

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 185

[Document No. AMS-TM-10-0088; TM-08-07]

RIN 0581-AC83

#### Farmers' Market Promotion Program Regulation; Notice of Request for Approval of a New Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of proposed rule making and request for comments.

**SUMMARY:** This proposed rule would establish regulations for the Agricultural Marketing Service's Farmers' Market Promotion Program (FMPP). The FMPP is a competitive grant program that makes funds available to eligible entities for projects to establish, expand, and promote farmers markets, roadside stands, community-supported agriculture programs, agritourism activities, and other direct producer-to-consumer marketing opportunities. The proposed rule would establish eligibility and application requirements, the review and approval process, and grant administration procedures for the FMPP. Additionally in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Agricultural Marketing Service (AMS) announces its intention to request from the Office of Management and Budget (OMB) approval of a new information collection. Once approved, AMS will request OMB to merge this new collection into the currently approved information collection OMB 0581-0235, entitled Farmers' Market Promotion Program.

**DATES:** Comments received by March 21, 2011 will be considered. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this action must be received by March 21, 2011.

#### FOR FURTHER INFORMATION CONTACT:

Contact Carmen Humphrey, Branch Chief, Marketing Grants and Technical Services Branch, Marketing Services Division, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), USDA; 202/694-4000.

**ADDRESSES:** Interested parties may comment on the proposed rule using the following procedures:

- *Mail to:* Errol Bragg, Director, Marketing Services Division, Transportation and Marketing Programs, AMS, USDA, 1800 M Street, NW., Room 3012-South Tower, Washington, DC, 20036; or

- *Internet:* <http://www.regulations.gov>.

- Written comments should reference docket number AMS-TM-10-0088, TM-08-07; and the section number of the regulations the comment pertains to.
- Clearly indicate whether you are in favor of or against the proposed rule and your reason for the comment. Include recommended changes, as appropriate, and any relevant documentation that supports your comments. Only relevant materials should be submitted.

All comments submitted, including name and address, if provided, will be included in the record and made available to the public via <http://www.regulations.gov>.

Pursuant to the Paperwork Reduction Act, comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information collection technology, or any other form of information collection, should be sent to the above address. In addition, comments concerning the information collection should also be sent to the Desk Office of Agriculture, Office of Information Technology and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

##### Public Law 104-4

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA)

requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with a base year of 1995). This proposed rule does not meet the definition of a Federal mandate because the resulting annual State expenditures would not exceed the \$100 million threshold. The program is voluntary and local or tribal governments that choose to apply and qualify are eligible to receive grant funds.

##### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

##### Executive Order 12372

This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015 subpart V).

##### Executive Order 13132

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule would not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

##### Regulatory Flexibility Act

The AMS certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96-534, as amended (5 U.S.C. 601 *et. seq.*) (RFA). The RFA defines three types of small entities: small businesses, small organizations, and small governmental jurisdictions.

By nature of the FMPP grant program, this proposed rule would establish eligibility and application requirements for funding opportunities available to numerous small entities, including agricultural cooperatives, producer

networks, or producer associations; local governments; nonprofit corporations; public benefit corporations; economic development corporations; regional farmers' market authorities; and Tribal governments.

Producer networks and producer associations were added to the eligible entity list under the 2008 Farm Bill. Since 2006, however, agricultural cooperatives represented just 4.4 percent, producer networks represented 0.4 percent, and producer associations represented only 0.3 percent of all applications received under FMPP. These entities represent a total of only 5.1 percent of all FMPP applicants. Over the past 4 years the majority of all applications, or 67.9 percent, were received from nonprofit corporations. AMS anticipates this trend will continue each year through fiscal year 2012.

AMS considers for-profit agricultural cooperatives, producer networks, and producer associations as almost exclusively small agricultural firms, defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000 and that consist of a majority of small agricultural producers, defined by SBA as those having annual receipts of less than \$750,000. The RFA defines a small organization as any not-for-profit enterprise that is independently owned and operated and not dominant in its field. The RFA also defines a small governmental jurisdiction as governments of cities, counties, town, townships, villages, school districts, or special districts with a population less than 50,000. AMS expects that these small organizations and governmental jurisdictions would represent or advocate on behalf of constituent groups comprised predominately of small producers.

Additionally this proposed rule would establish procedures for these entities to apply for grant funds, provide a means of submitting payment requests, and define reporting requirements for awarded organizations. In addition, there are an estimated 69 peer reviewers who would be comprised of representatives from entities that are eligible to apply for FMPP grant funds and which AMS expects to be predominately small entities.

The proposed rule would not unduly burden or impose any discriminatory requirements for these eligible small entities or erect barriers that would restrict their ability to compete for available grant funds in the market.

### Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.168, Farmers' Market Promotion Program.

### Authority for the Farmers' Market Promotion Program

This program would provide grant funds to establish, expand, and promote direct producer-to-consumer marketing projects. The FMPP grant program is authorized by the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3001–3006) and the amendment to the 1976 Act, the Farmers' Market Promotion Program (7 U.S.C. 3005).

### Background

The FMPP was created through amendments to the Farmer-to-Consumer Direct Marketing Act of 1976. The grants authorized by the FMPP, originally funded in 2006 and revised under the 2008 Farm Bill (the Food, Conservation, and Energy Act of 2008, Pub. L. 110–246), are targeted to help improve and expand domestic farmers markets, roadside stands, community-supported agriculture programs, agritourism activities, and other direct producer-to-consumer marketing opportunities.

*Who administers FMPP, award grants, and oversees projects?*

AMS Transportation and Marketing Programs' Marketing Services Division administers and oversees the implementation of projects under FMPP.

