatives of a single brand participant to exhibit their company’s products at a foreign trade show” implied that these individuals have to be employees of the brand (as in §1485.17(b)(7)). These respondents suggested that this definition be expanded to include others associated with the brand such as distributors, consultants, etc.

*Response:* CCC agrees with the respondents. CCC has modified this section (now §1485.17(b)(8)) to expand the list of eligible representatives to 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. CCC notes that MAP Notice 99-003 is now obsolete and will be removed from FAS’ web site.

*Comment:* Sixteen respondents commented that the proposed definition for “notifications” has veered from the original purpose for notifications, which is to notify CCC of significant changes to the MAP Participant’s strategic plan. The respondents asked FAS to clarify the definition of notifications and stated the proposed rule would be burdensome to the Participants.

*Response:* CCC agrees with the commenters. Instead of changing the definition of “notification,” however, CCC has modified §1485.14(i) to change when notifications will be required.

Notifications are now required only if a MAP Participant wishes to conduct an entirely new activity or if the Participant wishes to increase the funding level for existing, approved activities by more than \$25,000 or 25%, whichever is greater. A MAP Participant may make significant adjustments below that threshold without prior notification to CCC, but must still submit a notification alerting CCC of such adjustments no later than 30 days after the change. Finally, CCC has clarified that minor adjustments to existing, approved activities and/or funding levels do not require notification.

*Comment:* Three respondents recommended that the definition of a small-sized entity be expanded for the program by establishing the size eligibility standard to one not exceeding 150 percent of the current Small Business Administration guidelines. The respondents stated that this recommendation would better align the definition with the actual practice in the food processing industry.

*Response:* CCC disagrees. CCC believes it is consistent with the Administration’s National Export Initiative to maintain the same definition of small business as the Small Business Administration.

*Comment:* Fourteen respondents suggested the phrase, “online to MAP and any other USDA market promotion program...” in the “UES web site” definition be changed to “... and any other USDA

market development program...” which is more accurate and the terminology used in the subsequent definition of the Unified Export Strategy (UES).

*Response:* CCC agrees with the respondents and has changed the final rule accordingly. In addition, CCC has added an explicit reference to the MAP program to the end of the definition.

*Comment:* One comment was received recommending each definition be given an identifying number or letter so that it is easier to indicate which definition is being discussed.

*Response:* CCC disagrees. CCC believes that providing the definitions alphabetically is adequate for identifying definitions.

*Comment:* Three respondents stated that because “brand participant” is defined in the proposed regulation to mean only U.S. agricultural cooperatives that are “participating in the MAP brand promotion of another MAP Participant,” the proposed rule does not appear to allow a cooperative to apply for funds to run its own brand program. Therefore, they requested that §1485.11 (brand participant) and §1485.13(a) be clarified to make it clear that cooperatives will continue to be eligible to apply directly for a brand promotion program.

One respondent stated that currently cooperatives are allowed to contract directly with FAS to participate in the MAP program to promote the brand that their farmers have developed, own and use, to maximize their returns. This respondent stated that it should be allowed to continue to do so, as this was what Congress intended.

One respondent stated that the reference to “participating in the brand promotion program of another MAP Participant” does not always apply and should be deleted from the definition.

*Response:* CCC agrees with these comments and has clarified these sections. CCC has modified the definition of “brand participant” to make clear that the term does not include any agricultural cooperatives that are MAP Participants that apply for MAP funds to implement their own brand programs. CCC has also modified the definition of “brand promotion” to include U.S. agricultural cooperatives’ promotion of their own brand in their own brand program. CCC has also modified §1485.15 to delete the phrase “third party” before “brand participants” as redundant, since the definition of brand participant clearly refers to third parties and not the MAP Participant. CCC has also modified §1485.17(b)(7) (now §1485.17(b)(8)) to make clear that the travel expenses of representatives of MAP Participants, including U.S. agricultural cooperatives running their own brand programs, at brand promotions at trade shows are also reimbursable. Finally, CCC has modified §1485.15(d) to refer to “entity” instead of “company” in noting that MAP Participants may not provide assistance to a single entity for brand promotion in a single country for more than 5 years.

*Comment:* One respondent stated that the proposed definition of “foreign third party” implies that the MAP Participant can select a qualified foreign third party with whom to work. The commenter stated if the proposed definition intends to imply that FAS must give approval of foreign third parties with whom Participants work, then it must be deleted.

*Response:* It is not CCC’s intention that CCC would review or approve foreign third parties with whom Participants wish to work. CCC has clarified this definition accordingly to state that a foreign

third party is a foreign entity with whom a MAP Participant works to promote the export of a U.S. agricultural commodity under the MAP program.

*Comment:* Three respondents commented that in light of the continued development of agricultural products for non-food use, they proposed that this rule be amended to insert “non-durable” between “and any” and “product thereof, excluding tobacco.”

*Response:* CCC disagrees with the respondents’ suggestion, as the change would unnecessarily limit the scope of the program. CCC has modified the definition of “U.S. agricultural commodity” to preserve the scope of the program as covering all agricultural commodities, regardless of the type of use to which the agricultural product is put. The definition of U.S. agricultural commodity now refers to “any agricultural commodity, including any food, feed, fiber, forestry product, livestock, or insect of U.S. origin or fish . . .”

#### ***Sec. 1485.12 Participation Eligibility***

CCC received 2 comments on this section.

*Comment:* One respondent stated the current MAP regulations allow U.S. agricultural cooperatives to be a MAP Participant. The proposed rule retained this eligibility but qualified “U.S. agricultural cooperative” with the term “nonprofit”. The respondent commented that its understanding is that the term “nonprofit” in §1485.12(c) and elsewhere in the proposed regulations is not intended to change the eligibility of cooperatives that are currently participating in MAP and which are considered “nonprofit” in the sense that they are entitled to tax treatment afforded by Subchapter T of the Internal Revenue Code Section 1381. The respondent requested that FAS confirm that “a nonprofit U.S. agricultural cooperative” as used in the proposed regulations includes U.S. agricultural cooperatives that are entitled to tax treatment afforded by Subchapter T of the Internal Revenue Code (IRC) Section 1381.

*Response:* CCC confirms that U.S. agricultural cooperatives that are entitled to tax treatment afforded by Subchapter T of the IRC Section 1381 are eligible to participate in the MAP program. CCC has deleted the term “nonprofit” before “U.S. agricultural cooperative” as unnecessary and potentially confusing. CCC has also modified the definition of “brand participant” in §1485.11 and §1485.12(c) and made conforming edits to §1485.13 and §1485.28(b) to delete the term “nonprofit”.

*Comment:* One respondent stated its concern that the proposed regulation §1485.13(a) states that “applicants” may apply for the MAP program, but does not define the term “applicant.” The respondent was also concerned that §1485.12 uses the term “entities” to describe who can “participate” in the MAP, while §1485.13(a) uses the term “applicant.” The respondent was concerned that the two sections do not cross reference each other and that neither term is defined in §1485.11 “Definitions.” The respondent also suggested the proposed regulations be revised as necessary to make clear that “a nonprofit U.S. agricultural cooperative” is one of the four entities eligible to participate in MAP under §1485.12 and is also eligible to be an “applicant” and apply directly for MAP under §1485.13(a), including for its own brand promotion program.

*Response:* CCC does not share the respondent’s concerns. CCC believes it is unnecessary to define the terms “applicant” and “entity.” CCC believes that it is appropriate to use different terms in §1485.13(a), which deals with those who actually apply to the program and therefore are “applicants,” and §1485.12, which deals with who, in theory, is eligible to apply. The MAP final rule is clear that to participate in the MAP, an entity must be one of four types of entities, one of which is a U.S. agricultural cooperative. Implicit in the concept of being “eligible” to participate in

the MAP is the notion that eligible “entities” are also eligible to be “applicants” to the program.

### ***Sec. 1485.13 Application Process***

CCC received 94 comments on this section. CCC's responses are below. In addition, CCC has included new §1485.13(d) and (e) to comply with OMB regulations 2 CFR Part 25, "Universal Identifier and Central Contractor Registration (CCR)" and 2 CFR Part 170, "Reporting Subaward and Executive Compensation Information." 2 CFR §25.200 directs federal agencies to include in their regulations issued on or after September 14, 2010 requirements that all applicants for federal financial assistance: (1) be registered in the CCR prior to submitting an application or plan; (2) maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by an agency; and (3) provide its DUNS number in each application or plan it submits to the agency. Similarly, pursuant to 2 CFR §170.200(b), any regulations issued after September 14, 2010 and containing instructions for applicants of grants and cooperative agreements, among other assistance, must require applicants that do not qualify for an exception under 2 CFR §170.110(b) to have the necessary processes and systems in place to comply with Part 170's reporting requirements if they receive funding.

*Comment:* Two respondents stated that under the current MAP regulations a U.S. agricultural cooperative is eligible to be a MAP Participant and in that capacity to apply directly to CCC for the cooperative's own brand promotion program.

The respondents stated that the proposed regulation at §1485.13(a) appears to unintentionally change this by providing in the fourth sentence that a MAP applicant (i.e., including a nonprofit U.S. agricultural cooperative) "may apply to conduct a generic promotion program, a brand promotion program that provides MAP funds to brand participants for branded promotion, or both". They requested that FAS confirm that a nonprofit U.S. agricultural cooperative that applies to CCC for its

own brand promotion program would be considered a “MAP Participant,” not a “brand participant” since it would enter into a MAP agreement directly with CCC.

*Response:* CCC agrees with the respondents. CCC did not intend to change this policy and has modified §1485.13(a) accordingly to explicitly state that an applicant who is a U.S. agricultural cooperative may also apply for funds to conduct its own brand promotion program. As noted previously, CCC has also clarified the definition of “brand participant” in §1485.11 to exclude from that definition any agricultural cooperatives that are MAP Participants that apply for MAP funds to implement their own brand programs.

*Comment:* Twenty-one respondents submitted requests for FAS to clarify that electronic copies of applications are no longer required to be submitted through the UES system and only a hard copy is required to be sent.

*Response:* CCC’s intent was not to imply that only a hard copy be sent. Applicants have always had a choice to submit either an electronic copy or a hard copy of their application. CCC believes the MAP final rule clearly maintains that choice, but encourages organizations to submit their applications through the UES system, because this format virtually eliminates paperwork and expedites the FAS processing, review, and reimbursement cycles.

*Comment:* Twenty-one respondents questioned if the online version is still required, could it be submitted in a reasonably short time following the deadline?

*Response:* No. Electronic applications may not be submitted after the deadline. CCC is required to publish a Notice of Funds Availability annually in the Federal Register. This notice provides 60 days to submit applications either electronically or by hard copy. Applications are required to be submitted by the deadline that is published in the annual notice.

*Comment:* Two respondents provided comments regarding §1485.13(a)(3)(i)(A) and §1485(a)(3)(i)(B). They stated they support the requirement that Participants submit a strategic plan; however, to reduce the complexity of the UES process, they recommended that the plan submission remain separate from the current UES process.

*Response:* CCC disagrees. CCC will continue to approve applications that it considers to present the best opportunities for developing and expanding export markets for U.S. agricultural commodities. The strategic planning process is a critical part of the application and therefore must be provided within the UES process in order for the applications to be evaluated in a consistent and equitable manner. This is not a change from current practice.

*Comment:* Sixteen respondents provided similar comments that stated that §1485.13(a)(1)(i)(R) & (S) both appear to require that the applicant's proposed contribution be stated in both dollar terms and as a percentage of CCC resources requested. They stated that they assume this change is not the intention of CCC, because §1485.25 of the proposed rule implies that the applicant has a choice between stating its proposed contribution either in dollar terms or as a percentage, as is the case under current MAP regulations. The respondents asked for clarification.

*Response:* CCC agrees with the respondents and has changed the final rule to clarify that the applicant has the choice to propose its contribution in dollar terms or as a percentage of resources requested. Section 1485.13(a)(1)(i)(R) & (S) have been eliminated and new §1485.13(a)(1)(i)(Q) requires applications to include: “Value, in U.S. dollars, of proposed contributions from the applicant or the applicant's proposed contribution stated as a percentage of the total dollar amount of CCC resources requested.”

*Comment:* Sixteen respondents stated that §1485.13(a)(3)(i)(M), which introduces the requirement for an evaluation plan as part of the MAP application process, seems to imply that the current practice of “performance measures”, Country Progress Reports and regular, formal evaluations is not sufficient. The respondents stated that if this is the case the evaluation plan could become an added bureaucratic burden and asked for further clarification of CCC’s intent with this new requirement. They also asked for further clarification on whether the evaluation plan is an additional requirement.

*Response:* The requirement for an evaluation plan is not a new requirement. 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 MAP. Section 1485.13(a)(3)(D) of the prior MAP rule required “[a] statement of goals and the applicant’s plans for monitoring and evaluating performance towards achieving these goals.” In addition, §1485.14(b)(6)(v) of the previous rule listed as one of the criteria considered by CCC in choosing applications the adequacy of the applicant’s strategic plan in the following category “Description of an evaluation plan and suitability of the plan for performance measurement.” The new final rule merely clarifies the current requirement to increase each applicant’s opportunity for success. To

clarify that the evaluation plan is not a new requirement, CCC has combined sub-paragraphs (M) and (E) into one sub-paragraph (E) in §1485.13(a)(3).

*Comment:* Fourteen respondents stated that the specific mention of the submission of an “evaluation plan” in the application process implied that the current submission of goals and performance measures is no longer sufficient. The fourteen respondents also recommended that if such a plan is required, that the Participant’s submission be permitted to be brief and generalized.

*Response:* As noted in response to the prior comment, in this final rule, CCC has combined the current regulation’s language on goals and performance measures and the new proposed language on evaluation plans into one single sub-paragraph (E) in §1485.13. CCC notes that evaluation of MAP’s effectiveness has been and will continue to be an integral element of program planning and implementation. The adequacy of the evaluation plan has been and will remain one of the criteria in approving applications.

*Comment:* One respondent stated that both §1485.13(a)(1)(i)(J) and §1485.14(c)(9) refer to evaluating a request for a brand promotion program based on the percentage of CCC resources that will be made available to small-sized entities. The comment stated that since only small companies are eligible to participate in the branded program, this reference does not appear to be needed and should be deleted.

*Response:* CCC has deleted the references requested by the respondent but for a different reason. The respondent is not correct that only small companies are eligible to participate in the branded program. U.S. agricultural cooperatives are also eligible to participate in the branded program. CCC, however, does not intend for small companies to receive preference over cooperatives.

Accordingly, there is no need to determine the percentage of resources made available to small-sized entities, and CCC has eliminated both sections. Large companies remain ineligible for branded programs.

***Sec. 1485.14 Application Review and Formation of Agreements***

CCC has edited §1485.14(b)(3) to make clear that the preference given to organizations with the broadest producer representation/industry participation applies only with respect to nonprofit U.S. trade organizations. CCC has also clarified §1485.14(e) and (f) to reflect that the approval letter must also be signed by the MAP Participant and that final agreement occurs when both the program agreement or amendment and the approval letter are signed by both parties. In addition, CCC received 130 comments on this section, set forth below.

*Comment:* Fourteen respondents stated under §1485.14(c)(8) that “overhead costs” and “direct promotional costs” are not defined.

*Response:* CCC believes these terms are generally well-understood and that “direct promotional costs” in specific is self-explanatory. CCC, therefore, does not deem it necessary to define these terms in the final rule. Moreover, this language remains unchanged from the current rule that has been in place for 15 years. Section 1485.14(c) explains the allocation factors used by CCC to determine which applications to approve. Subsection (c)(8), which notes that CCC will review general administrative and overhead costs compared to direct promotional costs, merely reflects CCC’s preference that program funds be used for promotional expenses rather than administrative expenses. CCC has modified §1485.14(c)(8) to make clear that CCC will review proposed MAP-funded general administrative and overhead costs compared to proposed MAP-funded direct promotional costs.

*Comment:* With respect to §1485.14(c)(8), fourteen respondents questioned how CCC compares salaries of staff with technical expertise and who execute programs with the fees of consultants who do similar work. The respondents stated that they felt the wording made an overly simplistic distinction between administration and promotional expenses.

*Response:* CCC disagrees that the wording of §1485.14(c)(8) is overly simplistic. However, this comment raises an issue that requires further clarification of §1485.11's definition of "administrative expenses or costs." The MAP final rule now deletes the phrase "that are not directly identifiable with a specific market promotion activity" from the proposed definition of administrative expenses or costs. Administrative expenses or costs now are defined as those "expenses or costs of administering, directing, and controlling an organization that is a MAP Participant . . . [including costs related to personnel (including, but not limited to, salaries, benefits, payroll taxes, individual insurance, training)]" regardless of whether they are specifically identifiable with a specific market promotion activity. As proposed §1485.16(c) and §1485.17(d)(26) made clear, home office domestic administrative expenses, including salaries of U.S. home office staff who execute MAP activities, are generally not reimbursable under MAP, and the Participant must use its own funds to pay any administrative costs of its U.S. offices. This is not a change from the prior regulations. This change to the definition of "administrative expenses or costs" makes the definition consistent with these sections.

Pursuant to §1485.17(c)(1) and (11), however, MAP funding is available, for generic promotion only, to pay for the compensation of a U.S. citizen employee or U.S. citizen contractor stationed overseas, as well as the administrative costs for overseas offices approved in MAP program agreements. In evaluating applications for MAP funding of overseas offices, as reflected in

§1485.14(c)(8), CCC generally prefers that MAP funding be directed toward promotional expenses rather than administrative expenses. It is true that salaries of overseas office staff with technical expertise are still considered administrative expenses even if the staff execute MAP activities, whereas fees of consultants who do similar work would be classified as promotional expenses. However, applicants are free to explain in their applications what promotional activities overseas office staff are anticipated to conduct.

*Comment:* One respondent stated that the wording in §1485.14(c)(8) regarding factors affecting allocations does not provide for any distinction when making allocation decisions between time salaried staff spend on “administrative functions” (usually a minor amount of time spent by higher paid staff) and time spent making use of technical expertise to execute programs and provide information to importers and processors, which are the main reasons for employing higher paid staff.

*Response:* See response to prior comment. CCC does not believe that §1485.14(c)(8) must distinguish between time salaried staff spends on “administrative functions” and time salaried staff spends on executing MAP activities. All time spent by salaried staff is considered general administrative and overhead costs, not direct promotional costs, as clarified in the revised definition of “administrative expenses or costs.” As noted in CCC’s response above, applicants are free to explain in their applications what promotional activities overseas office staff are anticipated to conduct.

*Comment:* One respondent in a comment to §1485.29 stated further clarification was needed regarding the eligibility of contracts with U.S. based organizations that are retained to implement or assist with approved international market development efforts. This respondent stated the proposed

regulations do not completely clarify those domestic contracts that would be deemed eligible for reimbursement and those that would not be.

*Response:* CCC's current practice is to reimburse MAP Participants' expenditures for contracts with U.S. based organizations retained to implement or assist with approved international market development efforts, except when the U.S. based organization is also providing administrative services to the MAP Participant's U.S. office(s). In other words, if a U.S. based organization assumes any functions related to the administration, direction or control of the MAP Participant's U.S. office(s) in a program year, then no activity of any type undertaken by this organization in the United States or overseas during that program year, including direct promotional services overseas, will be reimbursable with MAP funds. CCC has codified this current practice in new §1485.17(b)(19).

