

§ 1485.21

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

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

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

§ 1485.21 Failure to make required contribution.

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

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

§ 1485.22 Submissions.

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

7 CFR Ch. XIV (1-1-12 Edition)

§ 1485.23 Miscellaneous provisions.

(a) *Disclosure of program information.* (1) Documents submitted to CCC by participants are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, 7 CFR part 1, Subpart A—Official Records, and specifically 7 C.F.R. 1.11, Handling Information from a Private Business.

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

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

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

(2) Neither an MAP participant nor its affiliates shall make export sales of agricultural commodities and products covered under the terms of the agreement. Neither an MAP participant nor its affiliates shall charge a fee for facilitating an export sale. A participant may, however, collect check-off funds and membership fees that are required for membership in the participating organization. For the purposes of this paragraph, "affiliate" means any partnership, association, company, corporation, trust, or any other such party in which the participant has an investment other than in a mutual fund.

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

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

Commodity Credit Corporation, USDA

§ 1485.23

cross section of the U.S. industry. If requested, a participant shall submit such selection criteria to CCC for approval.

(5) All participants should endeavor to ensure fair and accurate fact-based advertising. Deceptive or misleading promotions may result in cancellation or termination of an agreement.

(6) The participant must report any actions or circumstances that have a bearing on the propriety of the program to the Attaché/Counselor and its U.S. office shall report such actions in writing to the Division Director.

(c) *Contracting procedures.* (1) Neither the Commodity Credit Corporation (CCC) nor any other agency of the United States Government or any official or employee of the CCC or the United States Government has any obligation or responsibility with respect to participant contracts with third parties.

(2) A participant shall:

(i) Ensure that all expenditures for goods and services reimbursed, in excess of \$25.00, by CCC are documented by a purchase order, invoice, or contract and that such documentation demonstrates competition in acquiring the goods or services;

(ii) Ensure that no employee or officer participates in the selection or award of a contract in which such employee or official, or the employee's or officer's family or partners has a financial interest;

(iii) Conduct all contracting in an openly competitive manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids and requests for proposals for procurement of any goods or services shall be excluded from competition for such procurement;

(iv) Base solicitations for professional and technical services on a clear and accurate description of the requirements for the services to be procured;

(v) Perform 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.

(d) *Disposable capital goods.* (1) Capital goods purchased by the MAP participant and reimbursed by CCC that are

unusable, unserviceable, or no longer needed for project purposes shall be disposed of in one of the following ways:

(i) The participant may exchange or sell the goods provided that it applies any exchange allowance, insurance proceeds or sales proceeds toward the purchase of other property needed in the project;

(ii) The participant may, with CCC approval, transfer the goods to other MAP participants and activities, or to a foreign third party; or

(iii) The participant may, upon Attaché/Counselor approval, donate the goods to a local charity, or convey the goods to the Attaché/Counselor, along with an itemized inventory list and any documents of title.

(2) A participant shall maintain an inventory of all capital goods with a value of \$100 acquired in furtherance of program activities. The inventory shall list and number each item and include the date of purchase or acquisition, cost of purchase, replacement value, serial number, make, model, and electrical requirements.

(3) The participant shall insure all capital goods acquired in furtherance of program activities and safeguard such goods against theft, damage and unauthorized use. The participant shall promptly report any loss, theft, or damage of property to the insurance company.

(e) *Contracts between MAP participants and brand participants.* Where CCC approves an application for brand promotion, the MAP participant shall enter into an agreement with each approved brand participant which shall:

(1) Specify a time period for such brand promotion, and require that all brand promotion expenditures be made within the MAP participant's approved activity plan period;

(2) Make no allowance for extension or renewal;

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

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

(5) Include a written certification that the brand participant either owns

§ 1485.24

7 CFR Ch. XIV (1-1-12 Edition)

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 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, in a manner that is easily observed; and that such origin identification will conform, to the extent possible, to the U.S. standard of 1/6” (.42 centimeters) in height based on the lower case letter “o”. A participant may request an exemption from this requirement. All such requests shall be in writing and include justification satisfactory to the Deputy Administrator that this labelling requirement would hinder a participant’s promotional efforts. The Deputy Administrator will determine, on a case by case basis, whether sufficient justification exists to grant an exemption from the labelling requirement;

(7) Specify documentation requirements for a U.S. brand applicant seeking priority consideration for assistance based on eligibility as a small-sized entity;

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

(f) EIP/MAP participants shall ensure that all product labels, promotional material and advertising will identify the origin of the 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; such origin identification is conspicuously displayed in a manner that is easily observed, and that, to the fullest extent possible, the origin identification conforms to the U.S. standard of 1/6” (.42 centimeters) in height based on the lower case letter “o”. An EIP/MAP participant may request an exemption from this requirement. All such requests shall be in writing and include justification satisfactory to the Deputy Administrator that this labelling requirement would hinder a participant’s promotional efforts. The Deputy Administrator will determine, on a case by case basis, whether sufficient justification exists to grant an exemption from the labelling requirement;

(g) 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. 1517).” The MAP participant shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel.

(h) *Proceeds*. Any income or refunds generated from an activity, *i.e.*, participation fees, proceeds of sales, refunds of value added taxes (VAT), the expenditures for which have been wholly or partially reimbursed, shall be repaid by submitting a check payable to CCC or offsetting the participant’s next reimbursement claim. However, where CCC reimburses a participant with CCC commodity certificates, such participant may retain any income generated by the sale of such certificates.

[60 FR 6363, Feb. 1, 1995, as amended at 61 FR 3548, Feb. 1, 1996; 61 FR 32644, June 25, 1996]

§ 1485.24 Applicability date.

This Subpart applies to activities that are approved in accordance with the participant’s 1995 program and corresponding activity plan year.

§ 1485.25 Paperwork reduction requirements.

The paperwork and record keeping requirements imposed by this final rule have been submitted to the Office of