*Who Is eligible to apply for FMPP funds? ~ Eligible entities*

Eligible entities under FMPP are agricultural cooperatives, producer networks or associations (added under 2008 Farm Bill); local governments; nonprofit corporations; public benefit corporations; economic development corporations; regional farmers' market authorities; and Tribal governments. All entities must be owned, operated, and located within one of the 50 U.S. States or the District of Columbia.

*Are matching funds required?*

No. Matching funds are allowed but not required under FMPP.

*How can grant funds be used? ~ Eligible grant projects*

FMPP projects should be designed "(A) to increase domestic consumption of agricultural commodities by improving and expanding, or assisting in the improvement and expansion of, domestic farmers' markets, roadside stands, community-supported agriculture programs, agri-tourism

activities, and other direct producer-to-consumer market opportunities;" or "(B) to develop, or aid in the development of, new farmers' markets, roadside stands, community-supported agriculture programs, agri-tourism activities, and other direct producer-to-consumer marketing opportunities."

*Are there restrictions and limitations to FMPP Funds usage? ~ Restrictions and limitations on grant funds*

Yes. FMPP funds cannot be used to pay for (1) the acquisition of land or the acquisition, construction, rehabilitation, or repair of a building or facility, (2) the development of and/or participation in political or lobbying activities, (3) projects already funded by another Federal agency, or (4) any activities prohibited by FAR 31.2 or 7 CFR parts 3015, 3016, 3018, or 3019.

*Is AMS subject to any special requirements, restrictions, and limitations related to electronic benefits transfer (EBT)? ~ EBT activities*

Yes. Pursuant to the 2008 Farm Bill, not less than 10 percent of the grant funds awarded by AMS in fiscal years 2008–2012 shall be used to support the implementation of electronic benefits transfer (EBT) for Federal nutrition programs at farmers markets. This limitation only affects AMS' ability to award grants, and not any specific grant once awarded. Eligible EBT projects must (1) not be used for funding the ongoing cost of carrying out any EBT project; and (2) demonstrate a plan to continue to provide EBT card access at one or more farmers markets following the receipt of a grant. AMS will designate these projects as 'new EBT projects.' Existing EBT projects, therefore, are projects where a farmers market already has an EBT terminal or system in place.

Although existing EBT projects are eligible and can be funded under FMPP, to be considered under or counted toward the 10 percent legislative mandate the projects must be a new EBT project(s) at farmers markets.

*What are the application requirements? ~ Completed application package*

The following documentation must be submitted as an application package to AMS under FMPP:

- Standard Form 424 "Application for Federal Assistance." AMS uses this information to determine the entity's eligibility for participation in the FMPP.
- Standard Form 424A "Budget Information—Non-Construction Programs." AMS uses this information to assess the suitability of the budget for

the proposed project and to ensure it conforms to the program guidelines.

○ **Standard Form 424B, "Assurances—Non-Construction Programs."** AMS uses this information to certify that grant participants are complying with applicable program regulations.

○ **Project Proposal Narrative.** The narrative must include a plan to show how the applicant will utilize FMPP grant funds. This narrative plan must also include a detailed, itemized supplemental budget summary that indicates the personnel being requested and any other items being requested for payment under FMPP. AMS provides instructions for completing the narrative and supplemental budget summary in their FMPP Guidelines annually, at the start of each new FMPP grant program year. All information about FMPP program requirements will also be made available at the FMPP Web site at <http://www.ams.usda.gov/FMPP>.

○ **Written Proof of Eligibility.** Written proof of the applicant's eligibility from a State or Federal source is also required as part of the application package.

○ **Supporting Documents.** Supporting documents, including letters of support, letters of project participation and implementation, and descriptions of the principal project manager and others involved in the project, are also strongly encouraged.

*Can an organization submit multiple applications? ~ Maximum number of applications*

Yes. There is no limit to the number of applications or ideas an organization can submit to AMS. However, an organization can only receive one grant in a grant-funding year.

When submitting multiple ideas, an applicant should submit similar ideas in one application package, *i.e.*, an EBT start-up project may be submitted in one application, and a multiple market distribution project in a second application.

*Is there a fee for applying for FMPP funds?*

No. An applicant does not have to pay any fees to submit an application for grant funds under FMPP. However there are costs that would include burden hours for the respondents to complete the FMPP application, and any additional costs to mail the application package to AMS by regular or express carrier, as needed.

*How will grant applications be reviewed? ~ Review of grant applications*

Applications will be approved or rejected by AMS utilizing recommendations from entities that represent 'peer' and Departmental or other Federal and State government employee reviewers.

(a) 'Peer reviewers' will be comprised of representatives from organizations that are eligible to apply for FMPP grant funds. These are: agricultural cooperative organizations, producer network organizations, and producer network associations organizations; local governments; nonprofit corporations; public benefit corporations; economic development corporations; regional farmers' market authorities; and Tribal governments. Peer reviewers will not be eligible to serve as a reviewer if they are (i) employed by, volunteer for, or serve as a board member or other type of committee/team member for the organization that submitted an application that same year under FMPP; or (ii) a proposed subcontractor or financial beneficiary in a budget from any organization submitting an application that same year under FMPP.

(b) Reviewers will utilize the evaluation criteria provisions published annually in the FMPP Guidelines and Notice of Funds Available. The criteria may change based on the priorities for annual funding. AMS may request the applicant provide additional information or clarification.

*Is there a contract or grant agreement with awardees? ~ Grant agreements*

Yes. AMS will enter into a grant agreement with awardees. The grant agreement is used as documentation of the agreed upon responsibilities of AMS and the awardee(s) performing the project work. AMS grant agreements will include, at a minimum, the following: the project(s) in the approved plan, the beginning date and ending date of the project work, the total amount of Federal financial assistance that will be awarded, and the terms and conditions pursuant to which AMS will fund the project(s).