Note that this prohibition does not apply when the U.S. based organization is providing administrative services to an approved MAP funded overseas office (as opposed to the U.S. home office). In that case, the activities provided by the organization are reimbursable whether they are administrative or direct promotion under the MAP final rule, so long as the organization is not also providing administrative services to the MAP Participant's U.S. office(s) in the same program year.

*Comment:* Nineteen respondents provided similar comments in reference to §1485.14(i), stating that the current notification process serves CCC's and the Participant's purposes. A number of the respondents stated that although they believed some formalization of the process may be necessary, the proposed requirement to notify CCC of any budgetary change that is at least \$10,000 or more is burdensome. They stated that approval is only relevant at the constraint level and that

acknowledgement of an activity level change would be more appropriate. The respondents also recommended that notification level be increased to \$25,000, to reflect the greater impact of an activity funded at this level.

Several of the comments stated that the language “may make adjustments only if it submits a notification” implies that any change to an activity, regardless of how minor, requires a notification. The respondents suggested that while the regulations should certainly provide that activities can be changed, details of when a notification is required could be more appropriately addressed in a separate policy clarification. One respondent stated that if CCC has identified the need to track budget changes more closely, they recommend that it adopt a policy based on a percentage change rather than a dollar value and that the percentage be no less than 25 percent of an existing budget amount. The respondent further stated that FAS staff should be required to use the UES system for approving such changes and that approval should not be based on a default period of 15 days.

*Response:* CCC disagrees that the “current notification process” serves CCC’s purposes. However, in response to the above comments, CCC has modified §1485.14(i) to reduce the burden of notifications, adopting several of the changes requested by commenters. For example, CCC has increased the threshold to \$25,000 for requiring notification to CCC of changes to existing activities. This notification must occur before the change is implemented, but no approval is required. Similarly, CCC will require notifications for adjustments below that threshold only if the change is significant. No notification is required for minor changes in existing, approved activities or for deleting an activity.

*Comment:* Two respondents stated that MAP Participants' current practice of reallocating funds among brand participants in the MAP Participants' branded programs has allowed MAP Participants to expand brand participation by as much as 40 percent per year. Therefore, they strongly oppose proposed §1485.14(i)(2)(i), which would require MAP Participants to notify CCC of any increase in the funding level for existing, approved activities addressing a single constraint or opportunity by more than \$10,000 or 20 percent of the approved funding level, whichever is greater. They further stated that imposing a hard budget ceiling and requisite advance notification would severely limit the flexibility for MAP Participants with branded programs to reallocate funds from companies that are unable to utilize them in favor of those that can.

*Response:* Respondents are mistaken that §1485.14 (i)(2)(i) requires a MAP Participant to notify CCC of any reallocation of funds among the Participant's branded program participants. The notification requirement does not apply at the brand company level for a MAP Participant operating a brand program. The brand program is approved by CCC at the program level, not at the company level. CCC simply approves of the Participant's brand program in the aggregate; CCC does not review or approve a MAP Participant's allocation of funds among brand participants in its branded program.

*Comment:* Fourteen respondents stated they support the self-certification requirement by small-sized entities participating in a MAP Participant's activities in the branded program area. In addition, CCC received some comments encouraging CCC to be consistent in its policy to exclude large companies from the program. The respondents stated that currently large companies cannot apply and receive MAP funding directly; however, a marketing company representing a large company may obtain assistance through a SRTG. The respondents recommended that the applicant

company as well as the brand owner be required to certify that they meet SBA's criteria of being a small company.

*Response:* CCC disagrees with respondents' recommendation that the brand owner certify that it is a small company. It is not CCC's intention to limit the products that small export trading companies can market under the MAP branded program, regardless of the size of the company producing the product marketed. CCC believes that it is appropriate for a small export trading company to promote its ability to consolidate export shipments that include products made by a wide range of companies.

***Sec. 1485.15 Operational Procedures for Brand Programs***

CCC received 32 comments on this section. CCC has also modified §1485.15(c)(6) to include additional terms that are acceptable origin identification, currently set forth in MAP Notice 97-020. In addition, CCC has modified §1485.15(c)(6) to advise that CCC may temporarily waive the U.S. origin labeling requirement where CCC has determined that such labeling will likely harm sales rather than help them.

*Comment:* Three respondents made similar comments in reference to §1485.15(a). One respondent recommended that the requirement for an annual submission of program operational procedures be changed to require FAS approval only once, after which FAS would merely be notified of any changes. Two respondents proposed that the review of procedures and documents used to administer the branded program be conducted during the annual compliance review.

*Response:* CCC disagrees with the recommendation to remove the annual requirement and has retained the requirement for an annual submission of program operational procedures even if there

are no substantial changes in the procedures. CCC expects that any MAP Participant that is operating a brand program would review its procedures and documents annually.

CCC disagrees with the respondents' proposal to have CCC review the procedures during the annual compliance review in lieu of a separate submission. The purpose of the CCC review is to approve a plan at the start of a program year, before the program begins operation. Moreover, during the compliance review, CCC may review the implementation of the plan, rather than the plan itself.

In response to other comments requesting additional time for implementation, CCC has delayed the effective date of this final rule until the MAP Participant's 2013 program year (either 01/01/2013 or 07/01/2013). CCC has deleted the requirement in §1485.15(a) that the MAP Participant must submit its proposed brand program operational procedures not later than 21 days prior to signing participation agreements with brand participants. CCC has modified §1485.15(a) to note that CCC will notify all new and existing MAP Participants in writing in each Participant's annual approval letter and through the FAS web site as to applicable submission dates and dates for approvals of brand program operation procedures.

*Comment:* Two respondents commented on §1485.15(a). One respondent requested that FAS confirm that §1485.15(a) does not apply to a U.S. agricultural cooperative that is a MAP Participant and operates the cooperative's own brand promotion program. Another respondent commented that this section appears to apply to MAP Participants that administer brand promotion programs on behalf of third party brand participants that do not have a direct agreement with CCC. The

respondents requested clarification be made on whether this section does not apply to U.S. nonprofit agricultural cooperatives that are MAP Participants operating their own brand program.

*Response:* CCC confirms that §1485.15(a) applies only to MAP Participants that operate brand promotion programs that include third party brand participants, and does not apply to U.S. agricultural cooperatives that operate their own brand programs. CCC has amended the definition of brand participant in §1485.11 to make clear it does not include a U.S. agricultural cooperative operating its own brand program.

*Comment:* One respondent stated that §1485.15(b) and §1485.15(c) seem to imply that contracts between cooperatives and third party participants be preapproved by CCC each year. The respondent stated that this requirement is unreasonable and burdensome since nonprofit farmer owned cooperatives carefully protect their farmer members and their brand on each and every contract into which they enter.

*Response:* CCC disagrees that §1485.15(b) and §1485.15(c) imply that CCC pre-approves a MAP Participant's contracts with brand participants. Section 1485.15(b) simply requires that the MAP Participant's proposed operational procedures be pre-approved by CCC. It does not require CCC to pre-approve individual contracts. Section 1485.15(c) simply sets forth items that must be addressed in each contract with a brand participant. As discussed above, U.S. agricultural cooperatives operating their own brand program are not "brand participants."

*Comment:* Six respondents stated that §1485.15(c)(7) should include "small-sized entity or cooperative."

*Response:* CCC agrees and has made the requested change.

*Comment:* CCC received one comment asking whether a MAP Participant who had previously received an approval from CCC to use origin identification terms other than those appearing in the current regulations would have to re-submit these terms again for approval when the new regulations become effective.

*Response:* CCC understands the commenter to be referring to §1485.15(c)(6), which lays out the requirement that MAP activities identify the U.S. origin of the promoted products. CCC considers that an approval under the previous regulations would constitute an approval under the new regulations. A MAP Participant would not have to re-submit these terms again for approval under the new regulations.

CCC has also modified §1485.15(c)(6) to include additional terms that are acceptable origin identification, currently set forth in MAP Notice 97-020. Specifically, CCC has added the terms “American”, “United States of America”, as well as any state or territory of the United States of America spelled out in its entirety. Section 1485.15(c)(6) also now clarifies that the use of approved origin 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. Section 1485.15(c)(6) also now encourages the phrases “product of”, “grown in” or “made in”, but does not require them. MAP Notice 97-020 will be removed from the FAS website.

In addition, CCC notes that in certain situations, CCC has temporarily waived the requirement to identify the U.S. origin of products promoted under the MAP brand program. For example, current MAP Notice 09-007 temporarily waives this requirement for MAP brand activities conducted in certain Middle East countries. Accordingly, CCC has modified §1485.15(c)(6) to advise that CCC may temporarily waive the U.S. origin labeling requirement where CCC has determined that such labeling will likely harm sales rather than help them and that such determinations will be announced to MAP Participants via a MAP notice issued on FAS' web site. MAP Notice 09-007 will continue to be available on the web site for informational purposes and reflects CCC's current administration of the MAP program.

*Comment:* One respondent stated that 5 years is an unreasonable time to keep records, stating that the IRS requires records to be kept for only 3 years.

*Response:* CCC disagrees with the respondent. The Agricultural Trade Act of 1978, as amended, at 7 U.S.C. §5662(a)(1) requires the Secretary of Agriculture “to require by regulation each exporter or other participant under the [MAP and other] program[s] to maintain all records concerning a program transaction for a period of not to exceed 5 years after completion of the program transaction, and to permit the Secretary to have full and complete access, for such 5-year period, to such records.”

*Comment:* Five respondents asked CCC to clarify whether cooperatives were still exempt from the 5-year graduation rule or if this had changed.

*Response:* CCC understands the commenters to be referring to the statutory provision in 7 U.S.C. §5623 note, which states that MAP assistance may not be provided to promote a specific branded product in a single market for more than 5 years unless the Secretary determines that further assistance is necessary in order to meet the objectives of the program. Currently, CCC exempts U.S. agricultural cooperatives from the 5 year rule. CCC determined in 1998 that continued support for U.S. agricultural cooperatives was necessary to meet MAP’s objectives, and that determination remains in place. CCC will publish this determination in a MAP notice on the FAS website.

*Comment:* Three similar comments stated that the “Sunset Rule” should be deleted. The respondents suggested that if the rule is maintained, then it should apply to a specific market and not to a country. One respondent stated that the 5-year limitation is the single greatest barrier to program participation and recommended that the country limitation be extended to 8 years per market. Another respondent recommended that export trading companies be considered for exemption from the 5-year limitation, if it can be proven that any additional marketing efforts after 5 years will be for different products beyond those previously marketed.

*Response:* CCC understands the commenters to be referring to the statutory provision in 7 U.S.C. §5623 note, which states that “[t]he Secretary should not provide assistance under the [MAP] program to promote a specific branded product in a single market for more than 5 years unless the Secretary determines that further assistance is necessary in order to meet the objectives of the program.” Because the 5-year limitation is established by statute, CCC cannot extend the country limitation to 8 years as requested by the respondents. While the statute provides the Secretary the discretion to waive the graduation requirement in individual circumstances where the Secretary believes such further assistance is necessary to achieve the goals of MAP, CCC has no authority to

“delete” the “Sunset Rule” as requested by the commenters. CCC also disagrees with the comment that the “Sunset Rule” be applied to a specific market and not to a country. CCC has defined “market” in the proposed and final rules to mean the country or countries targeted by an activity. Lastly, CCC does not have any information that suggests that exempting export trading companies from the 5-year limitation is necessary to achieve the goals of MAP. CCC retains the discretion to waive the 5-year limitation, if CCC determines that further assistance in a particular situation is in the best interests of the MAP.

*Comment:* Two respondents commented that they supported continuing exemptions for international shows that reflect a broad international attendance.

*Response:* CCC understands the commenters to be referring to CCC’s practice, as reflected in MAP Notice 09-005, of not counting a Participant’s attendance at certain international trade shows when determining whether a specific branded product has been promoted in a single market for more than 5 years. CCC will continue this practice and has codified it in §1485.15(d) of the MAP final rule.

Many international trade shows feature buyers and sellers from many countries. Many of the shows are held in the same country annually or biannually (e.g., SIAL and ANUGA are held in alternating years in France and Germany, respectively). Many U.S. companies attend such shows to meet with buyers from many countries, not just the host countries. However, given that CCC may not provide assistance to a single company for brand promotion in a single country for more than 5 years, many small brand companies would face graduation from a host country after exhibiting at one of these international trade shows for five years, even if the companies have had no other

activities in that country and participating in the show is used exclusively as a gateway for developing customers in other countries.

Therefore, to further the objectives of MAP, CCC has determined that brand participants' participation in certain international trade shows in foreign countries will not be considered when determining such participants' time in country for purposes of the 5 year graduation requirement. Specifically, as reflected in MAP Notice 09-005, CCC has compiled a list of international trade shows that CCC "exempts" from the graduation requirement. A show on this list meets two requirements: (1) it is a food or agricultural show, with no less than 30% of exhibitors selling food or agricultural products, and (2) it is an international show, meaning it targets buyers, distributors and the like from more than one foreign country and no less than 15% of the show's visitors are from countries other than the host country.

CCC is not planning on changing its practice and has codified MAP Notice 09-005 in §1485.15(d). MAP Notice 09-005 will be removed from the FAS website, as parts are now redundant with the final rule, and a new MAP notice will be posted on FAS' website listing the international trade shows that CCC "exempts" from the graduation requirement. If a MAP Participant believes that a show should be added to this list, the Participant should contact FAS.

*Comment:* One respondent stated that because they do not have the facilities for conducting investigations of corporate ownership structure, they proposed that the current process of self-certification continue.

*Response:* CCC notes that §1485.15(c)(7) as proposed allowed brand participants to self-certify as to status as a small-sized entity and that the final rule continues the current process of self-certification.

### ***Sec. 1485.16 Contribution Rules***

CCC received 20 comments on this section. Below are CCC's responses. In addition, CCC has clarified in §1485.16(c) that a MAP Participant's U.S. office's administrative costs may be included in calculating the amount of contributions the MAP Participant contributes to MAP activities.

Similarly, CCC has clarified in §1485.16(d)(2) that contributions are subject to the MAP regulations and the applicable OMB circulars on cost principles, to the extent these principles do not directly conflict with the provisions of this subpart. In addition, CCC has removed the cross-reference to §1485.16(c) in §1485.16(d)(2) as unnecessary.

*Comment:* Fourteen respondents provided similar comments in reference to §1485.16, stating it would be clearer to begin the subpart by stating that any expense that is listed as eligible for reimbursement can also be considered a contribution if paid with industry funds. The respondents stated that then the list would only need to state what is not eligible as a contribution, the assumption being that anything that is not listed is eligible. They stated this change would greatly reduce the confusion over items which now appear in both places, sometimes with slightly different wording.

*Response:* CCC believes that eligible contributions are clear as presented in §1485.16. CCC notes that §1485.16(d)(2)(xxi) specifically provides that "the cost of any activity expressly listed as reimbursable in this subpart" may be considered a contribution if paid with Participant or industry funds.

*Comment:* One respondent stated that this section does not specifically mention industry travel expenses as being counted as a contribution. This respondent stated that it urges FAS to specifically state that industry travel and other industry expenditures that are in support of the broader mission of Participants be listed as eligible to count toward contributions.

*Response:* CCC allows domestic travel expenses paid by the Participant to be counted as a contribution, pursuant to §1485.16(d)(2)(xvii). Additionally, at §1485.16(d)(2)(xxi), CCC allows to be counted as a contribution the cost of any activity paid by the Participant and expressly listed as reimbursable in this subpart, which includes travel. In response to the comment, however, CCC has modified the definition of “contribution” in §1485.11 to include explicitly expenditures made by entities in the MAP Participant’s industry in support of the entities’ related promotion activities in the markets covered by the MAP Participant’s agreement.

*Comment:* One respondent stated the proposed rule §1485.16(d)(2)(xvi) reads eligible contributions include “fees for participating in U.S. Government activities” and it requested clarification of the term “U.S. Government activities.”

*Response:* From time to time, the U.S. Government financially sponsors activities or endorses activities, particularly overseas, that promote export opportunities. These could include trade shows, trade missions, restaurant promotions, or a variety of other activities. To clarify this further, CCC has modified §1485.16(d)(2)(xvi) to note that the activities are “U.S. government sponsored or endorsed export promotion activities”. CCC has made a corresponding edit to §1485.17(d)(21).

*Comment:* One respondent commented that the proposed regulation at §1485.16(b) provides that “in MAP brand promotion programs, a brand participant shall contribute at least 50 percent of the total eligible expenditures made on each approved brand promotion.” It suggested that to be consistent with the quoted language, and with the understanding that a brand promotion program can be operated by a MAP Participant, as well as a brand participant, the phrase “a brand participant” in §1485.16(b) should be replaced with “a brand participant or Participant” or similar language.

*Response:* CCC agrees with the comment and has modified §1485.16(b) accordingly.

### ***Sec. 1485.17 Reimbursement***

CCC received 330 comments on this section. Below are CCC’s responses to the comments. In addition, CCC has clarified various provisions. For example, CCC has made explicit in §1485.17(b) that reimbursements are subject to the MAP regulations and the applicable OMB circulars on cost principles, to the extent these principles do not directly conflict with the provisions of this subpart. CCC has also modified §1485.17(c)(8) to codify CCC’s current practice of requiring MAP Participants to provide documentation establishing the full fare economy class rate to support their reimbursement claims, as well as clarify that international travel expenses for activities that occur inside or outside the United States are reimbursable. In addition, CCC has deleted §1485.17(c)(9), which provided that per diem was reimbursable, because it is redundant with §1485.17(c)(8) (which now explicitly includes per diem). Section 1485.17(c)(8) allows the reimbursement of “international travel expenditures,” which include transportation, per diem, and miscellaneous expenses.

CCC has also added §1485.17(b)(17), which allows for reimbursement of international travel expenditures (e.g., transportation, per diem, and miscellaneous expenses) for brand companies participating in foreign trade missions subject to certain conditions. This codifies MAP Notice 03-004. MAP Notice 03-004 will be removed from the FAS website.

Similarly, CCC has codified MAP Notice 01-004 in new §1485.17(b)(18). MAP Notice 01-004 describes CCC's longstanding practice of limiting reimbursement of expenditures related to retail, trade, or consumer exhibits or shows, whether held inside or outside the United States, where USDA has sponsored or endorsed a U.S. pavilion at the exhibit or show. In that situation, MAP funds are used to reimburse the travel and/or non-travel expenditures of only those MAP Participants located within the U.S. pavilion. CCC believes it is important to maintain a unified U.S. presence at these shows, with all exhibitors contributing fairly and supporting the U.S. pavilion. MAP Notice 01-004 will be removed from the FAS web site.

Finally, CCC has added a cross reference to §1485.17(d) in §1485.17(b) and §1485.17(c).

*Comment:* Three respondents provided similar comments in reference to §1485.17(b)(4). Two comments stated that the rule as written may be interpreted to allow the cost of product samples to be reimbursed. The respondents stated that “[a]s written, this rule may be interpreted to allow the cost of promotional samples themselves to be reimbursed. We feel that the existing approach, in which costs of distributing samples are eligible, but the costs of the samples themselves are not, remains appropriate within WTO eligibility. We recommend that this be clarified.”

One comment stated that the current MAP regulations limit the reimbursement of giveaways to U.S. dollars and suggested that the maximum reimbursement be increased to reflect inflation since the 1980s.

One respondent stated that the purchase of samples locally on a case-by-case basis with a maximum cost per sample not to exceed the allowable cost of a premium should be allowed.

