

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Part 1485****Agreements for the Development of Foreign Markets for Agricultural Commodities**

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations applicable to the Market Access Program (MAP) authorized by section 203 of the Agricultural Trade Act of 1978. This rule incorporates into the MAP allocation process the level of export contributions, including brand promotion cost-share contributions, made by U.S. industry participants; authorizes reimbursement of certain travel expenses for brand participants and certain necessary packaging and labeling design expenses; extends the activity payment deadline following the end of an activity plan year; establishes a 5-year limit, per country, on CCC assistance for brand promotion by single companies, and permits reimbursement to participants based upon issuance of a credit memo as an alternative to a transfer of funds.

**EFFECTIVE DATE:** June 2, 1998. See Supplementary Information.

**FOR FURTHER INFORMATION CONTACT:** Kent Sisson or Denise Feters at (202) 720-4327.

**SUPPLEMENTARY INFORMATION:****Executive Order 12866**

This final rule is issued in conformance with Executive Order 12866. It has been determined that this final rule will not have an annual economic effect in excess of \$100 million; will not cause a major increase in costs to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

**Executive Order 12988**

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule would have preemptive effect with respect to any State or local laws, regulations or policies which conflict with such provisions or which otherwise impede their full implementation; does not have retroactive effect; and does not require

administrative proceedings before suit may be filed.

**Executive Order 12372**

This program is not subject to the provisions of 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).

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because CCC is not required by any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

**Paperwork Reduction Act**

The information collection requirements for participating in the MAP were approved for use by the Office of Management and Budget (OMB) through April 30, 2000, and assigned OMB No. 0551-0027. This final rule does not impose new information collection requirements.

**Background**

The MAP is authorized by section 203 of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5623), which directs the Commodity Credit Corporation (CCC) to establish "a program to encourage the development, maintenance, and expansion of commercial markets for agricultural commodities through cost-share assistance to eligible trade organizations." CCC implements this provision by entering into agreements with non-profit trade associations, private organizations, State agencies, and cooperatives. These agreements provide for sharing the costs of overseas advertising, technical assistance, and other export promotion activities, and may include either generic or brand promotions.

**Summary and Analysis of Comments**

On February 25, 1998, CCC published a rule in the **Federal Register** (63 FR 9451) proposing several changes to the regulations which govern the operations of the MAP. That rule also requested interested parties to submit comments by March 27, 1998. CCC received 17 comments on the proposed rule. Following is a summary of the comments which specifically address the proposed rule and CCC's responses to these comments. General comments relating to the value of the program, editorial suggestions, and non-

substantive comments have been omitted.

**State and Industry Contributions**

CCC received 14 comments on this issue. None of these opposed the inclusion of state and industry contributions in the allocation process.

*Comment:* Matching funds provided by companies for brand promotion should be included as industry contributions, and, in turn, be considered in the MAP allocation process.

*Response:* CCC agrees with the commenters that company expenditures on brand promotion should be included as industry contributions. The focus of this program has shifted somewhat, with more emphasis being placed on market entry and access for agricultural cooperatives and small companies. For the first time, the 1998 MAP will include reimbursement for brand promotion undertaken by only cooperatives and small companies; large companies are no longer eligible to participate. By recognizing the contributions to the program made by such entities, and including those contributions in the allocation process, CCC expects that a greater number of cooperatives and small businesses will receive assistance through the MAP. Therefore, CCC is amending the final rule by removing § 1485.13(c)(3)(i), which disallows all non-administrative brand promotion expenditures as eligible contributions. We also agree that these non-administrative costs should be included in the allocation process in order to reflect the true industry contribution to the market development effort.

*Comment:* MAP participants should not be held responsible for shortfalls in industry or State contributions. Under certain economic situations (e.g., crop failure) it is prudent for an industry to scale back its promotional efforts, and penalizing a participant for its industry's wisdom would be illogical.

*Response:* MAP applicants compete against each other for funds based, in part, on the contributions promised in their MAP applications. To maintain the integrity of the competitive process, the level of contributions specified in each participant's MAP application must be met, regardless of the source of the contributions. Because it is the participant which applies for funding and enters into the program agreement with CCC, the participant must be held responsible for reaching the contribution level specified in the application.

*Comment:* Contribution levels are proposed in conjunction with allocation

requests. When funds are allocated at less than requested levels, the proposed contribution levels should not be considered commitments. CCC should use a contribution rate rather than an absolute level.

