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with a corporation for its general benefit.

### § 1488.21 Exporter's records and accounts.

CCC shall have access to and the right to examine any directly pertinent books, documents, papers and records of the exporter involving transactions related to the financed export credit sale until the expiration of three years after the end of the financing period.

### § 1488.22 Communications.

(a) Unless otherwise provided, written requests, notifications, or communications by the applicant pertaining to the financing agreement shall be addressed to the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S. Department of Agriculture, Washington, DC 20250.

(b) [Reserved]

### § 1488.23 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR part 1488) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551-0021.

[Amdt. 8, 50 FR 13967, Apr. 9, 1985]

## PART 1489—AGRICULTURAL TRADE PROMOTION PROGRAM

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AUTHORITY: Section 5(f) of the CCC Charter Act, 15 U.S.C. 714c(f).

SOURCE: 83 FR 44181, Aug. 30, 2018, unless otherwise noted.

### § 1489.10 General purpose and scope.

(a) This part sets forth the general terms, conditions, and policies governing the Commodity Credit Corporation's (CCC) operation of the Agricultural Trade Promotion Program (ATP). This program will provide assistance to eligible organizations to conduct market promotion activities, including activities to address existing or potential non-tariff barriers to trade, that promote U.S. agricultural commodities in foreign markets. Specific program requirements will be set forth in future Notices of Funds Availability announced through the *Grants.gov* website.

(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 ATP and ATP participants, to the extent that these regulations of general application do not directly conflict with the provisions of this subpart. These include, but are not limited to:

- (i) 7 CFR part 1, subpart A—Official Records.
- (ii) 7 CFR part 3—Debt Management.
- (iii) 7 CFR part 15, subpart A—Non-discrimination.
- (iv) 2 CFR part 417—Government-wide Debarment and Suspension (Non-procurement).
- (v) 2 CFR part 418—New Restrictions on Lobbying.
- (vi) 2 CFR part 421—Requirements for Drug-Free Workplace (Financial Assistance).

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(vii) 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 the CCC are also applicable to the ATP and the regulations set forth in this part.

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

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

(i) 2 CFR part 25—Universal Identifier and Central Contractor Registration.

(ii) 2 CFR part 170—Reporting Subaward and Executive Compensation Information.

(iii) 2 CFR part 175—Award Term for Trafficking in Persons.

(iv) 2 CFR part 180—OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).

(v) 2 CFR part 200—Office of Management and Budget Guidance, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(vi) 2 CFR part 400—Department of Agriculture, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(vii) 37 CFR part 401.1—Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.

(viii) Executive Order 13224, as amended, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism.

(c) Under the ATP, the CCC may provide multi-year grant assistance to eligible U.S. entities to conduct certain marketing and promotion activities, including activities to address existing or potential non-tariff trade barriers, aimed at developing, maintaining, or expanding commercial export markets for U.S. agricultural commodities. ATP 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. The CCC expects all activities that occur in the United States for which ATP reimbursement is sought to develop, maintain, or expand the commercial export market for the relevant U.S. agricultural commodity in accordance with the ATP Participant's approved ATP program. When considering eligible nonprofit U.S. trade organizations, the CCC gives priority to organizations that have the broadest producer representation and affiliated industry participation of the commodity being promoted.

(d) The ATP generally operates on a reimbursement basis.

(e) The CCC's policy is to ensure that benefits generated by ATP agreements are broadly available throughout the relevant agricultural sector and that no single entity gains an undue advantage. The CCC also endeavors to enter into ATP agreements covering a broad array of agricultural commodity sectors. The ATP is administered by personnel of the Foreign Agricultural Service (FAS) acting on behalf of the CCC.

### § 1489.11 Definitions.

For purposes of this subpart the following definitions apply:

*Activity* means a specific foreign market development effort undertaken by an ATP Participant.

*Administrative expenses or costs* means expenses or costs of administering, directing, and controlling an organization that is an ATP Participant. Generally, this would include expenses or costs such as those related to:

(1) Maintaining a physical office (including, but not limited to, rent, office equipment, office supplies, office décor, office furniture, computer hardware and software, maintenance, extermination, parking, business cards);

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

(3) Communications (including, but not limited to, phone expenses, internet, mobile phones, personal digital assistants, email, mobile email 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* means a document by which the CCC informs an applicant that its ATP application 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 ATP Participant before it becomes effective.

*ATP* means the Agricultural Trade Promotion Program.

*ATP Notice* means Agricultural Trade Promotion Program notices are documents that CCC issues for informational purposes. These ATP notices are made available electronically at [www.fas.usda.gov/programs/agricultural-trade-promotion-program-atp](http://www.fas.usda.gov/programs/agricultural-trade-promotion-program-atp). These notices have no legal effect. They are intended to alert ATP Participants of various aspects of CCC's current administration of the ATP program. For example, CCC issues ATP notices to alert ATP Participants of procedures for requesting advances, applicable Federal pay scale rates, lists of economic and trade sanctions against certain foreign countries, reporting formats and computer codes to use with the UES.

*ATP Participant or Participant* means an entity that has entered into an ATP program agreement with the CCC.

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

*Brand participant* means a U.S. for-profit entity or a U.S. agricultural cooperative that owns the brand(s) of the U.S. agricultural commodity to be promoted or has the exclusive rights to use such brand(s) and that is participating in the ATP brand promotion program of an ATP Participant. This

definition does not include any U.S. agricultural cooperatives that are ATP Participants that apply for ATP funds to implement their own brand programs.

*Brand promotion* means an activity that involves the exclusive or predominant use of a single U.S. company name, or the logo or brand name of a single U.S. company, or the brand of a U.S. agricultural cooperative, or any activity undertaken by a brand participant in the brand program.

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

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

*Credit memo* means a commercial document, also known as a credit memorandum, issued by the ATP Participant to a commercial entity that owes the ATP Participant a certain sum. A credit memo is used when the ATP 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 ATP Participant owes the entity against the amount the entity owes to the ATP Participant.

*Demonstration projects* means activities involving the erection or construction of a structure or facility or the installation of equipment.

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

*FAS* means Foreign Agricultural Service, USDA.

*FAS website* means a website maintained by FAS providing information on ATP. It is currently accessible at [www.fas.usda.gov/programs/agricultural-trade-promotion-program-atp](http://www.fas.usda.gov/programs/agricultural-trade-promotion-program-atp).

*Foreign third party* means a foreign entity that an ATP Participant works with to promote the export of a U.S.

agricultural commodity under the ATP program.

*Generic promotion* means an activity that is not a brand promotion but, rather, promotes a U.S. agricultural commodity generally. A generic promotion activity may include the promotion of a foreign brand (*i.e.*, a brand owned primarily by foreign interests and being used to market a commodity or product in a foreign market), if the foreign brand uses the promoted U.S. agricultural commodity from multiple U.S. suppliers. A generic promotion activity may also involve the use of specific U.S. company names, logos or brand names. However, in that case, the ATP Participant must ensure that all U.S. companies seeking to promote such U.S. agricultural commodity in the market have an equal opportunity to participate in the activity and that at least two U.S. companies participate. In addition, an activity that promotes separate items from multiple U.S. companies will be considered a generic promotion only if the promotion of the separate items maintains a unified theme (*i.e.*, a dominant idea or motif) and style and is subordinate to the promotion of the generic theme.

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

*Notification* means a document from the ATP Participant by which the ATP Participant proposes to CCC changes to the activities and/or funding levels in an approved ATP program agreement and/or approval letter.

