

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: Proposed rule.

SUMMARY: This proposed rule would revise and amend the regulations at 7 CFR part 1485 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.

DATES: Comments concerning this proposed rule must be received by November 9, 2009 to be assured consideration.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *E-Mail:* podadmin@fas.usda.gov.

- *Fax:* (202) 720-9361.

- *Hand Delivery or Courier:* 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.

- *U.S. Postal Delivery:* U.S. Department of Agriculture, Foreign Agricultural Service, Office of Trade Programs, Program Operations Division, Stop 1023, 1400 Independence Avenue, SW., Washington, DC 20250-1042.

Comments may be inspected in Suite 400, Portals Building, 1250 Maryland Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available through the

Foreign Agricultural Service (FAS) home page at: <http://www.fas.usda.gov/mos/programs/map.asp>.

FOR FURTHER INFORMATION CONTACT: Mark Slupek by phone at (202) 720-4327, by fax at (202) 720-9361, or by e-mail at: podadmin@fas.usda.gov.

SUPPLEMENTARY INFORMATION:**Background**

On May 23, 2007, the Commodity Credit Corporation (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 existing MAP regulations. In addition, CCC held a public hearing on July 25, 2007, to receive oral and written comments. This proposed rule includes changes based on public comments and CCC's experience in operating the program. The following changes are proposed:

CCC proposes to add a separate paragraph to note explicitly the applicability of other Federal statutes and regulations to the activities of MAP participants. CCC also proposes to add new definitions and to delete obsolete definitions. Of note, CCC proposes to clarify the definitions of U.S. agricultural commodity, brand promotion, CCC, contribution, credit memo, expenditure, generic promotion, supergrade, and small-sized entity. CCC proposes to remove the definitions of activity plan, activity plan amendment request (APAR), deputy administrator, division director, EIP/MAP, EIP/MAP participant, eligible commodity, exported commodity, unfair trade practice, U.S. commercial entity, and U.S. industry contribution. CCC proposes to add definitions of administrative expenses or costs, approval letter, brand participant, UES Web site, FAS Web site, notification, program agreement, program year, temporary contractor, U.S. for-profit entity, and UES.

CCC proposes to modify the language that describes the application process and activity plan. CCC proposes to update and merge the list of application requirements and the activity plan requirements to better reflect the UES system that has been in place for several years.

CCC proposes to modify the lists of reimbursable and non-reimbursable activities to clarify the reimbursability of certain activities, e.g., to allow reimbursement for the use of electronic media in advertising (such as radio, television, electronic mail, Internet, telephone, text messaging, and

podcasting) and portable electronic communications devices (such as mobile phones, wireless e-mail devices, and personal digital assistants). Other clarifications address overseas office expenses, legal expenses, market research, coupons, permanent displays, subscriptions to publications, travel reimbursement, Office of Management and Budget (OMB) Circular A-133 audits, and translation of written materials. CCC also proposes to clarify that expenditures associated with educational training designed to improve market access by addressing temporary or permanent trade barriers are reimbursable. Such activities are currently allowable, but were not specifically identified in the regulation.

CCC proposes to modify the list of reimbursable activities to include development and use of Web sites; production of business cards that target a foreign audience; expenditures associated with conducting international staff conferences; expenditures related to copyright, trademark, or patent registration; leasing storage space overseas for storing program materials; and business class travel to be more consistent with the federal travel regulation.

Throughout the program's history, certain domestic administrative costs have been reimbursable for regional or national groupings of state departments of agriculture. CCC proposes to broaden this eligibility to allow for domestic administrative costs for the Intertribal Agriculture Council, which is a similar grouping of Native American and Alaskan tribes.

CCC proposes to modify the list of non-reimbursable activities to make ineligible expenditures on activities that include derogatory references or negative comparisons to other U.S. agricultural commodities and contributions to a contingency reserve. CCC also proposes to clarify that if a MAP participant discovers that MAP funds have not been spent properly, the participant has 30 days to inform CCC and repay the amount misspent.

CCC proposes to clarify, separate, and include in a new paragraph MAP contribution rules that were originally subsumed in the application process paragraph.

CCC proposes to separate existing paragraphs entitled "Financial management, reports, evaluations, and appeals" and "Miscellaneous provisions" into multiple paragraphs to provide greater clarity. CCC proposes to establish separate paragraphs to describe the compliance review and appeals processes; amendment of agreements; termination of agreements;

consequences of noncompliance with agreements; as well as new paragraphs on financial management, evaluation, information disclosure, ethical conduct, physical property, program income, and reporting. CCC proposes to extend the due date for evaluation reports and annual performance reports to 180 days following the end of a program year.