*Once an organization receives a grant when can they reapply? ~ Consecutive grants*

An organization or entity that has received an FMPP grant may apply for future grants, but only after the current (existing) grant has been completed and AMS has accepted and approved all documentation and reports. The entity may then re-apply 12 months from this

acceptance and approval date. AMS will not provide two consecutive grants to any entity. AMS has developed this system in an effort to provide grant funding opportunities to as many new awardees each year as possible in order to support the rapidly growing number of farmers markets and other direct marketing organizations. This system has also been designed to avoid repeated funding of one entity for the same or similar project activities.

Here are two examples: First, a grant awarded in fiscal year 2010 for a 12-month project begins on October 1, 2010. The project is completed by September 30, 2011. All required documentation and reports are submitted and accepted by AMS no later than 90-days after project completion, *i.e.*, December 31, 2011. The fiscal year 2010 awardee may then re-apply to FMPP after December 31, 2011, for the fiscal year 2012 funding cycle.

Second, if a 6-month grant extension is approved by AMS, the original 12-month fiscal year 2010 grant award would complete the project on March 30, 2012. All required documentation and reports are submitted and accepted by AMS no later than 90-days after project completion, *i.e.*, June 30, 2012. The fiscal year 2010 awardee may then re-apply to FMPP until after July 1, 2012, for the fiscal year 2013 funding cycle.

*What are the awardee reporting requirements?*

Awardees are required to provide AMS the following written project and financial reports:

- **Semi-Annual Performance and Final Performance Reports.** The Performance (progress) Report is written documentation required by awardees to notify AMS about the work activities and progress towards completing the awardees' established project workplan goals, objectives, and timelines. A performance report is required every six months after the start date of the grant agreement. A one-time final Performance Report is required to be submitted within 90 days after the ending date of the grant agreement. If the project is one year or less, then only one performance report and a final performance report are required. This information is utilized by AMS as final documentation of completion of the workplan goals, objectives, and activities.

- **Federal Financial Report and Final Financial Reports.** A Federal Financial Report must be submitted every four months, after the receipt of Federal grant funds, until the expiration of the

grant period, to provide the Agency information to monitor the financial status of the organization's grant project. A final Federal Financial Report is also required 90 days after the expiration date of the grant period. If the project is one year or less, then only two financial reports and a final Financial Report are required. The Financial Report includes the amount of Federal cash disbursements, receipts, and cash on hand; Federal expenditures and unobligated balances; and any program income earned during the reporting period. This information will be used by the Agency to determine the use of cash provided by FMPP and the organization's spending practices in correlation to the project performance reports.

Each year FMPP grant funds are available AMS intends to publish a Notice in the **Federal Register** indicating: That applications may be submitted for participation in the competitive FMPP grant review process, and the maximum FMPP funding level available that fiscal year to applicants.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FMPP information collection is currently approved by OMB control number 0581-0235 Farmers' Market Promotion Program, which is an estimated 20,892 total annual burden hours. AMS is requesting OMB approval of a new information collection. When the final rule is approved, AMS will request OMB to consolidate this NEW collection into the currently approved collection OMB 0581-0235 Farmers' Market Promotion Program. This request would create one voluntary form and eight mandatory forms:

- Form "TM-31, FMPP Supplemental Budget Summary and Instructions—For EBT Projects"—voluntary for applicants.
- The "FMPP Guidelines"—mandatory for applicants and awardees.
- "Written Proof of Eligibility"—mandatory for applicants.
- "Registration with the Central Contractor Registry"—mandatory for applicants.
- Form "AMS-34, AMS Conflict-Of-Interest and Confidentiality Statement For Grant Reviewers"—mandatory for reviewers.
- Form "TM-32, FMPP Grant Peer Reviewer Qualifications Template"—mandatory for reviewers.
- Form "TM-33, FMPP Reviewer Declaration of Intent"—mandatory for reviewers.
- Form "AMS-33, United States Department of Agriculture, Agricultural

Marketing Service, Agreement Face Sheet"—mandatory for awardees.

- Form "TM-34, FMPP Grant Program, General Terms and Conditions"—mandatory for awardees.

*Title:* Farmers' Market Promotion Program.

*OMB Number:* 0581-NEW.

*Expiration Date of Approval:* 3 years from approval.

*Type of Request:* A new information collection.

*Abstract:* The Farmers' Market Promotion Program (FMPP) was created through an amendment of the Farmer-to-Consumer Direct Marketing Act of 1976. The grants authorized by the FMPP, originally funded in 2006 and revised under the 2008 Farm Bill, are targeted to help improve and expand domestic farmers markets, roadside stands, community-supported agriculture programs, agritourism activities, and other direct producer-to-consumer marketing opportunities. Entities eligible to apply are agricultural cooperatives, producer networks, producer associations, local governments, nonprofit corporations, public benefit corporations, economic development corporations, regional farmers market authorities, and Tribal governments.

AMS provides voluntary forms to be used to complete the narrative and supplemental budget summary and requires that additional information be provided with the application. The forms are available via the AMS Web site at <http://www.ams.usda.gov/FMPP>:

1. "TM-31, FMPP Supplemental Budget Summary and Instructions—For EBT Projects Only"—AMS will create this new voluntary form for applicants developing and budget requests for new and existing EBT projects only and will include instructions for its use.

2. "Written Proof of Eligibility"—In addition to an explanation in the narrative of how the applicant/organization qualifies as an eligible entity, written proof from a State or Federal source must also be provided in the application package. This documentation may include, for example for a nonprofit, a copy of the organization's letter of determination from the State or Internal Revenue Service indicating the date of incorporation as a nonprofit.