*Product samples* means a representative part of a larger whole promoted commodity or group of promoted commodities. Product samples include all forms of a promoted commodity (*e.g.*, fresh or processed), independent of the ultimate utilization of the sample. Product samples must be used in support of international marketing activities including, but not limited to, displays, food process testing, cooking demonstrations, or trade and consumer tastings.

*Program agreement* means a document entered into between CCC and an ATP Participant setting forth the terms and conditions of approved activities under ATP, including any subsequent amendments to such agreement.

*Program period* means a 12-month period during which an ATP Participant can undertake activities consistent with this subpart and its program agreement and approval letter with CCC. Program periods will begin on January 1 and end on December 31 of the same year, or begin on July 1 and end on June 30 of the subsequent year.

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

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

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

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

*SRTG* means State Regional Trade Group. An SRTG is a nonprofit association of state-funded agricultural promotion agencies.

*Temporary contractor* means 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* means a group of individuals engaged in an approved activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

*UES website* means a website maintained by FAS through which applicants may apply online to ATP and any other USDA market development program. The website is currently accessible to persons with e-authentication certification at <https://apps.fas.usda.gov/ues/webapp/>.

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

*U.S. agricultural commodity* means any agricultural commodity, including any food, feed, fiber, forestry product, livestock, or insect of U.S. origin or fish harvested from a U.S. aquaculture farm or harvested by a vessel as defined in Title 46 of the United States Code, in waters that are not waters (including the territorial sea) of a foreign country, and any product thereof, excluding tobacco. An agricultural commodity shall be considered to be U.S. origin if it is comprised of at least 50 percent by weight, exclusive of added water, of agricultural commodities grown or raised in the United States.

*USDA* means the United States Department of Agriculture.

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

#### § 1489.12 Participation eligibility.

To participate in the ATP as an ATP Participant, an entity shall be:

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

#### § 1489.13 Application process.

(a) *General application requirements.* CCC will periodically issue a Notice of Funds Availability through the *Grants.gov* website that it is accepting applications for participation in the ATP. 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 website, but are not required to do so. Applicants may apply to conduct a generic promotion program and/or a brand promotion program that provides ATP funds to brand participants for branded promotion, as well as to conduct other market promotion activities including activities to address existing or potential non-tariff trade barriers. An applicant that is a U.S. agricultural cooperative may also apply for funds to conduct its own brand promotion program.

(1) *Applicant and program information.* All applications shall contain:

- (i) The name, address, and internet location of the home page of the applicant organization;
- (ii) The name of the applicant's Chief Executive Officer;
- (iii) The name, telephone number, fax number, and email address of the applicant's primary contact person;
- (iv) The name(s) of the person(s) responsible for managing the proposed program;
- (v) 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;
- (vi) Tax exempt identification number of the applicant, if applicable;
- (vii) Beginning and ending dates for proposed program period (mm/dd/yy–mm/dd/yy);
- (viii) Dollar amount of CCC resources requested for generic activities;
- (ix) Dollar amount of CCC resources requested for brand activities;
- (x) Dollar amount of CCC resources requested for other market promotion activities, including activities to address existing or potential non-tariff trade barriers;
- (xi) Total dollar amount of CCC resources requested;
- (xii) Percentage of CCC resources requested for general administrative expenses;
- (xiii) A Dun and Bradstreet DUNS number for the applicant;
- (xiv) A description of the applicant organization's membership and membership criteria;
- (xv) A list of organizations affiliated with the applicant, including parent organizations, subsidiaries, and partnerships;
- (xvi) A description of the applicant's management and administrative capability;
- (xvii) A description of the applicant's prior export promotion experience;
- (xviii) Value, in U.S. dollars, of proposed contributions from the applicant or the applicant's proposed contribution stated as a percentage of the total dollar amount of CCC resources requested; and

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

(2) *Program justification.* All applications shall contain:

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

(ii) A description of the anticipated supply and demand situation for the promoted U.S. agricultural commodity(s) as well as a demonstration of loss suffered as a result of imposed tariffs (reduced sales, lost revenue, and decreased market share, etc.);

(iii) 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;

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

(v) 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 CCC market development programs from year-to-year, variations in promotional strategies within a country, and new markets.

(3) *Proposed program's strategic plan.*

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

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

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

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

(D) A description of competition from other exporters;

(E) An evaluation plan describing the applicant's goals and the applicant's plans for monitoring and evaluating performance towards achieving these goals. This evaluation plan should set forth specific goals and benchmarks set at regular intervals to be used to identify results against identified constraints and opportunities and to measure progress made in the target market. Evaluation of a proposed ATP 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 ATP and of individual Participants' programming is to restore or increase sales that would not have occurred in the absence of ATP funding. An ATP Participant may modify and resubmit this plan for re-approval at any time during the program period.

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

(1) Historical U.S. export data;

(2) U.S. market share; and

(3) CCC market development program funds received by the applicant;

(G) For each target country, three 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 description of any demonstration projects, if applicable;

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

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

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

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

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

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

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

(b) *Requests for addition evaluation information.* 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.* CCC will consider proposals for demonstration projects, provided:

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

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

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

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

(d) *Universal Identifier and Central Contractor Registration (CCR).* In accordance with 2 CFR part 25, each entity that applies to the ATP program and does not qualify for an exemption under 2 CFR 25.110 must:

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

(2) Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and

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

(e) *Reporting Subaward and Executive Compensation Information.* In accordance with 2 CFR part 170, each entity that applies to the ATP program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive ATP funding.

**§ 1489.14 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 ATP through another ATP Participant.

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

(1) The effectiveness of program management;

(2) Soundness of accounting procedures;

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

(4) Prior export promotion experience;

(5) Appropriateness of staffing;

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

(i) Description of target market conditions;

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

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

(iv) Strategic prioritization identified in proposed plan;

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

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

(vii) Past CCC market development 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 period's ATP Notice of Funds Availability announcement:

(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 to meet minimum cost share requirements;

(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) Proposed ATP-funded general administrative and overhead costs compared to proposed ATP-funded direct promotional costs; and

(d) *Approval decision*—(1) *Approval criteria and factors.* CCC will approve those applications that it determines best satisfy the criteria and factors specified in paragraphs (b) and (c) of this section.

(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 an

ATP Participant's program, including any requirements with respect to contributions and program evaluations. An applicant that decides to accept the terms and conditions contained in the program agreement or amendment and the approval letter must so indicate by having its Chief Executive Officer (CEO) or designee sign the program agreement or amendment and the approval letter and submit these to CCC. Final agreement shall occur when the program agreement or amendment and the approval letter are signed by both parties.

(f) *Signature cards.* The ATP Participant shall designate at least two individuals in its organization to sign program agreements and amendments, approval letters, reimbursement claims, and advance requests. The ATP Participant shall submit the signature card signed by those designated individuals and by the ATP 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 ATP Participant with IDs and passwords for the UES website, as necessary. ATP Participants shall protect these IDs and passwords in accordance with USDA's information technology policies that CCC will provide to ATP Participants. ATP 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) *Annual certifications.* An ATP Participant through which U.S. for-profit entities are participating in the ATP program shall obtain annual certifications from all such entities that certify their size or their status as U.S. agricultural cooperatives, as defined in these regulations. The Participant shall retain these certifications in accordance with the recordkeeping requirements of this part.