CCC proposes a new paragraph establishing new requirements for a participant to submit to CCC, for CCC's approval, a contracting plan that outlines its procedures for developing and publicizing requests for proposals, invitations for bids, and similar documents that solicit third-party offers to provide goods or services; procedures for reviewing proposals, bids, or other offers to provide goods and services; and other contracting requirements, including conflict of interest provisions that extend beyond the relevant actor's immediate family.

In addition, CCC proposes to add a paragraph requiring MAP participants that operate brand programs under MAP to establish certain operational procedures outlined in this proposed rule.

CCC also proposes to add a paragraph imposing new requirements on participants to establish and maintain a fraud prevention program and to report to CCC any allegations regarding potential fraud against the program.

Finally, CCC proposes to eliminate the EIP/MAP subcomponent, which was a part of the program limited to for-profit entities that entered into agreements with CCC. This applied when the program was available to large companies, but such companies are no longer eligible for the program.

Executive Order 12866

This proposed 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 OMB. 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).

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because 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 this rule.

Environmental Assessment

CCC has determined that this proposed 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), 40 CFR part 1502.4, "Major Federal Actions Requiring the Preparation of Environmental Impact Statements" and the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, no environmental assessment or environmental impact statement will be prepared.

Unfunded Mandates

Although we are publishing this as a proposed rule, 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.

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>.

List of Subjects in 7 CFR Part 1485

Agricultural commodities, Exports.

For the reasons stated in the preamble, CCC proposes to amend 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 continues to read as follows:

Authority: 7 U.S.C. 5623; 7 U.S.C. 5662–5663 and sec. 1302, Public Law 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. 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) 7 CFR part 3017—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 for the Civil Rights Act of 1964 and related civil rights regulations and policies.

(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. 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 that are not directly identifiable with a specific market promotion activity. 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 non-profit 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.

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 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 or U.S. industry in support of an approved activity.

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 Web site—a Web site maintained by FAS providing information on MAP. It is currently accessible at www.fas.usda.gov/mos/programs/map.asp.

Foreign third party—a foreign entity that works with a MAP participant, in accordance with an approved MAP program agreement and/or approval letter, in promoting the export of a U.S. agricultural commodity.

Generic promotion—an activity that is not a brand promotion but, rather, promotes a U.S. agricultural commodity generally.

MAP—the Market Access Program.

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.

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 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 an association of State Departments of Agriculture.

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 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 Web site—a Web site maintained by FAS through which applicants may apply online to MAP and any other USDA market promotion program. The Web site is currently accessible at <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.

U.S. agricultural commodity—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, cooperative, 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 nonprofit 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, a brand promotion program that provides MAP funds to brand participants for branded promotion, or both.

(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) Percentage of CCC resources requested for brand activities that will be made available to small-sized entities;

(K) Total dollar amount of CCC resources requested;

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

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

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

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

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

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

(R) Value, in U.S. dollars, of proposed contributions from the applicant;

(S) The applicant's proposed contribution stated as a percentage of the total dollar amount of CCC resources requested; and

(T) 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 system code, the applicable commodity aggregate code (available from the UES Web site) 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) A statement of goals and the applicant's plans for monitoring and evaluating performance towards achieving these goals;

(F) For each 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; and

(M) An evaluation plan setting 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.

(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.

(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.

§ 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 preference given to those organizations with the broadest base of producer representation and affiliated industry participation;

(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;

(8) General administrative and overhead costs compared to direct promotional costs; and

(9) In the case of a brand promotion program, the percentage of the budget that will be made available to small-sized entities as a means of providing priority assistance to such entities.

(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 must so indicate by having its Chief Executive Officer (CEO) or designee sign the program agreement or amendment and submit it to CCC. Final agreement shall occur when the program agreement or amendment is signed on behalf of CCC.

(f) Signature cards. The MAP participant shall designate at least two individuals in its organization to sign program agreements, reimbursement claims, and advance requests. The MAP participant shall submit the signature card signed by those designated individuals and by the 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 website, 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 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 add a new activity to its approved MAP program without first obtaining CCC written approval of such change. To

request approval of such change, the MAP participant shall submit a notification to CCC.

(ii) A notification for a new activity shall provide an activity justification and proposed activity strategic plan similar to the program justification and proposed program's strategic plan required in new applications. 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 in writing whether the requested change is approved.