In addition to the requirements above, any applicant applying for Federal funding must register with the Central Contractor Registry at <http://www.CCR.gov>.

3. *Registration with Central Contractor Registry.* The Central Contractor Registry (CCR) is the primary registrant database for the U.S. Federal

Government. The CCR collects, validates, stores, and disseminates data in support of agency acquisition missions, including Federal agency contracts, grants, cooperative agreements, and other forms of Federal assistance and assistance awards. Whether applying for assistance awards, contracts, grants, or other business opportunities, all entities are considered "registrants."

CCR has its origins in the Federal Financial Assistance Management Improvement Act of 1999, also known as Public Law 106-107. Both current and potential Federal government registrants and entities applying for assistance awards from the Federal government, via either Grants.gov or hard copy submission, are required to register with CCR in order to be awarded funds by the Federal government.

The type of information requested by CCR includes, but is not limited to:

a. *General information*, including organization DUNS number, Federal Tax Identification Number (TIN), location, employee numbers, and web site address.

b. *Corporate Information*, including organization or business type and SBA-defined socioeconomic characteristics.

c. *Financial Information*, including financial institution, American Banking Association (ABA) routing number, account number, remittance address, lock box number, automated clearing house (ACH) information, and credit card information.

d. *Point of Contact Information*, including the primary and alternate points of contact and the electronic business, past performance, and government points of contact.

Registrants are required to complete the one-time CCR registration to provide information relevant to procurement and financial transactions. CCR shares the data received from registrants with the Federal government. AMS will use this information in establishing its electronic (direct deposit) payment system. Note that the CCR registration does not guarantee business with the AMS/FMPP or any other Federal government agency.

AMS will request potential grant reviewers to complete the following form:

1. "TM-32, FMPP Grant Peer Reviewer Qualifications Template"—AMS will utilize this mandatory form for reviewers to complete and submit their personal or work qualifications and resume. Reviewers must have a general knowledge of direct producer-to-consumer marketing that includes operational aspects of farmers markets,

farms and production/ranching, roadside stands, CSAs, agritourism, and/or electronic benefits transfers projects. Reviewers will apply their knowledge and expertise in these areas to objectively assess applications and provide both a numeric score and written comments for each application.

The form will contain a checklist for potential reviewers to identify their employment and experience. Boxes will be provided for potential reviewers to indicate (a) their area of experience or expertise, such as farmers market management; and (b) whether the person is a current or retired nonprofit, for-profit, or Federal/State government employee. As such, AMS will review and may revise the form annually. AMS may also request additional information or clarification from potential reviewers.

The reviewer qualifications will be used to determine whether a reviewer is qualified to serve as part of the grant review process.

AMS will also require anyone serving as a grant reviewer to comply with and sign the following:

1. “*AMS-34, AMS Conflict-Of-Interest and Confidentiality Statement For Grant Reviewers*”—This mandatory form for reviewers to sign indicates compliance with the conflict of interest and confidentiality requirements. Regarding confidentiality, reviewers must agree not to copy, quote, or otherwise use or disclose to anyone, any information from any application. Reviewers must also agree with the conflict of interest requirements, which include that the reviewer does not have: (1) A direct financial interest in the review outcome; or have direct and predictable financial interests in the outcome; (2) indirect interests with the organization or personnel submitting an application under FMPP; or (3) any relationship, such as a close personnel friendship, that may affect the reviewers’ judgment or be seen as doing so by a reasonable person familiar with the relationship.

2. “*TM-33, FMPP Reviewer Declaration of Intent*”—AMS will utilize this mandatory form for reviewers to sign indicating they have not submitted an application under FMPP that funding year. Peer reviewers will not be eligible to serve as a reviewer if they are (i) employed by, volunteer for, or serve as a board member or other type of committee/team member for an organization that submitted an application that same year under FMPP; or (ii) a proposed subcontractor or financial beneficiary in a budget from any organization submitting an application that same year under FMPP.

Before grant funds are dispersed, applicants that are selected (awardees)

must comply with the terms and conditions of the grant and sign the grant agreement. The AMS will publish the “*FMPP Guidelines*” which contain information regarding how to complete a grant application package and the Agency’s post-award requirements, along with a public notice of funds being made available. The FMPP Guidelines will be revised annually and posted on the AMS Web site at <http://www.ams.usda.gov/FMPP>. While this document is not signed, applicants must read and utilize this document to prepare their application and understand the terms and conditions of the grant award. The grant agreement will include:

1. “*TM-34, FMPP Grant Program, General Terms and Conditions*”—This is a mandatory form for awardees indicating compliance with terms and conditions of the award and all Federal grant regulations and administrative requirements including 7 CFR parts 3015, 3016, 3018, 3019; and FAR 31.2. (The burden hours for this new form are already accounted for under the OMB 0851–0235, Farmers’ Market Promotion Program). The document also includes awardee assurances and certifications (thereby eliminating the Agency’s need for applicants to sign forms AD–1047, AD–1048, and AD–1049); changes in project contacts, leaders, managers, and staff; cost principles; actions that need prior approval; performance monitoring; reporting requirements; and payment requirements.

The FMPP Grant Program General Terms and Conditions may be updated annually to reflect mandatory additions and other changes made by regulatory or Office of Management and Budget grant requirements. The document is currently made available to applicants and awardees via the AMS website, and does not require a signature. It will also be included, by reference, the signed grant agreement face sheet.