(i) *Changes to activities and funding*—(1) *Adding a new activity.* (i) An ATP Participant may not conduct a new activity without first obtaining an approved activity budget for such change. To request approval of such activity



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budget, the ATP Participant shall submit a notification to CCC.

(ii) A notification for a new activity shall provide an activity justification and identify any related adjustments to the approved strategic plan, including changes in market, constraint, or opportunity that the activity proposes to address. The notification shall contain the activity description, the proposed budget, and a justification of transfer of funds.

(iii) After receipt of the notification, CCC will inform the ATP Participant via the UES website whether the requested budget is approved.

(2) *Modifying existing activities and their funding levels.* (i) An ATP Participant desiring to increase the funding level for existing, approved activities addressing a single constraint or opportunity by more than \$25,000 or 25 percent of the approved funding level, whichever is greater, must first submit a notification explaining the adjustment to CCC before making such change.

(ii) An ATP Participant may make significant adjustments below that threshold to the funding levels for existing, approved activities without prior notification to CCC, only if it submits a notification explaining the adjustments to CCC no later than 30 days after the change. Minor adjustments to existing, approved activities and/or funding levels do not require notification.

(iii) Notifications shall describe the activity, changes to the activity, the existing funding level, the proposed funding level, and a justification for transfer of funds, if applicable.

**§ 1489.15 Operational procedures for brand programs.**

(a) Where CCC approves an application by an ATP Participant to run a brand promotion program that will include brand participants, the ATP Participant shall establish brand program operational procedures. The ATP Participant shall submit to CCC for approval its proposed brand program operational procedures. CCC will notify all ATP Participants in writing in each Participant's approval letter and through the FAS website as to applicable submission dates for and dates for

approvals of brand program operation procedures. Such procedures shall include, at a minimum, a brand program application, application procedures, application review criteria, brand participant eligibility requirements, a participation agreement, reimbursement requirements, compliance requirements, reporting and recordkeeping requirements, employment practices, financial management requirements, contracting procedures, and evaluation requirements. The ATP Participant must submit to CCC for approval any proposed changes to already approved brand program operational procedures before implementing such proposed changes.

(b) The ATP Participant shall not enter into any participation agreements with brand participants nor shall it implement any ATP brand activities unless and until CCC has communicated in writing its approval of the proposed operational procedures to the ATP Participant.

(c) Participation agreements between ATP Participants and brand participants: Where CCC approves an ATP Participant's application to run a brand promotion program that will include brand participants, the ATP Participant shall enter into participation agreements with brand participants. Brand participants' size may not exceed 300 percent of the applicable small business size standard. These agreements must:

(1) Specify a time period for such brand promotion and require that all brand promotion expenditures be made within the ATP Participant's approved program period;

(2) Make no allowance for extension or renewal;

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

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

(5) Include a written certification by the brand participant that it either owns the brand of the product it will promote or has exclusive rights to promote the brand in each of the countries

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in which promotion activities will occur;

(6) Require that all product labels, promotional material, and advertising will identify the origin of the U.S. agricultural commodity as “American”, “Product of the United States of America”, “Product of the U.S.”, “Product of the U.S.A.”, “Product of America”, “Grown in the United States of America”, “Grown in the U.S.”, “Grown in the U.S.A.”, “Grown in America”, “Made in the United States of America,” “Made in the U.S.”, “Made in the U.S.A.”, “Made in America”, or product of, grown in or made in any state or territory of the United States of America spelled out in its entirety, or other U.S. regional designation if approved in advance by the CCC; that such origin identification will be conspicuously displayed in a manner easily observed as identifying the origin of the product; and that such origin identification will conform, to the extent possible, to the U.S. standard of 1/8 inch (.42 centimeters) in height based on the lower case letter “o”. The use of the above terms as a descriptor or in the name of the product (*e.g.*, Cincinnati style chili, Gina’s American Pizza) does not satisfy the product origin requirement. Phrases “product of”, “grown in” or “made in” are encouraged, but not required. An ATP 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 the CCC that this labeling requirement would hinder an ATP Participant’s promotional efforts. CCC will determine, on a case by case basis, whether sufficient justification exists to grant an exemption from the labeling requirement. In addition, the CCC may temporarily waive this requirement where the CCC has determined that such labeling will likely harm sales rather than help them. Such determinations will be announced to ATP Participants via an ATP notice issued on the FAS website;

(7) Include a written certification by the brand participant that identifies its size on the date of its application for branded program funding or that it is a U.S. agricultural cooperative;

(8) Require that the brand participant submit to the ATP Participant a statement certifying that any Federal funds received will supplement, but not supplant, any private or third party funds or other contributions to program activities; and

(9) Require the brand participant to maintain all original records and documents relating to program activities for three calendar years following the end of the applicable program period and make such records and documents available upon request to authorized officials of the U.S. Government.

### § 1489.16 Contribution rules.

(a) In ATP generic promotion programs, an ATP 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 the CCC for all generic promotion activities proposed to be undertaken by the ATP Participant.

(b) In ATP brand promotion programs, an ATP Participant conducting its own brand promotion that is a U.S. agricultural cooperative or a small-sized brand participant shall contribute at least 50 percent of the total eligible expenditures made on each approved brand promotion.

(c) An ATP Participant must use its own funds and may not use ATP program funds to pay any administrative costs of the ATP Participant’s U.S. office(s), including legal fees, except as set forth in this subpart. Where the ATP Participant uses its own funds to pay for administrative costs, such costs may be counted in calculating the amount of contributions the ATP Participant contributes to ATP generic or brand promotion programs.

(d) Eligible contributions:

(1) In calculating the amount of contributions that it will make, and the contributions that the U.S. industry (including expenditures to be made by entities in the applicant’s industry or agricultural sector in support of the entities’ related promotion activities in the markets covered by the applicant’s application) or State agency will make, the ATP applicant may include the costs listed under paragraph (d)(2) of this section if:

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(i) Expenditures are necessary and reasonable for accomplishment of an approved activity;

(ii) Expenditures are not included as contributions for any other Federal award;

(iii) Expenditures are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs.

(2) Subject to paragraph (d)(1) of this section, as well as applicable cost principles (*e.g.*, 2 CFR part 200) to the extent these principles do not directly conflict with the provisions of this subpart, eligible contributions are:

- (i) Cash;
- (ii) Compensation paid to personnel;
- (iii) The cost of acquiring materials, supplies or services;
- (iv) The cost of office space;
- (v) A reasonable and justifiable proportion of general administrative costs and overhead;
- (vi) Payments for indemnity and fidelity bond expenses;
- (vii) The cost of business cards that target a foreign audience;
- (viii) The cost of subscriptions that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the ATP Participant;
- (ix) The cost of activities conducted overseas;
- (x) Credit card fees;
- (xi) The cost of any independent evaluation or audit that is not required by the CCC to ensure compliance with program agreement or regulatory requirements;
- (xii) The cost of giveaways, awards, prizes and gifts;
- (xiii) The cost of product samples;
- (xiv) Fees for participating in U.S. government sponsored or endorsed export promotion activities;
- (xv) The cost of air and local travel in the United States;
- (xvi) STRE and the cost associated with trade shows, seminars, and entertainment conducted in the United States where the STRE and costs associated with trade shows, seminars, and

entertainment have a programmatic purpose and are authorized in the program agreement and/or the approval letter or authorized by prior written approval of the CCC;

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

(xviii) 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) The cost of refreshments and related equipment provided to office staff;

(v) The cost of insuring articles owned by private individuals;

(vi) The cost of any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(vii) The cost of product development, product modifications, or product research, except as described in §1489.17(c)(22);

(viii) Slotting fees or similar sales expenditures;

(ix) Membership fees in clubs and social organizations; and

(x) Any expenditure for an activity prior to the CCC’s approval of that activity.