*Response:* Each applicant has the option of submitting in the application its contribution level in the form of a percentage of CCC resources expended or an absolute dollar value. When an applicant chooses to submit a contribution level as a percentage of CCC resources expended, the applicant is not required to spend an absolute dollar amount, but a specified percentage of the resources reimbursed by CCC. When an applicant chooses to submit an absolute dollar value in its application, the absolute dollar value prevails irrespective of the amount reimbursed by CCC. If a participant is not able to meet its percentage contribution requirement, it has two options available. The first is to curtail expenditures of CCC resources in order to maintain the specified ratio of contributions to expenditures. The second option is to repay CCC the difference between the amount it has contributed and the amount specified. Therefore, CCC is adopting the rule as proposed.

#### *Packaging, Labeling, and Origin Identification*

CCC received 10 comments on this issue.

*Comment:* If market-specific labels are required and developed, can the company claim production costs in perpetuity for all reprints?

*Response:* No, companies can claim only costs for production of labels to be used during the activity plan year in which the expenditure is made. CCC has revised the final rule to clarify this point.

*Comment:* Where package and label design changes are implemented to comply with local laws, it is difficult to isolate those costs attributable solely to regulation compliance from those attributed to "creative artwork and design".

*Response:* Because other comments indicated that isolating such costs was possible and no evidence was provided in this comment to show otherwise, the proposed rule is adopted in this regard. To clarify, this rule allows for reimbursement of costs associated with the design and production of packaging, labeling, and origin identification when changes are necessary to meet another country's importing requirements. Any costs of design and production which are not necessary to meet such requirements are not reimbursable.

*Comment:* A written statement from an importer detailing packaging, labeling, or origin identification requirements, rather than copies of actual laws or regulations, should be considered sufficient documentation of a foreign country's import requirements.

*Response:* In order to keep reimbursement of these expenses auditable, participants will need to maintain copies of foreign government documents detailing packaging, labeling, or origin identification requirements. Other comments indicated that acquiring such documentation would be possible. A written statement from an importer may be helpful in understanding the requirements, but such a statement cannot be considered adequate documentation to support a reimbursement claim.

*Comment:* Importers sometimes reimburse costs of this type. It is inappropriate for this program to reimburse costs that importers already cover.

*Response:* If an importer reimburses or will reimburse such a cost, requesting reimbursement from CCC would violate § 1485.16(a)(3), which provides that a participant may seek reimbursement for expenditures on activities if there has not been and will not be reimbursement from another source. Also, § 1485.13(a)(2)(i)(G) requires participants to certify that MAP funds will not be used to supplant any other contributions to program activities. Consequently, this provision only applies to situations in which a participant would not be reimbursed by any other source and the funds would not supplant any other contributions to program activities.

#### *Extension of Deadline for Transferring Payments After Completion of Activity Plan Year*

CCC received 6 comments on this issue, all of which favored the proposed change.

*Comment:* Does this extension apply to both generic and brand promotion?

*Response:* Yes; unless otherwise specified, the reimbursement rules apply to both generic and brand promotion activities. The rule is adopted as proposed.

#### *Trade Show Travel for Brand Participants*

CCC received 11 comments on this issue, all of which favored the proposed change.

*Comment:* CCC needs to be cautious that companies don't claim trade show travel that would have been performed with or without assistance.

*Response:* Again, § 1485.13(a)(2)(i)(G) requires participants to certify that MAP funds will not be used to supplant any other contributions to program activities. However, many small companies have said that the high costs associated with international travel have prevented their participation in foreign trade shows. For such companies, this rule change facilitates market access.

*Comment:* Requirements such as trip reports, keeping original tickets, and mandatory use of U.S. carriers should be eliminated because they would be burdensome on small companies. Also, trip reports would contain business confidential information.

*Response:* Trip reports are essential to maintaining sufficient records for program evaluation. CCC believes it is in the best interest of the program as a whole to file a report of activities during trade show participation. CCC will protect business confidential information to the extent permitted by law. Travel would not be so frequent, or records so voluminous, as to constitute a burden on small business. CCC applies the U.S. Federal Travel Regulations and the Fly America Act, which generally require the use of U.S. carriers. Thus, the rule is adopted as proposed.

*Comment:* What must brand representatives do at a foreign trade show for their travel expenses to qualify for reimbursement?