*Response:* CCC's practice has been and continues to be that the cost of product samples is not reimbursable under MAP. In response to the first commenters above, CCC has clarified this issue and modified §1485.17(b)(4), which provides that the costs of in-store and food service promotions, product demonstrations, and distribution of promotional samples are reimbursable. Section 1485.17(b)(4) now explicitly notes that the purchase of product samples are not reimbursable and replaces the term "promotional samples" with "product samples." CCC also notes that §1485.17(d)(5) already specifically prohibits the reimbursement of the cost of product samples. In addition, as noted above, CCC has modified §1485.11 to include a definition of "product samples."

CCC disagrees with the view that the costs of product samples should be reimbursed.

CCC does not agree with the commenter requesting that the current MAP regulation's limit on the reimbursement of giveaways be increased or that it be codified in the MAP final rule. As noted above, CCC observes that the cost of samples of the promoted MAP product are not reimbursable, regardless of whether the samples are giveaways or not. Regarding the reimbursement of giveaways of non-MAP promoted products in general, the MAP final rule is written in a way to allow CCC to counter inflation, without unduly limiting its flexibility. As discussed below in CCC's response to

similar comments, rather than specify a reimbursement amount for giveaways in §1485.17(b)(11), CCC will set a reimbursement limit during the course of its administration of MAP and change that limit, as necessary, with appropriate notice to MAP Participants through written MAP notices posted on FAS' web site.

*Comment:* Three respondents commented in reference to §1485.17(b)(8) supporting the inclusion of eligibility of subscriptions. All recommended that CCC change the wording to remove the words “to publications” and instead state that “CCC will reimburse in whole or in part subscriptions that are of a technical, economic, or marketing nature and relevant to the approved activities.”

One respondent proposed adding language to allow for expenditures when the internet is used as a staff resource. It gave as an example for market intelligence, economic data, and key policies and procedures to be accessible via their internet site to their international offices and U.S. staff worldwide.

*Response:* CCC agrees with the first general comment and has modified §1485.17(b)(8) (now §1485.17(b)(9)), as some appropriate subscriptions could be to web-based information that may not traditionally be thought of as “publications.” CCC has also made a corresponding change to §1485.16(d)(2)(x). CCC does not agree with the second comment to add language to allow reimbursement of internet expenditures because, as submitted, this appears to be a function of the MAP Participant's home office, and, thus, is not reimbursable under the program unless otherwise authorized in §1485.17(c)(22).

*Comment:* Fourteen respondents commented regarding proposed §1485.17(b)(9) (now §1485.17(b)(10)), which provided that the cost of “demonstrators, interpreters, translators, receptionists, and similar temporary workers who help with the implementation of discrete promotional activities” is reimbursable. These respondents were concerned with the use of the word “discrete” in the preceding language. Several commented that they presume that the use of the term “discrete” applies to or refers to any approved activities such as described in the regulations. The respondents stated that it would be clearer to use the term “individual” rather than “discrete,” as that might better define the activity.

*Response:* CCC agrees with the respondents and has made the suggested change substituting the term “individual” for the term “discrete” in the final rule for clarity.

*Comment:* Fifteen respondents provided similar comments in regard to proposed §1485.17(b)(10) (now §1485.17(b)(11)), which provided that the cost of giveaways, awards, prizes, gifts and other similar promotional materials is reimbursable, subject to such reimbursement limitation as CCC may, from time to time, determine and announce in writing to all MAP Participants and on the FAS website. The respondents stated that they presume that announcements pertaining to the reimbursement limitations will be in the form of Program Announcements or similar instruments. Four stated that they agree with the need for flexibility in this area and supported CCC’s approach.

*Response:* CCC understands that the commenters are referring to CCC’s practice of issuing Market Access Program notices. MAP Notice 97-002 currently sets out a \$1.00 reimbursement limit for promotional items (which does not include product samples). It also sets out the conditions under which such reimbursement is available. CCC has determined to codify MAP Notice 97-002, in part.

Section 1485.17(b)(11), which allows reimbursement for giveaways, awards, prizes, gifts and other similar promotional materials, now notes that reimbursement is available only when: (1) the items are described in detail with a per unit cost in an approved strategic plan and (2) 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.

CCC believes that specifying a dollar amount in the new MAP regulations is unnecessarily restrictive and does not provide CCC sufficient flexibility to deal with changing economic circumstances such as inflation. Therefore, rather than specify a reimbursement amount in §1485.17(b)(11), CCC will retain the proposed rule's discretion. Thus, CCC will set a reimbursement limit during the course of its administration of MAP and change that limit, as necessary, with appropriate notice to MAP Participants through written MAP notices posted on FAS' web site. MAP Notice 97-002 will be removed from the FAS web site, and a new notice will be issued setting forth a reimbursement allowance for giveaways, awards, prizes, gifts and other similar promotional materials.

Comment: One respondent commented in reference to §1485.17(b)(12) and couponing. The commenter suggested that CCC allow ads to be reimbursed if the ad contains coupons for other products but does not contain a coupon for MAP Participant products.

Response: CCC confirms that reimbursement is allowed if ads contain coupons for other products but do not contain a coupon for MAP Participant products. In response to the commenter, CCC has revised §1485.17(b)(12) (now §1485.17(b)(13)) to make clear that only the design, production and

distribution of coupons for products other than the MAP Participant's promoted products are reimbursable.

In addition, CCC has revised §1485.17(b)(1), which allows advertising to be reimbursed, including advertising of price discounts, to make clear that advertising associated with coupons or price discounts for MAP-promoted products is not reimbursable. CCC has also modified both provisions to note that if otherwise reimbursable advertising or coupon activities include both coupons or price discounts for products other than the MAP Participant's promoted products as well as for the 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). This codifies MAP Notice 05-001, which will be removed from the FAS website.

Finally, CCC has modified §1485.17(d)(9) to clarify that CCC will not reimburse the cost of any coupon redemption or price discounts "of the MAP promoted commodity."

*Comment:* Sixteen similar comments were received regarding §1485.17(b)(12) and the design, production and distribution of coupons. The respondents requested that CCC clarify if this section is applicable to both branded and generic. Three comments stated that they strongly support the clarification to incorporate the eligibility of coupon design, production and distribution.

In addition, eighteen respondents stated that clarification was needed regarding what is covered as "branded," as "generic," or as both, throughout the regulations. Two respondents stated that the language listed in §1485.17(b)(1) through §1485.17(b)(15) seems to describe expenses eligible for

entities conducting a branded program, and that expenses listed from §1485.17(c) through §1485.17(d) addressed generic only. They requested clarification if this understanding was correct.

Another similar comment was received which stated that more specificity was needed for branded and generic reimbursement rules. One respondent stated that since web site costs were previously not considered an eligible branded expense and the eligibility of subscription costs and audit costs do not appear to pertain to the branded program, they would like confirmation that CCC now intended for these expenses to be eligible for both the generic and branded programs.

Two respondents stated that in reference to §1485.17(c)(16), the proposed rule should make it clear that branded programs are specifically included.

*Response:* CCC has modified §1485.17(b) to clarify that it addresses both brand and generic promotional activities. Therefore, all subparagraphs under §1485.17(b) are applicable to both generic and branded programs, including §1485.17(b)(9) (allowing subscription costs), §1485.17(b)(13) (allowing certain coupon costs), §1485.17(b)(14) (allowing certain audit costs) and §1485.17(b)(16) (allowing web site costs).

Section 1485.17(c) addresses generic promotional activities only.

Section 1485.17(d) was removed and the text of that section added to the definition of generic promotion in §1485.11. Subsequent subsections of §1485.17 have been reordered.

As discussed above, CCC does not reimburse the design, production or distribution of coupons for the MAP Participant's promoted products. CCC has modified §1485.17(b)(12) (now §1485.17(b)(13)) to make this clear.

Finally, CCC disagrees with the respondents who requested that branded programs be included in §1485.17(c)(15), which reimburses market research for generic promotions only. That section will remain applicable only to generic promotions.

*Comment:* Fourteen respondents commented in reference to “audits” referenced in §1485.17(b)(13) (which allowed for reimbursement of an audit of a MAP Participant that was required by the applicable parts of this title if the MAP is the Participant's largest source of federal funding), §1485.17(c)(17) (which allowed for reimbursement of independent evaluations or audits not otherwise required by CCC if performed to ensure compliance with program agreement or regulatory requirements), and §1485.17(e)(16) (which provided that CCC will not reimburse Participants for independent evaluations or audits if CCC determines such evaluation or audit is needed to confirm past or ensure future program agreement or regulatory compliance). The respondents requested further clarity on when CCC will pay for an audit. They also stated that references to “applicable parts of this title” should be avoided and instead, clear language should be provided. For example, the respondents asked whether, in light of §1485.17(b)(13), which provides for reimbursement for A-133 audits, §1485.17(c)(17) means MAP will pay for other audits that give the Participant assurances that it is in compliance with MAP rules, i.e., operational or forensic audits. Six respondents also provided similar comments in reference to §1485.17(e)(16), questioning if all financial audits were not reimbursable. The respondents also asked if OMB Circular A-133 audits were reimbursable given that this is not required by CCC but by the federal government.

*Response:* In response to these comments, CCC has modified §1485.17(b)(13) (now §1485.17(b)(14)) to clarify that this section refers to OMB Circular A-133 audits. Thus, for brand and generic promotions, such audits are reimbursable if the MAP is the MAP Participant's largest source of Federal funding.

Also in response to these comments, CCC has clarified §1485.17(c)(17) (now §1485.17(c)(16)). That section now provides that it is subject to the limitations set out in §1485.17(d)(which now lists items for which CCC will not reimburse Participants). CCC has also deleted the reference to ensuring compliance with "regulatory requirements" in this section. Section 1485.17(c)(16) now provides that for generic promotions only, independent evaluations and audits not otherwise required by CCC to ensure compliance with program requirements are reimbursable. CCC observes, however, that, as noted in new §1485.17(d)(31), expenditures associated with a MAP Participant's creation or review of its fraud prevention program, contracting procedures, or brand program operational procedures are not reimbursable.

With respect to the comments questioning whether §1485.17(e)(16) prohibits reimbursement of all financial audits, CCC confirms that 1485.17(e)(16) (now §1485.17(d)(16)) prohibits reimbursement only of evaluations or audits that are required by CCC to confirm past or to ensure future program agreement or regulatory compliance. This is not a change from the current regulations. Finally, CCC notes that this section does not prohibit reimbursement of OMB Circular A-133 audits, which is specifically allowed, under the appropriate circumstances, per §1485.17(b)(14).

CCC disagrees with the comments that the MAP final rule should avoid references to “applicable parts of this title.” As noted in §1485.10 of both the proposed and final rules, USDA regulations other than the MAP final rule also apply to USDA recipients of federal financial assistance. Some regulations apply to all MAP Participants. Others apply only to certain categories of MAP Participants. Because of the varied nature of MAP Participants, it would be unwieldy to specify which other regulations apply and when for each provision in the MAP final rule. However, in response to the comment, wherever the MAP final rule has explicitly referred to “applicable parts of this title,” CCC has added illustrative examples of what parts potentially apply to different MAP Participants.

In addition, CCC notes that §1485.10(b) provides an illustrative list of other USDA regulations of general application that may apply to MAP and MAP Participants. The section also puts MAP Participants on notice that they must comply with the relevant provisions of the CCC Charter Act and Title VI of the Civil Rights Act of 1964 and related civil rights regulations and policies.

Finally, in response to the comments, CCC has also added new §1485.10(b)(4), which lists additional laws and regulations that are applicable to MAP Participants.

*Comment:* Fourteen similar comments stated that previous policy guidance announced reimbursement of the costs of developing, updating, and servicing non-branded web sites on the internet and stated that they seek clarification on whether this new regulation supersedes the previous guidance. Three comments also stated that they strongly supported web site development expenses being eligible for both branded and generic programs.

*Response:* CCC understands that the commenters are referring to CCC's practice of issuing Market Access Program notices. CCC issues these MAP notices for informational purposes. While these notices have no legal effect, they alert MAP Participants to information regarding the administration of the MAP program that CCC believes is beneficial to share with MAP Participants.

CCC confirms that the MAP final rule sets out the reimbursement rules for MAP Participants and supersedes all prior inconsistent guidance. Specifically, §1485.17(b)(15) (now §1485.17(b)(16)), applicable to both brand and generic activities, and §1485.17(c)(31), applicable to generic activities, provide that CCC will reimburse, in part or in whole, the cost of developing, updating and servicing certain types of websites. In response to the comments, however, CCC has modified §1485.17(c)(31) to include additional conditions regarding web site content that CCC currently requires as a condition of reimbursement, as reflected in MAP Notice 01-003. MAP Notice 01-003 has thus been codified and will be removed from FAS' website. Section 1485.17(c)(31) now provides that expenditures associated with developing, updating, and servicing web sites on the Internet are reimbursable if the web sites: (1) contain a message related to exporting or international trade, (2) include a discernible "link" to the FAS/Washington homepage or an FAS overseas homepage, and (3) have been specifically approved by the appropriate FAS commodity division. Expenditures related to web sites or portions of web sites that are accessible only to an organization's members are not reimbursable. Reimbursement claims for web sites that include any sort of "members only" sections must be prorated to exclude the costs associated with those areas subject to restricted access.

Finally, CCC notes that §1485.16(b) provides that in MAP brand promotion programs, MAP Participants must contribute at least 50% of the total eligible expenditures made on each approved

brand promotion. At this time, CCC reimburses qualified website expenses 100% for generic promotions and 50% for brand promotions.

*Comment:* Ten respondents provided comments in regard to §1485.17(c)(8). They questioned under what circumstances business class travel would be reimbursed. The commentators stated that they felt it would be reasonable to be reimbursed for business class rate for flights over a specific duration (i.e. over 12 hours).

*Response:* CCC recognizes that circumstances might arise where business class flights may be necessary. Thus, CCC has modified §1485.17(c)(8) of the proposed rule. Originally, that section as proposed provided that CCC would determine a policy regarding the appropriate circumstances when business class rates would be acceptable and announce that policy in writing to all MAP Participants and on the FAS web site. CCC has now articulated in §1485.17(c)(8) the limited circumstances under which CCC, after prior written approval, will reimburse air travel up to the business class rate. These circumstances are the following:

(a) regularly scheduled flights between origin and destination points do not offer economy class (or equivalent) airfare and the MAP Participant receives written documentation from its travel agent 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; and

(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, ending with the scheduled arrival time, and including stopovers and changes of planes, exceeds 14 hours. In such case, 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. 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. 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.

CCC believes that requiring CCC's prior written approval will allow both MAP Participants and CCC to confirm that the Participants meet the circumstances that may justify air travel in excess of the full fare economy rate.

*Comment:* One respondent stated its opposition to §1485.17(e)(15), given that refundable airline tickets are often "triple or more the cost of non-refundable tickets". The respondent stated that this

rule has the effect of substantially increasing overall travel costs under the program and also that the ability to claim an occasional non-refundable airline ticket and associated fees, especially for an international buyer (whose travel is both less predictable and less accountable) would be vastly exceeded by the overall higher costs for the less restrictive tickets.

The respondent also asked for clarification of “travel restricted by a U.S. government action” and asked if denial by U.S. officials of a visa request constituted a restriction by a U.S. Government action.

*Response:* CCC disagrees. Section 1485.17(e)(15) (now §1485.17(d)(15)) provides that CCC will not reimburse the cost of any unused non-refundable airline tickets or associated fees, except where travel was restricted by U.S. government action or advisory. The commenter has provided no data that the effect of this proposed section would increase overall travel costs under MAP. This is not a change from the current MAP rule, and CCC does not have any reason to believe that this policy has increased costs to the MAP program beyond what it would have been had the commenter’s proposal been adopted. Finally, CCC notes that denial of a visa request would not constitute a restriction by a U.S. Government action. “Travel restricted by a U.S. government action” would include, for example, if all travel from a country was prohibited due to an epidemic.

*Comment:* Several respondents questioned whether airline change fees are reimbursable.

*Response:* Yes. Airline change fees are reimbursable provided that such fees meet certain conditions. CCC understands that, in order to most effectively use their MAP funding, Participants at times purchase airline tickets at a price that is less than the full fare economy rate. If a Participant

purchases a ticket for less than the full fare economy rate and subsequently changes the ticket, a change fee may be incurred. CCC considers this change fee to be reimbursable up to the point that the sum of the ticket purchase price and any ticket change fees equal, but do not exceed, the full fare economy rate. To clarify, if the sum of the ticket purchase price and any ticket change fees exceed the full fare economy rate, only the full fare economy rate is reimbursable. Section 1485.17(b)(8), §1485.17(b)(17) and §1485.17(c)(8) have been modified to specify that program-related international air transportation, including any fees for modifying the originally purchased ticket, will be reimbursed at a rate not to exceed the full fare economy rate, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304).

*Comment:* Seventeen respondents provided similar comments in reference to §1485.17(c)(13), which stated that more flexibility is needed for electronic communications, which are becoming a more important part of the marketing mix for Participants, both branded and generic. Fourteen of the respondents stated that the cost of service is the largest component of the costs of most devices, such as smartphones, and it is recommended that CCC include as reimbursable a monthly allowance.

They stated that as with giveaways and international travel, the determinant CCC statement may be added from time to time to allow for future flexibility. One respondent stated that it recommends that the cost of using these devices be included as reimbursable expenses and that the provisions of the regulations avoid the burdensome requirements of logging individual calls in minutes or sessions. Another commented that the regulations should provide for payment of monthly service fees for portable electronic devices for staff stationed overseas, provided the devices are primarily used for Participant market development purposes.

*Response:* Section 1485.17(c)(13) of the proposed rule provided that, for generic promotions only, CCC would reimburse the cost of the purchase, lease, or repair of, or insurance premiums for, capital goods that have an expected useful life of at least 1 year, including portable electronic communications devices (including mobile phones, wireless e-mail devices, personal digital assistants). That section does not deal with reimbursability of usage costs of electronic devices. CCC adopts §1485.17(c)(13) as proposed (now §1485.17(c)(12)).

As previously discussed in response to a comment, CCC believes the reimbursability of the usage costs of various communications devices is already adequately addressed by the various provisions in the MAP final rule. Reimbursability of such communication costs depends on the circumstances under which the communication took place. CCC refers to its prior response on this issue.

CCC has issued several MAP notices that provide further information on CCC's current practice of reimbursing telephone calls. MAP Notice 03-006 details CCC's allowances for program-related, emergency and personal telephone and internet expenses while on eligible travel. This Notice will remain on the FAS website. MAP Notice 99-009 (redundant with MAP Notice 03-006) and MAP Notice 98-017 (discussing reimbursement of wireless phone airtime devoted to program activities and now redundant) will be removed from the FAS website.

CCC disagrees with the commenter who requested that the regulations avoid the burdensome requirements of logging individual calls in minutes or sessions to claim reimbursement. CCC notes that all reimbursement claims must be substantiated by sufficient supporting documentation per §1485.21(d)(6). In order to claim reimbursement for usage costs, therefore, the MAP Participant

must identify the costs to be reimbursed. Thus, as CCC has noted above, the monthly service charge for a caller usage plan with unlimited minutes must be incurred primarily in furtherance of an approved activity and the Participant is responsible for documenting that such plan was used primarily in further of an approved activity. In contrast, under a caller usage plan that charges by the minute, only charges for calls incurred in furtherance of an approved activity would be reimbursed under MAP and the Participant is responsible for detailing which calls are properly reimbursed with MAP funds.