(4) The CCC shall determine, at the CCC’s discretion, whether any cost not expressly listed in this section may be included by the ATP Participant as an eligible contribution.

**§ 1489.17 Reimbursement rules.**

(a) An ATP Participant may seek reimbursement for an eligible expenditure if:

- (1) The expenditure was necessary and reasonable for accomplishment of an approved activity; and

(2) The Participant has not been and will not be reimbursed for such expenditure by any other source.

(b) Subject to paragraphs (a) and (d) of this section, as well as applicable cost principles (*e.g.*, 2 CFR part 200) to the extent these principles do not directly conflict with the provisions of this subpart, for either brand or generic promotion activities, the CCC will reimburse, in whole or in part, the cost of:

(1) Production and placement of advertising, in print, electronic media, billboards, or posters, which may include advertising the availability of price discounts, except that advertising associated with a coupon or price discount for the ATP-promoted product is not reimbursable. If advertising is related to both coupons or price discounts for products other than the ATP Participant's promoted products as well as for ATP-promoted products, expenditures for such advertising will not be reimbursed in whole or in part (*e.g.*, expenditures may not be prorated and submitted for reimbursement). Electronic media includes, but is not limited to, radio, television, electronic mail, internet, telephone, text messaging, and podcasting;

(2) Production and distribution of banners, recipe cards, table tents, shelf talkers, and other similar point of sale materials;

(3) Direct mail advertising;

(4) In-store and food service promotions, product demonstrations to the trade and to consumers, and distribution of product samples (but not the purchase of the product samples, except as authorized in paragraph (c)(9) of this section).

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

(6) Expenditures, other than travel expenditures, associated with seminars and educational training, whether conducted in the United States or outside the United States;

(7) Subject to paragraph (b)(18) of this section, expenditures, other than travel expenditures, associated with retail, trade and consumer exhibits and shows, whether held outside or inside the United States, including participation fees, booth construction, transportation of related materials, rental of

space and equipment, and duplication of related printed materials. However, with regard to non-travel expenditures associated with retail, trade and consumer exhibits and shows held inside the United States, such expenditures are reimbursable only if the exhibit or show is: A food or agricultural show with no less than 30 percent of exhibitors selling food or agricultural products; and an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15 percent of its visitors are from countries other than the host country. CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which ATP reimbursement is available and such list will be announced to ATP Participants via an ATP notice issued on FAS' website;

(8) Subject to paragraph (b)(18) of this section, international travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for no more than two representatives of a single brand participant (or ATP Participant directly running its own brand program) to exhibit their company's (or cooperative's) products at a retail, trade, or consumer exhibit or show held outside the United States. Representatives may include employees and board members of private companies, employees or members of cooperatives, or any broker, consultant, or marketing representative contracted by the company or cooperative to represent the company or cooperative in sales transactions. All travel should follow a direct or usually traveled route;

(9) Subscriptions that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the ATP Participant;

(10) Demonstrators, interpreters, translators, receptionists, and similar temporary workers who help with the implementation of individual promotional activities, such as trade

shows, in-store promotions, food service promotions, and trade seminars;

(11) Giveaways, awards, prizes, gifts and other similar promotional materials, subject to such reimbursement limitation as CCC may determine and announce in writing to ATP Participants via an ATP notice issued on FAS' website. Reimbursement is available only when:

(i) The items are described in detail with a per unit cost in an approved strategic plan; and

(ii) Distribution of the promotional item is not contingent upon the consumer, or other target audience, purchasing a good or service to receive the promotional item;

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

(13) The design, production, and distribution of coupons for products other than the ATP Participant's promoted products. If such activities include both coupons or price discounts for products other than the ATP Participant's promoted products as well as for ATP-promoted products, expenditures for such activities will not be reimbursed in whole or in part (*e.g.*, expenditures may not be prorated and submitted for reimbursement);

(14) An audit of an ATP Participant as required by 2 CFR part 200, subpart F, if the ATP is the ATP Participant's largest source of Federal funding;

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

(16) Expenditures associated with developing, updating, and servicing websites on the internet that clearly target a foreign audience;

(17) International travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, incurred for a foreign trade mission conducted outside the United

States that is an activity under an approved branded program and that has met the following conditions:

(i) Trade mission travel for company (or cooperative) representatives was identified as a separate approved activity in the ATP Participant's UES;

(ii) The trade mission included representatives, as defined in paragraph (b)(8) of this section, from a minimum of five different companies (or cooperatives), and no more than two representatives from each participating company (or cooperative);

(iii) The appropriate FAS overseas office supported the trade mission by dedicating meaningful funding or other resources (such as facilities or staff time) to the activity; and

(iv) The ATP Participant with the approved brand program produced an itinerary or agenda for the trade mission that demonstrated that company (or cooperative) representatives would be engaged for a minimum of 6 hours per day (except for the first and last days of the mission) in trade mission activities that include, at a minimum, each of the following:

(A) A product showcase where the FAS overseas office approved an invitation list of qualified buyers;

(B) Pre-arranged one-on-one business meetings; and

(C) Evaluation and feedback sessions with FAS staff and trade mission sponsors.

(v) Reimbursement is conditional on the ATP Participant having notified in writing the Attaché/Counselor in the destination country in advance of the travel. All travel should follow a direct or usually traveled route;

(18) Where USDA has sponsored or endorsed a U.S. pavilion at a retail, trade and consumer exhibit or show, whether held outside or inside the United States, ATP funds may be used to reimburse the travel and/or non-travel expenditures of only those ATP Participants located within the U.S. pavilion. Such expenditures must also adhere to the standard terms and conditions of the U.S. pavilion organizer. All travel should follow a direct or usually traveled route. Upon written request, the CCC may temporarily waive this subsection, on a case by case basis, where:

(i) The trade show is segregated into product pavilions; or

(ii) A company's distributor or importer is located outside the U.S. pavilion. Such waiver will be provided to the ATP Participant in writing; and

(19) Contracts with U.S.-based organizations when the only contracted service such organizations provide to an ATP Participant is carrying out a specific market promotion activity in the United States directed to a foreign audience (*e.g.*, a trade mission of foreign buyers coming to the United States to visit U.S. exporters). Such contracts may be reimbursable as a direct promotional expense. If a U.S.-based organization provides administrative services to the ATP Participant's domestic home office during a program period, any direct promotional services such organization provides to the Participant, whether for the Participant's domestic or overseas offices, during the same program period are not reimbursable.

(c) Subject to paragraphs (a) and (d) of this section as well as applicable cost principles (*e.g.*, 2 CFR part 200), but for generic promotion activities only, the CCC will also reimburse, in whole or in part, the cost of:

(1) Temporary contractor fees for contractors stationed overseas, except the 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;

(2) Subject to paragraph (b)(18) of this section, international travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, for activities held outside the United States or in the United States, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, except that if the activity is participation in a retail, trade, or consumer exhibit or show held inside the United States, international travel expenditures are covered only if the exhibit or show is: A food or agricultural

show with no less than 30 percent of exhibitors selling food or agricultural products; and an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15 percent of its visitors are from countries other than the United States. The CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which ATP reimbursement is available and such list will be announced to ATP Participants via an ATP notice issued on FAS' website.

