

§ 1485.18

(g) If a participant receives a reimbursement or offsets an advanced payment which is later disallowed, the participant shall within 30 days of such disallowance repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim.

(h) The participant shall report any actions having a bearing on the propriety of any claims for reimbursement to the Attache/Counselor and its U.S. office shall report such actions in writing to the Division Director(s).

§ 1485.18 Advances.

(a) *Policy.* In general, CCC operates MAP and EIP/MAP on a reimbursable basis. CCC will not advance funds to an EIP/MAP participant or to an MAP participant for brand promotion activities.

(b) *Exception.* Upon request, CCC may advance payments to an MAP participant for generic promotion activities. Prior to making an advance, CCC may require the participant to submit security in a form and amount acceptable to CCC to protect CCC's financial interests. Total payments advanced shall not exceed 40 percent of a participant's approved annual generic activity budget. However, CCC will not make any advance to an MAP participant where an advance is outstanding from a prior activity plan year.

(c) *Refunds due CCC.* A participant shall expend the advance on approved generic promotion activities within 90 calendar days after the date of disbursement by CCC. A participant shall return any unexpended portion of the advance, plus a prorated share of all proceeds generated (i.e., premiums generated from certificate sales and interest earned), either by submitting a check payable to CCC or by offsetting its next reimbursement claim. All checks shall be mailed to the Director, Marketing Operations Staff, FAS, USDA.

§ 1485.19 Employment practices.

(a) An MAP participant shall enter into written contracts with all employees and shall ensure that all terms, conditions, and related formalities of such contracts conform to governing local law.

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(b) An MAP participant shall, in its overseas office, 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) An MAP participant may pay salaries or fees in any currency (U.S. or foreign) if approved by the Attache/Counselor. However, participants are cautioned to consult local laws regarding currency restrictions.

1485.20 Financial management, reports, evaluations and appeals.

(a) *Financial management.* (1) An MAP participant shall implement and maintain a financial management system that conforms to generally accepted accounting principles.

(2) An MAP participant shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with these provisions. Each participant shall maintain all original records and documents relating to program activities for five calendar years following the end of the applicable activity plan year and shall make such records and documents available upon request to authorized officials of the U.S. Government. An MAP participant shall also maintain all documents related to employment such as employment applications, contracts, position descriptions, leave records and salary changes, and all records pertaining to contractors.

(3) A 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:

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

(ii) Original receipts for any other program related expenditure in excess of \$25.00;

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

(iv) Copies of reimbursement claims;

(v) An itemized list of claims charged to each of the participant's CCC resources accounts;

(vi) 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

(vii) Documentation supporting contributions 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 audit documentation related to claimed contributions.

(4) Upon request, a participant shall provide to CCC originals of documents supporting reimbursement claims.

(b) *Reports.* (1) End-of-Year Contribution Report. Not later than 6 months after the end of its activity plan year, a participant shall submit two copies of a report which identifies, by activity and cost category and in U.S. dollar equivalent, contributions made by the participant, the U.S. industry and foreign third parties during that activity plan year. A suggested format of a contribution report is available from the Division Director.

(2) *Trip reports.* Not later than 45 days after completion of travel (other than local travel), an MAP participant shall 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 or specific accomplishments.

(3) *Research reports.* Not later than 6 months after the end of its activity plan year, an MAP participant shall submit a report on any research conducted in accordance with the activity plan.

(4) A participant shall submit the reports required by this subsection to the appropriate Division Director. Trip reports and research reports shall also be submitted to the Attache/Counselor concerned. All reports shall be in English and include the participant's

agreement number, the countries covered, date of the report and the period covered in the report.

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

(6) A participant shall provide to the FAS Compliance Review Staff upon request any audit reports by independent public accountants.

(c) *Evaluation—(1) Policy.* (i) 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. Evaluation of 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 results of activities at regular intervals. The overall goal of the MAP and of individual participants' activities is to achieve additional exports of U.S. agricultural products, that is, sales that would not have occurred in the absence of MAP funding. A participant that can demonstrate additional sales compared to a representative base period, taking into account extenuating factors beyond the participant's control, will have met the overall objective of the GPRA and the need for evaluation.

(ii) Evaluation is an integral element of program planning and implementation, providing the basis for the strategic plan and activity plan. The evaluation results guide the development and scope of a participant's program, contributing to program accountability and providing evidence of program effectiveness.

(iii) An MAP participant shall conduct periodic evaluations of its program and activities and may contract with an independent evaluator to satisfy this requirement. CCC reserves the right to have direct input and control over design, scope and methodology of any such evaluation, including direct contact with and provision of guidance to the independent evaluator.

(2) *Types of evaluation.* (i) An activity evaluation is a review of an activity to determine whether such activity achieved the goals specified in the activity plan. Unless specifically exempted in the activity plan, all activity

evaluations shall be completed within 90 days following the end of the MAP participant's activity plan year.

(ii) 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 activity plan. These evaluations shall be completed within 90 days following the end of the participant's activity plan year.

(iii) A program evaluation is a review of the MAP participant's entire program or any appropriate portion of the program to determine the effectiveness of the participant's strategy in meeting specified goals. An MAP participant shall complete at least one program evaluation each year. Actual scope and timing of the program evaluation shall be determined by the MAP participant and the Division Director and specified in the MAP participant's activity plan approval letter.