*Comment:* The respondents asked if §1485.17(e)(16) means that CCC will reimburse for audits of subcontractors.

*Response:* No, all of the listings under §1485.17(e) (now §1485.17(d)) are not reimbursable.

*Comment:* One respondent stated that reimbursement for market research should be moved under subheading (b), thus allowing for reimbursement for market research under both generic and branded programs.

*Response:* CCC disagrees with the suggested comment to make market research eligible for both branded and generic programs. CCC intends that market research funded under the program be available throughout the relevant industry, not only to a single company or cooperative.

*Comment:* Four respondents provided similar comments in reference to §1485.17(c)(20) (now §1485.17(c)(19)), which provides that for generic promotions only, CCC will reimburse the cost of STRE (sales and trade relations expenditures made on breakfast, lunch, dinner, receptions, and

refreshments at approved activities, including miscellaneous courtesies such as checkroom fees, taxi fares and tips; and decorations for a special promotional occasion). The respondents requested that CCC clarify that STRE incurred in the United States at approved activities that demonstrated a positive impact on agricultural exports, be eligible for reimbursement under MAP. One commenter asked for further clarification of STRE regulations incurred in foreign and domestic markets.

*Response:* Generally, STRE incurred outside of the United States is reimbursable. CCC, however, agrees that under certain limited circumstances, STRE may be critical to the success of an activity being carried out in the United States. Therefore, CCC has modified §1485.17(c)(19) to clarify that STRE incurred outside the United States is reimbursable and that STRE incurred within the United States may be reimbursed under MAP upon prior written approval by CCC. As with all reimbursable expenses, such STRE must be incurred in conjunction with an approved MAP activity.

In response to the request for further clarification of STRE, CCC has codified, in part, MAP Notice 97-016 in §1485.17(c)(19). That section now specifies that MAP Participants are required to use the 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 Agricultural 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. MAP Notice 97-016 will be removed from the FAS website.

*Comment:* Seven comments were received stating miscellaneous courtesies such as checkroom fees, taxi fares and tips, and decorations for special purposes should not fall under Sales and Trade Related Expenses (STRE) and should be fully covered under MAP as separate expense categories.

*Response:* Congress has given CCC discretion to operate and manage the MAP. In doing so, CCC must balance benefits to MAP Participants against limited financial resources. Under the current MAP regulations, STRE incurred outside of the United States is reimbursable for generic promotions only. In response to other comments to the MAP proposed rule, CCC has modified §1485.17(c)(19) to allow reimbursement of STRE incurred in conjunction with an approved generic promotion taking place within the United States upon prior written approval by CCC. CCC, however, disagrees with these commenters that miscellaneous courtesies should be considered separately from STRE.

*Comment:* One respondent commented that it did not see language that includes authorization to use program funds to cover costs associated with participation in trade shows and fairs held within the United States. The respondent stated that many are international in nature and have very strong participation from overseas, and it recommended that the rules specifically include language to allow program funds to be used for Participant staff to participate in such trade shows.

*Response:* CCC agrees with the commenter and has clarified this issue in §1485.17(b)(7), §1485.17(c)(8) and §1485.17(c)(24) of this final rule. It has been CCC's practice to reimburse non-travel expenditures associated with retail, trade and consumer exhibits and shows held inside the United States under certain circumstances. Accordingly, CCC has codified, in relevant part, MAP Notice 09-006 in §1485.17(b)(7)) of the MAP final rule. Section 1485.17(b)(7) now provides, in part, that, for both generic and branded promotions, non-travel expenditures associated with retail,

trade and consumer exhibits and shows held inside the United States are reimbursable, subject to certain conditions set out in §1485.17(b)(7). In addition, the MAP final rule expands reimbursement to other related expenses. Specifically, §1485.17(c)(24) now provides that, for generic promotions only, domestic travel expenditures for such exhibits and shows conducted in the United States are reimbursable, subject to certain conditions and upon prior written approval by CCC. Section 1485.17(c)(8) also now specifically allows reimbursement of international travel expenses for an exhibit or show held inside the United States, subject to certain conditions. For brand promotion, neither domestic nor international travel expenses are reimbursable for retail, trade, or consumer exhibits or shows held inside the United States.

These sections allow reimbursement of eligible expenses related to exhibits and shows held inside the United States only if the exhibit or show is: (1) a food or agricultural show with no less than 30% of exhibitors selling food or agricultural products, (2) an international 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, and (3) an exhibit or show that the MAP Participant has not participated in within the last three years using funds from a source other than the MAP.

MAP Notice 09-006 will be removed from the FAS web site. A new MAP notice will be posted on FAS' web site listing the retail, trade and consumer exhibits and shows held inside the United States for which MAP reimbursement is currently allowed by CCC. In addition, MAP Notice 97-004, which addresses when brand companies are allowed to use MAP funds for expenses associated with domestic trade shows, is now inconsistent with the MAP final rule and will be removed from FAS' web site.

Below is a chart summarizing the reimbursement rules for international exhibits and shows held outside and inside the United States:

	Exhibits and shows outside U.S.	Exhibits and shows inside U.S.
Generic promotion	Non-travel expenditures: reimbursable (§1485.17(b)(7)) International travel expenditures: reimbursable (§1485.17(c)(8))	Non-travel expenditures: reimbursable subject to conditions (§1485.17(b)(7)) International travel expenditures: reimbursable subject to conditions (§1485.17(c)(8)) Domestic travel expenditures: reimbursable subject to prior written approval and subject to conditions (§1485.17(c)(24))
Brand promotion	Non-travel expenditures: reimbursable (§1485.17(b)(7)) International travel: reimbursable up to 2 people (§1485.17(b)(8))	Non-travel expenditures: reimbursable subject to conditions (§1485.17(b)(7)) International travel: Not reimbursable Domestic travel: Not reimbursable

*Comment:* Twenty-five respondents provided similar comments stating that the phrasing was unclear in §1485.17(c)(24), which includes “Expenditures associated with conducting international staff conferences.” The respondents requested that CCC clarify whether trade shows, seminars, educational training, international staff conferences, and meetings of international organizations are all eligible for reimbursement in the United States and overseas. Several of the respondents questioned if this included international conferences taking place in the United States and if so, whether that included travel. One respondent stated that it was unclear whether the international travel costs associated with having the industry’s trade representative attend the conference would be eligible.

Twenty-five respondents commented in reference to §1485.17(c)(25) and asked for clarification of “international organizations.” Three respondents proposed that the language be amended to include “and meetings of an international focus within the United States.”

One stated that this section was confusing and implied that reimbursement for travel for trade shows, seminars, and educational training was authorized only for those events that are conducted outside the United States. The respondent asked for clarification on this and stated that it believed that was not the intent of CCC, as it would severely limit the use of MAP funds to educate foreign target audiences through courses and programs conducted in the United States.

*Response:* CCC agrees that the phrasing in §1485.17(c)(25) was unclear and has replaced it with new §§1485.17(c)(23)-(26).

Regarding commenters' request to clarify whether international staff conferences conducted in the United States and overseas are eligible for reimbursement, CCC observes initially that expenditures related to international staff conferences are reimbursable for generic promotions only. CCC has added a new §1485.17(c)(23), which provides that non-travel expenditures related to conducting international staff conferences are reimbursable, regardless of whether the conferences are held in or outside the United States. These conferences are gatherings of the international staff of the MAP Participant. CCC further notes that international travel expenditures to such conferences for MAP Participants, whether held outside the United States or in the United States, are already reimbursable in accordance with §1485.17(c)(8). Thus, under §1485.17(c)(8), international travel costs associated with having the industry's trade representative attend the Participant's staff conference would be eligible if the individual is an employee or overseas contractor of the MAP Participant. Thus, in sum, for generic promotions only, both international travel expenditures and non-travel expenditures for international staff conferences are reimbursable, whether the conference is held outside the United States or in the United States. Domestic travel expenditures to attend such

international staff conferences are not reimbursable. For brand promotions, no expenditures of any kind associated with international staff conferences are eligible for reimbursement.

In response to commenters' request to clarify whether trade shows conducted in the United States and overseas are eligible for reimbursement, CCC has added new §1485.17(c)(24). That section allows reimbursement, for generic promotions only, subject to §1485.17(b)(18), of domestic travel expenditures related to international retail, trade and consumer exhibits and shows conducted in the United States upon prior written approval by CCC. CCC refers to its prior response to a similar comment above regarding eligibility of domestic travel and non-travel expenditures associated with participation in exhibits and shows held outside or inside the United States.

In response to commenters' request to clarify whether seminars and educational training conducted in the United States and overseas are eligible for reimbursement, CCC has added new §1485.17(b)(6) and new §1485.17(c)(25). Section 1485.17(b)(6) provides that, for both generic and brand promotions, non-travel expenditures associated with seminars and educational training, whether conducted inside or outside the United States, are reimbursable. Further, for generic promotions, international travel expenditures associated with seminars and educational training conducted inside or outside the United States are already reimbursable under §1485.17(c)(8). And, for generic promotions, new §1485.17(c)(25) now reimburses domestic travel for seminars and educational training conducted in the United States. For brand promotions, no travel expenditures associated with seminars or educational training, whether conducted inside or outside the United States, are eligible for reimbursement. The chart below summarizes the reimbursement rules for seminars and educational training.

	Seminars and educational training outside U.S.	Seminars and educational training inside U.S.
Generic promotion	Non-travel expenditures: reimbursable (§1485.17(b)(6)) International travel expenditures: reimbursable (§1485.17(c)(8))	Non-travel expenditures: reimbursable subject to conditions (§1485.17(b)(6)) International travel expenditures: reimbursable (§1485.17(c)(8)) Domestic travel expenditures: reimbursable (§1485.17(c)(25))
Brand promotion	Non-travel expenditures: reimbursable (§1485.17(b)(6)) International travel: Not reimbursable	Non-travel expenditures: reimbursable (§1485.17(b)(6)) International travel: Not reimbursable Domestic travel: Not reimbursable

CCC acknowledges the respondents’ request for clarification of the term “international organizations” and their request to reimburse domestic travel to “meetings of an international focus within the United States.” Due to difficulties in defining the criteria for eligible international organizations and meetings with an international focus, CCC has decided to eliminate the provision allowing reimbursement of domestic travel expenditures for a MAP Participant’s attendance at meetings of international technical organizations and declines to expand reimbursement to include “meetings with an international focus.” Unless such attendance falls within another covered category of reimbursement for domestic travel, domestic travel for these purposes will not be reimbursable under the MAP final rule.

Finally, as noted previously, CCC has codified MAP Notice 06-002 in new §1485.17(c)(26). That section now allows, for generic promotion only, the reimbursement of domestic travel expenditures of a MAP Participant employee, a 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 when such missions or teams are traveling in the United

States. Such trade missions or technical team visits must be identified in the MAP Participant's UES and must have been approved by CCC. MAP Notice 06-002 will be removed from the FAS website.

*Comment:* Ten respondents commented in reference to §1485.17(c)(31) and questioned if this included educational seminars in the United States and abroad. Three comments stated they supported the inclusion of activities that are intended to improve market access and therefore recommended the insertion of "or other appropriate activities" following "educational training" and before "designed to improve market access."

*Response:* CCC notes that §1485.17(c)(31) is now rendered redundant by §1485.17(b)(6), §1485.17(c)(8), and §1485.17(c)(25). Non-travel expenditures associated with seminars and educational training conducted inside or outside the United States are already reimbursable as noted above pursuant to §1485.17(b)(6). International and domestic travel expenditures for such activities are reimbursable, for generic promotion only, pursuant to §1485.17(c)(8) and §1485.17(c)(25).

The intention of proposed §1485.17(c)(31) was to specifically permit reimbursement of educational seminars, whether in the United States or abroad, where such seminars are intended to address market constraints such as temporary or permanent trade barriers. CCC, however, agrees with the comments that other activities in addition to educational training can achieve this objective. Given that, and the fact educational training is already covered in other subsections of the MAP final rule, CCC consequently has modified §1485.17(c)(31) (now §1485.17(c)(32)) to permit reimbursement for expenditures not otherwise prohibited from reimbursement that are associated with an activity 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.

*Comment:* Twenty respondents commented in reference to proposed §1485.17(d) suggesting the sentence “A generic promotion activity may also involve the use of specific company names, logos or brand names” be clarified to read “specific U.S. company names, logos, or brand names.” The respondents stated that the absence of this clarification gives the impression that two foreign brands have to participate in activities, which would be impossible in the case of store brands. The respondents further commented on the phrase, “At least two U.S. companies participate.” Several of the comments stated that it was not often possible to garner two brands for participation in a generic promotion where brands are specifically identified. One respondent stated that this requirement was so onerous that it would significantly affect their ability to conduct promotions at retail.

The respondents stated that some brands may choose not to participate; so this new regulation would limit the ability of a MAP Participant to undertake a generic promotion activity. They recommended that if the MAP Participant can demonstrate that all available brands are invited to participate then the final number of promotion participants would not have an impact on the eligibility of the activity for reimbursement.

*Response:* CCC agrees with the respondents in regard to adding the clarification of “U.S.” to the reference to specific company names, logos, or brand names, and has modified the definition of generic promotion in §1485.11 accordingly. CCC has also added “U.S.” as a qualifier for promoting separate items from multiple U.S. companies under a generic promotion. However, CCC disagrees with the respondents in regard to requiring two brands for participation and will keep this requirement in the final rule to avoid any appearance of promoting a single brand under a generic promotional activity. The text of proposed §1485.17(d) has been moved into the definition of “generic promotion” in §1485.11. §1485.17 has been re-ordered.

*Comment:* One respondent recommended that this section be rewritten as follows: “A generic promotion activity may include the promotion of a foreign brand if the foreign brand uses the promoted U.S. agricultural commodity. A generic promotion activity may also involve the use of specific company names, logos, or brand names. However, in that case, the MAP Participant must ensure that all U.S. and/or foreign companies seeking to promote such U.S. agricultural commodity in the market have an equal opportunity to participate in the market and that at least two companies participate.”

*Response:* CCC disagrees with the respondent, and the final rule will continue to reflect that a generic promotional activity may include the promotion of a foreign brand only if the foreign brand uses the promoted U.S. agricultural commodity from multiple U.S. suppliers. The text of proposed §1485.17(d) has been moved into the definition of “generic promotion” in §1485.11. §1485.17 has been re-ordered.

*Comment:* Fifteen respondents stated in reference to §1485.17(d) that most foreign brands are developed for the local companies to add value and be competitive in the market and are not generally designed to be the way for U.S. products to enter the market. The objective should be to encourage foreign brands to incorporate U.S. agricultural commodities, but the phrase, “and is the primary market access to the targeted market for the U.S. agricultural commodity” appears to limit it. The respondents questioned what exactly does the phrase itself mean, and recommended that this section be rewritten or deleted altogether.

*Response:* CCC believes that foreign brands are often very useful for increasing U.S. exports generically. Multiple foreign brands may use U.S. products, however, and a single foreign brand does not need to provide the “primary market access to the targeted market.” Thus, CCC agrees with the respondents and has modified the proposed text of §1485.17(d) to remove the phrase as requested. The text of proposed §1485.17(d) has been moved into the definition of “generic promotion” in §1485.11. §1485.17 has been re-ordered.

*Comment:* Sixteen respondents commented in reference to §1485.17(d) that since Participants are currently allowed to promote foreign brands that are composed of U.S. commodities, this rule would place the U.S. companies at a disadvantage because Participants could promote their foreign competitors and not U.S. companies. The respondents suggested removing this language to open it up to Participants promoting U.S. company names, logos, or brand names that compete with foreign brands in their market.

*Response:* CCC believes that §1485.17(d) in the proposed rule has been misunderstood in reference to the promotion of a foreign brand. Promoting a foreign brand constitutes a generic activity promoting the U.S. commodity because the foreign brand uses the promoted commodity from multiple U.S. suppliers. In contrast, promoting a single U.S. brand would constitute a branded activity. While §1485.17(d) specifically states that a generic promotion activity may also involve the use of multiple specific U.S. company names, logos, or brand names, such branding must meet the conditions of §1485.17(d), which ensures that the activity remains “generic”. The text of proposed §1485.17(d) has been moved into the definition of “generic promotion” in §1485.11. Section 1485.17 has been re-ordered. In addition, as discussed in the response to a prior comment, CCC deleted the requirement that generic promotion activity may include the promotion of a foreign

brand only if the foreign brand is the primary market access to the targeted market for the U.S. agricultural commodity.

*Comment:* In reference to §1485.17(d) fourteen respondents provided similar comments in regard to food service promotions. Several stated that generally food service operators rely on one U.S. supplier and the U.S. product is promoted as part of the food service item, identifying the U.S. origin but not the brand. The new regulation states, “a generic promotion activity may include the promotion of a foreign brand if the foreign brand uses the promoted U.S. agricultural commodity from multiple U.S. suppliers”. The respondents stated this is not always achievable and they recommend recognizing the broad generic parameters achieved within the context of the entire activity (food service/retail/bakery, etc.) within a market.

*Response:* CCC disagrees. CCC does not consider the promotion of a foreign brand that uses only a single supplier to be generic promotion. The text of proposed §1485.17(d) has been moved into the definition of “generic promotion” in §1485.11. Section 1485.17 has been re-ordered.

*Comment:* One respondent commented in reference to §1485.17(e)(19) (now §1485.17(d)(19)), which provides that membership fees in clubs and social organizations are not reimbursable. The respondent asked for clarification whether fees paid to a professional industry-related organization would be eligible for reimbursement.

*Response:* CCC intends that fees paid to a professional, industry-related organization would be eligible for reimbursement, and has added new §1485.17(c)(33) to include such language for generic promotions only. Membership fees for clubs and social organizations remain ineligible.

*Comment:* Three respondents stated that §1485.17(e)(26) (now §1485.17(d)(26)) conflicts with §1485.17(c)(23) (now §1485.17(c)(22)) and recommended that this be amended by adding “except as noted at §1485.17(c)(23).”

*Response:* CCC agrees with the respondents’ comment and has amended new §1485.17(d)(26) to reference §1485.17(c)(22).

*Comment:* Seventeen respondents commented in reference to §1485.17(e)(27) and suggested the phrase “negative comparison” be removed. One respondent suggested that if CCC believed that the concept needs to be addressed then the phrase should be replaced with “derogatory”. Another questioned whether if a product from one MAP Participant has a better functionality in an end product than that of another MAP Participant, can such statement not be made. Another respondent stated that it was unclear as to the definition of “negative comparison” and questioned if this regulation only refers to comparing a U.S. source of the competitive product as compared to a local source or making a generic statement that does not reference national origin. This respondent requested that this regulation be clarified to permit valid comparisons of a promoted product with that of a locally produced or generically stated product. One stated that the term “negative” was too general and also stated that it was not possible to discuss advantages of one of its products without suggesting something negative about some of its competitors’ other products. Two respondents stated that the words “negative comparison” may be too restrictive a term if it prevents the forthright statement of facts and comparison of functionality and relative value of various commodities and products in a given use. Several recommended revising this section by removing the words “negative comparison.”

*Response:* CCC agrees with the comments requesting the removal of the phrase “negative comparison” and with the comment asking to substitute “derogatory” in its place. CCC has modified §1485.17(e)(27) (now §1485.17(d)(27)) accordingly to prohibit reimbursement of any expenditure on an activity that includes any derogatory reference or comparison to other U.S. agricultural commodities.