(i) The CCC generally will not reimburse any portion of air travel, including any fees for modifying the originally purchased ticket, in excess of the full fare economy rate or when the ATP Participant fails to notify the Attaché/Counselor in the destination country in advance of the travel, unless the CCC determines it was impractical to provide such notice. If a traveler flies in business class or a different premium class, the basis for reimbursement will be the full fare economy class rate for the same flight and the ATP Participant shall provide documentation establishing such full fare economy class rate to support its reimbursement claim. If economy class is not offered for the same flight or if the traveler flies on a charter flight, the basis for reimbursement will be the average of the full fare economy class rate for flights offered by three different airlines between the same points on the same date and the ATP Participant shall provide documentation establishing such average of the full fare economy class rates to support its reimbursement claim.

(ii) In limited circumstances, the ATP Participant may be reimbursed for air travel up to the business class rate (*i.e.*, a premium class rate other than the first class rate) upon prior written approval by the CCC. Such circumstances are:

(A) Regularly scheduled flights between origin and destination points do not offer economy class (or equivalent) airfare and the ATP Participant receives written documentation from its travel agent to that effect at the time the tickets are purchased;

(B) Business class air travel is necessary to accommodate an eligible traveler's disability. Such disability must be substantiated in writing by a physician; and

(C) If an eligible traveler is an employee, contractor, or member of an ATP participant organization, and the eligible traveler's origin and/or destination are outside of the continental United States and the scheduled flight time, beginning with the scheduled departure time, ending with the scheduled arrival time, and including stopovers and changes of planes, exceeds 14 hours. In such case, per diem and other allowable expenses will also be reimbursable for the day of arrival. However, no expenses will be reimbursable for a rest period or for any non-work days (*e.g.*, weekends, holidays, personal leave, etc.) immediately following the date of arrival.

(D) If an eligible traveler is the target of a market development activity (*e.g.*, a foreign buyer, foreign importer, member of the foreign media) the ATP Participant may be reimbursed for air travel up to the business class rate when the eligible traveler's origin and/or destination are outside of the continental United States and the scheduled flight time, beginning with the scheduled departure time, ending with the scheduled arrival time, and including stopovers and changes of planes, exceeds five hours. In such case, per diem and other allowable expenses will also be reimbursable for the day of arrival. However, no expenses will be reimbursable for a rest period or for any non-work days (*e.g.*, weekends, holidays, personal leave, etc.) immediately following the date of arrival.

(iii) Alternatively, in lieu of reimbursing up to the business class rate in such circumstances noted in paragraphs (c)(2)(ii)(C) and (d) of this section, the CCC will reimburse economy class airfare plus per diem and other allowable travel expenses related to a rest period of up to 24 hours, either en route or upon arrival at the destination. For a trip with multiple destinations, each origin/destination combination will be considered separately when applying the 14-hour rule for eligibility of reimbursement of business class travel or rest period expenses.

(iv) A stopover for purposes of this paragraph (c)(2) is the time a traveler spends at an airport, other than the originating or destination airport, which is a normally scheduled part of a flight. A change of planes is the time a traveler spends at an airport, other than the originating or destination airport, to disembark from one flight and embark on another.

(v) All travel under this paragraph (c)(2) should follow a direct or usually traveled route. Under no circumstances should a traveler select flights in a manner that extends the scheduled flight time to beyond 14 hours in part to secure eligibility for reimbursement of business class travel. An eligible traveler that is the target of a market development activity is only eligible for a rest period when that traveler flies in economy class and meets the 14-hour test;

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

(4) Other allowable expenditures while in travel status as authorized by the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200;

(5) Accident liability insurance premiums for facilities used jointly with third-party participants for ATP activities or for ATP-funded travel of third-party participants;

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

(7) Legal fees incurred in resolving trade issues with foreign countries;

(8) The sample purchase price, and the cost of transporting samples domestically in the United States to the port of export and then to the first foreign port or first point of entry, for samples of U.S. agricultural commodities used to provide on-site technical assistance to the trade necessary to facilitate successful use of the relevant U.S. agricultural commodity by importers. The target of such activity must be the trade, and not consumers, but any product resulting from the technical training can be used to determine consumer preferences;

(9) STRE incurred outside of the United States and STRE incurred within the United States in conjunction

with an approved activity where the STRE has a programmatic purpose and are authorized with prior written approval from the CCC. ATP Participants are required to use the appropriate American Embassy representational funding guidelines for breakfasts, lunches, dinners and receptions incurred outside of the United States as the basis for their calculating eligible expenses. ATP Participants may exceed Embassy guidelines by 25 percent without prior approval. ATP Participants may only exceed 125 percent of Embassy guidelines when they have received written authorization from the FAS Agricultural Counselor at the Embassy. The amount of unauthorized STRE expenses that exceed 125 percent of the guidelines will not be reimbursed. ATP Participants must pay the difference between the total cost of STRE events and the appropriate amount as determined by the guidelines and these regulations. For STRE incurred in the United States, the ATP Participant should provide, in its request for approval, the basis for determining its proposed expenses;

(10) U.S. office(s) administrative support expenses, incurred specifically to administer the ATP, for the National Association of State Departments of Agriculture, the SRTGs, and the Intertribal Agriculture Council. The level of such funding will be established in the approval letter.

(11) U.S. office(s) administrative support expenses, incurred specifically to administer the ATP, for any ATP Participants not identified in this paragraph (c)(11), will be considered, except for agricultural cooperatives. Reimbursement for such expenses shall not exceed six percent of the ATP Participant's total ATP budget. The level of such funding will be established in the approval letter.

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

(14) Subject to paragraph (b)(18) of this section, domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for international retail, trade and consumer exhibits and shows conducted in

the United States upon prior written approval by CCC. Domestic travel expenses to such a show or exhibit are covered only if the exhibit or show is: A food or agricultural show with no less than 30 percent of exhibitors selling food or agricultural products; and an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15 percent of its visitors are from countries other than the host country. CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which ATP reimbursement is available and such list will be announced to ATP Participants via an ATP notice issued on FAS' website;

(15) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for seminars and educational training conducted in the United States;

(16) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for up to two individuals, whether home office ATP Participant employees, ATP Participant board members, or state department of agriculture employees paid by the ATP Participant, or a combination thereof, when such individuals accompany foreign trade missions or technical teams while traveling in the United States where the following conditions are met:

(i) Such trade missions or technical team visits are identified in the ATP Participant's UES;

(ii) Such trade missions or technical team visits have been approved by CCC; and

(iii) The ATP-sponsored travelers submit a follow-up trip report to CCC that includes the following:

(A) Purpose for the individuals' participation;

(B) Any pre-arranged business meetings;

(C) Itinerary and/or agenda for the trip; and

(D) Feedback from sponsors and trade mission/technical team members on the success of the trip.

(17) Approved demonstration projects;



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

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

(20) Business cards that target a foreign audience;

(21)(i) Expenditures associated with developing, updating, and servicing websites on the internet that:

(A) Contain a message related to exporting or international trade;

(B) Include a discernible “link” to the FAS website or an FAS overseas office website; and

(C) Have been specifically approved by the appropriate FAS division. Expenditures related to websites or portions of websites that are accessible only to an organization’s members are not reimbursable.