*Response:* CCC intends to reimburse travel and per diem costs only for those company representatives (maximum of two) who devote their time and efforts to exhibiting their company's products at a booth at the trade show. The booth could be for the company alone or for a group including the company, but the representatives must be exhibiting their own products, not the products of other companies. CCC will not reimburse company representatives who attend trade shows as visitors. CCC has revised the final rule to clarify this point.

*Comment:* CCC should allow for reimbursement of overland transportation costs to trade shows, not just airfare. Sometimes it is easier and less expensive to get to a trade show by other means.

*Response:* CCC agrees with this comment and will amend the proposed regulation to provide for reimbursement, consistent with the U.S. Federal Travel Regulations, of other means of transportation to international trade shows. For consistency, CCC will also amend § 1485.16(c)(8) to provide reimbursement for other means of international travel for generic promotion activities.

### Five Year Brand Graduation

CCC received 9 comments on this issue. Eight of these opposed the rule.

*Comment:* The rule proposes to limit brand promotion assistance to a company in a country to five years. Does "assistance" refer to reimbursements or allocations?

*Response:* Assistance refers to the MAP as a whole. CCC will not approve or reimburse activities for the same company for brand promotions in the same country for more than five years. No further clarification is required in the final rule.

*Comment:* Because market entry and growth cannot always be achieved in five years, particularly for companies with multiple products, the proposal to move to a five year assistance limit per company should be rejected.

*Response:* CCC recognizes that individual companies may not achieve market entry or growth for all products in a country within five years. However, CCC must operate and manage this program with limited resources. In order to provide the opportunity for the greatest number of companies to reap the benefits of the MAP, it is necessary to graduate companies from countries after five years of assistance.

*Comment:* Some branded participants have formulated their marketing strategies and plans believing that their companies would be able to remain in their current markets by switching their promoted products after five years. Thus, promotional activities which occurred prior to the 1998 activity plan year should not be counted toward the five year company limit.

*Response:* The MAP is administered on a year-to-year basis. Funding and program commitments are made on a program year basis. Although some participants may make plans assuming a continuing program, CCC has not made commitments beyond one program year. Companies may, of course, continue to promote their products in the country after five years; however, such activities must be supported with their own resources. Therefore, CCC is adopting the rule as proposed.

### Use of Credit Memos as Proof of Eligible Promotion Expenditures

CCC received 9 comments on this issue, all of which favor the proposed change. The final rule is adopted accordingly.

This rule includes other conforming and clarifying changes to accompany the substantive changes discussed herein.

### Effective Date

This rule is effective June 2, 1998 but it only applies to authorized activities beginning with the 1998 program. Therefore, present participants will not be required to revise previously approved activity plans in order to comply with the new rules.

### List of Subjects in 7 CFR Part 1485

Agricultural commodities, Exports.

In consideration of the foregoing, 7 CFR part 1485 is amended as follows:

### PART 1485—COOPERATIVE AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

1. The authority citation for 7 CFR 1485 continues to read as follows:

**Authority:** 7 U.S.C. 5623; 7 U.S.C. 5662–5663 and sec. 1302, Pub. L. 103–66, 107 Stat. 330.

### Subpart B—Market Access Program

2. Section 1485.11 is amended by deleting the paragraph designations and adding the following two new definitions in alphabetical order:

#### § 1485 Definitions.

\* \* \* \* \*

Credit memo—a notice that a vendor has decreased an amount owned for promotional expenditures at the time the notice is issued.

\* \* \* \* \*

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

\* \* \* \* \*

3. In section 1485.13, paragraph (c)(3)(i) is removed and paragraphs (c)(3)(ii) through (c)(3)(xii) are redesignated as paragraphs (c)(3)(i) through (c)(3)(xi) respectively.

4. Section 1485.14 is amended by removing paragraph (d)(3) and revising paragraphs (c)(4) and the first sentence of (d)(2) to read as follows:

#### § 1485.14 Application approval and formation of agreements.

\* \* \* \* \*

(c) \* \* \*

(4) Level of participant's, State's, and industry's contributions;

\* \* \* \* \*

(d) \* \* \*

(2) CCC will not provide assistance to a single company for brand promotion in a single country for more than five years. \* \* \*

\* \* \* \* \*

Section 1485.16 is amended by removing paragraph (a)(2); redesignating

paragraph (a)(3) as paragraph (a)(2); adding paragraph (b)(11); and revising paragraphs (a)(1), (b)(6), (b)(7), (b)(9), (c)(8), (c)(25), (d)(3), and (h)(3) to read as follows:

#### § 1485.16 Reimbursement rules.

(a) \* \* \*

(1) The expenditure was made in furtherance of an approved activity; and

\* \* \* \* \*

(b) \* \* \*

(b) Expenditures, other than travel expenditures, associated with retail, trade, and 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.