*Comment:* Four respondents commented on §1485.17(e)(28), which provides that CCC will not reimburse the cost of any expenditure on an activity that contradicts U.S. foreign policy. Respondents stated that it was not clear how the exact standard of U.S. foreign policy is to be determined and what constitutes a contradiction of that policy. One stated that the regulation was too vague. Another stated that it agreed with the spirit of the regulation but were unsure how it should determine if it was contradicting U.S. foreign policy. The respondents recommended further clarification.

*Response:* CCC agrees with the respondents that the U.S. foreign policy that applies to MAP Participants is not clearly articulated in the regulation. Moreover, independent regulations and Presidential Executive Orders setting out foreign policy related to specially designated nationals and other economic trade sanctions already apply to MAP Participants independent of the MAP final rule. Accordingly, CCC has deleted §1485.17(e)(28) from the final rule.

*Comment:* Two similar comments were made in reference to §1485.17(f). One respondent stated that it supports the applicability of the GS-15 Step 10 salary cap as it relates to non-U.S. citizens; however, it stated in the case of contractors (U.S. citizens or non-U.S. citizens), application of this

pay scale should be left to the discretion of the Participant. The respondent stated that adherence to the pay scale does not relieve Participants from having to competitively bid the position; since the Participant will have to competitively bid the position, the Participant should be allowed to pay and be reimbursed for the bid amount, which is a compensation amount that is reasonable for the market. Another respondent stated that this method of rate-setting is unfair to companies in high cost regions of the world and that it benefits those located in less expensive areas, especially third-world countries.

*Response:* §1485.17(f) (now §1485.17(e)) refers to employees or contractors who are hired to act as employees, rather than contractors hired to undertake a specific activity. Thus, this is not a bidding situation. CCC has modified the final rule to clarify that the type of contractor subject to §1485.17(e) are “contractors who are hired to act as employees.” If a MAP Participant chooses to employ an employee or contractor at a salary rate higher than is permissible in this section, then the MAP Participant must pay for the excess in compensation itself.

*Comment:* Fourteen respondents commented in reference to §1485.17(g) stating that since this sentence appears in the middle of the section, it is unclear as to what it applies. The respondents suggested that this be moved to the last item under the section.

*Response:* CCC confirms that §1485.17(g) (now §1485.17(j)) refers to all of §1485.17. CCC agrees with the comment and has modified §1485.17(j). That subsection now states “CCC may determine, at CCC’s discretion, whether any cost not expressly listed in §1485.17 will be reimbursed.”

### ***Sec. 1485.18 Reimbursement Procedures***

*Comment:* One respondent commented in reference to §1485.18(a)(5) that the requirement that claims for reimbursement include the applicable cost category greatly complicates the accounting process for Participants. The respondent stated that unless CCC has some practical need for cost category information, it recommended eliminating that reporting requirement.

*Response:* CCC disagrees. The requirement that claims for reimbursement include cost category is not a new requirement. Moreover, this information is necessary as CCC is often asked by Congress to report expenditures by cost category.

### *Sec. 1485.19 Advances*

CCC received 45 comments in regard to advances.

*Comment:* Fifteen respondents provided similar comments in reference to §1485.19(b). Each respondent recommended that language be included about the ability to apply for an advance in the current year if there is an outstanding advance from the previous year. The respondents stated that with the ability to apply for an advance for up to 3 months after the end of a program year this clarification is needed. They also stated that this was not spelled out in the new regulations and might be confusing to newer Participants.

*Response:* CCC does not believe it is necessary to include language about the ability to apply for an advance while there is an outstanding advance from the previous year. In the proposed rule, CCC removed the current rule's requirement that no advance will be made if an advance from a previous program year is still open. Thus, CCC believes §1485.19(b) of the proposed rule, which does not contain any prohibitions on a MAP Participant's request for an advance (except to require that such Participant meet the criteria for advance payments set forth in the applicable parts of this title, e.g., parts 3015, 3016, 3019), as written, allows Participants to apply for an advance in the current year if there is an outstanding advance from the previous year. In addition, CCC notes that the proposed rule already makes clear that a Participant may apply for an advance for up to 3 months after the end of its program year. The proposed rule provides, in part, that "CCC will not approve any request for an advance submitted later than 3 months after the end of a MAP Participant's program year."

*Comment:* Four respondents commented regarding security in reference to §1485.19(b). Two of the respondents requested clarification as to what circumstances would require submission of security and what type of security would be expected. One commented that the regulation was very vague and stated that they felt that a Participant capable of “fronting security” may not need an advance.

*Response:* Section 1485.19(b) provides, in part, that “[i]f CCC approves the request, prior to making an advance, CCC may require the MAP Participant to submit security in a form and amount acceptable to CCC to protect CCC's financial interests.” USDA’s uniform federal assistance regulations, in 7 CFR §3015.17(a), already provide that “[i]f the recipient is not a unit of government, the awarding agency may require the recipient to carry adequate fidelity bond coverage where the absence of coverage for the grant-supported activity is considered as creat[ing] an unacceptable risk.” Similarly, USDA’s uniform administrative requirements for grants and agreements with nonprofit organizations, in 7 CFR §3019.21(d), provide that “[t]he Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.” The proposed MAP rule explicitly observed that 7 CFR parts 3105 and 3109 apply to the MAP and MAP Participants (to the extent that they do not directly conflict with the MAP final rule). Thus, to the extent that CCC needs to take precautions to protect the federal government’s interests, USDA’s uniform regulations already provide a way for CCC to do so.

To accommodate the respondents’ request to clarify what circumstances would require submission of security and what type of security would be expected, CCC has decided to delete the sentence from §1485.19(b) quoted above and to add to the end of §1485.19(b) the following: “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 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.” Thus, CCC will make a determination, based on the applicable facts and circumstances presented by a particular MAP Participant’s advance request, whether the MAP Participant must obtain fidelity bond coverage and in what amount.

*Comment:* Twenty-five respondents made similar comments in reference to §1485.19(c). Fifteen stated that the requirement for a quarterly financial statement to CCC for all funds advanced and all interest earned is onerous. These respondents further stated that an annual statement should suffice. Six of the comments received recommended a waiver of interest for smaller advances. Four of the respondents stated that Participants are expected to pay all expenses in advance of reimbursement and that the financing of these costs are significant and dramatically exceed any potential revenue generated by interest income therefore they specifically oppose this rule.

*Response:* CCC agrees that requiring a quarterly statement on advances is unnecessary, given the fact that such information should be readily available in the UES system. Accordingly, CCC has deleted the last sentence from §1485.19(c) requiring the submission of a financial statement.

### ***Sec. 1485.20 Employment Practices***

CCC received 20 comments in regard to this section.

*Comment:* Twenty respondents commented in reference to §1485.20(a), which requires that MAP Participants enter into written contracts with all employees and that all terms, conditions, and related formalities of such contracts conform to governing local law. The respondents stated that this rule was onerous and counterproductive, and that they opposed this rule.

*Response:* CCC disagrees that this rule is counterproductive or onerous. CCC is aware of several cases of MAP Participants being involved in lawsuits involving the Participant's overseas employees. The written employment contract protects Participants' and CCC's interests. Furthermore, in order to properly perform its compliance and monitoring functions, CCC requires documentation to support all MAP expenditures. The written employment contract provides such documentation for overseas employees.

*Comment:* Fourteen respondents asked if the intent was to require employment contracts with MAP Participant employees in foreign locations and suggested CCC restate this to be clear. Two questioned if this was intended for foreign staff only and stated that contracts would limit both the flexibility of the employer as well as employee and provide a much more difficult environment in cases of unsatisfactory performance by an employee. They also stated that it could lead to substantially higher costs for Participants. One commented that all of the 50 states are "at-will employment states" and that this doctrine covers employment practices for MAP Participants with domestic U.S. staff. Two respondents commented that written contracts should only be required by CCC in reference to employees paid for with MAP funds.

*Response:* CCC intends that this section refers to the employment of overseas employees who are paid in whole or in part with MAP funds and has modified this section accordingly to require "written contracts with all overseas employees who are paid in whole or in part with MAP funds." CCC disagrees with the comment that contracts would limit the employer's and employee's flexibility and make it more difficult to let go of an unsatisfactory employee. A written employment contract would not eliminate the ability of employers to fire employees at will if the contract includes an at-will clause. Similarly, an employment contract can be written to reflect the flexibility desired by the parties to the contract.

#### ***Sec. 1485.21 Financial Management***

CCC received 18 comments in regard to this section.

*Comment:* Sixteen respondents provided comments in regard to §1485.21(c). Fourteen of the respondents stated that the record retention policy is modified to delete the 5-year requirement without specifying the required retention period. They stated that they assumed it was included in 7 CFR part 1, subpart A – Official Records, but questioned the point of referencing this part when the required retention time could be stated here.

One respondent commented that there were several references in this section and others to "applicable parts of this title" and stated that was very vague. They asked CCC to clarify the reference more precisely. Another respondent stated they believed §1485.21(c) pertained to employment records for non- U.S.-based employees and asked that the regulation be restated to clarify this.

*Response:* CCC agrees with the respondents' recommendation of an explicit statement of the required retention time. 7 U.S.C. §5662 requires, in part, that MAP Participants maintain all records concerning a program transaction for a period not to exceed 5 years after completion of the program transaction, and to permit the Secretary to have full and complete access, for such 5-year period, to such records. CCC has modified §1485.21(c) accordingly to require retention of all records concerning a MAP program transaction for a period of 5 years after completion of the program transaction, and to permit CCC to have full and complete access, for such 5-year period, to such records. Additionally, in response to the comment questioning whether employment records had to be retained only for non-U.S.-based employees, CCC has modified §1485.21(c) to explicitly state that 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.

In response to the comments that refer to “applicable parts of this title” in the MAP final rule are vague, CCC refers to its prior response to a similar comment.

*Comment:* One respondent referenced §1485.21(d)(6) and asked for clarification of the term “receipted paid bills.” They stated in the past “stamped” paid bills were not considered an acceptable form of proof of payment and that instead there had to be evidence of a financial transaction which involved a third party such as a bank.

*Response:* Receipted paid bills means bills for which receipt of payment has been confirmed in writing by the payee. This language has not been changed from the current regulation. CCC has not

changed its past practice. CCC believes this term is well understood and does not believe it is necessary to codify any clarification.

*Comment:* One respondent commented on §1485.21(d)(7), which requires MAP Participants to maintain documentation supporting contributions. Such documentation must include the dates, purpose, and location of the activity for which the cash or in-kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; and, the method of computing the claimed contributions. The respondent stated that although the required documentation referenced in this section was relatively easy for a MAP Participant to provide, it was unreasonable to expect this level of detail in reports from the U.S. industry.

*Response:* CCC disagrees. In order to properly perform its compliance and monitoring functions, CCC requires documentation to support all MAP contributions. If U.S. industry expenditures cannot be supported by adequate documentation, such expenditures will not count as eligible contributions. This language has not been changed from the current regulation.

### ***Sec. 1485.22 Reports***

CCC received four comments in regard to §1485.22. One comment supported the proposed rule. CCC's responses to these comments are below. In addition, CCC has modified §1485.22(e) to clarify that CCC can require a MAP Participant to submit an A-133 audit only when CCC is designated the cognizant agency for audit.

*Comment:* One respondent commented on §1485.22(a), stating that the format currently used to report contributions requires identification of amounts by cost category and source, not by activity code. The respondent stated that to track expenditures by activities would be burdensome, and it recommended that CCC retain the current format for reporting contributions.

*Response:* CCC agrees with the respondent and has modified the section accordingly to delete the requirement to identify contributions by activity.

*Comment:* Two respondents commented in reference to §1485.22(b), stating that in many cases, documentation of travel and travel expenses were not received by the Participant until well beyond the proposed 45 day period after travel. The respondents proposed that the reference to “completion of travel” be replaced with “submission of claims for travel expenses”.

*Response:* CCC disagrees with the respondent. Travel expense information is not required in trip reports. Moreover, this provision has been in place for at least 15 years, and reporting has become easier with the improvement in electronic technologies.

### ***Sec. 1485.23 Evaluation***

In reference to §1485.23(b), CCC received six comments supporting the change in requirements for submission of the evaluation report from 3 months to 6 months. They stated this change will result in an improved ability to more accurately report the results of their activities.

### ***Sec. 1485.24 Compliance Reviews and Notices***

CCC received 107 substantive comments in reference to §1485.24. CCC has also deleted the reference to “a notice of delinquency” from §1485.24(e)(2). Pursuant to 7 CFR part 1403, when a debt is due CCC, only an initial written demand for payment is provided to the debtor.

*Comment:* Fifteen respondents recommended that CCC develop and publish a realistic timeline for MAP Participants to come into compliance with the new regulations after the effective date. The respondents stated that compliance with the contracting guidelines and anti-fraud requirements requires a reasonable length of time.

*Response:* CCC has delayed the effective date of the final rule until the MAP Participant’s 2013 program year (i.e., either 01/01/2013 or 07/01/2013). MAP Participants may, however, voluntarily choose to comply with §1485.15(a)-(b), §1485.29(d) and §1485.31(a)(1) of the final rule in their 2012 program year.

In subsequent program years after 2013, a new MAP Participant, including a former Participant that did not participate in the previous program year, will be required to submit its initial brand program operational procedures (as applicable), contracting guidelines and anti-fraud program as set forth in its approval letter. Returning MAP Participants will be required to submit their brand program operational procedures (as applicable) and anti-fraud program, as set forth in their approval letters.

*Comment:* Twenty-two respondents stated their concern in reference to §1485.24(d). The respondents stated that they were concerned that the proposed rule states “the fact that a compliance

review has been conducted by USDA staff does not signify that a MAP Participant is in compliance with its program agreement, approval letter and/or applicable laws and regulations.”

*Response:* This language is included to signify that a compliance review may not identify all occasions in which a Participant is out of compliance. The fact that a compliance review had occurred and did not uncover the non-compliant action is not a defense to any subsequent determination by CCC that the Participant is not in compliance with its program agreement, approval letter and/or applicable laws and regulations. Similarly, a future compliance review may include findings that were not identified in a previous review, although similar non-compliant actions may have occurred during the time period covered by the previous review.

*Comment:* Fifteen respondents questioned how a Participant can be assured that it is in compliance with the MAP program if a compliance review cannot be used as a basis for establishing program compliance. Another respondent commented that §1485.24(d) seems to imply that a compliance review means only that the auditor has not found anything - yet. One respondent stated that when a Participant has acted in good faith, the determination long after the fact that a given practice was in error should not cause CCC to re-open previously audited expenditures for reimbursement to CCC. Several of the respondents stated that a successful review should be considered confirmation that a Participant is in compliance with its program agreement, approval letter and/or applicable laws and regulations. They questioned what value a compliance review has if it doesn't attest to a Participant's compliance.

Two respondents commented that the problems with this language are further compounded by the current rarity of reviews and the extended length of time it takes to receive the official

concluding letter. Fourteen comments stated that the compliance staff should develop an approach that would be sufficient to cover all areas of the program and give all Participants (MAP Participants and USDA staff) a sense of confidence that a thorough review has been achieved.

*Response:* CCC disagrees. When requesting and accepting MAP funding, MAP Participants become responsible for the effective control over all funds, property, and other assets they receive from the federal government. MAP Participants must act accordingly and institute their own internal controls for safeguarding these funds.

CCC has a similar duty to ensure public funds are properly expended. Compliance reviews are one way in which CCC discharges, in part, this duty. The purpose of such reviews is to give assurance to CCC, not MAP Participants. These reviews are not comprehensive evaluations for Participants regarding their own internal controls and systems. Moreover, even the most stringent review would not necessarily bring about CCC's complete confidence that a Participant's program did not include any non-compliant actions. As an example, fraudulent behavior by a MAP Participant's contractor may initially appear to be completely compliant upon review of well-crafted fraudulent documentation. A subsequent whistleblower complaint, however, may reveal the fraudulent activity. It is simply not possible for CCC to confirm that an entire program is in compliance for any MAP Participant, much less for all MAP Participants.

In short, whether or not CCC's compliance staff conducts a compliance review of a MAP Participant's program and regardless of the outcome of that review, the Participant retains the ultimate responsibility, as a result of having accepted federal funds, for running its program in compliance with all applicable laws and regulations.

*Comment:* Fourteen respondents proposed that additional language be added to this section, stating, “Should USDA staff determine that a MAP Participant is out of compliance, the MAP Participant will be required as in (b) and (c) of this subpart to return to CCC the amount of funding deemed to have been inappropriately spent for the reviewed program year. Notice will be made of the particular error and shared with all MAP Participants. A pattern of this error may be noted but the MAP Participant will only be required to reimburse CCC for the compliance finding resulting from the current review and at the time the finding was made and going forward and not liable for previously un-reviewed and undiscovered findings.”

*Response:* CCC disagrees with this comment. CCC does not agree that all compliance findings are appropriate to share with other MAP Participants. While compliance findings often are the results of errors or misunderstandings, occasionally compliance findings involve intentional actions taken to violate the regulations. Such actions are often covered up by the perpetrator, and are sometimes not discovered through normal compliance reviews. CCC will continue its current practice of providing notice to MAP Participants of patterns of errors or misunderstandings that it has discovered through compliance reviews and that it deems appropriate to share with all MAP Participants. Also, as noted in previous responses, CCC disagrees that MAP Participants should not be liable for previously undiscovered instances of noncompliance.

*Comment:* Nineteen respondents commented in reference to §1485.24(e)(1) stating that the reduction in the amount of time for a Participant to respond to an audit finding from 60 to 30 days was an unreasonably short period of time, an unwarranted reduction and an onerous requirement. Several stated that staff members are not always in-country to begin working on a response

immediately and that 30 days does not provide sufficient time for the Participant to research and develop an adequate response or appeal.

*Response:* CCC concurs with the commenters that the reduction in time to respond may create an onerous requirement as Participants are often in travel status. Therefore, CCC has changed §1485.24(e)(1)'s period of time within which a MAP Participant may submit a response to a compliance report or written notice back to 60 days. In addition, CCC has made a corresponding change to §1485.24(b) and (c), whereby if a MAP Participant notifies CCC within 30 days of the date of the written compliance report or written notice that the Participant intends to file an appeal pursuant to §1485.24(e), the amount owed to CCC by the MAP Participant is not due until the appeal procedures are finished and CCC has made a final determination as to the amount owed.

***Sec. 1485.25 Failure to make required contribution***

CCC received 17 comments in reference to §1485.25.

*Comment:* Sixteen respondents stated that they believed that the time to remit payment for failure to make required contributions should be 6 months after the program year ends, not 90 days. Two respondents proposed the contributions should be within 6 months in order to be consistent with the proposed rule at §1485.23(b), which states that evaluation results be submitted within 6 months following the end of the Participant's program year. They stated the evaluation process is an essential component in determining a MAP Participant's contribution level and therefore proposed that §1485.25 be amended to read, "a MAP Participant shall remit such payment within 6 months after the end of the program year."

*Response:* CCC agrees that the time to remit payment should be 6 months, because the MAP Participant has 6 months to develop its contribution report and may not realize it has fallen short in contributions until the report is complete. Section 1485.25 has been modified accordingly.

### ***Sec. 1485.28 Ethical Conduct***

CCC received 21 comments in reference to §1485.28.