2. “*AMS-33, United States Department of Agriculture, Agricultural Marketing Service, Agreement Face Sheet*”—This is a mandatory form for awardees to sign indicating compliance with terms and conditions of the grant award, project work approved, and receipt of grant funding. The sheet includes the grant authority; funding dollar amount; awardee and Federal contacts names, address, email addresses, and phone and fax numbers; agreement number; project title, objectives, and statement of work; project work beginning and ending dates; and awardee and AMS Associate Administrator signatures. Three (3) copies of this agreement are required with the awardee’s and the AMS

Associate Administrator’s signatures and dated for each grant.

The 2008 Farm Bill authorizes funding for grants under FMPP, allocating mandatory funds from the Commodity Credit Corporation, from 2009 through 2012 with \$5 million for each year of 2009 and 2010, and \$10 million for each year of 2011 and 2012. With this increase in funding made available, and a focus of funding new EBT projects, AMS anticipates an increase in the number of applications being submitted and an increase in the burden hours. In fiscal year 2010, nearly one-half of all the project ideas submitted for funding were for new or existing EBT-related project work.

With the approval of this new collection and when the final notice is published, AMS will request that OMB consolidate these new burden hours into the currently approved information collection OMB 0581–0235.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 2.322 hours per response.

*Respondents:* Same respondents as for the overall collection package: Agricultural Cooperatives, Producer Networks or Producer Associations; Local Governments; Nonprofit Corporations; Public Benefit Corporations; Economic Development Corporations; Regional Farmers’ Market Authorities; and Tribal Governments.

*Estimated number of respondents:* 1,575.

*Estimated total annual responses:* 4,925.

*Estimated number of responses per respondent:* 3,127.

*Estimated total annual burden on the respondents:* 11,437 hours.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA) that requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

- Voluntary form TM–31 can be filled out electronically from the AMS Web site and printed out for submission. For Grants.gov applicants the proposal narrative and supplemental budget summary can also be filled out electronically and submitted as an attachment through Grants.gov during the FMPP application process. Additionally, Grants.gov applicants are not required to submit any additional (hard copy) paperwork to AMS.

- Form TM–34 will be made available via the FMPP website and can be printed for awardees personal records. A copy of this form is provided by AMS

to awardees with the grant agreement. There is no need to return this form to AMS.

- Form AMS-33 is completed by AMS and will be mailed to awardees for their original signature.

- Forms AMS-34, TM-32, and TM-33 will be made available via the AMS Web site and, once signed by reviewers can be scanned, e-mailed, or faxed to AMS.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the proposed regulations and USDA's oversight, including whether this information will have practical utility; (2) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB 0581-NEW and the Farmers' Market Promotion Program. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the same address referenced in the **ADDRESSES** section of this rule.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

This proposed rule would establish the FMPP grant process, as follows:

#### List of Subjects in 7 CFR Part 185

Farmers' Market Promotion Program, FMPP, FMPP guidelines, FMPP application requirements, FMPP voluntary narrative and budget forms, FMPP reviewer information, reviewer confidentiality, FMPP grant agreement, and FMPP awardee grant acceptance terms and conditions.

For the reasons set forth in the preamble, it is proposed that Chapter 1 of title 7 of the Code of Federal Regulations be amended by adding subchapter I and part 185 to read as follows:

### Subchapter I—Grant Programs

#### PART 185—FARMERS' MARKET PROMOTION PROGRAM

Sec.	
185.1	Grant program scope.
185.2	Definitions.
185.3	Eligible entities for grant funds.
185.4	Eligible grant project.
185.5	Eligible grant project—EBT activities.
185.6	Restrictions and limitations on grant funds.
185.7	Project narrative.
185.8	Completed application package.
185.9	Maximum number of applications.
185.10	Review of grant applications.
185.11	Grant agreements.
185.12	Consecutive grants.
185.13	Post award requirements.
185.14	Program income.
185.15	Reporting and oversight requirements.

**Authority:** 7 U.S.C. 3001–3006.

#### § 185.1 Grant program scope.

Pursuant to the authority conferred by the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3001–3006) and the amendment to the 1976 Act, the Farmers' Market Promotion Program (7 U.S.C. 3005), AMS intends to make competitive grant funds available to eligible entities for projects to establish, expand, and promote farmers markets and direct producer-to-consumer marketing, in accordance with the terms and conditions set forth herein and other applicable Federal statutes and regulations including, but not limited to, 7 CFR parts 3015, 3016, 3018, and 3019.

#### § 185.2 Definitions.

(a) *Agency Fiscal Year* means the Agricultural Marketing Service's operating year which begins on October 1 and ends on September 30.

(b) *AMS* means the Agricultural Marketing Service of the United States Department of Agriculture.

(c) *Application* means a grant application package, which includes all forms, narrative, budget, and other required information as specified in 7 CFR 185.8, that is submitted to AMS under the Farmers' Market Promotion Program (FMPP) for FMPP grant funds.

(d) *Awardee* means the entity to which a grant is awarded and which is accountable for the use of the funds provided. The awardee is the entire legally eligible entity, even if only a particular component of the entity is designated in the grant agreement.

(e) *Agricultural cooperative* means a group- or member-owned entity or business that provides, offers, or sells agricultural products or services for the mutual benefit of the members thereof.

(f) *Agritourism* means the act of consumers visiting a working farm or

any agricultural or agribusiness operation for the purpose of enjoyment, education, or active involvement in the activities of the farm or operation. Agritourism projects must meet the scope and eligible fund usages for the grant program prescribed in § 185.1 and 185.4.

(g) *Consumer* means a person that buys goods or services and consumes it or uses it for direct personal use or ownership, rather than for resale or use in mass production and manufacturing.