(ii) Reimbursement claims for websites that include “members only” sections must be prorated to exclude the costs associated with those areas subject to restricted access; and

(22) Expenditures not otherwise prohibited from reimbursement that are associated with activities held in the United States or abroad designed to improve market access by specifically addressing temporary, permanent, or impending non-tariff barriers to trade that prohibit or threaten U.S. exports of agricultural commodities. Examples of such expenditures include, but are not limited to: Initial pre-clearance programs, educational training, policy advocacy, public relations efforts, foreign country audits of U.S. facilities, export protocol and work plan support, seminars and workshops, study tours, field surveys, development of pest lists, pest and disease research, database development, and reasonable logistical and administrative support.

(d) CCC will not reimburse any cost of:

(1) Forward year financial obligations, such as severance pay, attributable to employment of foreign nationals;

(2) Expenses, fines, settlements, or judgments relating to legal suits, challenges or disputes, except as otherwise allowed in 2 CFR part 200 and these regulations;

(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, except as specified in paragraph (c)(22) of this section;

(5) Product samples to be distributed to consumers;

(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 period. However, the CCC may, at its discretion, reimburse the construction or purchase of permanent displays on a case-by-case basis, if the Participant sought and received prior written approval from the CCC of such construction or purchase;

(8) Rental, lease or purchase of warehouse space, except for storage space for program-related material;

(9) Coupon redemption or price discounts of the ATP promoted commodity;

(10) Refundable deposits or advances;

(11) Giveaways, awards, prizes, gifts and other similar promotional materials in excess of the limitation that the CCC will determine. Such determination will be announced in writing via an ATP notice issued on FAS’ website;

(12) Alcoholic beverages that are not an integral part of an approved promotional activity;

(13) The purchase, lease (except for use in authorized travel status) or repair of motor vehicles;

(14) Travel of applicants for employment interviews;

(15) Unused non-refundable airline tickets or associated penalty fees, except where travel was restricted by U.S. Government action or advisory;

(16) Independent evaluations or audits, including evaluations or audits of the activities of a subcontractor, if the CCC determines that such a review is needed in order to confirm past or to ensure future program agreement or regulatory compliance;

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(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, except as otherwise allowed in 2 CFR part 200;

(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 ATP Participant;

(26) U.S. office(s) administrative expenses, including communication costs, except as noted in paragraphs (c)(11) and (12) of this section and except that usage costs for communications devices incurred while on reimbursable international or domestic travel for approved ATP brand or generic promotion activities are reimbursable as eligible travel expenditures as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200;

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

(28) Payment of U.S. and foreign employees' or contractors' share of personal taxes;

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

(30) Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening; and

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

(e) For a brand promotion activity, the CCC will reimburse no more than 50

percent of the total eligible expenditures made on that activity by a brand participant.

(f) The CCC will reimburse for expenditures made after the conclusion of an ATP Participant's program period provided:

(1) The activity was approved by the CCC prior to the end of the program period;

(2) The activity was completed within 30 calendar days following the end of the program period; and

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

(g) An ATP Participant shall not use ATP funds for any activity or any expenses incurred by the ATP 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 the CCC.

(h) Except as otherwise provided in this subpart, ATP-funded travel shall conform to U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200 and ATP-funded air travel shall conform to the requirements of the Fly America Act (49 U.S.C. 40118). For international travel, the ATP Participant shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel.

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

### § 1489.18 Reimbursement procedures.

(a) Participants are required to use the CCC's UES system to request reimbursement for eligible ATP 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

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

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

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

(d) The CCC will not reimburse claims submitted later than 6 months after the end of an ATP Participant's program period.

(e) If the CCC overpays a reimbursement claim, the ATP Participant shall repay the CCC within 30 days of such overpayment the amount of the overpayment either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by the CCC.

(f) If an ATP Participant receives a reimbursement or offsets an advanced payment which is later disallowed, the ATP Participant shall repay the CCC within 30 days of such disallowance the amount disallowed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by the CCC.

(g) ATP funds may be expended by ATP Participants only on legitimate, approved activities as set forth in the program agreement and approval letter. If an ATP Participant discovers that ATP funds have not been properly spent, it shall notify the CCC and shall within 30 days of its discovery repay the CCC the amount owed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by the CCC.

(h) The ATP Participant shall report any actions that may have a bearing on the propriety of any claims for reimbursement in writing to CCC.

**§ 1489.19 Advances.**

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

(b) *Exception.* An ATP Participant for generic promotion activities may request an advance of ATP funds from the CCC, provided the ATP Participant meets the criteria for advance payments in 2 CFR part 200. The CCC will not approve any request for an advance submitted later than 3 months after the end of an ATP Participant's program period. At any given time, total payments advanced shall not exceed 40 percent of an ATP Participant's approved generic activity budget for the program period. The CCC will not advance funds to an ATP Participant for brand promotion activities. When approving a request for an advance, the CCC may require the ATP Participant to carry adequate fidelity bond coverage when the absence of such coverage is considered to create an unacceptable risk to the interests of the ATP. Whether an "unacceptable risk" exists in a particular situation will depend on a number of factors, such as, for example, the Participant's history of performance in ATP; the Participant's perceived financial stability and resources; and any other factors presented in the particular situation that may reflect on the Participant's responsibility or the riskiness of its activities.

(c) *Interest.* An ATP Participant shall deposit and maintain in an insured bank account in the United States all funds advanced by the CCC. The account shall be interest-bearing, unless the exceptions in 2 CFR part 200 apply. Interest earned by the ATP Participant on funds advanced by the CCC is not program income. The ATP Participant shall remit any interest earned on the advanced funds to the appropriate entity as set forth in the applicable parts of this title.

(d) *Refunds due the CCC.* An ATP Participant shall fully expend all advances on approved generic promotion activities within 90 calendar days after the date of disbursement by the CCC. By the end of the 90 calendar days, the ATP Participant must submit reimbursement claims to offset the advance and submit a check made payable to CCC for any unexpended balance. The

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ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by the CCC.

### § 1489.20 Financial management.

(a) An ATP Participant shall implement and maintain a financial management system that conforms to generally accepted accounting principles. An ATP Participant's financial management system shall comply with the standards in 2 CFR part 200.

(b) An ATP Participant shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with these regulations.

(c) An ATP Participant shall retain all records concerning an ATP program transaction for a period of three years after completion of the program transaction and permit the CCC to have full and complete access, for such three year period, to such records. These records shall include all records pertaining to contractors.

(d) An ATP 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 a set amount CCC will determine and announce in writing to all ATP Participants via an ATP notice issued on the FAS website. The CCC may, from time to time, set a different minimum amount. In that case, the CCC will announce the new amount in writing to all ATP Participants via an ATP notice issued on the FAS website;

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

(4) Copies of reimbursement claims;

(5) An itemized list of claims charged to each of the ATP 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. ATP Participants must retain and make available for compliance review documentation related to claimed contributions.

(e) Upon request, an ATP Participant shall provide to the CCC originals of documents supporting reimbursement claims.

### § 1489.21 Reports.

(a) *End-of-Year Contribution Report.* Not later than 6 months after the end of its program period, an ATP Participant shall submit two copies of a report that identifies, by cost category and in U.S. dollar equivalent, contributions made by the Participant, the U.S. industry, and the States during that program period. 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), an ATP 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 period, an ATP Participant shall submit a report on any research conducted pursuant to the approved ATP program.