*Comment:* One respondent commented on §1485.28(b), which states that “A MAP Participant may, however, collect check-off funds and membership fees that are required for membership in the MAP Participant.” The commenter also refers to §1485.28(c), which states, in part, that “A MAP Participant shall not limit participation in its MAP activities to members of its organization.” The respondent stated the two sections appear to be contradictory and further questioned how a MAP Participant recruits members, if all companies must have equal access to programs and information regardless of their membership in the Participant organization. This respondent stated that additionally, as the companies that are members are contributing financial resources to satisfy the MAP’s contribution requirements, it is only fair that these companies derive some benefit over companies that are non-members.

Nineteen respondents commented in reference to §1485.28(c) stating that they would like to know what method a MAP Participant is to use to incentivize membership (thus achieving the broadest base) if no preference is permitted as a benefit of membership. They stated that, while not excluding anyone from participating, it is possible to give some limited preference, such as first

notice of events, etc. Three of the respondents stated that §1485.28(c) would require non-members to participate in their marketing program using their brand. These commentators state that a farmer-owned agricultural cooperative cannot permit non-members to participate in the cooperative's marketing program using the cooperative's brand. The respondents believed this proposed rule was in direct contradiction with these statutory requirements.

One respondent suggested the regulation should state that all commercial entities must have equal opportunity to access program information funded by MAP, but that such opportunity is provided only through membership in a Participant organization.

*Response:* Section 1485.28(b) and §1485.28(c) are not contradictory. Under §1485.28(b), a MAP Participant may collect check-off funds and membership fees that are required for membership in the MAP Participant. Section 1485.28(c) prohibits a MAP Participant from limiting participation in its MAP activities to members of its organization. The MAP final rule does not require equal access to the MAP Participant's non-MAP-funded programs and information. To make clearer that the requirement of open participation is limited to MAP activities, CCC is modifying §1485.28(c) to require that Participants agree to 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.

It is CCC's intention that the benefits of the MAP should be made broadly available throughout the relevant agricultural sector. Not all MAP Participants are similarly structured, and some organizations are far more inclusive than others. Because CCC cannot, and would not desire to, instruct industry groups how to organize themselves, this requirement is placed on those

organizations that choose to participate in the MAP. Participating organizations are free to charge reasonable and documentable administrative fees to non-members that participate in MAP-funded activities.

CCC notes that §1485.28(c) is not intended to require MAP agricultural cooperatives to allow non-members to participate in their marketing program using the cooperative's brands. In response to this comment and the following comment, CCC has modified §1485.28(c) accordingly to explicitly provide that this provision does not apply to U.S. agricultural cooperatives when implementing their own brand program.

*Comment:* One respondent asked that FAS clarify that §1485.28(c) and §1485.28(d) would not apply to nonprofit U.S. agricultural cooperatives with their own brand program. If FAS determines otherwise with respect to the document disclosure provision §1485.28(c), the respondent asked that the provision be made clear that it allows for the redaction of business-confidential information from any documents provided pursuant to the provision.

*Response:* As noted above, CCC has modified §1485.28(c) in response to a prior comment so that the provision does not apply to agricultural cooperatives promoting their own brand program. Furthermore, §1485.28(d) does not deal with brand promotion, but speaks only to how MAP Participants select industry representatives to participate in generic MAP activities. CCC has also modified §1485.28(d) to clarify that the provision applies only to generic activities.

### ***Sec. 1485.29 Contracting Procedures***

CCC received 69 comments in reference to §1485.29. Responses are set forth below.

*Comment:* Three respondents provided similar comments in reference to §1485.29(b). One comment asked if this section applies to items paid with MAP funds and income generated from programs or only the former. Two questioned if the “small purchase threshold referenced in 7 CFR part 3019 is set at \$100,000, to whom do the contracting plan requirements apply for contracts above \$25,000?” One respondent questioned what contracting compliance procedures were affected by this dollar threshold.

*Response:* CCC intends that any use of income generated by MAP funded activities should be governed by the MAP regulation. CCC has modified §1485.32 accordingly to state that the Participant’s use of such revenue or refunds generated from MAP-funded programs shall be governed by 7 CFR Part 1485. Thus, §1485.29 would apply to items paid, in whole or in part, with income generated from MAP programs.

Regarding the questions related to the \$100,000 small purchase threshold and the \$25,000 contract requirement, CCC notes these are two different thresholds that relate to two different provisions in the MAP final rule. In addition, CCC notes that it has increased the \$25,000 threshold to \$35,000 in the MAP final rule as discussed below in response to a different comment.

Proposed §1485.29(d) of the MAP final rule created a new requirement for MAP Participants to submit a contracting plan that lists each contract with an annual value of \$25,000 or more. In the MAP final rule, CCC changed §1485.29(d) to require that “[e]ach 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's approval of such contracting guidelines will remain in place until CCC retracts its approval in writing or 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 value of \$35,000 or more." Thus, all MAP Participants must establish written contracting guidelines for contracts that are funded in whole or in part by MAP funds and that have an annual value of \$35,000 or more. CCC also modified §1485.29(c) and (d) to make clear that these provisions apply only to MAP-funded contracts.

In addition to this requirement for written contracting guidelines, §1485.29(b) also provides that "[a] MAP Participant shall comply with the procurement standards set forth below and in the applicable parts of this title when procuring goods and services and when engaging in construction to implement program agreements (e.g., 7 CFR Parts 3015, 3016, and 3019). For purposes of this subpart, the "small purchase threshold" referenced in 7 CFR part 3019 is the "simplified acquisition threshold" established by 41 U.S.C. §134." Thus, the small purchase threshold of \$100,000 referenced in §1485.29(b) relates to those procurement standards set out in part 3019 of this title, which sets out the uniform administrative requirements for nonprofit organizations.

To illustrate, both 7 CFR part 3019 and 7 CFR part 3016 contain procurement requirements, some of which are tied to the "simplified acquisition threshold" (previously "the small purchase threshold") previously set out at 41 U.S.C. §403(11), now codified at 41 U.S.C. §134. See, e.g., 7 CFR §3019.44(e), 7 CFR §3016.36(d). This threshold was, at one time, \$25,000. It was subsequently increased to \$100,000 by statute. Because the current 7 CFR part 3019 has not been updated to reflect the increase in that threshold from \$25,000 to \$100,000 as set forth in 41 U.S.C. §403(11), now codified at 41 U.S.C. §134, CCC clarified the current \$100,000 threshold in proposed

§1485.29(b). In response to these comments, however, CCC believes that, to account for possible changes to the simplified acquisition threshold that may occur in the future, it would be best if the final rule referred to the statute fixing the threshold rather than specify the currently applicable threshold. Accordingly, CCC has modified §1485.29(b) to refer to the threshold set at 41 U.S.C. §134 rather than a \$100,000 threshold.

*Comment:* Thirty-one respondents stated that if the requirement to submit contracting “plans” is retained, they proposed an increase to the annual contract value greater than the current \$25,000. A suggestion was made for \$100,000. Four comments stated that the total cost is often not known until the bidding is completed. They stated that this regulation was too intrusive and would lead to multiple re-submittals of the contracting plan to account for new and revised contracts. They stated that this policy should not require a listing up-front of all contracts expected during that plan year.

*Comment:* CCC received thirty-one similar comments in reference to §1485.29(d). All respondents opposed the regulation as written. Fifteen respondents stated that they believed these contracting requirements should apply only to those contracts that are fully funded and reimbursable by MAP and not those that will be paid for with industry funds (contributions). Several respondents stated that the proposed rule was too onerous and that, at most, MAP Participants should be required to provide a description of contracting guidelines, not procedures that could be applied to different contracting situations.

*Comment:* Eighteen respondents provided comments that “contracting guidelines” should be substituted for “contracting plan” and that once a plan (guideline) is approved in any given year, it should not need to be reapproved, unless it changes in some fundamental way.

*Comment:* Seventeen respondents stated their strong opposition to the proposed rule and stated that the rule presented a number of challenges, including that the decision to use a contractor may not be made until the award letter is received and individual projects are approved. They stated that the timing of the award cycle would make this proposed requirement impossible and create an onerous pre-approval process that not only micromanages program implementation but would be impossible under the timelines by which the program currently operates.

*Comment:* One respondent proposed a change in the wording in the following passage to read, “Prior to entering into any contracts during a program year, a MAP Participant must submit to CCC for CCC approval a written contracting (procedure manual).” The commenter then asked when the MAP Participant could anticipate receiving approval of their contracting procedure manual. Another proposed that at most FAS require that the Participant develop a description of contracting procedures that could be applied to different contracting situations and would remain applicable over multiple years.

*Comment:* Fourteen respondents questioned on what basis anyone at CCC would be qualified to judge a Participant’s contracting plan. They stated conversely, if the judgment was only related to whether there was a plan or whether it was adequately updated, then what was the point? They stated that this set of requirements created the need for a parallel notification process as Participants will be forced to amend the plan with each new need.

*Comment:* Fifteen respondents commented in reference to §1485.29(d)(1) stating that much of this section was covered by inference in §1485.28; so it should not need to be spelled out here.

*Comment:* Three respondents stated they supported the regulation for requiring an annual documented evaluation for in-country representation in lieu of the current arbitrary process of rebidding every 3 years.

*Response:* The proposed rule established a requirement for a contracting plan in §1485.29(d) because CCC has received many questions about appropriate contracting procedures over recent years. The proposal was not meant to be an onerous requirement. Rather, it was meant to encourage MAP Participants to formalize their contracting methods and intentions for a given year and to give MAP Participants the opportunity to obtain in advance CCC review and pre-approval of the Participants' contracting methods.

CCC understands that the bulk of the opposition to this proposal stems from the requirement to list all contracts. CCC agrees that this is unnecessary and actually detracts from the intended purpose. CCC has accordingly modified §1485.29(d) to require that MAP Participants establish contracting guidelines to follow as various contracting situations arise. Individual contracts need not be identified. Moreover, CCC has removed the requirement that a MAP Participant must submit its contracting plan to CCC prior to entering into any contracts during the program year. Rather, the MAP final rule now provides that after CCC approves the initial contracting guidelines, such approval will remain in place until CCC retracts its approval in writing or new guidelines are approved that supersede them. As discussed above in response to a separate comment, MAP Participants shall submit their contracting guidelines to CCC as set forth in their approval letters. The MAP final rule continues to allow the MAP Participant to modify and resubmit these guidelines for reapproval at any time.

CCC agrees that these contracting requirements should apply only to those contracts that are funded, in whole or in part, by MAP funds and not those that are paid for with industry funds (contributions). CCC has modified §1485.29(d) accordingly. CCC observes that this would encompass all contracts funded in whole or in part with MAP funds, which would include contracts with U.S.-based organizations that are retained to implement or assist with approved international market development efforts, if such contracts were funded by MAP.

CCC does not agree with the suggestions to increase the threshold of \$25,000 to \$100,000 for contracts that are to be submitted in contracting “plans.” First, CCC notes that the requirement no longer requests contracts to be listed. Second, CCC observes that CCC chose the \$25,000 level in the proposed rule because that is the same threshold that CCC has maintained since 1996, as reflected in MAP Notice 05-005, for the contract competition requirement. Since 1996, CCC has required MAP Participants to conduct an appropriate form of competition at least every three years on all contracts valued at \$25,000. CCC believes that the \$25,000 level is an appropriate level not only for when competition should be conducted but also for determining what contracts should be subject to written contracting guidelines. However, in recognition that the \$25,000 level should be adjusted for inflation, using the Department of Labor’s Bureau of Labor Statistics inflation calculator, CCC has increased the minimum level to \$35,000, with the possibility of future increases through written guidance announced to MAP Participants via a MAP notice issued on FAS’ web site. Section 1485.29(d) has been modified accordingly. CCC notes that MAP Notice 99-003 is now obsolete and will be removed from FAS’ web site.

CCC disagrees that the substance of §1485.29(d)(1) can already be inferred from §1485.28 and need not be spelled out in §1485.29(d)(1).

In response to the comment asking when the MAP Participant should expect approval of its contracting procedures, CCC will try to complete its review of contracting guidelines within 21 calendar days of receipt.

*Comment:* A respondent suggested that if an activity is approved in a particular city that MAP Participants be required to at least offer qualified contractors in that city or country an opportunity to bid on the project. The commenter further stated that contractor lists should be obtained from the local post rather than requiring potential contractors to register on a web site. In addition, the commentator stated that the post should review the activity before it begins.

*Response:* While CCC requires open, fair, and competitive contracting practices, CCC cannot and does not deem it appropriate to instruct MAP Participants in appropriate methods for identifying potential contractors in every market in the world. In addition, some FAS Posts could not review every activity in their markets.

*Comment:* Two respondents provided similar comments in reference to §1485.29(d)(3) and stated that they understood the rationale for this proposal was ensuring that contracting procedures were open, fair and competitive. They stated that there are exceptions, especially in the area of highly technical services where there is reasonable cause to allow the same individual to draft specifications as to bid on them. The respondents proposed that such circumstances be treated as a rare exception

and as one of the “various situations” for which “separate procedures” are developed as cited in §1485.29(d)(2), to ensure that such exceptional cases result in a open, fair, and competitive contract.

*Response:* In response to the commenters’ requests, CCC has modified §1485.29(d)(3) to provide that MAP Participants’ written contracting guidelines may detail special situations where the prohibitions in this subsection 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. As discussed above, CCC must approve or disapprove of MAP Participants’ contracting guidelines.

Respondents question whether §1485.29(d)(2) authorizes MAP Participants to develop separate procedures that would allow the same individual to draft specifications to bid on the solicitation. Section 1485.29(d)(2) does not directly address this issue. Consequently, as discussed above, CCC has modified §1485.29(d)(3) instead.

*Comment:* Six respondents stated that this section does not discuss requirements for contracts of less than \$25,000 (now \$35,000).

*Response:* While the contracting guidelines required by §1485.29(d) apply only to contracts with an annual value of \$35,000 or more, contracts with an annual value of less than that threshold are still subject to the remaining provisions of the MAP regulations, including §1485.29(a)-(c), as well as other procurement provisions of the applicable parts of this Title. For example, §1485.29(c) indicates that all contracting should be fair, open, and competitive.

### ***Sec. 1485.31 Anti-fraud requirements***

CCC received 85 comments in reference to this section.

*Comment:* Twenty-one respondents provided similar comments in reference to §1485.31(a)(1), stating that the regulation as written was too intrusive and onerous. Several of the respondents recommended either removing this regulation altogether and/or treating it like Civil Rights training by developing course work based on what was developed for the anti-fraud course offered by Western U.S. Agricultural Trade Association. The respondents stated that FAS could then require all MAP Participant staff and board with fiduciary responsibilities to take the course and submit certification statements to that effect.

*Response:* CCC disagrees. CCC's position is that anti-fraud efforts should be more structured and intensive than in the past. Recent incidents indicate fraud has the potential to cause considerable losses to the government. In addition to the requirement that they develop a fraud prevention program, MAP Participants are highly encouraged to attend anti-fraud training courses.

*Comment:* Seventeen respondents stated that if necessary, this plan should be developed once, submitted and approved and only be resubmitted if there has been some fundamental change. As with the contracting subpart, they questioned what the timing was for submission of the MAP Participant's fraud prevention program and when the MAP Participant should expect the program's approval.

Three respondents asked for clarification on when the information needs to be submitted and if the review was to be done by an independent third party or if it could be done in house. Two

respondents provided comments proposing that the annual submission take place outside of the annual UES application process or that it be completed as part of the regular compliance review process.

*Response:* CCC disagrees that plans should only be re-submitted if there are fundamental changes to the plan. While an initial plan would not need to be rewritten every year, CCC expects MAP Participants to review their anti-fraud plans annually and to submit these plans each year, regardless of whether they have fundamentally changed. CCC has modified §1485.31(a)(1) to make clear that MAP Participants should review their fraud prevention programs annually. While a plan may not change dramatically from one year to the next, CCC expects that annual reviews would yield the need for minor changes from time to time and expects to review the current applicable plan for each program year. It is not necessary that the plan be developed by an independent third party if the MAP Participant has internal expertise.

As stated above in response to an earlier comment, it is expected that a 2013 MAP Participant should submit its initial anti-fraud program as directed in its approval letter. Thus, annual submission will take place outside of the UES application process. In subsequent program years, a new Participant, including a former Participant that did not participate in the previous program year, will be required to submit its initial anti-fraud program as set forth in its approval letter. For continuing annual submissions, MAP Participants will submit their plans as directed in their approval letters. CCC does not agree that the anti-fraud submission should be completed as part of the regular compliance review process. First, as noted above in response to a similar request related to operational brand procedures, the purpose of the CCC review is to approve a plan at the start of a program year, before the program begins operation. Compliance reviews look at what has

historically happened. Moreover, during the compliance review, CCC may review the implementation of the plan, rather than the plan itself.

In response to the comment asking when the MAP Participant should expect approval of its program, CCC will endeavor to complete its review within 21 calendar days of receipt.

*Comment:* Sixteen respondents questioned if a MAP Participant has multiple locations with accounting responsibilities, does the annual review have to include all locations or just the corporate headquarters where the financial consolidation occurs?

*Response:* Because fraud can occur both at corporate headquarters and field offices, CCC expects anti-fraud reviews to encompass all of a Participant's offices.

*Comment:* One respondent commented that this section appears to apply to exclude brand participants. The respondent stated that the current fraud prevention program covered by A-133 covers this requirement, and therefore it asserted that this regulation was redundant and recommended that this regulation be eliminated or A-133 should be eliminated.

*Response:* The anti-fraud requirements are imposed on MAP Participants, not brand participants that participate in the MAP program through MAP Participants. CCC disagrees that §1485.31's requirements are redundant with OMB Circular A-133. OMB Circular A-133 requires, in part, that subject entities (those who expend \$500,000 or more in federal awards) have an audit conducted. Such entities must maintain appropriate internal controls. In contrast, the MAP final rule applies to all MAP Participants (not just those who expend \$500,000 or more) and requires a specific proactive and preemptive fraud prevention program. One of the objectives of the fraud prevention

requirement is to make MAP Participants more aware of the specific risk for brand participants to defraud them. The MAP requirements are in addition to, not in lieu of, the requirements of OMB Circular A-133.

*Comment:* Two respondents questioned if the cost of fraud prevention review would be reimbursable.

*Response:* CCC does not intend for anti-fraud efforts to be reimbursable with MAP funds. CCC has added §1485.17(d)(31) to clarify this.

*Comment:* One respondent stated that it (the Participant) has adhered to an internal controls document which includes language on fraudulent behavior. It stated that it would like clarification of the new anti-fraud preparation policies to ensure that its policies adhere to MAP regulations.

*Response:* While CCC may provide anti-fraud training and guidance in the future, given the differences in structure between classes of MAP Participants, as well as differences between individual MAP Participants, CCC does not believe CCC should dictate a single set of anti-fraud procedures or a model anti-fraud plan for all MAP Participants to use. The respondent may submit its internal controls document to CCC by the time stated in its approval letter or any time before that, at which time CCC will review this document and respond.

*Comment:* One respondent commented that it did not feel that each Participant should be responsible for developing its own anti-fraud program and that this would result in the application of different security standards. This respondent stated it would be more efficient and more economical

if CCC, with the assistance of an outside contractor, could develop a set of minimum anti-fraud procedures for all Participants to use.

*Response:* While CCC may provide anti-fraud training and guidance in the future, given the differences in structure between classes of MAP Participants, as well as differences between individual MAP Participants, CCC does not believe CCC should dictate a single set of anti-fraud procedures or a model anti-fraud plan for all MAP Participants to use.