\* \* \* \* \*

(9) Part-time contractors such as demonstrators, interpreters, translators and receptionists to help with the implementation of promotional activities such as trade shows, in-store promotions, food service promotions, and trade seminars;

\* \* \* \* \*

(11) The design and production of packaging, labeling or origin identification, to be used during the activity plan in which the expenditure is made, if such packaging, labeling or origin identification are necessary to meet the importing requirements in a foreign country; and

(c) \* \* \*

(8) International travel expenses plus passports, visas and inoculations subject to the limitation that CCC will not reimburse any portion of air travel in excess of the full fare economy rate or when the participant fails to notify the Attache/Counselor in the destination country in advance of the travel unless the Deputy Administrator determines its was impractical to provide such notification;

\* \* \* \* \*

(25) Travel expenditures associated with trade shows, seminars, and educational training conducted in the United States; and

\* \* \* \* \*

(d) \* \* \*

(3) The design and production of packaging, labeling or origin identification, except as described in paragraph (b)(11) of this section.

\* \* \* \* \*

(h) \* \* \*

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

6. Section 1485.20 is amended by revising paragraph (a)(3)(vi) to read as follows:

**§ 1485.20 Financial management, reports, evaluations and appeals.**

(a) \* \* \*

(3) \* \* \*

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

\* \* \* \* \*

7. Section 1485.21 is revised to read as follows:

**§ 1485.21 Failure to make required contribution.**

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

Signed at Washington, DC, on May 11, 1998.

**Lon Hatamiya,**

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

[FR Doc. 98-14522 Filed 6-1-98; 8:45 am]

BILLING CODE 3410-01-M

**ACTION:** Final rule; Technical amendment.

**SUMMARY:** The Department of Energy is amending the Department of Energy Assistance Regulations, 10 CFR Part 600, to remove provisions dealing with the audit of State and local government recipients of financial assistance that were rendered obsolete by a common rule published on August 29, 1997 (62 FR 45937). The common rule, which DOE incorporated through an amendment to Part 600, implements the Single Audit Act Amendments of 1996 and subsequent revisions to the Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

**EFFECTIVE DATE:** This final rule will be effective June 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Richard Langston, Department of Energy, Office of Procurement and Assistance Policy, HR-51, 1000 Independence Ave. SW., Washington, D.C. 20585-0705, (202) 586-8247.

**SUPPLEMENTARY INFORMATION:**

I. Explanation of Revisions.

II. Procedural Requirements.

- A. Review Under Executive Order 12612.
- B. Review Under Executive Order 12866.
- C. Review Under Executive Order 12988.
- D. Review Under the National Environmental Policy Act.
- E. Review Under the Paperwork Reduction Act.
- F. Review Under the Regulatory Flexibility Act.
- G. Review Under the Small Business Regulatory Enforcement Fairness Act.
- H. Review Under the Unfunded Mandates Act.

**I. Explanation of Revisions**

The Department of Energy Assistance Regulations, 10 CFR part 600, Subpart E—Audits of State and Local Governments, implemented the Single Audit Act of 1984 and OMB Circular A-128, Single Audits of State and Local Governments. The Single Audit Act Amendments of 1996 (Pub. L. 104-156, 110 Stat. 1396) and the June 24, 1997, revision of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (62 FR 35278), required agencies to adopt the standards in revised Circular A-133 by August 29, 1997, so that they would apply to audits of fiscal years beginning after June 30, 1996. Agencies, including DOE, promulgated a common rule on August 29, 1997 (62 FR 45937) to codify the new requirements. DOE accomplished this, for state and local governments, by amending 10 CFR 600.226 (Subpart C—Uniform Administrative Requirements for Grants

and Cooperative Agreements to State and Local Governments). As a consequence of these changes, existing Subpart E was rendered obsolete. This final rule removes 10 CFR part 600, Subpart E, from the Code of Federal Regulations.

**II. Procedural Requirements**

**A. Review Under Executive Order 12612**

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

**B. Review Under Executive Order 12866**

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of OMB.

**C. Review Under Executive Order 12988**

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4)

**DEPARTMENT OF ENERGY**

**10 CFR Part 600**

RIN 1991-AB41

**Assistance Regulations: Technical Amendment**

**AGENCY:** Department of Energy (DOE).