(h) *Community-supported agriculture (CSA) program* means a farm business(es) or group of farmers/producers that develop a partnership with consumers. Typically consumers pay for farm products in advance; and in turn, the farm business commits to supplying sufficient quantity, quality, and variety of products and delivering those products directly to the consumer or to a common distribution location for consumer pick-up.

(i) *Direct producer-to-consumer marketing* means agricultural marketing enterprises where farmers or vendors sell their own products directly to consumers.

(j) *Economic development corporation* means an organization whose mission is the improvement, maintenance, development and/or marketing or promotion of a specific geographic area.

(k) *Electronic benefits transfer (EBT)* means an electronic system that allows a recipient to authorize transfer of their government benefits from a Federal/State account to a retailer/business account to pay for products authorized and received under food stamps and other government benefit programs.

(l) *Equipment* means any tangible, nonexpendable, personal property, including exempt property charged directly to the grant having: A useful life of more than 1 year, and an acquisition cost of \$5,000 or more per unit.

(m) *Existing EBT project* means a farmers market, facility, or other establishment that already has electronic benefits transfer (EBT) terminals and an EBT system in place at the market, facility, or establishment.

(n) *Farmers market* means a public and recurring assembly of farmers, their employees, and/or vendors that sell agricultural products that they have grown, raised, or produced, directly to consumers. The extent to which a farmer and/or vendor sells other farmer's food and/or other agricultural products to enhance the market's diversity is under the discretion of market management.

(o) *Grant agreement* means the signed documentation that designates an agreement between AMS and the

awardee entity performing the awarded project work. The agreement will include, at a minimum: The approved project plan(s), the project dates, the total amount awarded, and the terms and conditions pursuant to which AMS funds the project(s).

(p) *Grant period* means the period of time from when the grant agreement is signed until the completion of all projects submitted in the proposal narrative plan.

(q) *Indirect cost* means cost(s) incurred for common or joint objectives that can not be readily identified with a particular final project cost objective.

(r) *Local government* means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

(s) *New EBT project* means a new or start-up electronic benefits transfer (EBT) initiative at a farmers market where the facility has not initiated or implemented EBT.

(t) *Nonprofit corporation* means any organization or institution, including nonprofits with State or IRS 501(c) status and accredited institutions of higher education, where no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(u) *Program income* means gross income earned by the awardee that is directly generated by a supporting activity or earned as a result of the grant award, in accordance with 7 CFR parts 3015, 3016, and 3019.

(v) *Producer association* means an organization or other business entity that assists, represents, or serves producers or a producer network.

(w) *Producer network* means a producer group- or member-owned organization or business entity that provides, offers, or sells agricultural products or services through a common distribution system for the mutual benefit of the members thereof.

(x) *Project* means all proposed activities to be funded by the FMPP.

(y) *Proposal narrative* means the written proposed project activities and planned use of funds submitted for funding in the grant application.

(z) *Public benefit corporation* means a corporation organized to construct or operate a public improvement, the profits from which inure to the benefit of a State(s) or to the people thereof.

(aa) *Regional farmers' market authority* means an entity that establishes and enforces regional, State,

or county policies and jurisdiction over regional, State, or county farmers markets.

(bb) *Roadside stand* means a stand or kiosk located along the side of a road where a farmer or other agricultural vendor sells agricultural and/or other agricultural products that they have grown, raised, or produced, directly to consumers.

(cc) *States* means all 50 U.S. States and the District of Columbia.

(dd) *Supplies* means any tangible, personal property other than equipment as defined in § 185.2(l), excluding debt instruments and inventions defined in 7 CFR 3019.2(hh).

(ee) *Supplemental budget summary* means a detailed, itemized list of personnel, travel, equipment, and/or other items or costs that are being requested for payment by FMPP funds to fulfill the proposed grant project activities. The supplemental budget summary is the budget portion of the project narrative, details of which are provided in § 185.7(o), and is more specific in budget details than the required SF-424A budget.

(ff) *Tribal government* means a governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688 (43 U.S.C. 1602)) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

(gg) *United States* means any of the 50 states or the District of Columbia.

#### **§ 185.3 Eligible entities for grant funds.**

(a) Eligible grant applicants are agricultural cooperatives, or producer networks or associations; local governments; nonprofit corporations; public benefit corporations; economic development corporations; regional farmers' market authorities; and Tribal Governments.

(b) All entities must be owned, operated, and located within the United States.

(c) Entities must provide written proof of their eligibility, from State or Federal sources, to be eligible for and/or receive grant funds.

#### **§ 185.4 Eligible grant project.**

(a) To be eligible for a grant, the project(s) must establish, expand, or promote farmers markets or direct producer-to-consumer marketing activities within the United States. In general, the project(s) must increase domestic consumption of agricultural commodities by:

(1) Improving and expanding, or assisting in the improvement and expansion of, domestic farmers markets, roadside stands, community-supported agriculture programs, agritourism activities, or other direct producer-to-consumer market opportunities; or

(2) Developing, or aiding in the development of, new farmers markets, roadside stands, community-supported agriculture programs, agritourism activities, or other direct producer-to-consumer marketing opportunities.

(b) To be eligible for a grant, the project(s) must be completed within 24 calendar months after the grant agreement prescribed in § 185.11 is signed. The grant period is established by the approved project timelines submitted in the application proposal narrative and approved and documented by AMS in the grant agreement. For cause, however, an extension of the grant period not to exceed six (6) additional months may be granted by AMS on a case by case basis with a written request. Including the original 24-month grant period and any approved extensions, an FMPP grant period will not exceed 30 months (2.5 years).

#### **§ 185.5 Eligible grant project—EBT activities.**

(a) All electronic benefits transfer (EBT) projects are eligible for grant funding.