*Comment:* Three respondents provided similar comments in reference to §1485.31(a)(2). All three suggested that the language be modified to read, “notify CCC promptly when any instances of fraud have been substantially determined.”

*Response:* CCC disagrees with the respondents and believes CCC should be a part of any investigation early enough to determine if fraud has occurred.

### ***Sec. 1485.32 Program Income***

CCC received six comments in regard to this issue.

*Comment:* One respondent stated that as an organization that conducts activities spanning more than one program year, it felt there were several challenges with this language. It stated that it does not see a way to comply strictly with the proposed language and further stated that it recommended that Participants be allowed to create a program reserve (at an agreed upon level) from participation fees, with the understanding that any funds above that level be remitted to CCC as they occur and that the

reserve fund itself remit to CCC if/when the Participant terminates participation in the MAP program.

*Comment:* Four respondents stated they strongly support the proposed revision.

*Response:* Proposed §1485.32 allowed the MAP Participant to expend program income in furtherance of the MAP Participant's approved MAP activities in the program year in which the program income was received. CCC, however, acknowledges that a MAP Participant's program can be funded over a multi-year basis. Therefore, given that the grant period may be multi-year and certain activities may occur over more than one calendar year, CCC has accordingly modified §1485.32 to allow MAP Participants to use program income in furtherance of approved MAP activities during the program period over which the MAP Participant may expend the MAP funds, regardless of the specific program year that the income was received. Thus, for example, if a MAP activity in program year 1 yields a net revenue in program year 2 in a 3-year MAP grant, the MAP Participant should apply that revenue to MAP activities conducted in program year 2 or 3. CCC does not believe that allowing MAP Participants to establish a reserve fund with program proceeds is appropriate.

### ***Sec. 1485.36 Paperwork Reduction Requirements***

CCC received three comments to this section.

*Comment:* Three respondents recommended that CCC transition from solely paper recordkeeping of MAP related files to electronic recordkeeping.

*Response:* CCC understands the respondents' comments to refer to CCC's use of the UES, the standardized online Internet application used by entities to apply to any USDA market development program, including the MAP. MAP Participants currently use the UES to submit reimbursement claims, trip reports, and other information to CCC under the MAP. While CCC believes MAP Participants' use of the UES effectively reduces costs and increases efficiencies, MAP Participants cannot transition solely from paper recordkeeping to electronic recordkeeping. The MAP final rule requires Participants to maintain records of expenditures and contributions to substantiate their MAP activities. Such records must include, inter alia, original receipts for all STRE (e.g., actual vendor invoices or restaurant checks) and any other program-related expenditure in excess of \$75.00 (e.g., canceled checks, receipted paid bills, contracts or purchase orders, per diem calculations, travel vouchers, and credit memos). Where the original documentation is provided in paper, MAP Participants must maintain and make such paper documentation available for review for compliance and monitoring purposes.

#### **List of Subjects in 7 CFR Part 1485**

Agricultural commodities, Exports.

For the reasons stated in the preamble, CCC amends 7 CFR part 1485 as follows:

#### **PART 1485--GRANT AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR U.S. AGRICULTURAL COMMODITIES**

1. The authority citation for 7 CFR part 1485 reads as follows:

**Authority:** 7 U.S.C. 5623, 5662-5663 and sec. 203, 402-403, Pub. L. 95-501, as amended, 92 Stat 1685 and sec. 1302, Pub. L. 103-66, 107 Stat. 330.

2. Subpart B is revised to read as follows:

#### **Subpart B—Market Access Program**

Sec.

- 1485.10 General purpose and scope.
- 1485.11 Definitions.
- 1485.12 Participation eligibility.
- 1485.13 Application process.
- 1485.14 Application review and formation of agreements.
- 1485.15 Operational procedures for brand programs.
- 1485.16 Contribution rules.
- 1485.17 Reimbursement rules.
- 1485.18 Reimbursement procedures.
- 1485.19 Advances.
- 1485.20 Employment practices.
- 1485.21 Financial management.
- 1485.22 Reports.
- 1485.23 Evaluation.
- 1485.24 Compliance reviews and notices.
- 1485.25 Failure to make required contribution.
- 1485.26 Submissions.
- 1485.27 Disclosure of program information.
- 1485.28 Ethical conduct.
- 1485.29 Contracting procedures.
- 1485.30 Property standards.
- 1485.31 Anti-fraud requirements.
- 1485.32 Program income.
- 1485.33 Amendment.
- 1485.34 Noncompliance with an agreement.
- 1485.35 Suspension, termination, and closeout of agreements.
- 1485.36 Paperwork reduction requirements.

## **Subpart B—Market Access Program**

### **§ 1485.10 General purpose and scope.**

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

(b) (1) In addition to the provisions of this subpart, other regulations of general application issued by the U. S. Department of Agriculture (USDA), including the regulations set forth in Chapter XXX of this title, “Office of the Chief Financial Officer, Department of Agriculture,” may apply to the MAP and MAP Participants, to the extent that these regulations of general application do not directly conflict with the provisions of this subpart. These include, but are not limited to:

- (i) 7 CFR part 1, subpart A—Official Records
- (ii) 7 CFR part 3—Debt Management

- (iii) 7 CFR part 15, subpart A—Nondiscrimination
- (iv) 7 CFR part 3015—Uniform Federal Assistance Regulations
- (v) 7 CFR part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- (vi) 2 CFR part 417—Government-wide Debarment and Suspension (Nonprocurement)
- (vii) 7 CFR part 3018—New Restrictions on Lobbying
- (viii) 7 CFR part 3019—Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations
- (ix) 7 CFR part 3021—Government-wide requirements for drug-free workplace (financial assistance)
- (x) 7 CFR part 3052—Audits of States, Local Governments, and Non-profit Organizations
- (xi) 48 CFR part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulations.

(2) In addition, relevant provisions of the CCC Charter Act (15 U.S.C. 714 *et seq.*) and any other statutory provisions that are generally applicable to CCC are also applicable to the MAP and the regulations set forth in this part.

(3) MAP Participants must also comply with Title VI of the Civil Rights Act of 1964 and related civil rights regulations and policies.

(4) Other laws and regulations that apply to MAP Participants include, but are not limited to:

- (i) 2 CFR part 25—Universal Identifier and Central Contractor Registration
- (ii) 2 CFR part 170—Reporting Subaward and Executive Compensation Information
- (iii) 2 CFR part 175—Award Term for Trafficking in Persons
- (iv) 2 CFR part 180—OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)
- (v) 37 CFR part 401.1—Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements
- (vi) Executive Order 13224, as amended, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism

(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 and products. 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. When considering eligible nonprofit U.S. trade organizations, CCC gives priority to organizations that have the broadest producer representation and affiliated industry participation of the commodity being promoted.

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

#### **§ 1485.11 Definitions.**

For purposes of this subpart the following definitions apply:

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

*Administrative expenses or costs*— 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, business cards);

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

(3) Communications (including, but not limited to, phone expenses, internet, mobile phones, personal digital assistants, e-mail, mobile e-mail devices, postage, courier services, television, radio, walkie talkies);

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

(5) Utilities (including, but not limited to, sewer, water, energy);

(6) Professional services (including, but not limited to, accounting expenses, financial services, investigatory services).

*Approval letter*— 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 program agreement. This letter requires a countersignature by the MAP Participant before it becomes effective.

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

*Brand participant*— a small-sized U.S. for-profit entity, or a U.S. agricultural cooperative that owns the brand(s) of the U.S. agricultural 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*— 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.

*CCC*— the Commodity Credit Corporation, including any agency or official of the United States delegated the responsibility to act on behalf of CCC.

*Contribution*— an expenditure made by a MAP Participant, the U.S. industry, or State agency in support of an approved activity. This includes expenditures to be made by entities in the MAP Participant's industry in support of the entities' related promotion activities in the markets covered by the MAP Participant's agreement.

*Credit memo*— 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*— activities involving the erection or construction of a structure or facility or the installation of equipment.

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

*FAS*— Foreign Agricultural Service, USDA.

*FAS website*— a website maintained by FAS providing information on MAP. It is currently accessible at [www.fas.usda.gov/mos/programs/map.asp](http://www.fas.usda.gov/mos/programs/map.asp).

*Foreign third party*— a foreign entity that a MAP Participant works with to promote the export of a U.S. agricultural commodity under the MAP program.

*Generic promotion*— an activity that is not a brand promotion but, rather, promotes a U.S. agricultural 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 U.S. agricultural 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 U.S. agricultural 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*— the Market Access Program.

*MAP Notice*—Market Access Program notices are documents that CCC issues for informational purposes. These MAP notices are made available electronically at <http://www.fas.usda.gov/mos/programs/mnotice.html>. 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 MAP notices to alert MAP Participants of procedures for requesting advances, applicable federal pay scale rates, lists of economic and trade sanctions against certain foreign countries, reporting formats and computer codes to use with the UES.

*MAP Participant or Participant*— an entity that has entered into a MAP program agreement with CCC.

*Market*— the country or countries targeted by an activity.

*Notification*— 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 MAP program agreement and/or approval letter.

*Product samples*—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 agreement*— a document entered into between CCC and a MAP Participant setting forth the terms and conditions of approved activities under MAP, including any subsequent amendments to such agreement.

*Program year*— Unless otherwise agreed 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 program agreement and approval letter with CCC.

*Promoted commodity*— a U.S. agricultural commodity the sale of which is the intended result of a promotion activity.

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

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

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

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

*Supergrade*— a salary level above the reimbursable salary range generally allowable under 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*— 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*— 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.

*UES website*— a website maintained by FAS through which applicants may apply online to MAP and any other USDA market development program. The web site is currently accessible at [www.fas.usda.gov/mos/ues/unified.asp](http://www.fas.usda.gov/mos/ues/unified.asp).

*Unified Export Strategy (UES)*— is a standardized online Internet application developed by USDA and available for use by entities to apply to any USDA market development program, including the MAP.

*U.S. agricultural commodity*— any agricultural commodity, including any food, feed, fiber, forestry product, livestock, or insect of U.S. origin or 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, excluding tobacco. An agricultural commodity shall be considered to be U.S. origin if it is comprised of at least 50 percent by weight, exclusive of added water, of agricultural commodities grown or raised in the United States.

*USDA*— the United States Department of Agriculture.

*U.S. for-profit entity*— a firm, association, or other entity organized or incorporated, located and doing business for profit in the United States, and engaged in the export or sale of a U.S. agricultural commodity.

**§ 1485.12 Participation eligibility.**

To participate in the MAP, an entity shall be:

- (a) A nonprofit U.S agricultural trade organization;
- (b) A nonprofit SRTG;
- (c) A U.S. agricultural cooperative; or
- (d) A State agency.

**§ 1485.13 Application process.**

(a) *General application requirements.* CCC will periodically publish a Notice in the Federal Register that it is accepting applications for participation in MAP. Applications shall be submitted in accordance with the terms and requirements specified in the Notice and in these regulations. Applicants are encouraged to submit a UES through the UES Internet web site, 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 who is a U.S. agricultural cooperative may also apply for funds to conduct its own brand promotion program.

(1) Applicant and program information.

(i) All applications shall contain:

(A) The name, address, and Internet location of the home page of the applicant organization;

(B) The name of the applicant's Chief Executive Officer;

(C) The name, telephone number, fax number, and e-mail address of the applicant's primary contact person;

(D) The name(s) of the person(s) responsible for managing the proposed program;

(E) A description of the applicant organization, including the type of organization of the applicant (e.g., nonprofit SRTG), its mission, and the statutory authorities by which it is constituted and under which it operates, if applicable;

(F) Tax exempt identification number of the applicant, if applicable;

(G) Beginning and ending dates for proposed program year (mm/dd/yy-mm/dd/yy);

(H) Dollar amount of CCC resources requested for generic activities;

(I) Dollar amount of CCC resources requested for brand activities;

(J) Total dollar amount of CCC resources requested;

(K) Percentage of CCC resources requested for general administrative expenses;

(L) A Dun and Bradstreet DUNS number for the applicant;

(M) A description of the applicant organization's membership and membership criteria;

(N) A list of organizations affiliated with the applicant, including parent organizations, subsidiaries, and partnerships;

(O) A description of the applicant's management and administrative capability;

(P) A description of the applicant's prior export promotion experience;

(Q) Value, in U.S. dollars, of proposed contributions from the applicant or the applicant's proposed contribution stated as a percentage of the total dollar amount of CCC resources requested; and

(R) Value, in U.S. dollars, of proposed contributions from other sources.

(ii) [Reserved]

(2) Program justification.

(i) All applications shall contain:

(A) A description of the promoted U.S. agricultural commodity(s), its harmonized tariff classification, the applicable commodity aggregate code (available from the UES website) and the percentage of U.S. origin content by weight, exclusive of added water;

(B) A description of the anticipated supply and demand situation for the promoted U.S. agricultural commodity(s);

(C) The volume and value of exports of the promoted U.S. agricultural commodity(s) to the targeted markets for the most recent 3-year period;

(D) If the proposal is for 2 or more years, an explanation why the proposal should be funded on a multi-year basis; and

(E) A certification and, if requested by CCC, a written explanation supporting the certification that any funds received will supplement, but not supplant, any private or third-party funds or other contributions to program activities. An explanation, if one is requested, shall indicate why the applicant is unlikely to carry out the activities without Federal financial assistance. In determining whether Federal funds would supplement or supplant private or third-party funds or contributions, CCC will consider the applicant's prior overall marketing budget in the MAP program from year-to-year, variations in promotional strategies within a country, and new markets.

(ii) [Reserved]

(3) Proposed program's strategic plan.

(i) All applications shall include a strategic plan that contains:

(A) A description of overall long term strategic goals to be advanced by the proposed activities for the ensuing 3–5 years;

(B) An explanation of the organization's strategic planning process and identification of priority target markets, including a summary of proposed budgets by country and commodity aggregate code;

(C) A description of the world market situation for the exported U.S. agricultural commodity(s);

(D) A description of competition from other exporters;

(E) An evaluation plan describing the applicant's goals and the applicant's plans for monitoring and evaluating performance towards achieving these goals. This evaluation plan should set forth specific goals and benchmarks set at regular intervals to be used to identify results against identified constraints and opportunities and to measure progress made in the target market. Evaluation of a proposed MAP program's effectiveness will depend on a clear statement by the applicant of goals, method of achievement, and expected results of programming 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 may modify and resubmit this plan for re-approval at any time during the program year.

(F) For each target country, 5 years or as many years as are available of:

(1) Historical U.S. export data;

(2) U.S. market share; and

(3) MAP funds received by the applicant;

(G) For each target country, 3 years of projected U.S. export data and U.S. market share;

(H) Country strategy, including market constraint(s) impeding U.S. exports (e.g., trade barriers) or opportunities present and the strategy proposed to overcome constraints or take advantage of the opportunities, previous activities in the country, and the projected impact of the proposed program on U.S. exports;

(I) A justification for any proposed overseas office, including a staffing plan listing job titles, position descriptions, salary ranges, any request for approval of supergrade salaries, and an itemized administrative budget;

(J) A description of any demonstration projects, if applicable;

(K) Data summarizing the applicant's historical and projected exports, market share, and MAP budgets of the promoted U.S. agricultural commodity(s);

(L) A written presentation of all proposed activities including:

(1) A short description of the relevant market constraint or opportunity;

(2) A budget for each proposed activity, identifying the source of funds.

(ii) Applications for brand promotion assistance shall also include in their strategic plans:

(A) A description of how the brand promotion program will be publicized to U.S. industry;

and

(B) The criteria that will be used to allocate funds to U.S. for-profit entities and U.S. agricultural cooperatives.

(b) CCC may request any additional information that it deems necessary to evaluate an application, including, but not limited to, performance measurement information.

(c) Special rules governing demonstration projects funded with CCC resources.

(1) CCC will consider proposals for demonstration projects, provided:

(i) No more than one such demonstration project per constraint is undertaken within a market;

(ii) The constraint to be addressed in the target market is a lack of technical knowledge or expertise;

(iii) The demonstration project is a practical and cost effective method of overcoming the constraint; and

(iv) A third-party must participate in such project through a written agreement with the MAP Participant.

(d) Universal Identifier and Central Contractor Registration (CCR)

(1) 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:

(i) Be registered in the CCR prior to submitting an application or plan;

(ii) Maintain an active CCR 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

(iii) Provide its DUNS number in each application or plan it submits to CCC.

(2) [Reserved]

(e) 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. 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. The selection process, by its nature, involves the exercise of judgment. CCC's choice of Participants and proposed promotion projects requires that it consider and weigh a number of factors, some of which cannot be mathematically measured—e.g., market opportunity, market strategy, and management capability. CCC may require that an applicant participate in the MAP through another MAP Participant or applicant.

(b) Application review criteria. In assessing the likelihood of success of the applications it receives and deciding which it will approve, CCC will follow results-oriented management principles and consider the following criteria:

(1) The effectiveness of program management;

(2) Soundness of accounting procedures;

(3) The nature of the applicant organization. With respect to nonprofit U.S. trade organizations, preference will be given to those organizations with the broadest base of producer representation of and affiliated industry participation for the commodity being promoted;

(4) Prior export promotion experience;

(5) Appropriateness of staffing;

(6) Adequacy of the applicant's strategic plan in the following categories;

(i) Description of target market conditions;

(ii) Description of and plan for addressing market constraints and opportunities;

(iii) Breadth of industry participation in strategic planning process;

(iv) Strategic prioritization identified in proposed plan;

(v) Export volume and value and market share goals in each target country;

(vi) Description of evaluation plan and suitability of the plan for performance measurement;

and

(vii) Past program results and/or evaluations, including program success stories.

(c) Allocation factors. CCC determines which applications to approve and develops preliminary recommended funding levels for each approved application based on the following factors, in addition to those in paragraph (b) of this section. 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 in the **Federal Register**:

(1) Size of the budget request in relation to projected value of exports;

(2) Where applicable, size of the budget request in relation to actual value of exports in prior years;

(3) Where applicable, Participant's past projections of exports compared with actual exports;

(4) Level of contributions by the applicant and by all other sources;

(5) Market share goals in target country(ies);

(6) The percentage by weight, exclusive of added water, of U. S. agricultural commodities contained in the promoted products;

(7) The degree of value-added processing in the United States; and

(8) Proposed MAP-funded general administrative and overhead costs compared to proposed MAP-funded direct promotional costs.

(d) Approval decision.

(1) CCC will approve those applications that it determines best satisfy the criteria and factors specified above.

(2) Notification of decision. CCC will notify each applicant in writing of the final disposition of its application.

(e) Formation of agreements. CCC will send a program agreement (or amendment to an existing program agreement), an approval letter, and a signature card to each approved applicant. The program agreement or amendment 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 contributions and program evaluations. An applicant that decides to accept the terms and conditions contained in the program agreement or amendment and the approval letter must so indicate by having its Chief Executive Officer (CEO) or designee sign the program agreement or amendment and the approval letter and submit these to CCC. Final agreement shall occur when the program agreement or amendment and the approval letter are signed by both parties.

(f) Signature cards. The MAP Participant shall designate at least two individuals in its organization to sign program 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. The Participant shall immediately notify CCC of any changes in signatories and shall submit a revised signature card accordingly.