(d) *Evaluation reports.* Not later than 6 months after the end of its program period, an ATP Participant shall submit a report on any evaluations conducted in accordance with the approved ATP program, including the outcome

of action taken with ATP funding and the increased market access or exports that can be directly attributed to the ATP program.

(e) *Annual audits.* Where the CCC is designated the cognizant agency for audit, the CCC may require the ATP Participant to submit to the CCC an annual audit in accordance with 2 CFR part 200. If the CCC requires an additional audit with respect to a particular agreement, the ATP Participant shall arrange for such audit and shall submit to the CCC, in the manner to be specified by the CCC, such audit of the agreement.

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

(g) *Approved letters.* An ATP Participant's program agreement and/or approval letter shall specify to whom the Participant shall submit the reports required in this section.

(h) *Program reviews.* FAS through its authorized representatives, may review project accomplishments, management control systems, and administration of funding provided through the program to ensure adherence to requirements. During such reviews, FAS will review recipients' files related to the grant-funded program and technical assistance may be required.

#### § 1489.22 Evaluation.

(a)(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 ATP. Evaluation of the ATP'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 ATP and of individual Participants' programming is to increase sales that would not have occurred in the absence of ATP funding. An ATP 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 an ATP Participant's program, contributing to program accountability, and providing evidence of program effectiveness that directly ties program funds to increased sales.

(b) All ATP 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 the CCC no later than 6 months following the end of the Participant's program period.

(c) ATP 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 ATP program. This evaluation shall be completed and submitted to CCC no later than 6 months following the end of the Participant's program period.

(d) When appropriate or required by the CCC, an ATP Participant shall complete a program evaluation. A program evaluation is a review of the ATP Participant's entire program, or an appropriate portion of the program as agreed to by the ATP Participant and CCC, to determine the effectiveness of the ATP Participant's strategy in meeting specified goals. Actual scope and timing of the program evaluation shall be determined by the ATP Participant and CCC and specified in the approval letter. An ATP 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 (for example, 2 CFR part 200), 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 the CCC, an ATP Participant shall complete and submit program success stories. The CCC will announce to all ATP Participants in writing via an ATP notice issued on the FAS website the detailed requirements for completing and submitting program success stories.

**§ 1489.23 Compliance reviews and notices.**

(a) USDA staff may conduct compliance reviews of ATP Participants' activities under the ATP program. ATP 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 ATP 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 ATP Participant shall repay the CCC the amount owed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by the CCC. If, however, an ATP Participant notifies the CCC within 30 days of the date of the compliance

report that the Participant intends to file an appeal pursuant to paragraph (e) of this section, the amount owed to the CCC by the ATP Participant is not due until the appeal procedures are concluded and the CCC has made a final determination as to the amount owed. In the absence of any finding of funds due to the CCC or other non-compliance, the CCC will issue a letter to the ATP Participant. If, as a result of a compliance review, the CCC determines that further review is needed in order to ensure compliance with the requirements of ATP, the CCC may require the Participant to contract for an independent audit.

(c) In addition, the CCC may notify an ATP Participant in writing at any time if CCC determines that CCC may be entitled to recover funds from the Participant. The CCC will explain the basis for any recovery of funds from the Participant in the written notice. The ATP Participant shall, within 30 days of the date of the notice, repay the CCC the amount owed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by the CCC. If, however, an ATP Participant notifies the CCC within 30 days of the date of the written notice that the Participant intends to file an appeal pursuant to paragraph (e) of this section, the amount owed to the CCC by the ATP Participant is not due until the appeal procedures are concluded and the CCC has made a final determination as to the amount owed.

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

(e) Appeals:

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

(2) After review of the Participant's response, the CCC shall determine whether the Participant owes any

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funds to the CCC and will inform the Participant in writing of the basis for the determination. The CCC will initiate action to collect such amount by providing the Participant a written demand for payment of the debt pursuant to Debt Settlement Policies and Procedures, 7 CFR part 1403.

(3) Within 30 days of the date of the determination, the Participant may request in writing that the 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, the 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, the CCC may in its discretion have a transcript prepared at the CCC's expense.

(5) The 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 the CCC.

### **§ 1489.24 Failure to make required contribution.**

An ATP Participant's required contribution will be specified in the approval letter. If the ATP Participant's required contribution is specified as a dollar amount and the ATP Participant does not make the required contribution, the ATP Participant shall pay to the CCC in dollars the difference between the amount actually contributed and the amount specified in the approval letter. If the ATP Participant's required contribution is specified as a percentage of the total amount reimbursed by the CCC, the ATP Participant may either return to the CCC the amount of funds reimbursed by the CCC to increase its actual contribution percentage to the required level or pay to the 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. An ATP Participant shall remit such payment within six months

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after the end of its program period. The ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by the CCC.

### **§ 1489.25 Submissions.**

For all permissible methods of delivery, submissions required by this subpart shall be deemed submitted as of the date received by the CCC.

### **§ 1489.26 Disclosure of program information.**

(a) Documents submitted to CCC by ATP 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 an ATP Participant pursuant to an ATP program agreement and/or approval letter shall be subject to the provisions relating to intangible property in 2 CFR part 200.

### **§ 1489.27 Ethical conduct.**

(a) An ATP 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. An ATP Participant shall conduct its business in the United States in accordance with applicable Federal, State and local laws and regulations. All ATP Participants must comply with the regulations in 2 CFR part 200 and this part.

(b) Except for a U.S. agricultural cooperative or a U.S. for-profit entity, neither an ATP Participant nor its affiliates shall make export sales of U.S. agricultural commodities and products covered under the terms of the applicable ATP agreement. Nor shall such entities charge a fee for facilitating an export sale. An ATP Participant may, however, collect check-off funds and membership fees that are required for membership in the ATP 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) An ATP Participant shall not limit participation in its ATP activities to members of its organization. Participants shall ensure that their ATP-funded programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non-merit factors. The ATP 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 ATP agreement. The Participant may charge a fee not to exceed the costs for assembling, duplicating and distributing the materials. This paragraph does not apply to any U.S. agricultural cooperative when implementing its own brand program.

(d) An ATP Participant shall select U.S. agricultural industry representatives to participate in generic ATP 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 the CCC, an ATP Participant shall submit such selection criteria to the CCC for approval.

(e) All ATP 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 ATP agreement and the recovery of CCC funds related to such promotions from the Participant.

(f) The ATP Participant must report any actions or circumstances that may have a bearing on the propriety of its ATP program to the appropriate Attaché/Counselor, and its U.S. office shall report such actions or circumstances in writing to the CCC.

**§ 1489.28 Contracting procedures.**

(a) Neither the CCC nor any other agency of the U. S. Government nor any official or employee of the CCC, FAS, USDA, or the U.S. Government has any obligation or responsibility

with respect to ATP Participant contracts with third parties.

(b) An ATP 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 example, 2 CFR part 200).