(2) Deleting or modifying existing activities and funding levels.

(i) A MAP participant may make adjustments to its existing, approved activities and/or funding levels without prior approval of CCC, only if it submits a notification explaining the adjustments to CCC no later than 30 days after the change. However, a MAP participant desiring to increase 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, must first submit a notification explaining the adjustment to CCC before making such change. If CCC does not disapprove of the proposed increase in funding level within 15 days, then the MAP participant may so adjust the level.

(ii) A notification of a modified or deleted activity shall contain the activity description, the proposed budget, and a justification of transfer of funds, if applicable.

(iii) A notification of changes to the approved funding levels of approved activities shall contain the activity description, 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 third party brand participants, the MAP participant shall establish brand program operational procedures. The MAP participant annually shall submit to CCC for approval, not later than 21 days prior to signing participation agreements with third party brand participants, its proposed brand program operational procedures for such program year. 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 third party 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 third party brand participants. Where CCC approves a MAP participant's application to run a brand promotion program that will include third party brand participants, the MAP participant shall enter into participation agreements with third party brand participants. These agreements must:

(1) Specify a time period for such third party brand promotion and require that all third party 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 third party 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 third party 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 "Product of the U.S.", "Product of the U.S.A.", "Grown in the U.S.", "Grown in the U.S.A.", "Made in America" or other U.S. regional designation if approved in advance by CCC; that such origin identification will be conspicuously displayed; and that such origin identification will conform, to the extent possible, to the U.S. standard of 1/8 inch (.42 centimeters) in height based on the lower case letter "o". 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;

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

(8) Require that the third party 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 third party 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 company, including a company reincorporated or re-organized under the same or different name if the reincorporated or re-organized company is substantially similar to the pre-existing company, 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 have the discretion to decide whether a reincorporated or re-organized company is substantially similar to the pre-existing company for purposes of applying this 5-year rule.

§ 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 participant.

(b) 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.

(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.

(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 paragraphs (c) and (d)(1) of this section, 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 to publications;
 - (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 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 in the United States 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 paragraph (a) of this section, 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. 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 promotional samples;

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

(6) Expenditures, other than travel expenditures, associated with retail, trade, consumer exhibits and shows,

seminars, and educational training, including participation fees, booth construction, transportation of related materials, rental of space and equipment, and duplication of related printed materials;

(7) International air travel, not to exceed the full fare economy rate, or other means of international transportation and per diem, 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 to exhibit their company's products at a foreign trade show;

(8) Subscriptions to publications that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the participant;

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

(10) Giveaways, awards, prizes, gifts and other similar promotional materials, 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 Web site;

(11) 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;

(12) The design, production, and distribution of coupons;

(13) An audit of a MAP participant as required by the applicable parts of this title if the MAP is the MAP participant's largest source of Federal funding;

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

(15) Expenditures associated with developing, updating, and servicing Web sites on the Internet that clearly target a foreign audience.

(c) Subject to paragraph (a) 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;

(3) Compensation of non-U.S. citizen staff employees or non-U.S. contractors 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 mean, except for approved supergrades;

(4) A retroactive salary adjustment for non-U.S. citizen staff employees or non-U.S. contractors 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;

(7) Temporary contractor fees, 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) International travel expenses, including passports, visas and inoculations, except that CCC generally will not reimburse any portion of air travel in excess of the full fare economy rate or when the 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. 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. In very limited circumstances, CCC will reimburse air travel up to the business class rate (*i.e.*, a premium class rate other than the first class rate). CCC will, from time to time, determine a policy regarding the appropriate

circumstances and announce that policy in writing to all MAP participants and on the FAS web site;

(9) Per diem, except that CCC will not reimburse per diem in excess of the rates allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304);

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

(11) Other allowable expenditures while in travel status as authorized by the U.S. Federal Travel Regulations (41 CFR parts 301 through 304);

(12) 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;

(13) 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);

(14) Such premiums for health or accident insurance and other benefits for foreign national employees that the employer is required by law to pay;

(15) Accident liability insurance premiums for facilities used jointly with third-party participants for MAP activities or for travel of non-MAP participant personnel;

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

(17) Independent evaluations or audits, if not otherwise required by CCC, to ensure compliance with program agreement or regulatory requirements;

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

(19) Employment agency fees;

(20) STRE;

(21) 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;

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

(23) Domestic administrative support expenses for the National Association of State Departments of Agriculture, the SRTGs, and the Intertribal Agriculture Council;

(24) Expenditures associated with conducting international staff conferences;

(25) Travel expenditures associated with trade shows, seminars, educational training, international staff conferences conducted outside of the United States, and meetings of international organizations conducted in the United States;

(26) Approved demonstration projects;

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

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

(29) Business cards that target a foreign audience;

(30) Expenditures associated with developing, updating, and servicing web sites on the Internet that contain a message related to exporting or international trade; and

(31) Expenditures associated with educational training designed to improve market access by addressing market constraints, such as temporary or permanent trade barriers.