(g) UES ID and passwords. CCC will provide each MAP Participant with IDs and passwords for the UES web site, as necessary. MAP Participants shall protect these IDs and passwords in accordance with USDA's information technology policies that CCC will provide to MAP Participants. 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.

(h) A MAP Participant through which small-sized U.S. for-profit entities are participating in the MAP program shall obtain annual certifications from all such entities that they are small-sized 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.

(i) 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 market, constraint, or opportunity that the activity proposes to address. The notification shall contain the activity description, the proposed budget, and a justification of transfer of funds.

(iii) After receipt of the notification, CCC will inform the MAP Participant via the UES web site 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, only if it submits a notification explaining the adjustments to CCC no later than 30 days after the change. Minor adjustments to existing, approved activities and/or funding levels do not require notification.
- (iii) Notifications shall describe the activity, changes to the activity, the existing funding level, the proposed funding level, and a justification for 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 annual approval letter and through the FAS web site as to applicable submission dates for and dates for approvals of 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 U.S. agricultural 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 the above 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 MAP 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 contributions to program activities; and

(9) Require the brand participant to maintain all original records and documents relating to program activities for 5 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.

(d) MAP Participants may not provide assistance to a single entity including a entity reincorporated or re-organized under the same or different name if the reincorporated or re-organized entity is substantially similar to the pre-existing entity, for brand promotion in a single country for more than 5 years. Such 5 years do not need to be consecutive. Such 5-year period shall not begin prior to the 1994 program year or the brand participant's first program year, whichever is later. In limited circumstances, CCC may waive the 5 year limitation if CCC determines that further assistance is in the best interests of the MAP. CCC shall, at its discretion, decide whether a reincorporated or re-organized entity is substantially similar to the pre-existing entity for purposes of applying this 5-year rule. Brand participants’ participation in certain international trade shows in foreign countries will

not be considered when determining such brand participants' time in country for purposes of the 5 year graduation requirement. Such shows must meet two requirements: they are food or agricultural shows, with no less than 30% of exhibitors selling food or agricultural products, and they are international shows, meaning they target buyers, distributors and the like from more than one foreign country and no less than 15% of each show's visitors are from countries other than the host country. CCC will compile a list of international trade shows that CCC exempts from the graduation requirement and such list will be announced to MAP Participants via a MAP notice issued on FAS' website.

**§ 1485.16 Contribution rules.**

- (a) In MAP generic promotion programs, a MAP Participant shall contribute a total amount in goods, services, and/or cash equal to at least 10 percent of the value of resources to be provided by CCC for all generic promotion activities proposed to be undertaken by the MAP Participant.
- (b) In MAP brand promotion programs, a MAP Participant conducting its own brand promotion or a brand participant shall contribute at least 50 percent of the total eligible expenditures made on each approved brand promotion.
- (c) A MAP Participant must use its own funds and may not use MAP program 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 contributions the MAP Participant contributes to MAP generic or brand promotion programs.
- (d) Eligible contributions.
  - (1) In calculating the amount of contributions that it will make, and the contributions 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 agency will make, the MAP applicant may include the costs listed under paragraph (d)(2) of this section if:

(i) Expenditures will be made in furtherance of an approved activity, and

(ii) The contributor has not been and will not be reimbursed by any source for such costs.

(2) Subject to paragraph (d)(1) of this section, as well as applicable cost principles (e.g., 2 CFR Parts 220, 225, and 230) to the extent these principles do not directly conflict with the provisions of this subpart, eligible contributions are:

(i) Cash;

(ii) Compensation paid to personnel;

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

(iv) The cost of office space;

(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) The cost of seasonal greeting cards;

(ix) Fees for office parking;

(x) 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 ;

(xi) The cost of activities conducted overseas;

(xii) Credit card fees;

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

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

(xv) The cost of product samples;

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

(xvii) The cost of air and local travel in the United States;

(xviii) Payment of employee's or contractor's share of personal taxes;

(xix) STRE and the cost associated with trade shows, seminars, and entertainment conducted in the United States;

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

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

(3) The following are not eligible contributions:

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

(ii) Any expenditure, including that portion of salary and time spent, related to promoting membership in the Participant organization (sometimes referred to in the industry as “backsell”);

- (iii) Any land costs other than allowable costs for office space;
  - (iv) Depreciation;
  - (v) The cost of refreshments and related equipment provided to office staff;
  - (vi) The cost of insuring articles owned by private individuals;
  - (vii) The cost of any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;
  - (viii) The cost of product development, product modifications, or product research;
  - (ix) Slotting fees or similar sales expenditures;
  - (x) Membership fees in clubs and social organizations; and
  - (xi) 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.

**§ 1485.17 Reimbursement rules.**

- (a) A MAP Participant may seek reimbursement for an eligible expenditure if:
- (1) The expenditure was made in furtherance 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 applicable cost principles (e.g., 2 CFR Parts 220, 225, and 230) 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, 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).

(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;

(7) Subject to §1485.17(b)(18), expenditures, other than travel expenditures, associated with retail, trade and consumer exhibits and shows, whether held outside or inside the United States, including participation fees, booth construction, transportation of related materials, rental of space and equipment, and duplication of related printed materials. However, with regard to non-travel expenditures associated with retail, trade and consumer exhibits and shows held inside the United

States, such expenditures are reimbursable only if the exhibit or show is: (1) a food or agricultural show with no less than 30% of exhibitors selling food or agricultural products, (2) an international 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, and (3) an exhibit or show that the MAP Participant has not participated in within the last three years using funds from a source other than the MAP. CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which MAP reimbursement is available and such list will be announced to MAP Participants via a MAP notice issued on FAS' website;

(8) Subject to §1485.17(b)(18), international travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 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 MAP notice issued on FAS' website. Reimbursement is available only when: (1) the items are described in detail with a per unit cost in an approved strategic plan and (2) 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 Office of Management and Budget Circular A-133 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 web sites on the Internet that clearly target a foreign audience;

(17) International travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 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 §1485.17(b)(8), 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 and 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, 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, 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, and

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

(2) Approved supergrade salaries for non-U.S. citizens 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 salary of a GS-15, Step 10 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 §1485.17(b)(18), international travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, for activities held outside the United States or in the United States, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 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 covered only if the exhibit or show is: (1) a food or agricultural show with no less than 30% of exhibitors selling food or agricultural products, (2) an international 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, and (3) an exhibit or show that the MAP Participant has not participated in within the last three years using funds from a source other than the MAP. CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which MAP reimbursement is available and such list will be announced to MAP Participants via a MAP notice issued on FAS' website.

(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 or when the MAP Participant fails to notify the Attaché/Counselor in the destination country in advance of the travel, unless the CCC determines it was impractical to provide such notice. 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) upon prior written approval by CCC. Such circumstances are:

(A) Regularly scheduled flights between origin and destination points do not offer economy class (or equivalent) airfare and the MAP Participant receives written documentation from its travel agent 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; and

(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, ending with the scheduled arrival time, and including stopovers and changes of planes, exceeds 14 hours. In such case, 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.

(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. 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;

(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 301 through 304);

(11) Organization costs for overseas offices approved in MAP program 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, and routine accounting and legal services required to maintain the overseas office;

(12) The purchase, lease, or repair of, or insurance premiums for, capital goods that have an expected useful life of at least 1 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 e-mail devices, 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;

(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;

(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 Agricultural 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) Educational travel of dependent children, visitation travel, rest and recuperation travel, home leave travel, emergency visitation travel for U.S. overseas employees allowed under the Foreign Affairs Manual published by the U.S. Department of State;

(21) Evacuation payments (safe haven) and shipment and storage of household goods and motor vehicles;

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

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

(24) Subject to §1485.17(b)(18), domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304), for international retail, trade and consumer exhibits and shows conducted in the United States upon prior written approval by CCC. Domestic

travel expenses to such a show or exhibit are covered only if the exhibit or show is: (1) a food or agricultural show with no less than 30% of exhibitors selling food or agricultural products, (2) an international 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, and (3) an exhibit or show that the MAP Participant has not participated in within the last three years using funds from a source other than the MAP. CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which MAP reimbursement is available and such list will be announced to MAP Participants via a MAP notice issued on FAS' web site;

(25) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304), for seminars and educational training conducted in the United States;

(26) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 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.

(27) Approved demonstration projects;

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

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

(30) Business cards that target a foreign audience;

(31) Expenditures associated with developing, updating, and servicing web sites 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 the appropriate FAS commodity division. Expenditures related to web sites or portions of web sites that are accessible only to an organization’s members are not reimbursable. Reimbursement claims for web sites that include any sort of “members only” sections must be prorated to exclude the costs associated with those areas subject to restricted access;

(32) 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; and

(33) Membership fees in professional, industry-related organizations.

(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;

(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 of, construction of, 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 MAP 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 MAP notice issued on FAS' website;
- (12) Alcoholic beverages that are not an integral 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 program agreement or regulatory compliance;

(17) Any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(18) Goods, services and salaries of personnel provided by U.S. industry or foreign third party;

(19) Membership fees in clubs and social organizations;

(20) Indemnity and fidelity bonds;

(21) Fees for participating in U.S. Government sponsored activities, other than trade fairs 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 §1485.17(c)(22) 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 301 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; and

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

(e) Special rules for 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 who are hired to act as employees, ordinarily, CCC will not 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 grade increase over the existing top grade of the FSN salary plan. The supergrade and its step increases are calculated as the percentage difference between the second highest and the highest grade in the FSN salary plan, with that percentage applied to each of the steps in the top grade. 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 of the program agreement or after the date the program 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 U.S. Federal Travel Regulations (41 CFR parts 301 through 304) 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 countries in writing in advance of any proposed travel.

(j) CCC may determine, at CCC's discretion, whether any cost not expressly listed in §1485.17 will be reimbursed.

**§ 1485.18 Reimbursement procedures.**

(a) Participants are required to use CCC's Internet-based UES system to request reimbursement for eligible MAP expenses. Claims for reimbursement shall contain the following information:

(1) Activity type—brand or generic;

(2) Activity number;

(3) Commodity aggregate code;

(4) Country code;

(5) Cost category;

(6) Amount to be reimbursed;

(7) If applicable, any reduction in the amount of reimbursement claimed to offset CCC demand for refund of amounts previously reimbursed and reference to the relevant compliance report or written notice; and

(8) If applicable, any amount previously claimed that has not been reimbursed.

(b) All claims for reimbursement shall be submitted by the MAP Participant's U.S. office to CCC.

(c) CCC will not reimburse a claim for less than \$10,000, except that CCC will reimburse a final claim for a MAP Participant's program year for a lesser amount.

(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 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 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 program 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 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 CCC.

#### **§ 1485.19 Advances.**

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

(b) Exception. A MAP Participant for generic promotion activities may request an advance of MAP funds from CCC, provided the MAP Participant meets the criteria for advance payments set forth in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016, and 3019). CCC will not approve any request for an advance submitted later than 3 months 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 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 . 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 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 in an insured bank account in the United States all funds advanced by CCC. The account shall be interest-bearing, unless the exceptions in the applicable parts of this title apply (e.g., 7 CFR Parts 3015, 3016 and 3019). Interest earned by the MAP Participant on funds advanced by CCC is not program income. The MAP Participant shall remit any interest earned on the advanced funds to the appropriate entity as set forth in the applicable parts of this title.

(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). 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. A MAP Participant's financial management system shall comply with the standards set forth in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016 and 3019).

(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 5 years after completion of the program transaction and permit CCC to have full and complete access, for such 5-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 maintain its records of expenditures and contributions in a manner that allows it to provide information by activity plan, country, activity number, and cost category. Such records shall include:

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

(2) Original receipts for any other program-related expenditure in excess of \$75.00. CCC may, from time to time, determine a different minimum level and announce that minimum level in writing to all MAP Participants via a MAP notice issued on the FAS website;

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

(4) Copies of reimbursement claims;

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

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

(7) Documentation supporting contributions. These must include the dates, purpose, and location of the activity for which the cash or in-kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; and, the method of computing the claimed contributions. MAP Participants must retain and make available for compliance review documentation related to claimed contributions.

(e) Upon request, a MAP Participant shall provide to CCC originals of documents supporting reimbursement claims.

#### **§ 1485.22 Reports.**

(a) End-of-Year Contribution Report. Not later than 6 months after the end of its program year, a MAP Participant shall submit two copies of a report that identifies, by cost category and in U.S. dollar equivalent, contributions made by the Participant, the U.S. industry, and the States during that program year. A suggested format of a contribution report is available from FAS. Foreign third party contributions are not included in the end-of-year contribution report.

(b) Trip reports. Not later than 45 days after completion of travel (other than local travel), a MAP Participant shall electronically submit a trip report. The report 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.

(c) Research reports. Not later than 6 months after the end of its program year, a MAP Participant shall submit a report on any research conducted pursuant to the approved MAP program.

(d) Evaluation reports. Not later than 6 months after the end of its program year, a MAP Participant shall submit a report on any evaluations conducted in accordance with the approved MAP program.

(e) Where CCC is designated the cognizant agency for audit, CCC may require the MAP Participant to submit to CCC an annual OMB Circular A-133 audit in accordance with 7 CFR Part 3052. If CCC requires an additional audit with respect to a particular agreement, the MAP Participant shall arrange for such audit and shall submit to CCC, in the manner to be specified by CCC, such audit of the agreement.

(f) CCC may require the submission of additional reports.

(g) A MAP Participant's program agreement and/or approval letter shall specify to whom the Participant shall submit the reports required in this section.

### **§ 1485.23 Evaluation.**

(a) Policy. (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 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, contributing to program accountability, and providing evidence of program effectiveness.

(b) All MAP Participants must report annual results against their target market and/or regional constraint/opportunity performance measures. These are outcome results usually based on multiple activities and should demonstrate progress made in the market. This report shall be completed and submitted to CCC no later than 6 months following the end of the Participant's program year.

(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) When appropriate or required by CCC, a MAP Participant shall complete a program evaluation. 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. 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 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 the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016, and 3019), 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 export sales achieved;

(6) A summary of the findings, including an analysis of the strengths and weaknesses of the program(s); and

(7) Recommendations for future programs.

(e) 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 in writing via a MAP notice issued on the FAS website the detailed requirements for completing and submitting program success stories.

#### **§ 1485.24 Compliance reviews and notices.**

(a) USDA staff may conduct compliance reviews of MAP Participants' activities under the MAP program. MAP 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.

(b) Upon conclusion of the compliance review, USDA staff will provide either a written compliance report or a letter to the MAP Participant. USDA staff will issue a compliance report if it appears that CCC may be entitled to recover funds from that Participant and/or it appears that the Participant is not complying with any of the terms or conditions of the program agreement, approval letter, or the applicable laws and regulations. The compliance report will explain the basis for any recovery of funds from the Participant. Within 30 days of the date of the compliance report, the MAP Participant shall 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. If, however, a MAP Participant notifies CCC within 30 days of the date of the compliance report that the Participant intends to file an appeal pursuant to §1485.24(e), the amount owed to CCC by the MAP Participant is not due until the appeal procedures are concluded and CCC has made a final determination as to the amount owed. In the absence of any finding of funds due to CCC or other non-compliance, CCC will issue a letter to the MAP 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 MAP, CCC may require the Participant to contract for an independent audit.

(c) In addition, CCC may notify a MAP 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 MAP Participant shall within 30 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 MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. If, however, a MAP Participant notifies CCC within 30 days of the date of the written notice that the Participant intends to file an appeal pursuant to §1485.24(e), the amount owed to CCC by the MAP Participant is not due until the appeal procedures are concluded and CCC has made a final determination as to the amount owed.

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

(e) Appeals.

(1) A MAP Participant may, within 60 days of the date of the compliance report or written notice from CCC, submit a written response to CCC appealing the report or notice. CCC, at its discretion, may extend the period for response.

(2) After review of the Participant's 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 will 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.

(3) Within 30 days of the date of the determination, the Participant may request in writing that CCC reconsider the determination and shall submit in writing the basis for such reconsideration. The Participant may also request a hearing.

(4) 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 in its discretion have a transcript prepared at CCC's expense.

(5) 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.**

A MAP Participant's required contribution will be specified in the approval letter. If the MAP Participant's required contribution is specified as a dollar amount and the MAP Participant does not make the required contribution, 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 is specified as a percentage of the total amount reimbursed by CCC, the MAP Participant may either return to CCC the amount of funds reimbursed by CCC to increase its actual contribution 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 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—Official Records, and specifically 7 CFR 1.12, Handling Information from a Private Business.

(b) Any research conducted by a MAP Participant pursuant to a MAP program agreement and/or approval letter shall be subject to the provisions relating to intangible property in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016, and 3019).

#### **§ 1485.28 Ethical conduct.**

(a) A MAP Participant shall conduct its business in accordance with the laws and regulations of the country 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. All MAP Participants must comply with the regulations in the applicable parts of this title (e.g., 7 CFR Parts 1485, 3015, 3016, 3018, 3021, 3019, and 3052).

(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 U.S. agricultural commodities and products 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. For the purposes of this paragraph, “affiliate” means any partnership, association, company, corporation, trust, or any other such party in which the Participant has an investment other than in a mutual fund.

(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 Participant's MAP 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 Contracting procedures.**

(a) 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 the applicable parts of this title when procuring goods and services and when engaging in construction

to implement program agreements (e.g., 7 CFR Parts 3015, 3016, and 3019). For purposes of this subpart, the “small purchase threshold” referenced in 7 CFR part 3019 is the “simplified acquisition threshold” established by 41 U.S.C. 134.

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

(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 annual approval letter and through the FAS web site 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 value of \$35,000 or more. CCC may determine a different minimum value and announce that minimum value in writing to all MAP Participants via a MAP 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 set forth in the applicable parts of this title (e.g., 7 CFR Parts 3015, 306, 3019), 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, agent's family, partners, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or

other interest in the firm selected for an award. 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; solicitations that yield receipt of three or more bids; 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 third party. However, the MAP Participant shall remain responsible and accountable to CCC for all MAP promotional activities and related expenditures undertaken by such third party and shall be responsible for reimbursing CCC for any funds that CCC determines should be refunded to CCC in relation to such third-party's promotional activities and expenditures.

#### **§ 1485.30 Property standards.**

The MAP Participant shall insure all MAP-funded real property and equipment acquired in furtherance of program activities and safeguard such against theft, damage and unauthorized use. The Participant shall promptly report any loss, theft, or damage of property to the insurance company.

#### **§ 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 annual approval letter and through the FAS web site 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 MAP program 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 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.**

Any revenue or refunds generated from an activity, e.g., participation fees, proceeds of sales, refunds of value added taxes (VAT), 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 period during which the MAP funds are available for obligation by

the MAP Participant. The use of such revenue or refunds shall be governed by 7 CFR Part 1485. Interest earned on funds advanced by CCC is not program income.

**§ 1485.33 Amendment.**

A program agreement may be amended in writing with the consent of CCC and the MAP Participant.

**§ 1485.34 Noncompliance with an agreement.**

If a MAP Participant fails to comply with any term in its program agreement or approval letter, CCC may take one or more of the enforcement actions set forth in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016, and 3019) 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.

**§ 1485.35 Suspension, termination, and closeout of agreements.**

A program agreement may be suspended or terminated in accordance with the suspension and termination procedures in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016, 3019). If an agreement is terminated, the applicable parts of this title will apply to the closeout of the agreement (e.g., 7 CFR Parts 3015, 3016, 3019).

**§ 1485.36 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.

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May 4, 2012\_

Date

Suzanne E Heinen

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

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