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

(d) Each ATP Participant shall submit to the CCC, for CCC approval, written contracting guidelines for contracts that are funded, in whole or in part, with ATP funds. The CCC will notify all new and existing ATP Participants in writing in each Participant's approval letter and through the FAS website as to applicable submission dates for and dates for approvals of contracting guidelines. The CCC's approval of such contracting guidelines will remain in place until the CCC retracts its approval in writing, or until new guidelines are approved that supersede them. Once approved by the CCC, these contracting guidelines shall govern all of a Participant's ATP-funded contracting involving contracts with a minimum annual value that CCC will determine and announce in writing to all ATP Participants via an ATP notice issued on the FAS website. The CCC may, from time to time, set a different minimum value. In that case, the CCC will announce the new amount in writing to all ATP Participants via an ATP notice issued on the FAS website. The guidelines shall indicate the method for evaluating proposals received for all contract competitions, the method for monitoring and evaluating performance under contracts, and the method for initiating corrective action for unsatisfactory performance under contracts. The ATP Participant may modify and resubmit these guidelines for re-approval at any time. In addition to the requirements in 2 CFR part 200, these guidelines shall include, at a minimum, the following:

(1) Procedures for developing and publicizing requests for proposals, invitations for bids, and similar documents



that solicit third party offers to provide goods or services. Solicitations for professional and technical services shall be based on clear and accurate descriptions of and requirements related to the services to be procured. Such procedures must include a conflict-of-interest provision that states that no employee, officer, board member, or agent thereof of the ATP 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. ATP Participants' written contracting guidelines may detail special situations where the prohibitions in this subparagraph do not apply, such as in situa-

tions involving highly specialized technical services or situations where the services are not commonly offered in a specific market;

(4) Requirements to perform and document in the procurement files some form of price or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices in connection with every procurement action that is governed by the contracting guidelines;

(5) Requirements to conduct an appropriate form of competition every three years on all multi-year contracts that are governed by the contracting guidelines. However, contracts for in-country representation are not required to be re-competed after the initial award. Instead, the performance of in-country representation must be evaluated and documented by the ATP 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 ATP Participant.

(e) An ATP Participant may undertake ATP promotional activities directly or through a domestic or foreign third party. However, the ATP Participant shall remain responsible and accountable to the CCC for all ATP 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 the CCC in relation to such third party's promotional activities and expenditures.

#### § 1489.29 Property standards.

The ATP Participant shall insure all ATP-funded 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.

**§ 1489.30 Anti-fraud requirements.**

(a) *All ATP Participants.* (1) All ATP Participants shall submit to the CCC for approval a detailed fraud prevention program. The CCC will notify all new and existing ATP Participants in writing in each Participant's approval letter and through the FAS website as to applicable submission dates for and dates for approvals of fraud prevention programs. ATP Participants should review their fraud prevention programs annually. The fraud prevention program shall, at a minimum, include an annual review of physical controls and weaknesses, a standard process for investigating and remediation of suspected fraud cases, and training in risk management and fraud detection for all current and future employees. The ATP Participant shall not conduct or permit any ATP promotion activities to occur unless and until the CCC has communicated in writing approval of the ATP Participant's fraud prevention program.

(2) The ATP 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 ATP program agreement and/or approval letter. The ATP 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 the CCC or USDA to the ATP Participant for the prompt investigation of such allegation or occurrence.

(b) *ATP Participants with brand programs.* (1) The ATP Participant may charge a fee to brand participants to cover the cost of the fraud prevention program.

(2) The ATP Participant shall repay to the CCC funds paid to a brand participant through the ATP Participant on claims that the ATP Participant or the CCC subsequently determines are unauthorized or otherwise non-reimbursable expenses within 30 days of the ATP Participant's determination or CCC's disallowance. The ATP Participant shall repay CCC by submitting a check to CCC or by offsetting the ATP

Participant's next reimbursement claim. The ATP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. An ATP Participant operating a brand program in strict accordance with an approved fraud prevention program, however, will not be liable to reimburse CCC for ATP funds paid on such claims if the claims were based on misrepresentations or fraud of the brand participant, its employees or agents, unless the CCC determines that the ATP Participant was grossly negligent in the operation of the brand program regarding such claims. The CCC shall communicate any such determination to the ATP Participant in writing.

**§ 1489.31 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 ATP funds, shall be used by the ATP Participant in furtherance of its approved ATP activities in the program period during which the ATP funds are available for obligation by the ATP Participant. The use of such revenue or refunds shall be governed by 7 CFR part 1489. Interest earned on funds advanced by the CCC is not program income.

**§ 1489.32 Amendment.**

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

**§ 1489.33 Noncompliance with an agreement.**

If an ATP Participant fails to comply with any term in its program agreement or approval letter, the CCC may take one or more of the enforcement actions in 2 CFR part 200 and, if appropriate, initiate a claim against the ATP Participant, following the procedures set forth in this subpart. The CCC may also initiate a claim against an ATP Participant if program income or CCC-provided funds are lost due to an action or omission of the ATP Participant.

**§ 1489.34 Suspension, termination, and closeout of agreements.**

A program agreement may be suspended or terminated in accordance with the suspension and termination procedures in 2 CFR part 200. If an agreement is terminated, the applicable regulations in 2 CFR part 200 will apply to the closeout of the agreement.

**§ 1489.35 Paperwork reduction requirements.**

The paperwork and record keeping requirements imposed by this subpart have been submitted for review by OMB under the Paperwork Reduction Act of 1980. OMB has not yet assigned a control number for this information collection.

**PART 1491—FARM AND RANCH LANDS PROTECTION PROGRAM**

**Subpart A—General Provisions**

- Sec.
- 1491.1 Applicability.
- 1491.2 Administration.
- 1491.3 Definitions.
- 1491.4 Program requirements.
- 1491.5 Application procedures.
- 1491.6 Ranking considerations and proposal selection.

**Subpart B—Cooperative Agreements and Conservation Easement Deeds**

- 1491.20 Cooperative agreements.
- 1491.21 Funding.
- 1491.22 Conservation easement deeds.

**Subpart C—General Administration**

- 1491.30 Violations and remedies.
- 1491.31 Appeals.
- 1491.32 Scheme or device.

AUTHORITY: 16 U.S.C. 3838h–3838i.

SOURCE: 76 FR 4039, Jan. 24, 2011, unless otherwise noted.

**Subpart A—General Provisions**

**§ 1491.1 Applicability.**

(a) The regulations in this part set forth requirements, policies, and procedures for implementation of the Farm and Ranch Lands Protection Program (FRPP) as administered by the Natural Resources Conservation Service (NRCS). FRPP cooperative agreements will be administered under the regula-

tions in effect at the time the cooperative agreement is signed.

(b) The NRCS Chief may implement FRPP in any of the 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**§ 1491.2 Administration.**

(a) The regulations in this part will be administered under the general supervision and direction of the NRCS Chief.

(b) NRCS will—

(1) Provide overall program management and implementation leadership for FRPP;

(2) Develop, maintain, and ensure that policies, guidelines, and procedures are carried out to meet program goals and objectives;

(3) Ensure that the FRPP share of the cost of an easement or other deed restrictions in eligible land will not exceed 50 percent of the appraised fair market value of the conservation easement;

(4) Determine eligibility of the land, landowner, State government, local government, Indian Tribe, or non-governmental organization;

(5) Ensure a conservation plan is developed in accordance with 7 CFR part 12;

(6) Make funding decisions and determine allocations of program funds;

(7) Coordinate with the Office of the General Counsel to ensure the legal sufficiency of the cooperative agreement and the easement deed or other legal instrument;

(8) Sign and monitor cooperative agreements for the Commodity Credit Corporation (CCC) with the selected eligible entity;

(9) Monitor and ensure conservation plan compliance with highly erodible land and wetland provisions in accordance with 7 CFR part 12; and

(10) Provide leadership for establishing, implementing, and overseeing administrative processes for easements, easement payments, and administrative and financial performance reporting.