(d) 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 and is the primary market access to the targeted market for the 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. 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 companies will be considered a generic promotion only if the promotion of the separate items maintains a unified theme and style and is subordinate to the promotion of the generic theme.

(e) 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 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;

(10) Refundable deposits or advances;

(11) Giveaways, awards, prizes, gifts and other similar promotional materials in excess of the limitation described in this subpart;

(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) Home office domestic administrative expenses, including communication costs;

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

(28) Any expenditure on an activity that contradicts U.S. foreign policy;

(29) 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;

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

(31) 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.

(f) 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, 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 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.

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

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

(i) CCC will reimburse for expenditures made after the conclusion of 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.

(j) 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.

(k) Except as otherwise provided in this subpart, travel shall conform to U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 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.

§ 1485.18 Reimbursement procedures.

(a) Participants are required to use CCC's Internet-based 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. CCC will not advance funds to a MAP participant for brand promotion activities.

(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. If 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. 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.

(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 part of this title apply. 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 part of this title. The MAP participant shall, no later than 10 days after the end of each calendar quarter, submit a financial statement to CCC accounting for all funds advanced and all interest earned.

(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 employees 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.

(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 records and permit access to records in accordance with the requirements of the applicable parts of this title. These records shall include all documents related to employment 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 and on the FAS Web site;

(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 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 audit 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 activity and 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) A MAP participant shall submit to CCC an annual audit in accordance with the applicable parts of this title. 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, 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. From time to time, CCC will announce to all MAP participants in writing and on the FAS Web site 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. 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.

(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 30 days of the date of the compliance report or written notice from CCC, submit a response to CCC. 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 notice of delinquency and a 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 90 days 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 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.

§ 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.

(b) Except for a nonprofit 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 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 agree to ensure that its 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.

(d) A MAP 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 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 the program to the appropriate Attaché/Counselor, and its U.S. office shall report such actions 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. For purposes of this subpart, the "small purchase threshold" referenced in 7 CFR part 3019 is set at \$100,000.

(c) Each MAP participant shall establish contracting procedures that are open, fair, and competitive.

(d) Prior to entering into any contracts during a program year, a MAP participant must submit to CCC, for CCC approval, a written contracting plan. This contracting plan shall list each contract with an annual value of \$25,000 or more that the MAP participant expects to be party to during the program year, the method for evaluating proposals received for each contract competition, 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 this plan for re-approval at any time during the program year. In addition to the requirements set forth in the applicable parts of this title, this plan 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;

(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 exceeds \$25,000 or more;

(5) Requirements to conduct an appropriate form of competition every 3 years on all multi-year contracts with an annual value of \$25,000 or more. CCC may, from time to time, determine a different minimum value and announce that minimum value in writing to all MAP participants and on the FAS Web site. 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 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. 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 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 year in which the program income was received. Interest earned on funds advanced by CCC is not program income.

§ 1485.33 Amendment.

A program agreement may be amended only 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 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 applicable parts of this title. If an agreement is terminated, the applicable parts of this title will apply to the closeout of the agreement.

§ 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.

Dated: August 19, 2009.

Michael V. Michener,

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

[FR Doc. E9-21552 Filed 9-4-09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-0317]

RIN 1625-AA87

Security Zone; Calcasieu River and Ship Channel, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to disestablish the permanent safety zone at Trunkline LNG in Lake Charles, LA and to replace it with a security zone with new boundaries. The Coast Guard also proposes to establish two additional permanent security zones on the waters of the Calcasieu River for the mooring basins at Cameron LNG in Hackberry, LA and PPG Industries in Lake Charles, LA. The Coast Guard also proposes to disestablish the moving safety zone for Liquified Natural Gas ("LNG") vessels in the Calcasieu ship channel and replace it with a moving security zone of the same dimensions. These security zones are needed to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature. Unless exempted under this rule, entry into or movement within these security zones would be prohibited without permission from the Captain of the Port or a designated representative.

DATES: Comments and related material must reach the Coast Guard on or before October 8, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2009-0317 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section