(3) *Contents of program evaluation.* A program evaluation shall contain:

(i) The name of the party conducting the evaluation;

(ii) The activities covered by the evaluation (including the activity numbers);

(iii) A concise statement of the constraint(s) and the goals specified in the activity plan;

(iv) A description of the evaluation methodology;

(v) A description of additional export sales achieved, including the ratio of additional export sales in relation to MAP funding received;

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

(vii) Recommendations for future programs.

(4) An MAP participant shall submit via a cover letter to the Division Director, an executive summary which provides assessment of the program evaluation's findings and recommendations and proposed changes in program strategy or design as a result of the evaluation.

(5) If as a result of an evaluation or audit of activities of a participant under the program, CCC determines that further review is needed in order to ensure compliance with the requirements of the program, CCC may re-

quire the participant to contract for an independent audit of the program activities,

(d) *Appeals.* (1) The Director, Compliance Review Staff (Director, CRS) will notify a participant through a compliance report when it appears that CCC may be entitled to recover funds from that participant. The compliance report will state the basis for this action.

(2) A participant may, within 60 days of the date of the compliance report, submit a response to the Director, CRS. The Director, CRS, at the Director's discretion, may extend the period for response up to an additional 30 days. If the participant does not respond to the compliance report within the required time period or, if after review of the participant's response, the Director, CRS, determines that CCC may be entitled to recover funds from the participant, the Director, CRS, will refer the compliance report to the Deputy Administrator.

(3) If after review of the compliance report and response, the Deputy Administrator determines that the participant owes any money to CCC he will so inform the participant and provide the basis for the decision. The Deputy Administrator may initiate action to collect such amount pursuant to 7 C.F.R. Part 1403, Debt Settlement Policies and Procedures. Determinations of the Deputy Administrator will be in writing and in sufficient detail to inform the participant of the basis for the determination. The participant may request reconsideration within 30 days of the date of the Deputy Administrator's initial determination.

(4) The Participant may appeal determinations of the Deputy Administrator to the Administrator. An appeal must be in writing and be submitted to the office of the Deputy Administrator within 30 days following the date of the initial determination by the Deputy Administrator or the determination on reconsideration. The participant may request a hearing.

(5) If the participant submits its appeal and requests a hearing, the Administrator, or the Administrator's designee, will set a date and time, generally within 60 days. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless

the participant bears the cost of a transcript; however, the Administrator may have a transcript prepared at CCC's expense.

(6) The Administrator will base the determination on appeal upon information contained in the administrative record and will endeavor to make a determination within 60 days after submission of the appeal, hearing or receipt of any transcript, whichever is later. The determination of the Administrator will be the final determination of CCC. The participant must exhaust all administrative remedies contained in this subsection before pursuing judicial review of a determination by the Administrator.

[60 FR 6363, Feb. 1, 1995, as amended at 61 FR 32644, June 25, 1996; 63 FR 29941, June 2, 1998]

§ 1485.21 Failure to make required contribution.

An MAP participant's contribution requirement will be specified in the MAP allocation letter and the activity plan approval letter. The amount specified will be the amount of contribution to be furnished by the applicant and other sources as indicated in the participant's application. The MAP participant shall pay to CCC in dollars the difference between the amount actually contributed and the amount specified in the allocation approval letter. An MAP participant shall remit such payment within 90 days after the end of its activity plan year.

[63 FR 29941, June 2, 1998; 63 FR 32041, June 11, 1998]

§ 1485.22 Submissions.

The participant may make any submissions required by this regulation either by hand delivery to the Director, Marketing Operations Staff, FAS, USDA or by commercial service delivery or U.S. mail. If delivery occurs by commercial "next-day" mail service or U.S. regular mail, first class prepaid, the material shall be deemed submitted as of the date of the commercial service or U.S. registered mail receipt. For all other permissible methods of delivery, the material shall be deemed submitted as of the date received by the Director, Marketing Operations Staff, FAS, USDA.

§ 1485.23 Miscellaneous provisions.

(a) *Disclosure of program information.*

(1) Documents submitted to CCC by 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 C.F.R. 1.11, Handling Information from a Private Business.

(2) If requested by a person located in the United States, a participant shall provide a copy of any document in its possession or control containing market information developed and produced under the terms of its agreement. The participant may charge a fee not to exceed the costs for assembling, duplicating and distributing the materials.

(3) The results of any research conducted by a participant under an agreement, shall be the property of the U.S. Government.

(b) *Ethical conduct.* (1) A participant shall conduct its business in accordance with the laws and regulations of the country in which an activity is carried out.

(2) Neither an MAP participant nor its affiliates shall make export sales of agricultural commodities and products covered under the terms of the agreement. Neither an MAP participant nor its affiliates shall charge a fee for facilitating an export sale. A participant may, however, collect check-off funds and membership fees that are required for membership in the participating organization. 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.

(3) An MAP participant shall not limit participation to members of its organization. The MAP participant shall publicize its program and make participation possible for commercial entities throughout the participant's industry or, in the case of SRTGs, throughout the corresponding region.

(4) A participant shall select U.S. agricultural industry representatives to participate in activities such as trade teams, sales teams, and trade fairs based on criteria that ensure participation on an equitable basis by a broad