(b) Not less than 10 percent of the grant funds awarded by AMS in Agency fiscal years 2008 through 2012, however, shall be used to support the use of EBT for Federal nutrition assistance programs at farmers markets as follows:

(1) The EBT project is a new or start-up EBT initiative at a farmers market;

(2) The EBT projects must not be used for funding the ongoing cost of carrying out any EBT project; and

(3) The applicant must also demonstrate a plan to continue to provide EBT card access at one or more farmers markets following the receipt of a grant.

#### **§ 185.6 Restrictions and limitations on grant funds.**

(a) Grant funds may not be used to pay for:

(1) The purchase, construction, rehabilitation, or repair of a building or facility.

(2) The acquisition of land.

(3) The development of and/or participation in political or lobbying activities (7 CFR part 3018).

(4) Projects already funded by another Federal agency. An application that duplicates or overlaps substantially



with a project activity or application already reviewed and funded by another Federal agency will not be funded by FMPP.

(5) Other activities prohibited by 7 CFR parts 3015, 3016, 3018, or 3019.

(b) Not more than 10 percent of the total funds budgeted of any proposal may be used for indirect costs. The supplemental budget summary narrative explanation must include an explanation of how the indirect cost rate was determined and what it includes.

#### § 185.7 Project narrative.

The project proposal narrative must include a plan to explain how FMPP grant funds will be used. The narrative must include:

(a) *Project Title*. Must capture the primary focus of the project, and match the title provided on Form SF-424.

(b) *Organization Information*. Provide the name of the organization applying for grant funds, contact name, mailing address, and telephone and fax number. Also provide the e-mail address for the person designated to answer questions about the organization's application, project information, and the proposed budget request.

(c) *Primary Project Manager Information*. Provide the name, mailing address, telephone and fax number, and email address for the person(s) responsible for managing and/or overseeing the project.

(d) *Requested FMPP Funding and Matching Funding*. Indicate the dollar amount requested from FMPP and the amount of matching funding (not required) that will be provided.

(e) *EBT, Equipment, Supplies, and Promotional Projects*. Questions will be asked whether the project proposal includes a new or existing EBT component, equipment, supplies, and promotional items/services; applicants must indicate by answering Yes or No.

(f) *Entity Type/Eligibility Statement*. Indicate the entity type of the applicant/organization. Provide an explanation of how the applicant/organization qualifies as an eligible entity. Although not required as part of the narrative, written proof of eligibility must also be provided from a State or Federal source in the application package. Applications that do not contain this documentation or provide sufficient information to determine the eligibility of the applicant will not be considered.

(g) *Executive Summary*. Should not exceed 200 words and must include the following: A project description, goals to be accomplished, stages of work and resources required, and expected timeframe for completing all tasks and results.

(h) *Goals of the Project*. Provide a clear statement (no more than two sentences) focusing on the ultimate goal(s) and objective(s) of the project.

(i) *Background Statement*. Provide specific information affecting the project or projects. Describe past, current, and/or future events, conditions, or actions taken that justify the need for each project. Correlate the background and purpose of the activity to support the particular project issue.

(j) *Work-plan and Resource Requirements*. Provide a statement that includes the planned scope of work, anticipated stages and timelines, and the resources required to complete the project. Identify who will do the work, whether collaborative arrangements or subcontractors will be used, the resource commitments of the collaborators, and the role(s) and responsibilities of each collaborator or project partner. Indicate in-kind and volunteer work. The anticipated stages/steps and timelines for each project activity must also be provided.

(k) *Expected Outcomes and Project Evaluation*. Describe what is to be accomplished, the expected results, and how success will be measured at the completion of the project. The quantitative and qualitative evaluation measurement of the project's impact must be identified.

(l) *Beneficiaries*. Describe which individuals, organizations, and/or entities will benefit from the project outcome and how they will benefit.

(m) *Evaluation Criteria Statements* (effective January 1, 2010). All applications will be evaluated against the criteria in the "Proposal Evaluation Criteria," which can be found in the FMPP Guidelines at [www.ams.usda.gov/FMPP](http://www.ams.usda.gov/FMPP). This criteria may be changed (annually) depending on the Agency's funding priorities. Use the evaluation criteria as headings. Address and summarize how the project addresses each criterion. Provide references in the work-plan and other narrative sections, as needed, to justify the merit of each criterion.

(n) *Existing and Pending Support* (effective January 1, 2010). List all current and pending public or private support to which personnel identified in the narrative have committed portions of their time, whether or not salary support for persons involved is included in the FMPP budget request. An application that duplicates or overlaps substantially with an application already reviewed and funded by another Federal agency will not be funded under FMPP.

(o) *Supplemental Budget Summary*. Provide sufficient detail about the

budget categories listed on Form SF-424A. This budget is required and supplements, but does not replace, the SF-424A. All requested budget items and activities must:

(1) Be itemized, listing separately each item, its costs, and use.

(2) Correlate to the purpose/goals of the project and demonstrate that they are reasonable and adequate for the proposed work.

(3) Not include matching funds or in-kind work and items.

(4) Be substantiated in a written budget narrative.

(p) *Primary Proposal Activity*. Each FMPP application must clearly identify the primary proposal activity. Identify only one specific activity that meets the proposal's main goal and objective.

(q) *Secondary Proposal Activity*. List all other activities (as many as are applicable) that meet the remaining goals and objectives.

#### § 185.8 Completed application package.

Completed applications shall be clear and succinct and shall include the following documentation satisfactory to AMS.

(a) Standard Form-424 "Application for Federal Assistance."

(b) Standard Form-424A "Budget Information—Non-Construction Programs."

(c) Standard Form SF-424B "Assurances—Non-Construction Programs."

(d) Written proof of the applicant's eligibility (see 185.7(f)) from a State or Federal source.

(e) A Project Proposal Narrative, which includes an itemized, detailed supplemental budget summary that indicates the items being requested for payment.

(f) Any supporting documents are strongly encouraged, including:

(1) Letters and/or other evidence of commitment and participation from cooperators, contractors, or resource providers.

(2) Brief description(s) of experience or qualifications of project personnel and staff.

#### § 185.9 Maximum number of applications.

An organization may submit multiple applications annually to AMS for competitive review. An organization can only receive one FMPP grant, however, in the Agency's funding or fiscal year.

#### § 185.10 Review of grant applications.

All applications will undergo a competitive review and will be approved or rejected by AMS using recommendations from reviewers that represent 'peer' and departmental or



other Federal and State government employee reviewers.

(a) 'Peer reviewers' will be representatives from organizations that are eligible to apply for FMPP grant funds, as provided in § 185.3.

(b) Peer reviewers will not be eligible to serve as a reviewer if they are:

(1) Employed by, volunteer for, or serve as a board member or other type of committee/team member for the organization that submitted an application that same year under FMPP; or

(2) A proposed subcontractor or financial beneficiary in a budget from any organization submitting an application that same year under FMPP.

(c) The reviewers will use the evaluation criteria and provide AMS application scores, comments, and recommendations. AMS may request the applicant provide additional information or clarification, as needed.

#### § 185.11 Grant agreements.

(a) After a competitive review and approval of grant projects and activities, AMS will enter into grant agreements with the selected applicants (awardees).

(b) AMS grant agreements will include at a minimum the following:

(1) The project(s) in the approved proposal narrative plan.

(2) The beginning and ending dates of the project work.

(3) Total amount of Federal financial assistance that will be awarded.

(4) Terms and conditions pursuant to which AMS will fund the project(s).

#### § 185.12 Consecutive grants.

AMS will not award two consecutive grants to any organization or entity. Any entity that has received a grant award may apply for future grants after completion of the current grant project and 12 months after AMS has received and accepted all required documentation and reports for that current grant.

#### § 185.13 Post award requirements.

Awardees are also responsible for:

(a) Diligently monitoring their performance to ensure that time schedules are being met, project work within designated time periods is being accomplished, and other performance measures are being achieved.

(b) Ensuring that grant funds are used only for the activities covered by the approved project work and budget.

(c) Ensuring that proper financial, personnel, procurement, monitoring, and recordkeeping procedures are followed.

(d) Retaining all records pertaining to the FMPP grant for 3 years after the final

financial status report has been submitted to and accepted by AMS.

#### § 185.14 Program income.

(a) Program income earned during the grant period shall be retained by the awardee and used to further the project objectives, unless otherwise specified in the terms and conditions of the award.

(b) Awardees must account for program income earned in all financial statements to AMS in accordance with 7 CFR parts 3015, 3016, 3018, and 3019.

#### § 185.15 Reporting and oversight requirements.

(a) Performance reports will be required of all awardees every 6 months after the start date of the signed grant agreement until the expiration date of the grant period. If the project is one year or less, then only one performance report and a final performance report (see paragraph (b) of this section) are required. Each performance report shall include, but not be limited to, the following:

(1) Briefly summarize activities performed, targets, and/or performance goals achieved for each objective during the reporting period for each project.

(2) Note unexpected delays or impediments as well as favorable or unusual developments for each project.

(3) Outline work to be performed during the next reporting period for each project.

(4) Comment on the level of grant funds expended to date for each project.

(b) A final performance report will be required by all awardees within 90 days following the expiration date of the grant period. The final progress report shall include the following:

(1) A summary of the issue(s), problem(s), interest(s), or need(s) being examined.

(2) How the issue(s) were addressed via the project(s).

(3) Specific contributions, including time, energy, or other project assistance, of project partners.

(4) Results, accomplishments, conclusions, and lessons learned for each project.

(5) Description of who benefited from the project's accomplishments and a quantitative measure of the current or future benefits to be derived from the project.

(6) Additional information available (e.g. publications, Web sites).

(7) A contact person for each project with telephone number and e-mail address.

(c) "Federal Financial Reports" will be required every four months after the agreement start date until the expiration date of the grant period. If the project is

one year or less, then only two financial reports and a final financial report (see paragraph (d) of this section) are required.

(d) A final "Federal Financial Report" is required within 90 days following the expiration date of the grant period. The report will include a summary of all project financial information and program income received during the grant project.

(e) AMS will monitor awardees, as it determines necessary, to assure that projects are completed in accordance with the approved project plan.

(f) AMS, after reasonable notice to an awardee, may provide a written forfeiture of grant funds should an awardee fail to request and/or use grant funds within the first 8 months following the grant agreement start date.

(g) If, after reasonable notice to an awardee and opportunity for response, AMS finds that there has been a failure by the awardee to comply substantially with any provision or requirement of the project plan, AMS may impose special conditions (7 CFR 3016.12, 3016.43, 3019.14, or 3019.62) and/or disqualify, for one or more years, the awardee from participation and/or receipt of future grants under the FMPP.

Dated: January 12, 2011.

**David R. Shipman,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2011-930 Filed 1-18-11; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2011-0025; Directorate Identifier 2010-NM-208-AD]

RIN 2120-AA64

#### Airworthiness Directives; The Boeing Company Model 777 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require revising the maintenance program to update inspection requirements to detect fatigue cracking of principal structural elements (PSEs). This proposed AD was prompted by a new revision to the airworthiness limitations of the maintenance planning document. We